



**CITY HALL**

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November 18, 2015

Planning Commissioners  
Winona, Minnesota 55987

Dear Commissioner:

The next meeting of the Planning Commission will be held on **Monday, November 23, 2015, at 4:30 p.m. in the Wenonah Room** of the Winona City Hall.

1. Call to Order
2. Minutes – November 9, 2015
3. Board of Adjustment Summary
4. Moratorium Information
5. Other Business
6. Future Action Items
7. Adjournment

Sincerely,

A handwritten signature in black ink, appearing to read "Carlos Espinosa".

Carlos Espinosa  
City Planner

## **PLANNING COMMISSION MINUTES**

**DATE:** November 9, 2015

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

**PRESENT:** Chairperson Davis, Vice-Chair Hahn, Commissioners Boettcher, Porter, Buelow, Ballard, M. Olson, P. Shortridge, and L. Olson

**ABSENT:** L. Olson

**STAFF PRESENT:** City Planner Mark Moeller; City Planner Carlos Espinosa

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The meeting was called to order at 4:30 p.m. by Chairperson Davis.

### **Approval of Minutes – October 12, 2015**

The minutes for October 12, 2015 were approved without changes upon motion by Commissioner M. Olson and second by Commissioner Buelow.

### **Public Hearing – Final Plat – Emerald Valley Subdivision**

Chairperson Davis opened the public hearing and asked if the petitioner would like to describe the project. Gail Lemmer stated that the project involves splitting 26 acres in ½ to facilitate development of single-family homes. The intent is that each new parcel would have a house and a garage on it.

Next, Chairperson Davis called on Mr. Moeller to present the staff report. Mr. Moeller reviewed the item with the Commission and stated that staff recommended approval with the five conditions noted in the staff report.

After the presentation, Chairperson Davis asked if there was anyone who would like to speak regarding the item. There being no one desiring to speak, Chairperson Davis closed the public hearing.

Next, Chairperson Davis stated that she had been out to the area and that it was quite mushy. As such, she was concerned about the stormwater drainage. Ms. Davis also asked if the access easement would still be valid if the property were sold. Mr. Moeller responded that stormwater drainage is a consideration with the plat and that one of staff's recommended conditions is for a grading management plan submitted to the City Engineer prior to any development. Mr. Moeller also confirmed that the access easement would run with the property and would still be valid if the property were sold.

Next, Ms. Davis asked about language banning stock cars in the subdivision. Ms. Lemmer explained that was a private covenant agreed upon by Brezas, Van Horns, and the Lemmers due to concerns about noise.

There being no further questions, Commissioner Boettcher made a motion to approve the item. The motion was seconded by Commissioner Ballard and approved unanimously.

**Development Code Update**

Jeff Miller from HKGI presented the document in the Commission's packets. Mr. Miller asked if there were any surprises from the notes on the stakeholder meetings.

Various Commissioners noted that the list of input from Council members was shorter than other groups, and that it was important to ensure that Council is involved in the process. Mr. Miller noted that one reason the list was smaller was due to the shorter time frame for the Council input meeting. Mr. Miller agreed that it's important for Council to be involved and noted that there will be a joint Council and Planning Commission meeting/workshop scheduled in Early 2015.

Commissioner Shortridge noted that it will be important to examine how the Downtown National and Local Historic Districts relate to one-another and the proposal for design standards in the greater downtown area. Mr. Shortridge stated that it may be beneficial to align the districts to the greatest extent possible.

Chairperson Davis asked about the audience for the final document. Mr. Miller stated that the code will continue to be a technical document necessitating administration by City staff, but it will be made easier to understand and interpret by adding updated definitions, consolidating land uses into a reference table, and providing illustrations.

Various Commissioners asked about the relevance of the Comprehensive Plan. Mr. Miller stated that the document from 2007 remains a good guide for the development update. Various Commissioners agreed.

There being no further discussion on this topic, Mr. Miller stated that a more general public meeting was originally scheduled for December, but that conversation with staff indicated it may be better to wait until after the first of the year. Mr. Miller also asked about the Commission's input regarding the meeting.

There was consensus among Commissioners to postpone the public meeting until after the first of the year given the holidays, and fact that the consultants will have completed more work on the code by then, thus providing the public more to react to. There was also consensus among Commissioners that the meeting should be open house style with a number of stations related to difference topics – similar to a recent public input meeting for the bridge project. In addition, the meeting should be held on a weekday starting from 4:00 to about 6:30 with opportunities for the public to provide input without verbally asking questions (e.g. comment cards).

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**Other Business**

Chairperson Davis asked if the Planning Commission and the Board of Adjustment could schedule a joint meeting to learn more about how the two groups function. Mr. Espinosa stated that would be a possibility and that he would bring information about the function of the Board of Adjustment to the next meeting.

Commissioner M. Olson asked if the Commission wanted to entertain recommending a moratorium on downtown residential development. There was consensus from the Commission for staff to return with information about how a moratorium process would work.

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 6:45 p.m.

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Carlos Espinosa  
City Planner

# PLANNING COMMISSION

**AGENDA ITEM: 3. Board of Adjustment Summary**

**PREPARED BY: Carlos Espinosa**

**DATE: November 23, 2015**

At the last meeting, Planning Commission members had questions about the Board of Adjustment and the relationship of the Board to the Planning Commission. Below is a summary of the role and procedures of the Board, and how the Board's review of variances relates to the Commission's review of Conditional Use Permits (CUPs).

## **Board of Adjustment Role and Procedures**

### Establishment and Powers

State statute requires that all cities with a zoning ordinance have a Board of Appeals and Adjustments. The Board could be the City Council, or the City Council could appoint another board or commission to serve in this role. In Winona, City Code Section 22.21 (attached) establishes the Board of Adjustment. This section also discusses how the Board functions and its powers. In summary, the Board has the power to grant variances (special exceptions) to provisions in the zoning code, and to hear and decide appeals where it alleged that an administrative officer has made an error in the enforcement of the zoning ordinance.

### Meetings

The Board of Adjustment meets two times a month to review variance requests. There are typically two to four requests per meeting with meetings lasting 30 minutes on average. For each variance request, there is a public hearing and the petitioner describes their variance request. The Board members ask questions of the petitioner, anyone who desires to speak, and of staff. After closing the public hearing, the Board has discussion amongst itself and asks staff questions. Prior to making a decision, the Board goes through the criteria on the following worksheet:

### Board of Adjustment Variance Questions Worksheet

*The underlined questions below represent the required statutory criteria which, pursuant to Minn. Stat. § 462.357, subd. 6, must be answered affirmatively in order for the BOA to grant a variance application. For purposes of establishing a record, a majority of BOA members must agree upon the answers given to each question. To help with developing findings, guidance to assist the BOA in answering each criterion is provided.*

1) Is the variance in harmony with the purposes and intent of the ordinance?

According to Section 43.03, the purpose and intent of the zoning ordinance is the following:

- a. To promote the public health, safety, morals, comfort and general welfare;
- b. To conserve and protect property and property values;
- c. To secure the most appropriate use of land; or
- d. To facilitate adequate and economical provisions for public improvements.

BOA members should address why the application either meets these provisions or why it does not.

2) Is the variance consistent with the Comprehensive Plan?

What is the future land use category for the subject property?

Does the request align with this category and other provisions of the Comprehensive plan?

3) Does the proposal put property to use in a reasonable manner?

Would the request put the property to use in a reasonable way? For example, is it reasonable to put a building in the proposed location?

4) Are there unique circumstances to the property not created by the landowner?

Are there unique physical characteristics of the property not related to the preferences of the landowner? The uniqueness typically relates to the physical characteristics of the property (i.e. size of the lot, shape of the lot, layout of the building, topography, trees, wetlands, etc.).

5) Will the variance, if granted, retain the essential character of the locality?

If granted, will the use of the land or the structure be of appropriate scale, in a suitable location, or otherwise be consistent with the surrounding area?

6) Are there other considerations for the variance request besides economics?

If there are affirmative answers to questions 3, 4, and 5, the application satisfies the practical difficulties test and the answer is yes.

If there are not affirmative answers to questions 3, 4, and 5, the practical difficulties test is not satisfied and the answer is no.

As noted above, the Board must answer affirmatively to all of these criteria in order to grant a variance. Answers to these criteria become the Board's findings of approval or denial. These criteria are established by state statute and cannot be changed.

### **Relationship of Variances to Conditional Use Permits**

Variances typically deal with setbacks or other numbers in the zoning code and are relatively narrow requests. Conditional Use Permits relate to the uses themselves and are generally more broad. For example, the Board recently granted variances to the

100' setback from a public parking lot requirement for first-floor residential uses in the CBD core. The Board's scope of review was limited to the requests for a reduced setback. In contrast, the Planning Commission's scope of review through the subsequent CUP requests was much broader and related to the suitability of the first-floor residential uses. Consideration of the CUPs included the approved variances, but also included reviewing conformance with the following general requirements. Despite the fact that the variances were granted, the Commission could have denied the CUPs or added conditions related to satisfying these requirements:

- (a) General Requirements for All Conditional Use Permits. In addition to meeting all conditions listed under a specific use within a zoning district, as applicable, the general standards and criteria, which must be met for all CUPs, are as follows:
- (1) The extent, location and intensity of the conditional use will be in substantial compliance with the Winona Comprehensive Plan.
  - (2) The conditional use will conform to all applicable zoning regulations for the district in which the property is located.
  - (3) Considering existing circumstances and potential uses under existing zoning, the conditional use will not substantially impair the use and enjoyment of other property in the neighborhood.
  - (4) The conditional use will not impede the normal and orderly development and improvement of the surrounding property.
  - (5) Considering existing circumstances and potential uses under existing zoning, the conditional use will not be detrimental to the existing character of the development in the immediate neighborhood or be incompatible with or endanger the public health, safety and general welfare.
  - (6) The conditional use will not create an excessive burden on existing parks, schools, streets/roads and other public facilities, which serve or are proposed to serve the area.
  - (7) The conditional use will not adversely affect neighboring property and dwellings because of excessive traffic generation, glare, noise or other nuisance characteristics.
  - (8) A conditional use located on property having significant historical and architectural resources shall preserve such resources, and a conditional use shall not substantially diminish other neighboring property having significant historical and architectural resources.

- (9) The conditional use shall either preserve or not significantly negatively affect natural and environmental resources.
- (10) The conditional use will comply with other applicable city, county, state, and federal regulations, as applicable.

CUPs are quasi-judicial (judge-like) determinations about whether an application meets the standards of City Code. As a result, if an application meets all of the general requirements listed above (in addition to the specific requirements for the use), the Commission essentially must approve it. If the Commission would like to deny a CUP, the denial must be based on facts which demonstrate that the application does not meet the requirements of code. These facts can come from Commissioner's review of the application, staff, or from facts that are presented at the public hearing. Because it can be difficult to assemble the facts needed to deny an application on the spot, the following option is given to Commissioners at the meeting where a CUP is reviewed:

- Deny. Under this option, following the hearing and deliberation, the Commission should state specific reasons for denial related to the criteria for the CUP. A motion should be made to postpone further consideration and direct staff to bring a resolution of denial to the next meeting. Staff will then draft a resolution of denial for adoption at the next meeting.

In accordance, denial of the CUP can be discussed at the next meeting before a resolution of denial is finally adopted. If there are questions about a CUP application, Commissioners can always vote to table the application to the next meeting. This would be an appropriate action where there is debate related to the "facts" of the case. If action is taken to table an item, staff can perform necessary research and bring additional information to the next meeting.

Another option in consideration of CUP applications is additional conditions. The following option is given at meetings where a CUP is considered:

- Approve the CUP with additional conditions. Under this option, a motion to approve the attached resolution with additional conditions would be in order. Reasonable and necessary conditions may be added:
  - i. To ensure compliance with the Comprehensive Plan, the general CUP standards, and/or with the specific CUP criteria.
  - ii. To protect the health, safety, morals, and general welfare of the public.

Additional conditions can generally be added to the resolution of approval at the same meeting. If there are questions about the conditions or more research is needed, the item can be tabled to the next meeting.

### Reasons for Planning Commission Review of CUPs

In late 2014, the CUP regulations in City Code were updated to include the general requirements discussed previously. The update also included a provision for Planning Commission review of CUPs. Prior to this time, the Board of Adjustment reviewed CUPs. The Board typically reviewed up to one or two CUP requests per year versus 25+ variance requests. Board of Adjustment review of CUPs often occurred simultaneously with variance requests (both the CUP and the variance were reviewed by the Board under the same application). Although this was an efficient way to review requests, at times it was difficult for the Board because CUP requests were infrequent and the procedure to approve CUPs is different than variances. In addition, the Board's review of CUPs related to zoning regulations which are typically created/reviewed by the Planning Commission. Issues with this arose during the review of CUPs for silica sand projects. In early 2012, the Commission had recently adopted CUP regulations for silica sand projects and two applications for CUPs were submitted to the Board. The Board, having no prior experience with silica sand, was responsible for reviewing and ruling on the CUPs. The Planning Commission, which developed the standards and had public hearings on the regulations, never saw the applications.

In summary, there are three major reasons review of CUPs was shifted to the Planning Commission:

1. The Board of Adjustment is specifically established in code to consider variances.
2. The Board is accustomed to the variance review procedure due to the number of variance requests received versus the number of CUP applications received.
3. The Planning Commission is typically involved in creating the standards which applicants must meet to receive a CUP. In effect, through review of CUPs, the Planning Commission is applying the standards they have created.

The 2014 amendments to the CUP ordinance also specified that variance requests must be approved prior to the CUP application. This specification was made for two reasons:

1. The scope of review for a CUP is larger than for a variance. As detailed previously, there are broader use-based considerations and more criteria involved with CUP review. A CUP can be denied or additional conditions can be added based on any of these criteria. As such, a variance approval generally fits under the larger "umbrella" of a CUP approval.
2. One of the general requirements to issue a CUP is: "The conditional use will conform to all applicable zoning regulations for the district in which the property is located." Prior approval of a needed variance allows the Commission to answer this question affirmatively.

### **Next Steps**

This agenda item was produced for discussion purposes. Any next steps should be determined by the Commission.

#### Attachment

- City Code Section 22.21

**22.21 BOARD OF ADJUSTMENT**

- (a) Created; Powers and Duties. There is created within and for the City a Board of Adjustment with the powers and duties as hereinafter set forth.

Upon organization of the board, the board shall succeed to the duties and responsibilities of the board of zoning appeals.

Ord. No. 2741 12/03/84

Ord. No. 3445 03/20/00

- (b) Composition, Appointment, Terms and Absences of Members; Officers; Quorum.

(1) The board shall be composed of seven members, citizens of the City, each appointed by the Mayor with the approval of Council for a term of three years. A present member shall serve out his or her term at which time a new appointment shall be made for a term of three years. The sixth appointee shall serve until April 3, 1978, and the seventh appointee shall serve until April 3, 1979; thereafter new appointments to fill the positions shall be made for a period of three years. The term of any alternate member shall end upon the appointment of the sixth and seventh members of the board.

(2) Any member who misses 40% of the duly called meetings within twelve consecutive months or misses three consecutive duly called meetings within twelve consecutive months shall be automatically removed from the board.

Ord. No. 3001 11/06/89

(3) Action of the board in the exercise of its power shall be taken only as follows: Five votes concurring in a decision if seven members are present, four votes concurring in a decision if either five or six members are present. A quorum shall be five members.

(4) The board shall select a chairman and a vice-chairman from its membership to serve for a term of one year. A secretary shall be appointed and removed by the City Manager. The secretary shall not be a member of the board.

Ord. No. 2798 04/21/86

- (c) Powers with Respect to Zoning Matters and Official Maps.

(1) The board has the power to hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative officer in the enforcement of the zoning ordinance, to hear requests for variances from the requirements of the zoning ordinance pursuant to Minnesota Statutes, Section 462.357, subd. 6. The board may not permit as a variance any use that is not permitted under the zoning ordinance for property in the zone where the affected person's land is located. The board may impose conditions in the granting of variances to insure compliance and to protect adjacent properties. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Ord. No. 3879 9/19/2011

(2) After an official map has been adopted and filed, the issuance of building permits by the City shall be subject to the provisions of Minnesota Statutes, Section 462.359. Whenever any street or highway is widened or improved, or any new street is opened, or interests in lands for other public purposes are required by the City, the City is not required in such proceedings to pay for any building or structure placed without a permit, or in violation of conditions of a permit within the limits of the mapped street or outside of any building line that may have been established upon the existing street or within any area thus identified for public purposes. The adoption of the official map does not give the City any right, title or interest in areas identified for public purposes thereon, but the adoption of the map does authorize the City to acquire such interests without paying compensation for buildings or structures erected in such areas without a permit or in violation of the conditions of a permit. If a permit for a building in such location is denied, the board shall have the power upon appeal filed with it by the owner of the land to grant a permit for building in such location in any case in which the board finds, upon the evidence and the arguments presented to it:

a. That the entire property of the appellant of which such area identified for public purposes forms a part cannot yield a reasonable return to the owner unless such a permit is granted, and

b. That balancing the interest of the City in preserving the integrity of the official map and of the comprehensive plan and the interest of the owner of the property in the use of his property and in the benefits of ownership, the grant of such permit is required by consideration of justice and equity. In addition to the notice of hearing required elsewhere in this chapter, a notice shall be published in the official newspaper once at least 10 days before the day of the hearing. If the board authorizes the issuance of a permit, the City Council shall have six months from the date of the decision of the board to institute proceedings to acquire such land or interest therein, and if no such proceedings are started within that time, the administrative officer responsible for issuing building permits shall issue the permit if the application otherwise conforms to City ordinances. The board shall specify the exact location, ground area, height and other details as to the extent and character of the building for which the permit is granted.

- (d) General Power. Without limiting or qualifying the foregoing powers, the board has the power to permit the extension of a district where the boundary line of a district divides a lot in single ownership as shown of record; to permit a street laid out actually on the ground in a manner different than shown on an official map to remain as laid out; to grant an exception to off-street parking requirements when it is determined that the size and shape of a lot or area to be built on is such that such requirement cannot be met and that such exception will not create undue traffic congestion in the adjacent streets; to grant an exception to setback and area requirements where the slope of the land on 20 percent or more of a lot or lots to be built on exceeds 10 percent where such slope interferes with the reasonable development of the property for the uses permitted in the district in which the lot is located; provided, however, that whenever an exception is

granted, new setback and area requirements for the lot or lots covered by the exception shall be specifically set forth in the decision of the board.

- (e) Exercise of Powers. In the exercise of its powers, the board may, in whole or in part, affirm or reverse or modify or amend any order, requirement, decision or determination of an administrative officer; it may impose a condition or conditions preceding or subsequent to insure compliance and/or to protect others and for such period as it may determine, each decision shall be in keeping with the spirit and intent of the law applicable to the matter under consideration; the board shall consider the effect of its decision on the environment, the effect upon others of the public, and all matters relating to the public health, safety, comfort, morals and general welfare.
- (f) Appeal Procedure.
- (1) Appeal to the board may be taken by any person affected where it is alleged that there is an error in any order, requirement, decision or determination made by an officer in the interpretation or enforcement of an ordinance respecting an area of responsibility over which the board has jurisdiction.
- (2) An appeal shall be taken within 10 days after a decision has been made and transmitted by mail to a person affected by the decision of an administrative officer.
- (3) An appeal shall be filed with the secretary of the board accompanied by the fee as set forth in Section 51.01 herein. In the event the appeal is withdrawn before the City incurs expense for publication or before hearing by the board, the City Treasurer is authorized and directed to refund said fee when directed to do so by the secretary of the board.
- (4) An appeal shall be in writing on a form provided by the secretary and be directed to the board. It shall succinctly state the facts, be accompanied by such documents or exhibits as the appellant believes are required, and shall state the relief requested.
- (5) As soon as reasonably may be after receipt of the appeal, the secretary shall submit the appeal and the file of the administrative officer to the board.
- (6) An appeal shall stay enforcement of an order, requirement, decision or determination of an administrative officer until the board shall make its decision; provided, however, that there shall be no stay if the administrative officer certifies in writing to the chairman of the board that enforcement is required because there is an imminent danger of substantial harm to life or property.
- (7) The board shall hear and decide an appeal not more than 45 days after it is filed with the secretary, unless in the judgment of the chairman of the board a good and sufficient reason exists for postponement of the hearing or decision or both, in which case he may order a postponement.
- (8) Any action for which Board approval is required shall be preceded by a public hearing. Notice of the hearing shall be published in the official newspaper

and be mailed to the petitioner and owners of all real property adjoining the subject property at least ten days prior to the hearing. If the requested action will result in a change of use of the subject property, mailed notice shall be expanded to include all owners of real property situated wholly or partly within 150 feet of the subject property.

Ord. No. 2861 02/02/87

(9) At a hearing the appellant, his agent or attorney, shall be given an opportunity to be heard and to show why the order, requirement, decision or determination of the administrative officer should be overruled or amended; the administrative officer shall be given an equal opportunity to be heard.

(10) After the hearing, the board shall deliberate and decide on the appeal.

(11) The board may establish procedural rules and may impose other requirements than are herein stated, provided, that such rules and other requirements are in the opinion of the board reasonable and necessary to the proper functioning of the board and the determination of matters brought before it.

(g) Appeal to the City Council.

(1) Any party in interest aggrieved by a decision of the board may seek relief therefrom by appealing to the City Council, by filing a written notice of appeal with the City Clerk, accompanied by the fee as set forth in Section 51.01 herein, and with the secretary of the board, within 10 days after the making of a decision by the board; the notice of appeal shall be in a form provided by the secretary and succinctly state the facts, be accompanied by such documents or exhibits as the appellant believes are required, and shall state the relief requested; the secretary of the board shall submit the file of the board to the City Clerk.

(2) An appeal shall stay enforcement of the decision of the board; provided, however, that there shall be no stay if the board has in its decision determined that there is an imminent danger of substantial harm to life or property.

(3) The City Council shall hear and decide a notice of appeal not more than 30 days after it is filed with the City Clerk, unless in the judgment of the Council a good and sufficient reason exists for postponement of the hearing or decision or both, in which case a postponement may be made.

Ord. No. 2913 02/16/88.

(4) The City Clerk shall cause notice of the hearing to be made pursuant to Section 22.21(g).

Ord. No. 2861 02/02/87.

(5) At a hearing, the appellant, his agent or attorney, shall be given an opportunity to be heard and to show why the decision of the board should be overruled or amended; a representative of the board shall be given an equal opportunity to be heard.

(6) After the hearing, the Council shall deliberate and decide on the notice of appeal; such determination shall be made as soon as reasonably may be after the hearing; the decision shall be in writing in the form of an order signed by the Mayor and attested by the City Clerk; a copy of the order shall be served on the appellant, his agent or attorney, by mail by the City Clerk.

(7) Any person aggrieved by a decision of the City Council may seek relief therefrom in any court of competent jurisdiction as provided by the laws of the state.

## 22.22 HUMAN RIGHTS COMMISSION

- (a) Established. There is hereby established within the City a human rights commission.
- (b) Purpose. The purpose of the commission is to secure for all citizens equal opportunity in employment, housing, public accommodations, public services and education and full participation in the affairs of this community by assisting the state department of human rights in implementing the Minnesota Human Rights Act and by advising the City Council on long-range programs to improve community relations in the City.

- (c) Composition.

(1) The commission shall consist of fifteen members to be appointed by the Council. Nine members of the commission shall be Winona County residents who reside within the Winona city limits and two members of the commission shall be Winona County residents who reside outside of the Winona city limits and are recommended by the Winona County Board Chairperson. All appointed members shall be eligible voters and shall be appointed with due regard to their fitness for the efficient dispatch of the functions, powers and duties vested in and imposed upon the commission. The remaining four members of the commission shall be representatives of the following agencies and need not be reside within Winona County: Project FINE, Winona County Human Services, Winona County District Court, and the Winona HRA.

Ord. No. 3613 5/17/04

Ord. No. 3837 5/3/2010

Ord. No. 3938 8/13/2013

(2) The first commission shall consist of five members appointed for a term of three years, five members for a term of two years and five members for a term of one year. Thereafter, members shall be appointed for terms of three years. The members of the commission shall serve without compensation and may be removed from office for cause by the Mayor.

(3) Any member who misses 40% of the duly called meetings within twelve consecutive months or misses three consecutive duly called meetings within twelve consecutive months shall be automatically removed from the board.

Ord. No. 2798 04/21/86.

Ord. No. 3001 11/06/89.

## **PLANNING COMMISSION**

**AGENDA ITEM: 4. Moratorium Information**

**PREPARED BY: Carlos Espinosa**

**DATE: November 23, 2015**

At the last meeting, Planning Commission members had questions about what would be involved with instituting a moratorium. Attached to this agenda item are two examples of moratoriums enacted by the City of Winona. The more recent of the two is the 2013 moratorium on new or expanded development in the downtown B-2.5 zoning district. The second is related to development of bluffland protection regulations in 2008/2009.

Commissioners should note that the City Council makes the decision to enact a moratorium. General information about moratoriums from the League of Minnesota Cities is provided on the following page.

Attachments:

1. B-2.5 Moratorium
2. Blufflands Moratorium

## **1. Interim Ordinances (Moratoria)**

Adoption of an interim ordinance (more commonly known as a moratorium) may aid cities in the zoning ordinance amendment process, by allowing a city to study an issue without the pressure of time generated by pending applications. Cities may use a moratorium to protect the planning process, particularly when formal studies may be needed on a particular issue. Cities must follow the procedures established in state statute to initiate a moratorium.

### **a. Procedure for interim ordinance adoption**

Cities must initiate a moratorium by adopting an ordinance (interim ordinance). The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the city or a portion of the city for a period not to exceed one year from the effective date of the ordinance. An interim ordinance may only be adopted where the city:

- Is conducting studies on the issue.
- Has authorized a study to be conducted.
- Has held or scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or other official controls, including the zoning code, subdivision controls, site plan regulations, sanitary codes, building codes and official maps.
- Has annexed new territory into the city for which plans or controls have not been adopted.

The legal justification for the interim ordinance should be stated in the findings of fact when the ordinance is adopted.

No notice or hearing is generally necessary before an interim ordinance is enacted. However, a public hearing must be held if the proposed interim ordinance regulates, restricts or prohibits livestock production (feedlots). In such case, the notice of the hearing must be published at least ten days prior to the hearing in a newspaper of general circulation in the city.

1.

ORDINANCE 3930

**AN EMERGENCY INTERIM ORDINANCE PURSUANT TO MINNESOTA STATUTES,  
SECTION 462.355, SUBD. 4, ESTABLISHING A STUDY PERIOD AND  
MORATORIUM FOR A PERIOD UP TO FOUR MONTHS ON  
DEVELOPMENTS IN THE MIXED-USE BUSINESS (B-2.5) ZONING DISTRICT**

Preamble: That on April 15, 2013, the City Council considered and passed a motion to authorize a study of the impacts and effects of existing, new or expanded mixed-use development in the B-2.5 zoning district within the central business core of the City of Winona for the purpose of determining the adequacy and effectiveness of existing ordinances and regulations, or if additional or changed City ordinances or regulations, or amendments to the City's comprehensive plan, are necessary or appropriate. That City Charter, Section 3.05 requires two readings of ordinances and publication before an ordinance becomes effective, except for emergency ordinances. That Council has determined that any additional proposals for the above identified uses within the B-2.5 zoning district brought forward during the period prior to final adoption and publication of this interim ordinance will be detrimental to the referenced study and may therefore negatively impact the City's ability to consider and modify regulations for such uses for the preservation of the public health, safety and welfare and the City's planning process. That Council has determined that a public hearing is not required before the Council adopts an interim ordinance pursuant to Minn. Stat. § 462.355, subd. 4. To forestall additional proposals for uses identified herein from being brought forward prior to the City adopting the above-referenced moratorium and thereby undermining or negatively impacting the City's study, regulatory and planning processes, immediate consideration and action by the City Council is necessary pursuant to Winona City Charter, Section 3.06, Emergency Ordinances, to preserve and protect the public peace, health, morals, safety and welfare.

The City of Winona does ordain:

**Section 1. Purpose and Intent.** The purpose and intent of this Ordinance is to prohibit new or expanded mixed-use development in the B-2.5 (Mixed-Use Business) zoning district, Winona City Code § 43.60.1, in the central business core of the City of Winona (City). The City Council has determined that it needs an opportunity to fully research, study and consider the impacts and potential impacts of the various uses permitted in the B-2.5 zoning district.

**Section 2. Preliminary Findings.** The City Council hereby makes the following preliminary findings to serve as the basis for the necessary study to be made during the moratorium period provided in this Ordinance. These preliminary findings serve as the reasons why it is in the public interest for the City to conduct a study and so declare a moratorium by virtue of this Ordinance:

- 1) The current regulations and official controls of the City may not adequately address the impacts and effects of current, new or expanded mixed-use development in the B-2.5 district within the City's central business core.
- 2) The City needs to research, analyze and study the impacts of such uses in relationship to the comprehensive plan or to determine the adequacy and effectiveness of current regulations in protecting the public health, safety and welfare of the community.
- 3) The public interest and public health, safety and welfare requires that the City study, analyze and evaluate the impacts and effects of existing, new or expanded mixed-use development in the B-2.5 district within the central business core of the City for the purpose of determining the adequacy and effectiveness of existing ordinances and regulations, or if additional or changed City ordinances or regulations, or amendments to the City's comprehensive plan, are necessary or appropriate.
- 4) This moratorium will ensure that any ordinance changes or comprehensive plan amendments will be carefully considered and evaluated and that all the issues, including, but not limited to, density, parking, and land use can be fully examined, while protecting the City's planning process and the public health safety and welfare during the moratorium period.

**Section 3. Moratorium Declaration.** For the duration stated herein and until the City has studied and adopted any ordinances or amendments to its comprehensive plan deemed necessary or appropriate related to the aforementioned purpose, intent and findings of this Ordinance, the City shall not accept, issue or process any applications or permits for mixed-use development in the City's B-2.5 zoning district within the City's central business core.

**Section 4. Study.** During the period of this moratorium, City staff will conduct a study; such study to help determine the regulatory controls which may need to be adopted or revised to protect the public's health, safety and welfare related to the aforementioned purpose, intent and findings. In addition, the City staff shall study the comprehensive plan to determine whether an amendment to the comprehensive plan is necessary or appropriate.

**Section 5. Duration.** Unless otherwise provided in this section, this Ordinance shall expire, without further City Council action, four months from the effective date of this Ordinance following its passage by the City Council pursuant to Minn. Stat. § 462.355, subd. 4; or it may be repealed earlier if the Council determines that no further study is necessary and any revisions of the City Code or Comprehensive Plan have been adopted by the City Council and are effective. The duration of this Ordinance may be extended by adoption of a subsequent Ordinance for a total time not to exceed the statutory limits in Minn. Stat. 462.355, subdivision 4.

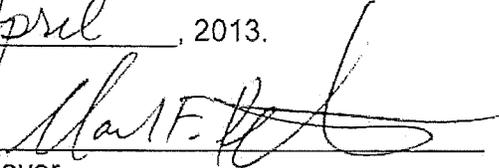
**Section 6. Exception.** This ordinance shall not apply to that certain existing development project subject to and located on real property legally described in that certain Development Agreement dated June 16, 2011; provided however, that such development project must proceed as originally approved by the City for a five story building with four (4) condominium units on each of the top four floors and parking on the ground floor of the building.

**Section 7. Separability.** Every section, provision, or part of this Ordinance is declared separable from every other section, provision or part; and if any

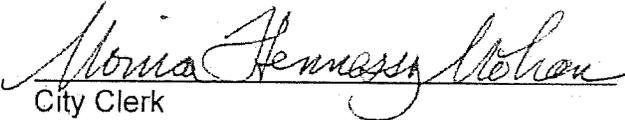
section, provision, or part thereof or action taken hereunder shall be held invalid, it shall not affect any other section, provision, or part.

**Section 8. Effective Date.** That this ordinance shall take effect immediately upon its adoption and shall be subsequently published.

Dated this 15<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
Mayor

Attested By:

  
\_\_\_\_\_  
City Clerk

# REQUEST FOR COUNCIL ACTION

Agenda Section: **New Business**

Originating Department:

Date

No: **5**

**Planning**

**9/15/08**

Item: **Moratorium Request – Bluffland Protection**

No. **5.**

## SUMMARY OF REQUESTED ACTION:

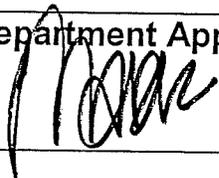
The protection of the visual, aesthetic, and ecological qualities of bluffland located within the City is listed as a specific goal of the City of Winona 2007 Comprehensive Plan. In implementing this goal, the Plan further recommends that continuing efforts be made to review and upgrade those policies and regulations needed to promote the protection of blufflands, and to consider "setbacks of structures from blufftops, and ridgelines, in order to protect biodiversity and key scenic viewsheds" to the greatest extent possible.

Given the previous, the Planning Commission has initiated active discussion relating to the issue of bluffland/bluff ridgeline protection within the City. To date, the Commission has found that the uncontrolled development of City blufflands and bluff ridgeline lands could negatively compromise their desired visual, functional, and ecological qualities, could threaten human life and the value of property; and could result in increased public costs to all citizens. With these concerns, the Commission has embarked on a process to further study them, and to prepare (for public review) applicable policies and regulations which may be necessary to mitigate them. It is expected that this process will evolve over the course of the next several months. During its meeting of August 25, 2008, the Commission (by four affirmative and three dissenting votes) has recommended that Council consider/enact a six month moratorium ordinance which is designed to prohibit construction and platting activities of all land located southerly of Highway 61. Again, the purpose of this request relates to providing the Commission time to complete its review/study of this issue.

Given the Commission request, the City Attorney has drafted the attached Moratorium Ordinance for Council consideration. As a matter of clarification, although the Ordinance would apply (section 2) to any new plat submittal; and construction or alteration activity, its scope would not include plats, or other construction activities, granted/permitted prior to ordinance adoption. Should Council concur with the ordinance, introduction of it is recommended.

Attachment

Department Approval:



City Manager Approval:

2.

ORDINANCE NO. \_\_\_\_\_  
AN ORDINANCE PLACING A MORATORIUM ON THE  
DEVELOPMENT OF BLUFFLANDS  
WITHIN THE CITY OF WINONA, MINNESOTA

THE CITY OF WINONA DOES ORDAIN:

Section 1. Background.

1.01 The protection of the visual, aesthetic, and ecological qualities of bluffland located within the City is listed as a specific goal of the City of Winona Comprehensive Plan adopted in 2007. In implementing this goal, the Plan further recommends that continuing efforts be made to review and upgrade those policies and regulations needed to promote the protection of blufflands, and to consider "setbacks of structures from blufftops, and ridgelines, in order to protect biodiversity and key scenic viewsheds" to the greatest extent possible.

1.02 The Planning Commission has, through initial study, found that the uncontrolled development of bluffland could:

- (a) Negatively compromise the visual, functional, and ecological qualities of bluffland;
- (b) Impact human life and the value of property, located within close proximity to bluffland resulting from rock falls, unstable soils, and erosion and sedimentation;
- (c) Compromise those ecological and vegetative qualities which are needed to stabilize bluffland; and
- (d) Result in increased public costs.

1.03 That City Council has concluded there is a need to further study these issues and to adopt regulations to adequately mitigate them.

1.04 There is a need for an interim ordinance to be adopted for the purpose of protecting the blufflands located within the City of Winona to ensure that the City and its citizens retain the benefits of the City's blufflands until such a study has been completed. In addition, there is a need to restrict the development of blufflands until such a study has been completed.

Section 2. Applicability.

This moratorium shall apply to any preliminary or final plat which includes bluffland property located south of Highway 61 in the City of Winona, Minnesota, and to any construction or alteration of bluffland property located south of Highway 61 in the City of Winona, Minnesota.

### Section 3. Planning and Zoning Study; Moratorium.

3.01 A study is authorized to be conducted by City staff to determine to what extent can blufflands be protected and preserved through regulation by the City. The scope of the study shall review regulations which shall:

(a) Minimize, to the greatest extent possible, the visual, functional, and ecological impacts of land disturbing activities of bluffs and bluff ridgelines, while also recognizing the legitimate expectations of property owners, and overall City economic development goals.

(b) Protect persons, property, and property values from impacts characteristic of development occurring within, and within close proximity to bluffs. Such impacts include rock falls, rolling boulders, subsidence, and those associated with unstable soils, as erosion and sedimentation.

(c) Protect and conserve significant City natural and visual resources as major rock outcrops, ridges and ridgelines, peaks, and landmarks, in order to retain the City's natural setting.

(d) Promote the retention and improvement of those ecological and vegetative qualities which serve to stabilize steep slopes and ridgelines, characteristic of bluff faces.

(e) Minimize public costs which may be associated with the development of bluff faces and ridgelines.

3.02 Upon completion of the study, the matter is to be considered by the Planning Commission for its review and recommendation to the City Council.

3.03 A moratorium on any further construction or alteration of bluffland property is adopted pending completion of the study and the adoption of any amendments to the City's zoning ordinance.

Section 4. Enforcement. The City may enforce any provision of this ordinance by mandamus, injunction or any other appropriate civil remedy in any court of competent jurisdiction.

Section 5. Separability. Every section, provision or part of this ordinance is declared separable from every other section, provision or part of this ordinance. If any section, provision, or part of this ordinance is adjudged to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other section, provision, or part of this ordinance.

Section 6. Duration. This ordinance shall remain in effect for a period of Six (6) months from the date of its effective date or until such earlier time as said ordinance shall be revoked or otherwise amended.

Section 7. Effective Date. This ordinance shall take effect upon its publication.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Mayor

Attested By:

\_\_\_\_\_  
City Clerk

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