

1. CALL TO ORDER/ROLL CALL

In the absence of Chairman Lucking, Commissioner Beal served as Planning Commission Chair.

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

Members Present: Commission members John Beal, David Paeper, Todd Palmberg and Mark Spiers

Absent: Chairman Pat Lucking

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

City Attorney Kelly administered the Oath of Office to Commissioner David Paeper.

2. APPROVE AGENDA

Commissioner Spiers moved to accept the agenda for tonight's meeting. Commissioner Paeper seconded the motion. Motion carried 4-0.

3. MINUTES OF March 18, 2009.

Commissioner Paeper noted a minor change on page one and moved to approve the minutes of March 18, 2009 as amended. Commissioner Palmberg seconded the motion. Motion carried 2-0-2. Commissioners Beal and Spiers abstained.

4. LIAISON REPORT

Council Liaison Fletcher said the Council discussed the degree in which they wanted the code enforced, even when there may be a cost to the city for compliance. The Council felt it was necessary to enforce the ordinance even if there is a cost to the city.

Mr. Fletcher updated the Commission on the status of the billboard along Highway 7, informed them that the dock fee will be raised next year, noted the future of the Southshore Senior Center was discussed and said the Council adopted an ordinance to allow for a storm sewer fee.

The City Council will hold their Board of Review on April 16th, will be repainting the city signs and discussed the new dock being installed at Excel Marina.

5. PUBLIC HEARINGS

None

6. NEW BUSINESS

OUTDOOR LIGHTING ORDINANCE – Discuss potential amendment of the city ordinance to create comprehensive regulations for outdoor lighting.

City Attorney Kelly said he was unable to get a draft ordinance out to the Commission for their review. He noted comments sent via email by Chairman Lucking suggesting some definitions and regulations on flood/spot lights as well as setting a time limitation on holiday lighting.

Chairman Beal said his main concern with lighting is enforcement. He doesn't want to create a burden on city staff to address, for what is in many cases, a neighbor dispute. Commissioner Paeper agreed. Mr. Beal feels it is an appropriate use of staff time to address lighting issues that receive multiple complaints.

Commissioner Spiers said the ordinance provides an avenue for neighbors to facilitate a conversation about lighting.

City Attorney Kelly agreed and noted that a candle measurement sets a definitive measurement. On the issue of holiday lighting, he said this is difficult to define and enforce without risks of violating someone's first amendment rights. Commissioner Paeper asked if the city risked a lawsuit in the regulation of holiday lighting. Kelly said the ordinance would be deemed unenforceable.

Commissioner Spiers said it would be beneficial if the city would use the newsletter to inform residents about issues related to lighting. The Commission agreed.

City Attorney Kelly said the proposed ordinance amendment would regulate lighting by intensity and hours of use. He said the issue of floodlights and security lighting should also be regulated through hours of operation or a requirement they be motion sensor controlled.

Commissioner Spiers feels the issue can be handled informally, rather than making radical changes to the ordinance.

Council Liaison Fletcher noted the existing ordinance may not be as bad and ineffectual as many may think since it already regulates intensity and restricts the visibility of the actual light source. The latter though creates an issue with all holiday lighting. Chairman Beal noted that Excelsior exempted holiday lights from regulation.

Commissioner Spiers volunteered to write an article for the newsletter.

City Attorney Kelly said he would draft an ordinance for the Commission's review at their May meeting.

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

Commissioner Spiers distributed a table showing the diameters of trees he measured in this neighborhood. It was determined that the majority of them would fall under the suggested dimensions for a Heritage Tree.

Chairman Beal noted that some of the Spruce trees exceeded the ordinance circumference by more than fifty percent. Commissioners Spiers noted that there may be other areas within the city with the same "old forest" component.

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Commissioner Paeper said he measured a number of trees in his neighborhood also. He said without knowing the specific circumferences in the ordinance, he was able to determine there were three Heritage Trees.

Chairman Beal thought the numbers selected for the Heritage designation would limit the number of designation, but now isn't so sure. He thinks an ordinance that protects too many trees may be difficult to "sell" to the public. Commissioner Paeper feels the numbers selected by the Commission are good and the trees that fall within that range are worth protecting. Commissioner Spiers said he was also comfortable with the numbers selected, stating a line needs to be defined to designate a Heritage Tree.

Commissioner Paeper noted the ordinance provides an avenue for Heritage Trees to be removed. Commissioner Spiers said the numbers represent a good start and could be amended at a later date if they're found to be too restrictive.

Chairman Beal suggested the Commission hold a public hearing on the proposed ordinance.

Commissioner Spiers agreed but suggested a number of minor changes including the need to define what "healthy" means when referencing the health of a tree. City Attorney Kelly said the health of a tree would need to be assessed by an Arborist, including the determination of whether a tree is dead or diseased. He said dead and diseased trees must be permitted for removal regardless of its designation in the ordinance.

The Commission discussed a number of minor, miscellaneous changes.

Commissioner Paeper discussed his concerns about the replanting schedule noting the tables are somewhat confusing. The Commission discussed amendments to the table to make them easier to understand through the elimination of some columns and redefinition of replanting diameters.

The Commission discussed the options available to the city in the case of a property unable to support the required replanting, with the understanding there is not enough city owned property to facilitate placement of donated trees as required by the ordinance. It was determined that some type of Park Dedication, in the value of the tree, be made to the city in lieu of actual trees.

Commissioner Spiers raised questions regarding the security payment required and how the amount is determined. City Attorney Kelly said the amount is typically established by landscaper, though the city retains the right to establish what it deems as a fair value. Zoning Coordinator Karpas noted that the security requirement only applies to those situations where the allowable removal is being exceeded, which requires City Council approval. The security requirement would be part of that approval process.

Council Liaison Fletcher discussed a conversation he had with a resident who was concerned that the tree ordinance may become too restrictive to someone who has a lot of old growth trees on their property, especially when it comes time for him to sell the property. Chairman Beal said the city has always felt strongly that trees need to be protected.

Commissioner Spiers believes the ordinance is balanced and allows for options. He doesn't believe the proposed changes would create a huge issue for most residents.

The Planning Commission agreed to hold a public hearing on the ordinance at their May meeting.

CONSTRUCTION MANAGEMENT ORDINANCE – Discuss re-recommending the ordinance to the City Council.

Zoning Coordinator Karpas summarized the history of the ordinance and the specific provisions contained within it. He said he strongly supports the ordinance which only outlines common sense construction practices.

City Attorney Kelly said the proposed ordinance is not contained in the Zoning section of the code, therefore does not require a public hearing. He said if the Commission is happy with the ordinance, it can send it back to the Council for their review.

Commissioner Palmberg asked what issues the city sought to solve with the proposed ordinance. Zoning Coordinator Karpas reiterated that most of the provisions are common sense provision, but the ordinance provides it in black and white to contractors. Karpas discussed the provisions related to neighbor notification and hours of construction.

Commissioner Paeper commented he liked the provisions controlling runoff.

Commissioner Spiers believed the one hundred foot distance requirement for neighbor notification should be increased.

Chairman Beal expressed concern about the history of this ordinance and said he would like the Council to tell the Commission if it doesn't intend on adopting the ordinance in its current form, rather than tabling it for years.

Council Liaison Fletcher said he likes a number of the provisions within the ordinance and would be inclined to support it.

Commission Paeper commented the ordinance is drafted in a manner which is preventative rather than reactionary.

Motion by Commissioner Paeper to recommend the Council approve the ordinance amendment creating provision regulating construction within the city. Commissioner Spiers seconded the motion for discussion.

Chairman Beal said he would like to see the notification distance increased to two hundred feet and that the motion includes the Planning Commission's desire that action be taken on the ordinance, even if it is to deny the proposed amendment.

Commissioner Palmberg would like the restriction on construction hours removed. He feels homeowners have the right to work on their property at any hour, noting the city does not regulate the times a lawn mower or other lawn maintenance equipment may be operated, even though they can be just as intrusive.

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The Commission discussed Mr. Palmberg's proposed amendment to the motion. It was agreed that the hours of construction would be amended to permit construction between the hours of 7 a.m. and 9 p.m., Monday through Friday and 8 a.m. to 9 p.m. on weekends and holidays.

Chairman Beal called the question on Mr. Paeper's motion to approve, with the amendments that the notification range be increased to two hundred feet, that the hours permitted for construction be 7 a.m. and 9 p.m., Monday through Friday and 8 a.m. to 9 p.m. on weekends and holidays and that the Commission requests the Council to take official action on the proposed amendment.

The motion carried 4-0.

ZONING MAP – Discuss amendment of Zoning Map to reflect districts as described by the City Ordinances.

Zoning Coordinator Karpas summarized his memo to the Commission, stating there was an error in the Zoning Map which is easily correctable, but there had been a request by Chairman Lucking that the Commission consider rezoning the property from R-2 to R1-A.

Commissioner Spiers asked about the size of the property. Zoning Coordinator Karpas said he did not know, but it looked as though the property would lose two or three lots if it were re-platted under the R1-A regulations.

Chairman Beal clarified the only outstanding irregularity is the designation on the Zoning Map. City Attorney Kelly said it was and commented that the Zoning Map may technically be correct in terms of the land's use, but not in its labeling in the legend.

Commissioner Paeper noted the character of the platted lots is similar to those around the subject property.

Commissioner Spiers asked what the purpose of rezoning the property would be, to minimize high density residences. City Attorney Kelly said it has always been the desire of the Metropolitan Council that cities provide for higher density housing and that the apartments have always been a convenient use to reference in the Comprehensive Plan.

Zoning Coordinator Karpas asked if it were the desire of the Commission to continue this matter to the May meeting to allow Chairman Lucking to present his case. Chairman Beal thought it would be a good idea, since what is being proposed is a pretty big deal. The other Commissioners agreed.

VARIANCE DOCUMENT – Discuss Variance document created by Councilmember Fletcher and make recommendation to the City Council on its proposed use.

Zoning Coordinator Karpas presented the proposed variance application which had been amended from the previous meeting.

Commissioner Spiers felt the updated application was a good thing to do and asked if there were any legal issues the Commission should be aware of.

City Attorney Kelly said he worked with staff on tweaking some of the language. He said this change has been needed for a long time.

Commissioner Spiers questioned the Expiration provision stating a property owner had one year to complete a project once a building permit has been issued. After some discussion it was determined to keep that provision since it was taken directly from the Zoning Ordinance and Commissioners felt a year was more than adequate for projects within the city.

Chairman Beal questioned the reference on the application as to whether a proposal was in keeping with the spirit and intent of the Comprehensive Plan. Zoning Coordinator Karpas said that language is taken directly from State Statutes and the Zoning Ordinance. Beal felt it was unnecessary and should be removed. City Attorney Kelly suggested placing a reference to the Zoning designation rather than the Comprehensive Plan. The Commission accepted the change.

Commissioner Paeper said he would like the reference to “building renderings” removed from the submittal materials since the city requires and prefers scaled elevations of all structures. Staff will remove the reference.

The Commission discussed the process of moving this item onto the Council. It was determined that Staff would make amendments to the application and submit it to the Council.

Motion by Commissioner Paeper to recommend the Council approve the proposed application form for use on variances requests. Commissioner Palmberg seconded the motion. The motion carried 4-0.

HARDSHIP CRITERIA – Discuss Hardship and Reasonable Use Standards for Variances.

Zoning Coordinator Karpas noted that the Mayor included some literature for the Commission’s review on hardship criteria pertaining to variance requests.

7. PLANNING COMMISSION LIAISON

There will be no representative from the Planning Commission at the May 5th City Council meeting.

Council Liaison Fletcher commented that there will be times that the Commission will need to send a representative to the Council, especially in instances where there may be actionable items.

8. ADJOURN

Motion by Commissioner Palmberg to adjourn the meeting. Commissioner Paeper seconded the motion. The meeting was adjourned at 9:10 p.m.

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Respectively Submitted
Gus Karpas - Zoning Coordinator