



**CITY HALL**  
207 Lafayette Street  
P.O. Box 378  
Winona, MN 55987-0378  
FAX: 507/457-8212

December 4, 2013

Planning Commissioners  
Winona, Minnesota 55987

Dear Commissioner:

The next meeting of the Planning Commission will be held on **Monday, December 9, 2013, at 4:30 p.m. in the Council Chambers** of the Winona City Hall.

1. Call to Order
2. Minutes – November 25, 2013
3. Public Hearing – May Rezoning Request - R-R to AG
4. Appointment of New Officer Nominating Committee
5. Other Business
6. Adjournment

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Moeller".

Mark Moeller  
City Planner

## **PLANNING COMMISSION MINUTES**

**DATE:** November 25, 2013

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

**PRESENT:** Chairperson Porter, Commissioners Boettcher, M. Olson, Davis, Buelow, English, Hahn and L. Olson

**ABSENT:** Commissioner Ballard

**STAFF PRESENT:** City Planner, Mark Moeller; and Assistant City Planner, Carlos Espinosa

---

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

### **Approval of Minutes – November 12, 2013**

The minutes from the Commission's meeting of November 12, 2013 were reviewed. Upon motion by Commissioner Boettcher and second by Commissioner L. Olson, the minutes were unanimously approved as submitted.

### **Air Quality Monitoring Recommendations**

Chairman Porter called on Carlos Espinosa, Assistant City Planner, to provide a summary of this agenda item.

Mr. Espinosa stated that during the Commission's last meeting, it had considered, and discussed, a number of recommendations that had been submitted from the Citizen's Environmental Quality Committee (CEQC) and relating to air quality monitoring issues. Following that discussion, and a failure to reach consensus on a recommendation to Council, the matter was tabled to this meeting.

Mr. Espinosa stated that the agenda for this afternoon's meeting generally includes the same information that he had submitted with the agenda for the Commission's last meeting. In part, this information includes the full set of recommendations from the Citizen's Environmental Quality Committee, along with a proposal from the Minnesota Pollution Control Agency to establish a single air quality monitoring station within the City.

In concluding, Mr. Espinosa stated that since the MPCA proposal is attached to a general time line, he was hopeful that the Commission would be able to address this issue this afternoon in order that a recommendation could be submitted to Council, for its December 2<sup>nd</sup> meeting.

Upon discussion of this item, Commissioner Boettcher made a motion to recommend approval of the MPCA monitoring program for the purpose of establishing a baseline air quality standard for the City. This motion was seconded by Commissioner Hahn.

Upon discussion of the motion, Commissioner Boettcher stated that, in addition to his motion, he was hoping that the air quality pilot program would be conducted over a minimum 12 month period. Mr. Espinosa responded that it was his understanding that initial testing would be carried out over a one year period.

In seconding the motion, Commissioner Hahn explained that he hoped the testing program would establish baseline data serving to initially define if major problems exist.

Commissioner Davis asked what would happen after the one year pilot program lapses. Mr. Espinosa responded that if initial testing shows that air quality problems exist, additional monitoring might be considered. At this point, it was uncertain as to what role the City or MPCA would play in extended monitoring activities. However, those would be discussed at that time. On the other hand, if readings generally show that air quality levels fall within acceptable thresholds, monitoring beyond the 12 month period may not need to be conducted.

Commissioner Davis again emphasized that she continues to be concerned as to what the plan for this information will be. Mr. Espinosa explained that monitoring equipment would essentially be on loan to the City of Winona. Given that there may be a need for this equipment at some other location following the one year period, he was uncertain as to whether or not it would be available for an additional site.

Commissioner Porter noted that since testing would begin in early January and be completed in January of 2015, data will not be available for the annual air monitoring network plan. Mr. Espinosa responded in the affirmative.

Mr. Hahn emphasized that although extended monitoring may be required, he felt it was premature to address this issue until such time that it is actually determined that it is needed. At that point, all involved could sit down and work out specific details relative to additional monitoring or other procedures needed to address the issue.

Commissioner Boettcher stated that it was critical that MPCA testing begin after the first of the year in order that it is completed before bridge construction activity begins. He again stressed the need to complete the baseline study as soon as possible.

Commissioner Buelow felt that results of monitoring reports may be beneficial to other areas of the City and will serve to define if problems exist. He emphasized that since the MPCA is willing to provide financial resources to the pilot project, the City of Winona should take advantage of this resource.

In response to a question, Mr. Espinosa stated that, at this point, the proposed location of the monitoring site would be on the roof of the YMCA building at Fourth and Winona Streets. In part, the program will include the use of current city staff in checking equipment and collecting data. Training of staff members will be under taken in early December. No new City staff will be hired for this project.

Chairman Porter emphasized that his position has not changed since the Commission's last meeting. Again, although the MPCA has offered to initiate and pay for the air monitoring program, he felt there was no defined need to spend money for this purpose.

Commissioner Hahn noted that he expects additional traffic in the City as a result of the frac sand industry. Although the City is unsure as to what impacts will result from that activity, the proposed pilot program will serve to define a current air quality baseline.

Commissioner Porter stated that, in his opinion, once the frac sand industry begins to settle out a bit, he questioned whether it will continue to rely on Winona as a primary transportation distribution hub.

Following brief discussion, the vote of the motion presented by Commissioner Boettcher was as follows: Ayes; Commissioners Boettcher, Buelow, Davis, English and Hahn, Nays: Commissioners Porter and L. Olson, Abstaining; M. Olson.

Chairman Porter declared the motion adopted, and explained that this item will now be forwarded to Council for final approval.

**Adjournment**

Chairman Porter asked if there was any other business to come before the Commission. There being no other business to come before the Commission, the meeting was adjourned.

---

Mark Moeller  
City Planner

## PLANNING COMMISSION

**AGENDA ITEM:** 3. Public Hearing – May Rezoning Request – R-R to AG

**PREPARED BY:** Mark Moeller

**DATE:** December 9, 2013

### BASE DATA

**Petitioner:** Troy May

**Location:** Exhibit A – Outlot F of Michaelwood Subdivision.  
This Outlot is part of 223 Michaelwood – the petitioner’s home address.

**Area:** Approximately 3.7 acres.

**Existing Zoning:** R-R (Rural-Residential)

**Requested Zoning:** AG (Agricultural)

**Existing Use:** In accordance with terms of Michaelwood Subdivision plat approval, Outlot F has/is being managed as an “undisturbed (natural)” area.

**Surrounding Land Use/Zoning:** **North:** The petitioners home site (Lot 8), along with a 60’ wide storm drainage easement/R-R.  
**South:** Residential/Agricultural uses/AG.  
**East:** Storm drainage easement.  
**West:** Outlot E (As with the proposed rezoning site, an undisturbed/natural area/R-R).

**Site Zoning History:** Approved in mid 1986, the Michaelwood Subdivision included an early concept for establishing what we now refer to, as Natural State Area (NSA). Given a 45% natural area set aside requirement, Exhibit A references numbered and lettered Outlots within the plat. Of these, numbered lots were created for homesite development purposes, while lettered Outlots A-M were established to meet natural set aside requirements. Additionally, the use of Outlots was restricted by final plat dedication language requiring that Outlots be left in their natural state.

Given the previous, it was presumed that numbered and adjacent Outlots would be sold as one. As such, the proposed rezoning site, Outlot F in this case, is “part of” a larger property, owned by the petitioner that also includes Lot 8. The petitioner’s home is located on this lot.

At the time of plat approval, all of the subdivision was “Winona Township” zoned R-2 (Residential). Following annexation of the Subdivision into the City in 1996, the full extent of the Subdivision was subsequently zoned R-R in October of 1998. This classification has remained intact since that time.

In large part, the applicant’s purpose in submitting this request is to permit him the opportunity to (gun) hunt on the 3.7 acre Outlot. Given current provisions of City Code Section 62.04, although bow hunting is permitted throughout most areas of the City, hunting with the use of a firearm is only permitted with Agricultural Zoning Districts and within the regulations and protocols of state law. As reflected on Exhibit B, although firearm hunting would be permitted within those Agricultural districts abutting the subdivision at its north, south, and east sides, this activity is currently not permitted within the residentially zoned development.

In further addressing laws and restrictions, current Minnesota hunting regulations require that:

“On another person’s private land or a public right-of way, a person may not take a wild animal with a firearm within 500 feet of a building occupied by humans or livestock without written permission of the owner, occupant or lessee of the building. A person may hunt from the water or from public land that is within 500 feet of a building occupied by humans or livestock.”

Given DNR conservation officer interpretation of the previous and in applying this regulation to current residential use of the immediate neighborhood, firearm hunting by the owner of the Outlot could be conducted from any part of it. For any other person,

the activity would be “limited” to an approximate one half acre of land area located at the southeast corner of the 3.7 acre Outlot. All other parts of the Outlot would be restricted by the 500’ buffer.

### ANALYSIS

**1. Was there an error or oversight in original zoning of the site, which would warrant rezoning?**

Again, all of Michaelwood Subdivision was zoned R-R (Rural-Residential) in 1998. In part, this classification reflected 1995 Comprehensive Plan recommendations for low density residential use of the development. It could be argued that Outlots of the subdivision could have been zoned something more restrictive (i.e.: AG or Conservancy) to provide a higher level of Natural State protections. However, it was ultimately concluded that provisions included on the plat were adequate to promote “no disturbance” restrictions of Outlots. With this R-R zoning was applied to the total development, and no error or oversight is noted.

**2. Has there been a change in area development patterns, since original zoning that may warrant/support rezoning?**

No. Since 1998, neighborhood development patterns have not changed.

**3. Would potential uses within the requested zoning impose “undue hardship” such as noise, odors, etc., on adjacent landowners?**

Given that the purpose/intent of the defined Outlot is to identify and protect its natural/undisturbed condition, zoning plays only a very minor role in defining its use. Whether zoned R-R (Residential) or M-2 (Industrial), plat approval restrictions require the parcel to remain in a “natural state”. Again, the purpose of this (Agricultural) request relates to a desire to firearm hunt on the Outlot. All things considered, this activity would be the only foreseeable benefit to rezoning. Further, if carried out in accordance with limited hunting seasons, and applicable laws, undue impacts are not anticipated. Further, the activity would not compromise the Outlots purpose and intent relating to its protection for natural state purposes.

**4. Would the public interest be better served if the rezoning request was applied to a different area of the City?**

Generally, the public interest is served when the highest and best use of land is achieved, and overall benefits of rezoning outweigh disadvantages. As

previously noted, given use restrictions of this Outlot, the applicants request is “site specific” and if approved, would enable him to conduct certain (non-zoning) firearm hunting activity on the site. In short, if this activity can be carried out without compromising the immediate neighborhood, the public interest may be served.

**5. Could the rezoning be construed as being spot zoning?**

Spot zoning generally applies if one, or more, of the following tests is met:

- A. The rezoning action results in a convenience only to the property owner or petitioner. Given the specialized nature of this request, approval of the request would enable the applicant to hunt on his property. However, previous analysis indicates that this could be accomplished without compromising the Outlots intended primary use/purpose, and is not expected to result in “undue hardship” on neighboring residents.
- B. The zoning change is arbitrary, capricious, or unreasonable. As reflected on Exhibit B, firearm hunting is currently permitted within Agricultural zoning districts abutting the Michaelwood Subdivision to the North, South, and East. Given that the rezoning site abuts Agricultural zoning at its south border, the extension of this classification to the Outlot would not appear to be unreasonable.
- C. Rezoning is not consistent with goals and objectives of the 2007 Comprehensive Plan. Generally, the plan has designated the subdivision for low density residential use with development being constrained by severe slopes at its outer limits (reflected on Exhibit A as Outlots). Although development of the subdivision has generally conformed to Plan goals, the level of plan detail would not, unless it obviously compromised Outlot intent, prohibit approval of the request.

**RECOMMENDATION**

In summary, the analysis has determined that:

- 1. No error or oversight in original zoning was made.
- 2. Neighborhood zoning/development patterns have remained stable since enactment of original zoning.
- 3. Given use/performance restrictions of the rezoning site, approval of the request is not anticipated to result in “undue hardships” on the immediate neighborhood.
- 4. Although approval of the request would enable the applicant to undertake personal hunting activity on the Outlot, it is unclear how this might relate to the general public interest.
- 5. Although the discussion of spot zoning did imply that approval of the request would generally (only) benefit the applicant, it was noted that this

action would not compromise the stated intent or the Outlot, nor would undue neighborhood impacts result. Additionally, the request is not unreasonable and if approved would not appear to be inconsistent with the Comprehensive Plan.

Outside of the previous analysis, this request is a bit different than most we see in that regardless of how the Outlot is zoned, use of the site will ultimately be directed by plat approval restrictions requiring that the Outlot be retained in a natural/undisturbed condition. What approval of this request would do is to enable the applicant to conduct firearm discharge/hunting activities from the southeast corner of the site. Should the Commission determine that the request is appropriate, approval of it should be recommended. Options to this action would include:

1. Recommend denial of the applicants request to Council.
2. Recommend a modification of the request.
3. Table action pending the development of additional information.

**PUBLIC INPUT/COMMENT**

As of the distribution of this agenda item, no public comments of the request have been received.

Attachments

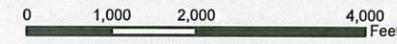


# Permitted Hunting Areas

- IMPORTANT -

These areas are on private property, permission from landowner is required to avoid trespassing.

 City Limits  
 Parcel Boundary  
 Permitted Hunting Areas (Agricultural Zoning District)



October 2011

[www.cityofwinona-mn.com](http://www.cityofwinona-mn.com)

## NOTICE

Pursuant to Winona City Code Seciton 62.04, the hunting of protected or unprotected birds or mammals is "only" permitted within those city agricultural districts shown on this map, and the following:

1. The hunting activity is carried out in accordance with all State of Minnesota hunting regulations, and applicable hunting seasons.

