

## PLANNING COMMISSION MINUTES

**DATE:** January 23, 2012

**TIME:** 4:30 p.m.

**PRESENT:** Chairman Porter; Commissioners Eyden, Boettcher, Gromek, Buelow and Ballard

**ABSENT:** Commissioner Prosen, Olson and Briggs

**STAFF PRESENT:** City Planner, Mark Moeller

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The meeting was called to order at 4:30 p.m. by Chairman Porter.

### Approval of Minutes – December 12, 2011

The minutes from the Commission's meeting of December 12, 2011 were reviewed, and upon motion by Commissioner Boettcher, and second by Commissioner Ballard, were unanimously approved as submitted.

### Bicycle Ordinance

Chairman Porter introduced this item and called on Carlos Espinosa, Assistant City Planner, to provide an overview of it. Mr. Espinosa noted that he had, in the Commission's agenda package, included a draft ordinance related to bicycles and bicycle use within the City. He explained that Winona's City Code currently does not specifically address bicycling rules in the City. Although bicycling rules are primarily established through state statute, cities may adopt regulations consistent with state statutes, and make additions according to local conditions. As part of the effort to define local bicycle rules, and promote bicycling in Winona, the Planning Division has created the draft ordinance in cooperation with representatives from the Park and Recreation Department and the Police Department.

In summary, the draft ordinance includes the following provisions in accordance with state statute:

- Bicyclists are afforded the same rights and duties of motor vehicle drivers.
- Bicyclists must ride as close as practicable to the right-hand curb or edge of the roadway (except when passing another vehicle, turning left or avoiding safety hazards).
- Bicyclists are treated as pedestrians when inside a crosswalk (even when riding a bike).
- Bicyclists may ride a maximum of two abreast as long as traffic is not impeded.

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Mr. Espinosa further noted that in addressing local conditions and priorities, the draft ordinance:

- Removes the existing requirement for bicycle registration.
- Prohibits bicycling on the sidewalk in the central business district as defined by City Code Section 62.25. This provision would not apply when parking a bicycle or accessing a place of business.
- Allows bicycling on sidewalks outside the central business district.
- Encourages using a helmet – especially for those under age 16.
- Encourages walking bicycles within crosswalks.

Mr. Espinosa concluded by stating that the proposed ordinance would be located within City Code provisions of Chapter 61. As such, a formal hearing by the Planning Commission is not required. However, should the Commission determine that the draft ordinance is desirable; he would appreciate a motion supporting it.

Commissioner Eyden asked if there would be consequences for breaking any of the laws noted within the draft ordinance. Mr. Espinosa responded that in discussing this with the Police Department, options for violations included anything from warnings to misdemeanor offences.

Commissioner Eyden asked if the Police Department would be enforcing the ordinance. Mr. Espinosa responded that he has been working with Kevin Kearney in developing the ordinance and that the Police Department would enforce violations when noted.

Commissioner Eyden noted that the Central Business District definition referenced in the ordinance included all of LeVee Park. She recommended that LeVee Park be excluded. Following further discussion of this provision, the consensus of those present was that the Central Business District definition should stop at the railroad tracks. As such, LeVee Park would not be subject to the ordinance.

Following additional discussion, the general consensus of the Commission was that the Ordinance appeared to be appropriate. Given this, it was moved, and seconded, to recommend that Council consider adoption of it.

**Draft Amendment – Sensitive Land Development Ordinance**

Chairman Porter called on Mark Moeller, City Planner, to review a summary of this item. Mr. Moeller noted that this particular issue had been kicked around by the Commission for well over a year now. Given that, he was hoping that this afternoon's meeting would serve as a final review to Sensitive Land Development Ordinance Code Amendments. Again, the general focus of the amendment effort was designed to reshape the Sensitive Land Development Ordinance in order to bring it in line with Bluff Protection, Shoreland, Stormwater Management, and other land protection ordinances of the City.

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In doing so, adoption of the proposal would serve to reduce redundancy and current conflicting requirements that exist.

Mr. Moeller noted that since the Commission's last review of the proposal, it had been reviewed by the City Attorney, and additional modifications had been made. As noted, some of these will require amendments to other City code provisions.

At this point, Mr. Moeller conducted a page by page analysis of proposed amendments. In summary, these included:

- Page 1. Under current provision, the purpose and intent section of the ordinance includes a number of specific goals and objectives to be met by the Sensitive Lands Development Ordinance. These principles would be replaced by a simple paragraph that defines purpose and intent as relating to general goals and objectives of the Comprehensive Plan as well as the intent and purpose of the Zoning Ordinance.

Mr. Moeller noted that this change had been made following discussion with the City Attorney's Office. In part, the City Attorney had determined that with a reference to Comprehensive Plan goals, a lengthy list of goals, to be achieved is redundant.

- Page 2. As reformatted, those environments to be classified as Natural State Areas on preliminary and final plats will precede the land disturbance activity definition. Mr. Moeller noted that under the ordinance, delineated wetlands, bluff impact overlay districts, and all lands located within 100 feet from the normal high water mark of any special water (trout stream) river or stream would need to be classified as a Natural State Area on a plat. Generally all of these environments are presently protected under State or Local laws. However, if part of a plat, they would need to be classified as NSA. He further noted that the NSA protection had also been recommended as a mitigation strategy within the 2008 Alternative Urban Areawide Review or Orderly Annexation Areas. Given the current proposal then, language of the Sensitive Land Development Ordinance would be consistent with other code provisions.

Mr. Moeller noted that the protected environment listing also includes a generic category. This category would apply to a situation where a specific development required something like an AUAR or Environmental Impact Statement. In those cases, the end result may be approval of the environmental document with recognition to protect certain environments that may be discovered on a site. Additionally, it may also serve to recognize protection mandates of state/federal law.

Mr. Moeller further stated that the definition for Land Disturbance Activity generally reflected that found under the Bluff Protection Ordinance. The single

change that had been made to this definition since the Commission's last review was that the removal of dead vegetation from a defined Natural State Area would no longer be permitted.

Mr. Moeller further explained that the definition for Land Disturbance Activity would not include a Natural State Area site condition that represented an immediate safety hazard to persons or property, nor to the removal of noxious weeds by hand means.

- Page 3. Mr. Moeller explained that the most significant activity related to this page was that current Tables A and B of the present ordinance would be removed entirely. Currently, Table A defines environments that would totally be set aside as NSA. These are being replaced by language which would generally require that wetlands, bluffs and buffers within 100 feet of a trout stream be set aside as Natural State Areas.

Table B currently presents a sliding scale to slope ratio that needs to be applied on a lot by lot basis within new subdivisions. This table would simply be replaced by requiring that Bluff Impact Overlay Districts be set aside as Natural State Areas. This action should greatly simplify the identification of Natural State Areas pertaining to slopes within a subdivision.

Part 3, Determination of Maximum Density, would generally remain the same. For the most part, this language would permit NSAs to be used in meeting lot area and yard requirements provided that they are not disturbed.

Subpart 4, Disturbance of Natural State Areas, would be modified to prohibit Land Disturbance Activities unless they are otherwise permitted under Sections 43.83 (c) and 43.83 (f) of the Bluff Protection Ordinance. He explained that although special exception uses of the bluff protection ordinance would require approval by the Planning Commission, any person who felt that the application of new requirements would cause practical difficulties could appeal to the Board of Adjustment. In cases where the management of a specific environment (i.e.: wetlands) falls under the jurisdiction of a State, Federal or other agency, the Board of Adjustment would need to seek an opinion from the agency prior to acting on the variance. Given this language, if land disturbance activities are specifically discouraged, a person who feels that that provision would cause practical difficulties in some way could appeal to the Board of Adjustment. In these cases, staff would have to make every effort possible to ensure that the Board fully understood what the purpose and intent of the restriction was.

Mr. Moeller explained that the present Subpart 5, transfer of Natural State Areas would be deleted entirely while language pertaining to the modification and preservation of a Natural State Area would be retained. Additionally, the present Subpart 8, review criteria, would be deleted in its entirety. Generally, these

criteria are essentially already covered under protected environmental “philosophies” of Section 2.

- Page 6. Since adoption of “additional plat requirements” of the present ordinance, the City has created a formal storm water management ordinance reflecting these same requirements. Given this, Mr. Moeller was suggesting that current language pertaining to this section be deleted in its entirety and that preliminary plat provisions of Section 42.04 be modified to include a Subpart E which reads as follows:

“A preliminary storm water management or erosion and sediment control plan meeting applicable standards of Chapter 68.”

- Page 7. Mr. Moeller noted that the present Subpart 10 of the Sensitive Land Ordinance again requires additional information to be included with the Final Plat submittal. Given this philosophy, Chapter 42.06 would be modified to include a Subpart C which reads as follows:

“A final Stormwater Management or Erosion and Sediment Control Plan meeting applicable standards of Chapter 68.”

Present language pertaining to Part 8, Natural State Areas field identification would be retained as written. However, in reviewing this section he remembered that there had been an interest in upgrading standards to include signs, or other marker, that would clearly and permanently define Natural State Areas. He noted that this was probably more applicable to the fact that NSAs can be used to achieve lot area and yard requirements of a lot. Unless clearly marked at all times, lot NSAs could diminish over time.

Following Commission discussion of this item, the consensus was that some form of a permanent marker should be considered. However, even with this process, a mechanism may be needed to ensure that once created on a plat, NSAs are not compromised. Questions also surfaced as to how many markers may be required to identify NSAs, who would pay for signs, and who would put them up. If necessary, Mr. Moeller suggested that the Commission could come back to this item after adoption of present amendments to the Sensitive Land Ordinance.

Finally, Mr. Moeller explained that the revised ordinance would include language stating that NSAs, adopted prior to adoption of this amendment, would continue to be managed in accordance with terms and conditions of original plat approvals.

Along with the previous, Mr. Moeller stated that proposed changes would be made to Stormwater and Shoreland Management Ordinances. The more significant of these being that language pertaining to 100 foot undisturbed buffers (although presently found

in the Stormwater Management Ordinance) would be “repeated” within the Shoreland Management Ordinance. Since the ordinance presently does not include this language, the transfer should serve to highlight the requirement with the intent of making sure that it doesn’t “get lost” somewhere. As a side note, Mr. Moeller hoped that, at some point in the future, the Shoreland Ordinance would become part of the Zoning Ordinance, as are the Bluff Protection Ordinance and Flood Plain Management Ordinance.

The final amendment proposed will include one to subsection J of the Bluff Protection Ordinance. Under this change, variances would be referred to the Board of Adjustment rather than the Planning Commission. Mr. Moeller explained that this change had been recommended by the City Attorney.

Following brief discussion, the consensus of the Commission was that the amendment, as a whole, appeared to be acceptable. With this, it was suggested that staff move forward in establishing a public hearing date to formally review and consider it. Mr. Moeller stated that he was working on a February 13<sup>th</sup> hearing date.

#### **Other Business**

Commissioner Boettcher stated that he had not heard much regarding the Bridge Reconstruction Project other than the fact that some thought was being given to rehabilitation of the current structure. He noted that he would not favor such an action.

Mr. Moeller replied that, at this point, the issue is still with the Minnesota Department of Transportation, and no formal determination by that agency had been made relative to a preferred option.

Commissioner Gromek had asked if trees had been removed from the Eiken property. Mr. Moeller noted that he had not received any further communication from the forester, or his consultant, of this project. He did stress that as a condition of approval, staff was to be advised of the starting point for tree removal. To his knowledge, the project has not yet been implemented. However, staff will advise the Commission as to how it goes.

At this point, Mr. Moeller explained that the City’s law firm, involved in the 30% Rule Lawsuit, were recommending that present rental housing limitations be moved from the Zoning Ordinance to the Rental Housing Code. With this proposal, staff would be establishing a Commission hearing on February 13<sup>th</sup> to consider this action. In part, the rationale for the change is that the present rule is perceived to exceed Minnesota Statutes pertaining to City Zoning enabling laws, and that the City’s Charter is broader than those laws. Additionally, current regulations, since they relate to rental housing, would better function under Chapter 33A, than in Chapter 43. Further detail relative to the issue will be presented during the hearing.

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Mr. Espinosa stated that, given recent sand processing issues in the City, staff was looking at developing a conditional use process for such operations. As part of this process; the first step would be to modify current language of the M-2 District by specifically requiring that sand processing operations be permitted only as a Conditional Use. As the issue continues to evolve, and as the City continues to identify potential problem areas with the industry, additional conditions could be added.

Commissioner Boettcher noted problems concerning the deposit of sand on streets within the area of storage and shipping operations. Mr. Espinosa explained that the City was well aware of these issues, and was doing everything possible to mitigate them.

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned.



Mark Moeller  
City Planner