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Date: October 21, 2014

To: Honorable Mayor and City Council

From: Cary Teague, Community Development Director

Re: Work Session - Tree Preservation Ordinance

On May 6, 2014, the City Council tabled consideration of and Ordinance Amendment regarding tree preservation to a future Work Session to discuss further with the Planning Commission. In preparation for the work session attached are the following background materials:

- City Council minutes from the May 6, 2014 discussion.
- The draft ordinance that was considered.
- A revised ordinance based on the City Council discussion on May 6.
- The Original City Council packet including Planning Commission minutes.
- City of Minnetonka's Ordinance.
- A basic Edina vs. Minnetonka ordinance comparison.

V.B. GRANDVIEW RESIDENTIAL SURVEY FINAL REPORT, BILL MORRIS AND PETER LEATHERMAN, MORRIS LEATHERMAN COMPANY – RECEIVED

Bill Morris, Morris Leatherman Company, presented highlights of the Grandview Residential Survey final report that involved 400 random Edina households with a non-response rate of less than 3%. The survey related to the development of the Grandview area and values that residents held for public lands in general. Dr. Morris stated that the survey results indicated the public needs more information about the Grandview Redevelopment Framework, there is support for mixed use with emphasis on the “public side of things” and “intense opposition” to apartments, and a referendum for a general obligation bond-funded community center would not pass at this point in time.

The Council reviewed the survey results, asked questions of Mr. Morris, and thanked Mr. Morris and Mr. Leatherman for their work on this report.

VI. PUBLIC HEARINGS HELD – Affidavits of Notice presented and ordered placed on file.

V.I.A. ORDINANCE NO. 2014-06 – AMENDMENT TO CHAPTER 10, ARTICLE III OF THE CITY CODE, REGARDING TREE PRESERVATION – TABLED

Planning Commission Working Group Presentation

Planning Commissioner Platteter described the consideration of the Working Group and recommendation for an ordinance amendment addressing tree preservation and replacement for demolition permits, building additions, and building accessory structures. Planning Commissioner Platteter answered questions of the Council relating to the recommendation for a 2-for-1 tree replacement requirement, caliper requirement for replacement of a significant tree, definition of replacement trees and protected trees, ability to enforce, methods of application, and option to define a basic removal area (i.e., within ten feet of the building pad). Planning Commissioner Platteter advised of input from builders in opposition to this amendment and suggested the City consider a boulevard (public space) strategy to maintain tree canopy.

The Council agreed with the importance of finding balance points between property rights and protection of the City’s tree canopy. The option was raised to regulate by listing trees that were not allowed, instead of listing trees that were acceptable, in an effort to provide more flexibility for replacement tree species.

Community Development Director Teague stated staff received a landscape plan associated with a building permit but generally, when a site was cleared for construction, the property owner replanted trees that were removed, though of a smaller caliper. He addressed the issue of staffing, noting the City Forester works 34 hours a week and had indicated enforcement of this ordinance amendment would require an additional part-time staff position.

Mayor Hovland opened the public hearing at 8:32 p.m.

Public Testimony

Lori Grotz, 5513 Park Place, addressed the Council.

Pam Starkey, 5331 Oaklawn Avenue, addressed the Council.

Dianne Plunkett Latham, 7013 Comanche Court, addressed the Council.

Frank Lorenz, 7151 York Avenue South, Unit 720, addressed the Council.

Member Swenson made a motion, seconded by Member Brindle, to close the public hearing.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

Minutes/Edina City Council/May 6, 2014

Forester Horwath addressed issues raised during public testimony relating to cost and timing to replant a large tree, potential City liability if regulating tree placement, and difficult predictability of tree impact. He recommended including the State of Minnesota list of invasive trees within the ordinance. Mr. Horwath stated his concern relating to the amount of time enforcement would require and indicated he had not found tree replacement to be a major concern as property owners were not often cutting down significant trees unnecessarily.

The Council continued discussion of the amendment and asked questions of Mr. Teague and Mr. Neal. The Council discussed the merits of the Minnetonka tree preservation ordinance in terms of clarity of definitions, reasonable scope, and general tree protection standards in addition to preservation rules. The Council expressed support for the concept of a tree preservation ordinance and asked for additional staff input on the most logical method to preserve the City's tree canopy, whether home additions should be excluded, how to define a basic removal radius, whether lot size should be a factor in terms of replacement ratios, how to limit the City's costs, and boulevard replanting strategy. **Member Sprague made a motion, seconded by Member Brindle, tabling consideration of Ordinance No. 2014-06, Amendment to Chapter 10, Article III of the City Code, Regarding Tree Preservation, to a future Work Session.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VI.B. COMPREHENSIVE GUIDE PLAN AMENDMENT, PRELIMINARY PUD REZONING, PRELIMINARY DEVELOPMENT PLAN, LENNAR CORPORATION, 6725 YORK AVENUE AND 6712, 6708, 6704, 6700, AND 6628 XERXES AVENUE – RESOLUTIONS NO. 2014-51 AND 2014-52 – ADOPTED

Mayor Hovland recognized elected Richfield officials who were in attendance.

Community Development Director Presentation

Mr. Teague presented the request of Lennar Corporation for a Comprehensive Plan Amendment to change the building height from four stories and 48 feet to six stories and 70 feet; floor area ratio from 1.0 to 1.27; and, regarding the Land Use Plan for the five single-family homes from Low Density Residential to Community Activity Center. He reported on concerns of Richfield residents on the east side of Xerxes Avenue with the proposed setbacks. It was noted the traffic study concluded the existing roadways and parking could support this project and recommended creating a left turn into the site on York Avenue.

Mr. Teague advised that the Planning Commission recommended, on a split vote, approval of the Comprehensive Plan Amendment and denial of the Preliminary Rezoning and Preliminary Development Plan based on the layout of the project. Mr. Teague indicated the proponent had revised the plans by reducing the size of the retail space; expanding the width of the boulevard along York Avenue, shifting the entire building ten feet to the west; and, creating additional setbacks (eight feet) on the top floor corners of the building facing Xerxes Avenue. Staff recommended approval of the Comprehensive Plan Amendment, Preliminary Rezoning, and Preliminary Development Plan per the findings and conditions as outlined in the draft resolutions. If approved, the developer would be required to return for Final Rezoning to PUD; Final Development Plan; and, Ordinance amendment creating the new PUD District. In addition, a City Code amendment would be needed to allow R-1 property to be considered for a PUD.

The Council addressed the indication of the Edina Housing Foundation that 20% affordable housing was a trigger for federal money and the Council had expressed interest in pursuing that type of project where funding could be maximized.

Proponent Presentation

Peter Chmielewski described projects undertaken and managed by Lennar Corporation.

ORDINANCE NO. 2014-06
AN ORDINANCE AMENDMENT REGARDING TREE PRESERVATION

The City Council Of Edina Ordains:

Section 1. Chapter 10, Article III of the Edina City Code is amended to add Division 3 as follows:

DIVISION III. TREE PROTECTION

Sec. 10-82. Preservation, protection and replacement of Protected Trees: This ordinance applies to all demolition permits; building permit applications for a structural addition; and building permits for accessory structures including a garage, deck or a pool.

(1) Purpose: Edina is fortunate to have a robust inventory of mature trees that form an integral part of the unique character and history of the city, and that contribute to the long-term aesthetic, environmental, and economic well-being of the city. The purpose of the ordinance is to:

- a. Preserve and grow Edina's tree canopy cover by protecting mature trees throughout the city.
- b. Protect and enhance property values by conserving and adding to the distinctive and unique aesthetic character of Edina's tree population.
- c. Protect and enhance the distinctive character of Edina's neighborhoods
- d. Improve the quality of life for all stakeholders, including city residents, visitors and wildlife.
- e. Protect the environment by the filtering of air and soil pollutants, increasing oxygen levels and reducing CO₂; managing erosion and stormwater by stabilizing soils; reducing heat convection; decreasing wind speeds; reducing noise pollution and decreasing the urban heat island effect.
- f. Protect and maintain healthy trees in the development and building permit processes as set forth herein; and prevent tree loss by eliminating or reducing compacted fill and excavation near tree roots.

(2) Definitions:

- a. Protected Tree: Any tree of the birch, balsam fir, black walnut, buckeye, cedar, elm, hemlock, hickory, ironwood, linden, locust, maple (except silver maple), Norway pine, oak, spruce and white pine varieties. (Measured at 6" and over at Diameter at Breast Height (DBH).

Existing text – XXXX

Stricken text – ~~XXXX~~

Added text – XXXX

b. Removable Tree. Any tree not defined as a Protected Tree, or as defined as an invasive species by the Minnesota Department of Natural Resources.

(3) Demolition and building permit applications must include a certified tree inventory plan indicating where Protected Trees are located and, their species, caliper, health and approximate height and canopy width. The plan must show how Protected Trees are preserved and protected during construction. The plan must also show if any Protected Trees are proposed to be removed and the location, species and size of all replacement tree(s).

(4) If a Protected Tree is removed, except as allowed for in paragraph (7), it must be replaced with two (2) trees, subject to the following conditions:

a. Replacement trees must be varied by species and are limited to the species listed above in (2) Definitions.

b. Replacement trees must not be subject to known epidemic diseases or infestations. Disease or infestation resistant species and cultivars are allowed.

c. Replacement trees must be at least two and one-half inches (2.5") in caliper for deciduous trees and a minimum of seven feet (7') tall for coniferous trees.

d. Replacement tree plans are subject to approval by the City Forester before implementation.

e. If a replacement tree location cannot be found on the property, it must be placed in a public area, subject to approval by the City Forester.

(5) Protected Trees may be removed, in the following areas:

a. Including, and within a ten-foot (10') radius of, the building pad of a new or remodeled building.

b. Within driveways and parking areas.

Protected Trees removed in subparagraphs a. and b. above must be replaced with one (1) tree, subject to the species listed above in (2) Definitions and the conditions listed in subparagraphs a. through e. of paragraph 4 above.

- (6) Removable Trees five inches (5") or less in caliper may be removed for any development or building permit, without replacement. If a Removable Tree greater than five inches (5") is removed, it must be replaced with one tree, and subject to the conditions is paragraph 4 above. If a Protected Tree is dead, diseased or hazardous it must be approved by the City Forester before removal.
- (7) During the demolition and building permit processes, the permit holder shall not leave any Protected Tree without sufficient guards or protections to prevent injury to the Protected Tree, in connection with such construction. The survey must indicate how the Protected Tree would be protected during construction, subject to staff review and approval. City staff monitoring is required for all projects with affected Protected Trees and/or replacement trees to ensure that all such trees are properly established and maintained for three (3) years. Tree protection during construction is subject to the city's Construction Management Plan (CMP).
- (8) If Protected Trees were removed within one (1) year prior to the date the development, demolition and building permit applications were submitted, these Protected Trees are also subject to the replacement policy set forth in paragraph (4) above.

Section 2. This ordinance is effective immediately upon its passage and publication.

First Reading:
Second Reading:
Published:

ATTEST:

Debra A. Mangen, City Clerk

James B. Hovland, Mayor

Please publish in the Edina Sun Current on:
Send two affidavits of publication.
Bill to Edina City Clerk

Existing text – XXXX
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(1) Purpose: Edina is fortunate to have a robust inventory of mature trees that form an integral part of the unique character and history of the city, and that contribute to the long-term aesthetic, environmental, and economic well-being of the city. The purpose of the ordinance is to:

- a. Preserve and grow Edina's tree canopy cover by protecting mature trees throughout the city.
- b. Protect and enhance property values by conserving and adding to the distinctive and unique aesthetic character of Edina's tree population.
- c. Protect and enhance the distinctive character of Edina's neighborhoods
- d. Improve the quality of life for all stakeholders, including city residents, visitors and wildlife.
- e. Protect the environment by the filtering of air and soil pollutants, increasing oxygen levels and reducing CO2; managing erosion and stormwater by stabilizing soils; reducing heat convection; decreasing wind speeds; reducing noise pollution and decreasing the urban heat island effect.
- f. Protect and maintain healthy trees in the development and building permit processes as set forth herein; and prevent tree loss by eliminating or reducing compacted fill and excavation near tree roots.

(2) Definitions:

- a. Protected Tree: Any tree that is structurally sound and healthy, and that meets one of the following:

Existing text – XXXX

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Added text – **XXXX**

Added text after May 6 - XXXX

- i. a deciduous tree that is at least 15 inches dbh, except box elders, elm, poplar, willow, silver maple, black locust, fruit tree species, and mulberry.
- ii. a coniferous tree that is at least 20 feet in height.

b. Removable Tree. Any tree not defined as a Protected Tree, or as defined as an invasive species by the Minnesota Department of Natural Resources.

(3) Demolition and building permit applications must include a certified tree inventory plan indicating where Protected Trees are located and, their species, caliper, health and approximate height and canopy width. The plan must show how Protected Trees are preserved and protected during construction. The plan must also show if any Protected Trees are proposed to be removed and the location, species and size of all replacement tree(s).

(4) If a Protected Tree is removed, except as allowed for in paragraph (5), it must be replaced with one (1) tree, subject to the following conditions:

- a. Replacement trees must be varied by species and are limited to the species listed above in (2) Definitions.
- b. Replacement trees must not be subject to known epidemic diseases or infestations. Disease or infestation resistant species and cultivars are allowed.
- c. Replacement trees must be at least two and one-half inches (2.5") in caliper for deciduous trees and a minimum of seven feet (7') tall for coniferous trees.
- d. Replacement tree plans are subject to approval by the City Forester before implementation.
- e. If a replacement tree location cannot be found on the property, it must be placed in a public area, subject to approval by the City Forester.

(5) Protected Trees may be removed without mitigation, in the following areas:

- a. Including, and within a ten-foot (10') radius of, the building pad of a new or remodeled building.
- b. Within a ten-foot (10') radius of driveways and parking areas.

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Added text – **XXXX**

Added text after May 6 - XXXX

- (6) During the demolition and building permit processes, the permit holder shall not leave any Protected Tree without sufficient guards or protections to prevent injury to the Protected Tree, in connection with such construction. The survey must indicate how the Protected Tree would be protected during construction, subject to staff review and approval.
- (7) If Protected Trees were removed within one (1) year prior to the date the development, demolition and building permit applications were submitted, these Protected Trees are also subject to the replacement policy set forth in paragraph (4) above.

Section 2. Chapter 32. Article III. Evaluation of Plats and Subdivisions is hereby revised as follows:

Subsection 32-7. (Subdivisions.) Variances are hereby amended as follows:

Sec. 32-7. Variances.

(a) *Grant by Council.* In connection with the preliminary or final approval of a plat or subdivision the Council may grant variances from the provisions of this Section. The Council shall grant variances only upon finding that an unusual hardship exists as to the land within the plat or subdivision, and specifically that:

- ~~(1) The hardship is not a mere inconvenience;~~
- ~~(2) The hardship is due to the particular physical surroundings, shape or topographical condition of the land;~~
- ~~(3) The condition or conditions upon which the request for a variance is based are unique to the property being platted or subdivided and not generally applicable to other property;~~
- ~~(4) The hardship is caused by this Section and not by the applicant;~~
- ~~(5) The variance will result in an improved plat or subdivision; and~~
- ~~(6) The variance, if granted, will not alter the essential character of the land within the plat or subdivision or in the neighborhood.~~

Existing text – XXXX

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Added text after May 6 - XXXX

- (1) That there are special circumstances or conditions affecting the property such that the strict application of the provisions of this title would deprive the applicant reasonable use of their land.
- (2) That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which property is situated.
- (3) That the variance is to correct inequities resulting from an extreme physical hardship such as topography, etc.

A grant of a variance by the Council shall be deemed to include a favorable finding on each of the variance grounds set out above even if not specifically set out in the approval resolution or the minutes of the Council meeting.

(b) *Conditions.* In granting a variance the Council may impose conditions to ensure compliance with the purpose and objectives of this Section and other applicable provisions of this Code and to protect adjacent properties. The conditions may be made a part of any Development Contract required by article IV of this chapter.

(c) *Variances from Section 36.* When Variances are requested from Section 36, requirements for lot areas and dimensions, the Planning Commission and City Council may consider the following criteria in addition to Section 36-98:

- (1) The impact of the proposed plat or subdivision, and proposed development, on the character and symmetry of the neighborhood as evidenced and indicated by, but not limited to, the following matters:
 - a. The suitability of the size and shape of the lots in the proposed plat or subdivision relative to the size and shape of lots in the neighborhood; and
 - b. The compatibility of the size, shape, location and arrangement of the lots in the proposed plat or subdivision with the proposed density and intended use of the site and the density and use of lots in the neighborhood.
- (2) The impact of the proposed plat or subdivision, and proposed development, on the environment, including but not limited to,

Existing text – XXXX

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Added text – **XXXX**

Added text after May 6 - XXXX

topography, steep slopes, vegetation, naturally occurring lakes, ponds and streams, susceptibility of the site to erosion and sedimentation, susceptibility of the site to flooding and water storage needs on and from the site.

- (3) The consistency of the proposed plat or subdivision, and proposed development, and compliance by the proposed plat or subdivision, and the proposed development, with the policies, objectives, and goals of the Comprehensive Plan.
- (4) The compliance of the proposed plat or subdivision, and the proposed development with the policies, objectives, goals and requirements of chapter 36 including, without limitation, the lot size provisions and the floodplain overlay district provisions of chapter 36.
- (5) The impact of the proposed plat or subdivision, and proposed development on the health, safety and general welfare of the public.
- (6) The relationship of the design of the site, or the improvements proposed and the conflict of such design or improvements, with any easements of record or on the ground.
- (7) The relationship of lots in the proposed plat or subdivision to existing streets and the adequacy and safety of ingress to and egress from such lots from and to existing streets.
- (8) The adequacy of streets in the proposed plat or subdivision, and the conformity with existing and planned streets and highways in surrounding areas. Streets in the proposed plat or subdivision shall be deemed inadequate if designed or located so as to prevent or deny public street access to adjoining properties, it being the policy of the City to avoid landlocked tracts, parcels or lots.
- (9) The suitability of street grades in relation to the grades of lots and existing or future extension of the City's water, storm and sanitary sewer systems.
- (10) The adequacy and availability of access by police, fire, ambulance and other life safety vehicles to all proposed improvements to be developed on the proposed plat or subdivision.

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Added text after May 6 - XXXX

(11) Whether the proposed plat or subdivision, or the improvements proposed to be placed thereon are likely to cause substantial environmental damage.

Section 4. Chapter 32. Article III. Evaluation of Plats and Subdivisions is hereby revised as follows:

Sec. 32-130. Considerations.

~~The Commission in reviewing proposed plats and subdivisions and in determining its recommendation to the Council, and the Council in determining whether to approve or disapprove of any plat or subdivision, may consider, among other matters, the following:~~

- ~~(1) The impact of the proposed plat or subdivision, and proposed development, on the character and symmetry of the neighborhood as evidenced and indicated by, but not limited to, the following matters:
 - a. The suitability of the size and shape of the lots in the proposed plat or subdivision relative to the size and shape of lots in the neighborhood; and
 - b. The compatibility of the size, shape, location and arrangement of the lots in the proposed plat or subdivision with the proposed density and intended use of the site and the density and use of lots in the neighborhood.~~
- ~~(2) The impact of the proposed plat or subdivision, and proposed development, on the environment, including but not limited to, topography, steep slopes, vegetation, naturally occurring lakes, ponds and streams, susceptibility of the site to erosion and sedimentation, susceptibility of the site to flooding and water storage needs on and from the site.~~
- ~~(3) The consistency of the proposed plat or subdivision, and proposed development, and compliance by the proposed plat or subdivision, and the proposed development, with the policies, objectives, and goals of the Comprehensive Plan.~~
- ~~(4) The compliance of the proposed plat or subdivision, and the proposed development with the policies, objectives, goals and requirements of chapter 36 including, without limitation, the lot size provisions and the floodplain overlay district provisions of chapter 36.~~

Existing text – XXXX

Stricken text – XXXX

Added text – XXXX

Added text after May 6 - XXXX

- ~~(5) The impact of the proposed plat or subdivision, and proposed development on the health, safety and general welfare of the public.~~
- ~~(6) The relationship of the design of the site, or the improvements proposed and the conflict of such design or improvements, with any easements of record or on the ground.~~
- ~~(7) The relationship of lots in the proposed plat or subdivision to existing streets and the adequacy and safety of ingress to and egress from such lots from and to existing streets.~~
- ~~(8) The adequacy of streets in the proposed plat or subdivision, and the conformity with existing and planned streets and highways in surrounding areas. Streets in the proposed plat or subdivision shall be deemed inadequate if designed or located so as to prevent or deny public street access to adjoining properties, it being the policy of the City to avoid landlocked tracts, parcels or lots.~~
- ~~(9) The suitability of street grades in relation to the grades of lots and existing or future extension of the City's water, storm and sanitary sewer systems.~~
- ~~(10) The adequacy and availability of access by police, fire, ambulance and other life safety vehicles to all proposed improvements to be developed on the proposed plat or subdivision.~~
- (11) Whether the physical characteristics of the property, including, without limitation, topography, vegetation, susceptibility to erosion or siltation, susceptibility to flooding, use as a natural recovery and ponding area for storm water, and potential disturbance of slopes with a grade of 18 percent or more, are such that the property is not suitable for the type of development or use proposed.
- (12) Whether development within the proposed plat or subdivision will cause the disturbance of more than 25 percent of the total area in such plat or subdivision containing slopes exceeding 18 percent.

(3) Comply with Section 10-82.

- ~~(13) Whether the proposed plat or subdivision, or the improvements proposed to be placed thereon are likely to cause substantial environmental damage.~~

Existing text – XXXX

Stricken text – XXXX

Added text – XXXX

Added text after May 6 - XXXX

Section 3. This ordinance is effective immediately upon its passage and publication.

First Reading:
Second Reading:
Published:

ATTEST:

Debra A. Mangen, City Clerk

James B. Hovland, Mayor

Please publish in the Edina Sun Current on:
Send two affidavits of publication.
Bill to Edina City Clerk

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Ordinance was duly adopted by the Edina City Council at its Regular Meeting of _____, 2014, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____, 2014.

Existing text – XXXX
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Added text – **XXXX**
Added text after May 6 - XXXX

Minnetonka vs. Edina Tree Ordinance Comparison

<u>Ordinance Provision</u>	<u>Edina Propose</u>	<u>Minnetonka</u>
Application	Applies to all building permits	Applies to all building permits, subdivisions, variances, CUP, vacant properties
Tree Plan Required	Certified tree inventory	Tree preservation plan
Definition	<p>Protected Tree: Any tree of the birch, balsam fir, black walnut, buckeye, cedar, elm, hemlock, hickory, ironwood, linden, locust, maple (except silver maple), Norway pine, oak, spruce and white pine varieties. (Measured at 6" and over at Diameter at Breast Height (DBH).</p> <p>Removable Tree. Any tree not defined as a Protected Tree, or as defined as an invasive species by the Minnesota Department of Natural Resources</p>	<p>Significant tree – a tree that is structurally sound and health and that is either a deciduous tree at least 8" dbh or coniferous tree at least 15' tall</p> <p>High priority tree – a tree that is not in a woodland preservation area but is still important to the site and the neighborhood character that is structurally sound and healthy, and meets the following: deciduous 15" dbh except box elders, elm, poplar, willow, silver maple, black locust, Amur maple, fruit tree, mulberry and Norway maple. Coniferous 20' tall</p>
Replacement Required	1 for 1 in building area and driveway; 2 for 1 outside building area and driveway	1 for 1 outside of the building area and driveway (size requirement varies, 2 inch for significant tree and to 1-1/4 inch to 3 inch for high priority tree)
Minimum Lot Size	9,000 s.f. (generally)	22,000 square feet
Staff Review applications	200-300 per year (80% time forester + staff)	100 per year (full time 2+ staff)
Site Plan Layout requirements	No – tree location not required on survey for single family homes	Yes, requires site design, including building placement and size, to avoid high priority trees. City may specify site layout.

Limits subdivision lots	No	Yes, limits number of lots based upon the existing tree removal
Required escrow deposit for mitigated trees	No	Yes
Specify time requirements when trees can be cut or trimmed	No	Yes
Specify trees or groups of trees for preservation	No	Yes

Minnetonka
Tree Ordinance

ORDINANCE NO. 2008-24

AN ORDINANCE AMENDING CITY CODE §300.28, SUBD. 19
REGARDING TREE PROTECTION

The City of Minnetonka Ordains:

Section 1. Existing city code §300.28, subd. 19, a copy of which is attached as Exhibit A, is repealed, and a new city code §300.28, subd. 19 is adopted to read as follows:

19. Tree Protection.

a) Purpose. The goal of this subdivision is to preserve as much as practical Minnetonka's highly valued tree natural resources, ecosystems and viewsheds, while allowing reasonable development to take place and not interfering with how existing homeowners use their property. This subdivision provides incentives for property owners who wish to subdivide areas that include woodlands and high priority trees to use planned unit development (PUD), which allows the flexibility to both protect woodlands and property rights. Standards governing the preservation, protection, and planting of trees are necessary to:

- 1) prevent tree loss by eliminating or reducing compaction, filling or excavation near tree roots;
- 2) prevent or reduce soil erosion and sedimentation and stormwater runoff;
- 3) improve air quality and reduce noise pollution;
- 4) enhance energy conservation through natural insulation and shading;
- 5) control the urban heat island effect;
- 6) increase and maintain property values;
- 7) maintain buffers between similar land uses and establishing and maintaining buffers between conflicting land uses; and
- 8) preserve as much as practical the diversity and extent of the trees and woodlands that are an integral part of this city's identity, while allowing reasonable development and allowing existing homeowners freedom to use their land.

b) Definitions. For the purposes of this subdivision, certain terms and words are defined as follows:

The stricken language is deleted; the underlined language is inserted.

tolerant of seasonal flooding and deposition of silty or sandy soils. The canopy cover is extremely variable, and mature trees are typically greater than 70 feet tall. The dominant tree species in the canopy are silver maple and eastern cottonwood. In floodplain areas with severe flooding, the understory will be sparsely vegetated. Trees in the understory include saplings from the canopy species, green ash, black willow, slippery elm, American elm, boxelder, and hackberry;

b. "lowland hardwood forest" - an area with a flat terrain populated by deciduous tree species tolerant of periodic soil saturation from seasonally high water tables. The soils are moderately well to poorly drained. The dominant tree species in the canopy are American elm, black ash, basswood, bur oak, red oak, white oak, quaking aspen, paper birch, and red maple. Trees in the understory include saplings from the canopy species, slippery elm, green ash, butternut, sugar maple, quaking aspen, balsam poplar, and American hornbeam. The large shrub or small tree layer of the understory is typically dense and can include ironwood, pagoda dogwood, prickly ash, American hazelnut, gray dogwood, and speckled alder;

c. "maple basswood forest" – an area with well drained soils and populated by a variety of shade-tolerant, fire sensitive, deciduous tree species. The mature trees are straight with narrow crowns greater than 60 feet tall. The dominant tree species in the canopy are basswood and sugar maple but mesic species such as slippery elm, red oak, bur oak, green ash, white ash and black ash may be found as well. Trees in the understory include saplings from the canopy species, bitternut, black cherry, and ironwood. The large shrub or small tree layer of the understory is composed of primarily tree seedlings and herbaceous plants;

d. "mesic oak forest" – an area populated by tall, single stemmed deciduous trees greater than 60 feet tall that lack spreading lower branches. Mesic oak forests may have a moderately moist habitat, but can be dry depending on the slope and aspect of the forest. The dominant tree species in the canopy include red oak, white oak, and bur oak. Trees in the understory include saplings from the canopy, and fire-sensitive species such as basswood, green ash, bitternut hickory, big-toothed aspen, butternut, northern pin oak, black cherry, paper birch, American elm, boxelder and red maple. The large shrub or small tree layer in the understory tends to be sparse with greater herbaceous plant diversity but can include ironwood, chokecherry, prickly ash, American hazelnut, prickly gooseberry, red-berried elder, nannyberry, juneberry/serviceberry, and pagoda dogwood;

e. "oak woodland brushland" – an area with a canopy more open than a forest but less open than a savanna. It is characterized by open-grown trees and a distinct shrub layer in well-drained sandy, gravelly soils. The dominant tree species include red oak, northern pin oak, white oak, bur oak, and aspen. When it exists, the trees in the understory include saplings from the canopy, black cherry and red cedar. The large shrub or small tree layer can include American hazelnut, ironwood, juneberry and chokecherry;

f. "tamarack swamp" – an area that is a forested wetland community dominated by patches of tamarack, a deciduous coniferous tree. The dominant tree species in the canopy include tamarack, black spruce, paper birch, and red maple. The trees in the understory include saplings from the canopy and the large shrub or small tree layer can include speckled alder and red osier dogwood; or

g. "willow swamp" – an area that is a forested wetland community or an area with seasonally flooded soils and scattered-to-dense shrub cover. The dominant tree species in the canopy include black willow and speckled alder. The trees in the understory include saplings from the canopy and the large shrub or small tree layer can include several species of willow and dogwood.

10) "High priority tree" – a tree that is not in a woodland preservation area but is still important to the site and the neighborhood character, that is structurally sound and healthy, and that meets at least one of the following standards:

a. a deciduous tree that is at least 15 inches dbh, except box elders, elm species, poplar species, willow, silver maple, black locust, amur maple, fruit tree species, mulberry, and Norway maple.

b. a coniferous tree that is at least 20 feet in height, except a Colorado spruce that is not in a buffer as described in subparagraph (b)(10)(c); or

c. a tree that is in a group of deciduous trees that are at least eight inches dbh or coniferous trees that are at least 15 feet in height, that provide a buffer or screening along an adjacent public street, and that are within 50 feet of an arterial road and 35 feet of a minor collector, local, or private street and a trail.

11) "Significant tree" – a tree that is structurally sound and healthy and that is either a deciduous tree at least eight inches dbh or a coniferous tree at least 15 feet in height.

c) City authority. To preserve protected trees, the city may:

1) require and enforce a tree preservation plan as described in paragraph (d) below;

2) specify trees or groups of trees for preservation;

3) specify grading limits;

4) require the clustering of buildings or the relocation of roads, drives, buildings, utilities or storm water facilities when this would preserve protected trees;

5) grant variances;

6) specify time periods in which tree cutting, trimming or injury may not occur in order to prevent the spread of disease; and

7) require conservation easements or other legal means to ensure that woodland preservation areas or groups of high priority trees or significant trees are not intentionally destroyed after the development has been approved.

d) Tree Preservation Plan. A tree preservation plan is required as part of an application for a preliminary plat, lot division, conditional use permit, variance, grading permit, site and building plan review, wetland/floodplain alteration permit, or building permit, except a grading permit and building permit for R-1 property when no tree mitigation is required under (e)(1) below. If the exception applies and if the property owner retains a contractor to do the work, the contractor must submit a plan showing the proposed construction limits on the property and must not remove any trees outside the specified construction limits. A tree preservation plan must include:

1) a tree inventory that meets the following criteria:

a. The species, sizes, and locations of high priority trees, significant trees, and trees in woodland preservation areas must be shown, regardless of health. Dead or structurally unsound trees should be noted as such in the inventory.

b. Canopy species that exist in woodland preservation areas, including those that are in the understory, must be inventoried if they are four inches dbh or larger. Understory trees, excluding canopy species, and large shrubs that exist in woodland preservation areas must be inventoried if they are two inches dbh or larger.

c. The size of high priority trees and significant trees must be inventoried regardless of location.

d. The size of coniferous trees must be recorded in dbh and approximate height.

e. Invasive species such as buckthorn and honeysuckle should not be inventoried.

2) a site plan that shows the dbh, location and size of the critical root zone for each protected tree, the trees to be removed, the trees to be preserved, the proposed construction limits, and the proposed tree protection methods in addition to construction limit fencing. If grading or construction limits are outside of a woodland preservation area, the trees in that woodland preservation area may be grouped together.

e) Tree Removal and Preservation. Removal of protected trees is prohibited except as follows:

- 1) "Basic Tree Removal Area" - consists of the following:
 - a. within the areas improved for reasonably-sized driveways, parking areas and structures without frost footings and within ten feet around those improvements;
 - b. within the footprints of, and 20 feet around, buildings with frost footings; and
 - c. in areas where trees are being removed for ecological restoration in accordance with a city-approved restoration plan.
- 2) "Canopy" - The uppermost layer of a forest, formed by tree crowns.
- 3) "Critical root zone" – the minimum area around a tree that must remain undisturbed. The critical root radius is calculated by measuring the tree's diameter at breast height. For each inch of tree diameter, 1.5 feet of root zone radius must be protected. For example, if a tree's dbh is 10 inches, then its critical root zone radius is 15 feet (10 x 1.5 = 15).
- 4) "Diameter breast height (dbh)" – the diameter of a tree measured at 4.5 feet above the base of the tree. Multi-stem trees are considered one individual tree and each stem must be measured 4.5 feet above the base of the stem and added together to determine the diameter of the multi-stem tree.
- 5) "Protected tree" – a tree that is in a woodland preservation area, or is a high priority tree or significant tree.
- 6) "Redevelopment" -- reconstruction of the principal structure if it includes the removal of the principal structure by more than 50% of the square footage of the building footprint or an increase of the square footage of the building footprint by more than 50%.
- 7) "Sapling" - A young tree.
- 8) "Understory" - The trees, shrubs, and herbaceous plants that grow in the shade of the forest canopy, including trees that could potentially grow to reach the canopy.
- 9) "Woodland preservation area" - a remnant woodland ecosystem that is at least two acres in size regardless of property boundaries, is generally mapped in the city's Minnesota Land Cover Classification System, and although it may be degraded it generally meets the criteria for one of the following types of ecosystems as reasonably determined by the city:
 - a. "floodplain forest" – an area populated by deciduous tree species

1) Existing Structures.

a. R-1 zone: On property that is zoned R-1 and that has an existing principal structure, protected trees may be removed without any mitigation if the principal structure has been in existence and not externally expanded for at least two years after (1) a final building permit inspection or a certificate of occupancy was issued and (2) all of its final landscaping or ground cover was installed.

b. All other zones: On property that is not zoned R-1 and that has an existing principal structure, protected trees may be removed subject to the same standards applicable to R-1 property if no site improvements are undertaken and the owner complies with the required tree preservation and landscape plan for the property.

2) Existing Vacant Parcels of Land, Redevelopment, Site Improvements.

a. R-1: For the construction of a principal structure on a vacant R-1 lot or for redevelopment of an existing R-1 lot, protected trees may be removed with no mitigation only within the "basic tree removal area".

b. All other zones: On property not zoned R-1, for the construction of a principal structure on a vacant lot with no principal structure, for redevelopment of an existing lot, or for site improvements to an existing lot, protected trees may be removed with no mitigation only;

1. within the basic tree removal area; and

2. within the width of required easements for public and private streets and utilities, except that only significant trees may be removed in areas of required surface water ponding. The removal of woodland preservation area trees or high priority trees for surface water ponding must be mitigated.

c. The removal of protected trees under this subsection 2 must also comply with the general removal requirements under subsection 4 below.

3) Subdivisions.

a. Significant trees may be removed for any construction in a subdivision of land without mitigation only:

1. within the basic tree removal area; and

2. within the width of required easements for public and private streets and utilities, including areas required for surface water ponding.

b. If more than 35% of the site's high priority trees or more than 25% of a woodland preservation area on the site are to be removed for any construction in a

subdivision of land, there can be no more than one lot per developable acre of land. High priority trees and trees within a woodland preservation area may be removed for any construction in a subdivision of land without mitigation only;

1. for the basic tree removal area; and

2. for the width of required easements for public and private streets and utilities, except in areas of required surface water ponding. The removal of high priority trees or trees in woodland preservation areas for surface water ponding must be mitigated.

c. A subdivision of land that proposes to remove more than 35% of the site's high priority trees or more than 25% of a woodland preservation area on the site can be developed up to the full density normally allowed under other development regulations in the applicable zoning district if the property is developed under an approved planned unit development (PUD). There is no minimum size required for a PUD in this situation. In reviewing a PUD application, the city will consider the extent to which steps are taken to preserve protected trees, such as:

1. using creative design, which may include the clustering of homes, reducing lot sizes, reducing or expanding normal setbacks, custom grading, retaining walls, buffers, and establishing the size and location of building pads, roads, utilities and driveways;

2. preserving the continuity of woodland preservation areas by developing at the edges of those areas rather than at the core;

3. exercising good faith stewardship of the land and the trees both before subdivision and after, including the use of conservation easements when appropriate; and

4. minimizing the impact to the character of the existing landscape and neighborhood.

d. The removal of protected trees under this subsection 3 must also comply with the general removal requirements under subsection 4 below.

4) General removal requirements. The removal of protected trees under subsections (2) and (3) must also comply with the following general requirements:

a. Principal structures and associated facilities must be located to maximize tree preservation. The city may specify the location of the principal structures and associated facilities in order to ensure a reasonable amount of tree preservation.

b. Any tree removed outside of the specified allowable tree removal areas must be mitigated as specified below.

c. The applicant must comply with any approved tree preservation or landscape plan.

d. Trees required to be saved as part of a subdivision approval must remain on a lot for two years after the final building permit inspection or certificate of occupancy is issued for the principal structure, whichever is later. Any tree that dies solely of natural causes such as disease or wind is exempt from this section.

e. Each protected tree that is removed in violation of ordinance requirements is a separate violation of the city code.

5) Greater Public Good. The city council may allow the removal of protected trees contrary to the provisions in subparagraphs (1) – (4) if it determines that there is a greater public good such as:

a. providing reasonable use or access to the property;

b. providing affordable housing;

c. allowing for the creation or rehabilitation of a public road or trail;

d. providing for a public utility service, such as a transmission line, ponding or a water tower;

e. allowing for the creation or rehabilitation of a public park; or

f. enabling redevelopment in a designated redevelopment area.

f) Tree Mitigation.

1) When tree mitigation is required, the applicant must submit a tree mitigation plan for staff review and approval. The plan must indicate the number of inches or feet of mitigation trees, the species and quantity of each species, and the caliper size or feet and location for each replacement tree. The plan may not be comprised of more than 25 percent of the same species or size unless approved by the city. The plan must comply with the mitigation standards required below. The applicant must implement the tree mitigation plan approved by city staff.

2) Specific mitigation standards. Mitigation for tree removal of trees in woodland preservation areas, high priority trees, and significant trees must meet the following specific standards;

a. Mitigation rate.

1. A tree or large shrub that is in a woodland preservation area

or is a high priority tree must be replaced at the rate of one inch for each inch in diameter of a deciduous tree that was removed and at the rate of one foot for each foot in height of a coniferous tree that was removed; and

2. A significant tree must be replaced with one two-inch tree.

b. Mitigation species.

1. Trees and large shrubs in woodland preservation areas must be replaced with species found in that eco-type as specified on the list of acceptable replacement species on file with the city;

2. High priority trees must be replaced with species of a similar type that are normally found growing in similar conditions and that are included on the list of acceptable replacement species on file with the city;

3. Significant trees may be replaced with any tree species other than ash, box elder, silver maple, willow, Norway maple, amur maple and Colorado spruce, as approved by city staff; and

c. Mitigation size.

1. Replacement sizes for woodland preservation areas and high priority trees are:

a) not less than one and one quarter inches but not more than three inches dbh for deciduous balled and burlapped trees, and not less than three inches but not more than six inches dbh for spade-moved deciduous trees;

b) not less than 7 gallon stock for understory or small trees and not less than 3 gallon stock for shrubbery; and

c) not less than six feet but not more than eight feet in height for balled and burlapped coniferous trees, and not less than eight feet but not more than 14 feet in height for spade-moved coniferous trees.

2. The city may allow larger balled and burlapped or spade moved trees if these trees are accompanied with a three year guarantee. Other size substitutions, based on site characteristics, may be allowed at the reasonable discretion of the city.

3. Replacement size for a significant tree is not less than a two-inches dbh.

3) General mitigation standards:

a. All replacement trees and shrubs must meet the American Standard for Nursery Stock and the American National Standard relating to planting guidelines, quality of stock and appropriate sizing of the root ball for balled and burlapped, potted and spade-moved trees.

b. If the city determines in its reasonable discretion that there is no appropriate location for some or all of the required replacement trees, those trees may not be required.

c. Replacement trees must be planted on the same property or development area from which the trees were removed.

d. A tree will be considered removed if girdled, if 30 percent or more of the trunk circumference is injured, if 30% or more of the crown is trimmed, if an oak is trimmed between April 1st and July 15th, or if the following percentage of the critical root zone is compacted, cut, filled or paved: 30 percent of the critical root zone for all species, except 40 percent for ash, elm, poplar species, silver maple and boxelder.

e. Development that is subject to landscape requirements in sections 300.27 and 300.31 must meet the minimum landscape requirements of the applicable section. Trees planted as part of a required landscaping plan may be counted as replacement trees under this section, at the city's discretion.

f. The required mitigation trees must be replaced by the current property owner if the trees have died, have severely declined or have been damaged after the end of the second full growing season following installation. A tree will be considered to be severely declined if more than 25 percent of the crown has died.

g. The city may require an escrow deposit to ensure the required planting and continued existence of the mitigation trees. The city will release the escrow deposit after the end of the second full growing season following installation of the mitigation trees and any replacement trees.

h. A tree or shrub that was required by the city to be saved but was removed must be replaced at a rate of 2:1 based on dbh for deciduous species and height for conifers. The city may also impose a financial penalty equal to \$500.00 for each inch of dbh or foot of height removed, not to exceed \$5000 for each tree or shrub. This provision also applies to a conservation easement area that is disturbed during or after development.

g) General tree protection standards.

1) Before construction, grading or land clearing begins, the city-approved tree protection fencing or other method must be installed and maintained at the critical root zones of the trees to be protected. The location of the fencing must be in conformance with the approved tree preservation plan. This fencing must be inspected

by city staff before site work begins.

2) No construction, compaction, construction access, stock piling of earth, storage of equipment or building materials, or grading of any kind may occur within the critical root zone areas of trees to be protected.

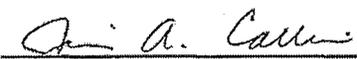
3) A healthy protected tree that was not a hazard to personal safety or property damage and that was removed or otherwise destroyed by unnatural causes within three years before a development application will be regarded as if it were present at the time of construction or a development application. This provision does not apply if the number of protected trees removed is less than 5% of the protected trees existing five years before the application.

4) An area of new or compensatory water storage may not be located where there are woodland preservation areas, high priority trees or significant trees, unless approved by the city. Mitigation will be required for the loss of woodland preservation areas and high priority trees due to ponding. The compensatory storage area must be created in a manner that prevents erosion into any nearby water resource.

Section 2. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

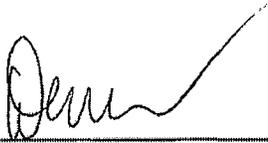
Section 3. This ordinance is effective upon adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on August 25, 2008.



Janis A. Callison, Mayor

ATTEST:



David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: April 21, 2008
Date of adoption: August 25, 2008
Motion for adoption: Schneider

Seconded by: Allendorf
Voted in favor of: Allendorf, Callison, Ellingson, Schneider, Wagner, Wiersum
Voted against: Hiller
Abstained:
Absent:
Ordinance adopted.

Date of publication: *September 2, 2008*

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on August 25, 2008.

David E. Maeda, City Clerk

Exhibit A

Repealed Section §300.28, subd. 19

19. Performance Standards Regulating Tree Removal.

a) Standards governing the preservation, protection, and planting of trees are necessary to:

- 1) prevent tree loss by eliminating or reducing compaction, filling or excavation near tree roots;
- 2) prevent or reduce soil erosion and sedimentation and stormwater runoff;
- 3) improve air quality and reduce noise pollution;
- 4) enhance energy conservation through natural insulation and shading;
- 5) control the urban heat island effect;
- 6) increase and maintain property values;
- 7) protect privacy by maintaining buffers between similar land uses and establishing and maintaining buffers between conflicting land uses; and
- 8) preserve the variety and extent of trees which exist in the city and which are an integral part of this city's identity.

b) A certain amount of tree removal is an inevitable consequence of the urban development process. Nevertheless, construction of streets, utilities, driveways, parking lots, buildings, and other facilities must be located in a manner to save as many significant trees as possible.

c) In enforcing this ordinance, the city may give preference to the preservation of higher quality significant trees over less desirable trees. A tree may be considered of higher quality based on its species, size, location, or other relevant factors. The city forester will establish a list of species that are considered less desirable, and this list will be kept on file in the planning department.

d) The city may require that a property be rezoned and developed as a planned unit development to utilize flexible development standards to preserve significant trees; the city may require the clustering of buildings where this would preserve significant trees.

e) significant trees may be destroyed for development, without any required replacement, in the following areas:

- 1) within the width of required easements for public streets and utilities and

the required areas for surface water ponding;

2) within the areas improved for reasonably-sized driveways, parking lots, and structures without frost footings and within ten feet around those improvements; and

3) within the footprints of buildings and 20 feet around buildings with frost footings.

If a significant tree is removed in other areas, trees must be planted to meet the number of significant trees which existed in those other areas before development, subject to the conditions in paragraphs (f) and (g) below.

f) the provision of replacement trees is subject to the following.

1) The applicant will not be required to raise the number of trees above 25 trees per acre.

2) If the applicant and the city agree that there is no appropriate location for some or all of the replacement trees, those trees will not be required.

3) In calculating the number of replacement trees, only trees meeting the minimum sizes in subparagraph (g) below may be counted. Notwithstanding the above, any development that is subject to section 300.27 must meet the minimum landscape requirements of that section.

g) Any trees required to be planted must be varied in species, must be primarily species native to the area, may not include any species that are subject to disease epidemic or are on the list of less desirable trees established by the city forester, and must be hardy under local conditions. They must be at least 2½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees, except that for property located in the planned I-394 district they must be at least 3½ inches in diameter for deciduous trees and 10 feet tall for coniferous trees. The required trees must be replaced by the property owner or original developer if they die within one year after installation.

h) Before any construction or grading takes place, snow fencing, erosion control fencing, or similar device must be placed around the drip lines of significant trees that are to be preserved or that are located nearby on adjacent property. No construction, compaction, or grading of any kind may occur within these drip lines, except when necessary to save additional significant trees and when the risk to the trees designated for preservation is minimal. The developer must place signs on the fencing prohibiting construction, compaction, or grading.

i) A significant tree that was removed or otherwise destroyed within two years before a development application must be replaced in the same general location by two trees meeting the requirements of paragraph (g) above. The replacement trees will be considered significant trees existing at the time of the development application and may be removed and relocated on the site only if the original significant tree would have

been allowed to be removed under this ordinance.

j) The area of any compensatory water storage may not be located where there are any significant trees, unless approved by the city. The compensatory storage area must be created in a manner that prevents erosion into any nearby wetland.

k) Tree removal on property with an existing home or other principal structure shall be exempt from this subdivision, except as stated in paragraph (j) above, unless the tree removal is to accommodate new development or the expansion of the existing development.

REPORT / RECOMMENDATION



To: MAYOR AND COUNCIL

Agenda Item #: VI.A.

From: Cary Teague, Community Development Director

Action

Discussion

Date: May 6, 2014

Information

Subject: Public Hearing – Ordinance No 2014-6; An Ordinance Amendment to Chapter 10, Article III of the City Code, regarding tree preservation.

Action Requested:

Grant first reading of the attached Ordinance No. 2014-6.

Information / Background:

Over the past several months, the Planning Commission has been considering an Ordinance Amendment regarding tree preservation and replacement for demolition permits, building additions, and building accessory structures.

Planning Commissioner Michael Platteter, who along with Commission Claudia Carr led the Planning Commission Working Group through the process, will present the Ordinance and project background to the City Council on May 6th.

The following is a summary of the proposed Ordinance:

- This ordinance applies to all demolition permits; building permit applications for a structural addition; and building permits for accessory structures including a garage, deck or a pool.
- All such permits are required to include a certified tree inventory plan indicating where Protected Trees are located and, their species, health, caliper, and approximate height and canopy width. The plan must show how Protected Trees are preserved and protected during construction. The plan must also show if any Protected Trees are proposed to be removed and the location, species and size of all replacement tree(s).
- Trees to be protected under this Ordinance include: birch, balsam fir, black walnut, buckeye, cedar, elm, hemlock, hickory, ironwood, linden, locust, maple (except silver maple), Norway pine, oak, spruce and white pine varieties.
- Any healthy protected tree that is removed within a building pad, or a 10-foot radius of the building pad or within a driveway or parking area must be replaced 1 to 1.

- Any healthy protected tree that is removed as part of a demolition permit; building permit application for a structural addition; or building permits for accessory structure that is outside of the building pad, within 10 feet of the building pad or within the driveway or parking area must be replaced 2 to 1.
- Protected Trees to remain must be protected during construction.
- Staff is required to monitor all construction projects with Protected Trees and/or replacement trees to ensure that all trees are properly established for three years.

The proposed Ordinance would add an expense to a building permit for inclusion of the certified tree inventory. This would be done by the surveyor either on the main survey submitted with the building permit, or on a separate survey. In either case, the surveyor would be responsible for siting trees on the property and developing a plan for relocation and placement of new trees, and showing them on the survey.

Ordinance Enforcement

Enforcement of the Ordinance would likely require additional staffing. The city forester is currently a part time position (34 hours per week on average). The forester has reviewed the proposed Ordinance, and believes that an additional staff person (possibly part time) would be required to adequately enforce the Ordinance, and still maintain the level of service that they currently provide. The primary focus of the forester is on the city's 600-800 acres of public land; although he does occasionally work with residents regarding tree issues on private property.

The new ordinance would require the following additional staff review:

- Review of the "tree plan" as part of the building permit. This is the review of the survey showing existing trees, those that would be removed, and those proposed to be planted. Given the last couple years of permit activity, this could be between 150-200 permits per year; this would include new home construction after a tear down and additions to existing homes.
- Inspection of each of these construction sites. To ensure compliance with the proposed plans and protection of existing trees on site.
- On-going monitoring. The code requires staff monitoring for three years. Potentially, that could mean that up to 600 sites would be actively monitored.

This would ultimately be a decision of the City Council in regard to staffing.

ATTACHMENTS:

- Draft Ordinance
- Planning Commission presentation
- Planning Commission Minutes: Jan. 8 & 22, Feb. 12 & 26, and March 12, 2014.
- Staff Memo dated March 12, summarizing the Draft Ordinance & identifying issues
- Correspondence

ORDINANCE NO. 2014-06
AN ORDINANCE AMENDMENT REGARDING TREE PRESERVATION

The City Council Of Edina Ordains:

Section 1. Chapter 10, Article III of the Edina City Code is amended to add Division 3 as follows:

DIVISION III. TREE PROTECTION

Sec. 10-82. Preservation, protection and replacement of Protected Trees: This ordinance applies to all demolition permits, building permit applications for a structural addition, and building permits for accessory structures including a garage, deck or a pool.

(1) Purpose: Edina is fortunate to have a robust inventory of mature trees that form an integral part of the unique character and history of the city, and that contribute to the long-term aesthetic, environmental, and economic well-being of the city. The purpose of the ordinance is to:

- a. Preserve and grow Edina's tree canopy cover by protecting mature trees throughout the city.
- b. Protect and enhance property values by conserving and adding to the distinctive and unique aesthetic character of Edina's tree population.
- c. Protect and enhance the distinctive character of Edina's neighborhoods
- d. Improve the quality of life for all stakeholders, including city residents, visitors and wildlife.
- e. Protect the environment by the filtering of air and soil pollutants, increasing oxygen levels and reducing CO₂; managing erosion and stormwater by stabilizing soils; reducing heat convection; decreasing wind speeds; reducing noise pollution and decreasing the urban heat island effect.
- f. Protect and maintain healthy trees in the development and building permit processes as set forth herein; and prevent tree loss by eliminating or reducing compacted fill and excavation near tree roots.

(2) Definitions:

- a. **Protected Tree:** Any tree of the birch, balsam fir, black walnut, buckeye, cedar, elm, hemlock, hickory, ironwood, linden, locust, maple (except silver maple), Norway pine, oak, spruce and white pine varieties. (Measured at 6" and over at Diameter at Breast Height (DBH).

Existing text – XXXX
Stricken text – ~~XXXX~~
Added text – XXXX

b. Removable Tree. Any tree not defined as a Protected Tree, or as defined as an invasive species by the Minnesota Department of Natural Resources.

(3) Demolition and building permit applications must include a certified tree inventory plan indicating where Protected Trees are located and, their species, caliper, health and approximate height and canopy width. The plan must show how Protected Trees are preserved and protected during construction. The plan must also show if any Protected Trees are proposed to be removed and the location, species and size of all replacement tree(s).

(4) If a Protected Tree is removed, except as allowed for in paragraph (7), it must be replaced with two (2) trees, subject to the following conditions:

a. Replacement trees must be varied by species and are limited to the species listed above in (2) Definitions.

b. Replacement trees must not be subject to known epidemic diseases or infestations. Disease or infestation resistant species and cultivars are allowed.

c. Replacement trees must be at least two and one-half inches (2.5") in caliper for deciduous trees and a minimum of seven feet (7') tall for coniferous trees.

d. Replacement tree plans are subject to approval by the City Forester before implementation.

e. If a replacement tree location cannot be found on the property, it must be placed in a public area, subject to approval by the City Forester.

(5) Protected Trees may be removed, in the following areas:

a. Including, and within a ten-foot (10') radius of, the building pad of a new or remodeled building.

b. Within driveways and parking areas.

Protected Trees removed in subparagraphs a. and b. above must be replaced with one (1) tree, subject to the species listed above in (2) Definitions and the conditions listed in subparagraphs a. through e. of paragraph 4 above.

(6) Removable Trees five inches (5") or less in caliper may be removed for any development or building permit, without replacement. If a Removable Tree greater

Existing text – XXXX

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Added text – XXXX

than five inches (5") is removed, it must be replaced with one tree, and subject to the conditions is paragraph 4 above. If a Protected Tree is dead, diseased or hazardous it must be approved by the City Forester before removal.

(7) During the demolition and building permit processes, the permit-holder shall not leave any Protected Tree without sufficient guards or protections to prevent injury to the Protected Tree, in connection with such construction. The survey must indicate how the Protected Tree would be protected during construction, subject to staff review and approval. City staff monitoring is required for all projects with affected Protected Trees and/or replacement trees to ensure that all such trees are properly established and maintained for three (3) years. Tree protection during construction is subject to the city's Construction Management Plan (CMP).

(8) If Protected Trees were removed within one (1) year prior to the date the development, demolition and building permit applications were submitted, these Protected Trees are also subject to the replacement policy set forth in paragraph (4) above.

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James B. Hovland, Mayor

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Send two affidavits of publication.
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CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Ordinance was duly adopted by the Edina City Council at its Regular Meeting of _____, 2014, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____, 2014.

City Clerk

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**Planning Commission Residential
Working Group Update:
Proposed Tree Ordinance
October 22nd, 2014**



Edina Planning Commission





A brief refresher/history:

Planning Commission Residential Working Group – work to date

- Reviewed and assessed residential rebuild situation (Oct 2012-Mar 2013).
- Public input forums: two meetings and Speak Up Edina topic (Jan-Feb 2013).
- Provided recommendations to City Council (Mar-July 2013).

Planning Commission Residential Working Group - results

- Updated Construction Management plan (Mar 2013).
- Residential Redevelopment Coordinator position created (April 2013).
- Code updates for residential heights, setbacks, stormwater and grading (July/Aug 2013).

Item not addressed to date: Tree Ordinance





Tree Canopy: Issues Identified in Public Forums

- Tree protection during construction
- Concern on loss of tree canopy, quality of life issues
- Environmental concerns for tree loss, including carbon sink loss, energy conservation shading effects, urban heat islands and erosion/stormwater control



Tree Canopy: Approaches for Ordinance

- Provide tree protection guidelines during construction
- Provide tree ordinance for teardowns/lot subdivisions
- Address discretionary tree removal
- Require tree inventory and preservation plan
- Require equivalency planting plan for trees removed





Mature Tree Benefits in Edina

- Provides social/health benefits to community and wildlife.
- Stormwater: For 5% loss in tree cover, stormwater increases 2%. A tree can absorb 100 gal/water per day. Filters and reduces site erosion.
- Energy: Reduced “urban heat island” effect. Can reduce cooling by 30% and save 20-50% in heating costs.
- Carbon sequestration: Absorbs 48lbs CO₂/year, one ton for a 40 year old tree. Lifespan is 100-150 years.
- Air quality: Absorbs 10 lbs. of air pollutants/year
- Oxygen: Produces oxygen for two people/year.
- Property values: increased values between 4-15%.

(information source: americanforests.org)





What this means to Edina - Tree Loss 2008-2014

- A robust tree canopy is a defining element of our neighborhoods; loss of tree canopy means loss of neighborhood character.
- There have been 450 +/- residential Teardowns in Edina plus numerous major remodeling projects. At an estimated loss of two mature trees per teardown, and many have had more trees removed:
 - Over 900 mature trees removed from Edina in the past six years
 - Carbon increase of 43,200 lbs. CO₂/year
 - Added air pollution of 9,000 lbs./year in lost absorption rates
 - Reduced oxygen production for 1,800 people

(information source: americanforests.org)





What this means to Edina – Stormwater 2008-2014

- There have been 450 +/- residential teardowns in Edina plus numerous major remodeling projects. At an estimated loss of two mature trees per teardown, and many have had more trees removed:
 - Over 900 mature trees removed from Edina in the past six years
 - Stormwater increase of 90,000 gallons/day. For a 5% loss in tree cover stormwater increases 2%.
 - At an average of 1/3 acre for each teardown, there have been over 150 acres redeveloped in Edina with no stormwater management, landscaping or impervious surface mitigation.
 - An equivalent land area is almost two Southdale mall parcels redeveloped with no stormwater control or management.

(information source: americanforests.org)



CITY OF EDINA



Tree removal, residential lot



CITY OF EDINA



Tree removal, residential lot



CITY OF EDINA

Tree removal, residential lot



CITY OF EDINA



Tree removal, residential lot





2008 Tree Canopy, Morningside & Grimes





Examples of trees remaining after new construction



They can be accommodated





Summary

- Tree loss in Edina is a detriment to the community, and a large loss of trees has already occurred in our residential neighborhoods.
- The City Council is asked to implement a Tree Ordinance.

Thanks for your consideration





Appendix

ORDINANCE NO. 2014-__
AN ORDINANCE AMENDMENT REGARDING TREE PRESERVATION

The City Council Of Edina Ordains:

Section 1. Chapter 10, Article III of the Edina City Code is amended to add Division 3 as follows:

DIVISION III. TREE PROTECTION

Sec. 10-82. Preservation, protection and replacement of Protected Trees: This ordinance applies to all demolition permits; building permit applications for a structural addition; and building permits for accessory structures including a garage, deck or a pool.

(1) Purpose: Edina is fortunate to have a robust inventory of mature trees that form an integral part of the unique character and history of the city, and that contribute to the long-term aesthetic, environmental, and economic well-being of the city. The purpose of the ordinance is to:

- a. Preserve and grow Edina's tree canopy cover by protecting mature trees throughout the city.
- b. Protect and enhance property values by conserving and adding to the distinctive and unique aesthetic character of Edina's tree population.
- c. Protect and enhance the distinctive character of Edina's neighborhoods
- d. Improve the quality of life for all stakeholders, including city residents, visitors and wildlife.
- e. Protect the environment by the filtering of air and soil pollutants, increasing oxygen levels and reducing CO2; managing erosion and stormwater by stabilizing soils; reducing heat convection; decreasing wind speeds; reducing noise pollution and decreasing the urban heat island effect.
- f. Protect and maintain healthy trees in the development and building permit processes as set forth herein; and prevent tree loss by eliminating or reducing compacted fill and excavation near tree roots.

(2) Definitions:

- a. **Protected Tree:** Any tree of the birch, balsam fir, black walnut, buckeye, cedar, elm, hemlock, hickory, ironwood, linden, locust, maple (except silver maple), Norway pine, oak, spruce and white pine varieties. (Measured at 6" and over at Diameter at Breast Height (DBH).

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Proposed Tree Ordinance



- b. **Removable Tree.** Any tree not defined as a Protected Tree, or as defined as an Invasive species by the Minnesota Department of Natural Resources.
- (3) Demolition and building permit applications must include a certified tree inventory plan indicating where Protected Trees are located and, their species, caliper, health and approximate height and canopy width. The plan must show how Protected Trees are preserved and protected during construction. The plan must also show if any Protected Trees are proposed to be removed and the location, species and size of all replacement tree(s).
- (4) If a Protected Tree is removed, except as allowed for in paragraph (7), it must be replaced with two (2) trees, subject to the following conditions:
- a. Replacement trees must be varied by species and are limited to the species listed above in (2) Definitions.
 - b. Replacement trees must not be subject to known epidemic diseases or infestations. Disease or infestation resistant species and cultivars are allowed.
 - c. Replacement trees must be at least two and one-half inches (2.5") in caliper for deciduous trees and a minimum of seven feet (7') tall for coniferous trees.
 - d. Replacement tree plans are subject to approval by the City Forester before implementation.
 - e. If a replacement tree location cannot be found on the property, it must be placed in a public area, subject to approval by the City Forester.
- (5) Protected Trees may be removed, in the following areas:
- a. Including, and within a ten-foot (10') radius of, the building pad of a new or remodeled building.
 - b. Within driveways and parking areas.

Protected Trees removed in subparagraphs a. and b. above must be replaced with one (1) tree, subject to the species listed above in (2) Definitions and the conditions listed in subparagraphs a. through e. of paragraph 4 above.



- (6) Removable Trees five inches (5") or less in caliper may be removed for any development or building permit, without replacement. If a Removable Tree greater than five inches (5") is removed, it must be replaced with one tree, and subject to the conditions in paragraph 4 above. If a Protected Tree is dead, diseased or hazardous it must be approved by the City Forester before removal.
- (7) During the demolition and building permit processes, the permit holder shall not leave any Protected Tree without sufficient guards or protections to prevent injury to the Protected Tree, in connection with such construction. The survey must indicate how the Protected Tree would be protected during construction, subject to staff review and approval. City staff monitoring is required for all projects with affected Protected Trees and/or replacement trees to ensure that all such trees are properly established and maintained for three (3) years. Tree protection during construction is subject to the city's Construction Management Plan (CMP).
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WITNESS my hand and seal of said City this ____ day of _____, 2014.

City Clerk

NOTES FROM THE
RESIDENTIAL REDEVELOPMENT FORUM
SATURDAY, JANUARY 26, 2013
10 PM – 12 PM
EDINA SENIOR CENTER

RED TEXT DENOTES TREE COMMENTS

Facilitators:

Mike Platteter, Ken Potts and Ariene Forrest* – Residential Redevelopment "working group"

Staff in Attendance:

Cary Teague, Kris Aaker, Jackie Hoogenakker

Others in Attendance:

Council Member Swenson

Mary Dick
Lon & Nancy Oberpriller
Molly Schomburg
Ryan Weber
Jen Colburn
Chris and Barb Hayhoe
John Peterson
Bill Rodgers
Jeff and Jannie Johnson
Kevin Staunton
Ellen Berner
Edward Glickman

Council Member Bennett

Bob Thompson
Susan Wahman
Liz Genorese
Scott Smith
Andrew Ramirez
Nora Davis
Bob Westlund
Janey Westin
Marlene Schleimer
Pat Meyers
Gene Persha
Liz Genorese

Mike Platteter thanked everyone for attending the forum and introduced Ken Potts and Ariene Fischer members of the Residential Redevelopment Work Group. Platteter opened the forum with a power point presentation highlighting the goals of the "working group".

Platteter said during this study of residential development and redevelopment their group found that the "issues" seemed to fall within two areas; construction management and zoning (setbacks, massing).

Platteter informed everyone to keep in mind the following dates:

January 31 – 7-9 PM additional residential redevelopment public forum at the Senior Center – same agenda as today's.

Workshop Notes



January 31st – February 12th – Summarize feedback period
February 13th – present findings to the Planning Commission
March 5th – PC and City Council will meet to discuss next steps with the next steps based upon Council comments.

Planner Teague addressed the group and briefly explained zoning code issues.

Attendee Comments during Presentation

The following comments occurred during the presentation by Platteter and Teague:

- Concern was expressed on increased segregation between the have/have not's that appears to be occurring as the result of large houses being built in place of smaller houses.
- More Information from Minnetonka on their setback and other standards needs to be added (on handout).
- Horrified by the lack of respect builders show to neighbors.
- Design regulations? Design review in a more formalized process. A Minnetonka resident suggested that a study be done on how the "new house" will "fit in" – maybe side setbacks need to be readdressed.
- A Fulton (Minneapolis) resident informed the group their "neighborhood association" established construction guidelines; however, these guidelines are not enforceable.
- Construction management issues; monitor better.
- Impervious surfaces – reconsider?
- Respect neighborhood character.
- Suggest considering a Floor Area Ratio (FAR) per average in area; block?

Platteter explained the "Forum Agenda" indicating the attendees would break into small groups to discuss defining issues and regroup to discuss proposed solutions. Each small group would then report their issues and solutions to the entire group.

Group One

Issue: Challenge builders to come up with creative solutions – bigger not always better.

Solution: We need more refined regulations enforced to preserve the neighborhood character and our mixed income community.

Issue: Respect neighborhood – new construction should conform to character of the neighborhood – AMEN

Solution: Different zoning requirements for different neighborhoods to preserve setback, height, mature trees, etc.

Issue: Restrict retaining walls in side yard setback.

Workshop Notes



Solution: H & W Standards - Different zoning requirements for different neighborhoods to preserve setback, height, mature trees, etc.

Issue: FAR has to be consistent with the average in the neighborhood.

Solution: Different zoning requirements for different neighborhoods to preserve setback, height, mature trees, etc.

Issue: Require that drainage and runoff be retained on the lot being remodeled.
Solution: Zoning regulations for impervious surfaces – collect fines if violates

Issue: Garages can't be more than 1/4 of the front face of the new structure.

Solution: Different zoning requirements for different neighborhoods to preserve setback, height, mature trees, etc.

Issue: Roll back building height to a more reasonable level so it is consistent with the neighboring structures.

Solution: Different zoning requirements for different neighborhoods to preserve setback, height, mature trees, etc.

Issue: Regulate where "storage" or "outbuildings" can be placed on a lot so they aren't so close (3') to the neighboring structures so as to block views.

Issue: New restrictions for height and setback on garages.

Group Two

Issue: General zoning.

Solution: Design review that evaluates proposed new construction design and that fit into the existing neighborhood. Eliminate use of asphalt if possible.

Issue: Affordable housing.

Solution: Preserve mixed income neighborhoods. Neighborhood specific size restrictions based on average sizes of homes adjacent to new construction. For example not to exceed 20% of existing average square footage

Group Three

Issues: Base new construction size (square footage) on average home size on same block (above ground square footage).

Solution: Sizes will change over time. Will keep some neighborhoods with small homes with no chance of changing

Issues: Design review process to evaluate aesthetic, size and stories based on adjacent homes/neighborhood.

Solution: Something like Minneapolis site plan review

Issues: Better and stringent enforcement of violations to code and zoning.
Solution: Better communicate process/requirement to neighbors

Issues: Zoning based on neighborhood versus one set of rules for the whole City.
Solution: Redo zoning districts

Group Four

Issues: Front loaded garage on 50-foot lot.

Solution: Love to see them barred, but at least prohibit from occupying more than 50% of front face.

Issue: Side Setbacks. Is increasing setback as height increases working?

Solution: It isn't

Issue: No driveway to back takes away side setback.

Solution: Great idea

Issue: Mass of homes/lot coverage

Solution: Require that FAR be consistent with average of neighborhood

Issue: Placement of accessory structure (sheds)

Solution: Require larger setback and require neighborhood approval of siting storage or accessory structure.

Issue: Height

Solution: Roll back by 5-feet at least

Issue: Trees

Solution: Require that large trees be preserved – consistent with character of the neighborhood

Issue: Where does (drainage) go with more lot coverage?

Solution: Require that drainage not be directed to neighboring lots.

Issue: Neighbors not apprised of building plans

Solution: Require notification of neighbors

Issue: Loss of privacy in backyards, sight lines into homes.

Solution: Preserve better, setbacks, etc.

Issue: Retaining walls/egress windows too close to lot line

Solution: Through setbacks preserve access to the back yards.



Group five

Issue: Damaging neighborhood trees.

Solution: Tree ordinance – require permits to remove trees larger than 10 inches in diameter

Issue: Losing affordable starter homes. Solution?

Issue: Could not get explanation for why City required changes to plans.

Solution: Written complaint requires written response of City.

Issue: New structure shading neighbors back yard – killing gardens.

Solution: Neighbors should be shown plans for new construction at least one month prior to work starting.

Issue: Side yard setbacks not sufficient – too small for small lots.

Solution: Require minimum 16' total (Both sides combined) or require minimum 5-foot setback on one side, 8'-9' on other

Issue: Not enough room to access the back yard.

Solution: require access on one side of house to backyard (min. 3')

Issue: Different in size of new home when compared to original home.

Solution: Add design guidelines around how new home fits with existing homes – See Park Ridge, IL design guidelines.

Issue: Drainage – does the City require drainage plans? How enforced.

Solution: Must drain to public drainage (directly) or maintain on site.

Committee members thanked everyone for their input and reiterated the dates of the upcoming Residential Redevelopment Forum (January 31st) indicating that meeting be similarly conducted.

Written Individual Comments:

See below and attached to notes.

Zoning:

- Include FAR
- Preserve sightlines
- Take topography into account
- Different more restrictive requirements for 50-foot properties.
- Different height limits on narrow lots.
- New construction should fit into existing footprint
- FAR has to be consistent by the average of the neighborhood
- Roll back building heights to be more consistent with the neighboring properties

- Regulate where storage or outbuildings can be located so they aren't too close to neighboring property lines and block views
- Smart zoning laws are neighborhood specific
- Base adjacent new construction on "average" size of existing homes in the neighborhood
- Have multiple zoning districts based on neighborhoods
- Consider implementing a design review process
- Reconsider hard surface
- Reconsider egress windows – setback
- Driveway widths
- Stricter limits on building height
- Restrict the size of garages and their location
- On 50-foot lots have 5 foot setback on one side and on the other side 8 or 9 feet
- ? - is increasing the setback by height really working

Construction Management

- Require that the builder should be required to bring new plumbing from the home to the street and not stop at the setback.
- Contractors should face fines if they do not properly monitor their subs and vendors i.e. blocking streets
- Times for construction needs to be reevaluated 7 AM is too early
- City should monitor construction sites so residents don't have to keep calling the City of Edina with complaints
- Street constantly blocked by trucks and other vehicles
- Better enforcement of violations

Drainage, Engineering

- Better storm water management on the site
- Restrict height and where retaining walls in are placed in the side yard setback
- Ensure that drainage and runoff be retained on the lot being developed or redeveloped

Aesthetics

- Respect architecture of other homes
- Driveway Width
- Light
- Privacy
- Community review of proposed new construction and remodeling
- Establish protective covenants



Miscellaneous

- Garages can't be more than 1/3 of the front face of the new structure
- Front loading garages on 50-foot wide lots - if allowed can't take up more than 50% and/or garage must start behind the habitable area of the house
- Require attached garage to be in back if lot less than 75-feet in width
- No short garages
- Concerned about "investors" coming in and buying a property – tearing down the house and building a huge house that does not fit into the neighborhood and the price point is 2 to 3 times that of the neighborhood
- Style of house should fit with the houses on the street – Morningside has big time issues
- Could there be a period of time that a house can be on the market before an "investor" can buy up the property
- I have no faith in the City that they will do anything with the residents feedback

Forum was adjourned at 12 Noon.

Submitted by _____

Potts, Platteter and Forrest are members of the Edina Planning Commission



Workshop Notes

NOTES FROM THE
RESIDENTIAL REDEVELOPMENT FORUM
THURSDAY, JANUARY 31, 2013
7 PM – 9 PM

EDINA SENIOR CENTER

RED TEXT DENOTES TREE COMMENTS

Facilitators:

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Lon and Nancy Oberpriller
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Janet Ingram
Ami Sharp
Tim Crain
Andi Otness
Scott Smith
Lori and Jim Grotz
Kevin Staunton
Carol Engstrom

Council Member Bennett
Bob Thompson
Susan Wahman
Janet Ingram
Peter Kililea
Peggy Lawrence
Mike Pearson
Angela Deen
John Peterson
Felt Meriweather
Helen Burke

Mr. Platteter welcomed everyone and introduced Ken Potts and Arlene Forrest, members of the Edina Planning Commission and Residential Redevelopment "working group"

Planner Teague briefly explained to the group the history of "massing" and changes to the Code that were implemented in the last few years to address it.

Mr. Potts and Ms. Forrest directed the group in an exercise of identifying issues and solutions to those issues. The group broke down into small groups to complete the exercise. Each group presented their findings. Results are as follows:

Group One:

Issue: Pedestrian Access

Solution: Enforcement of point 7 on handout.

7. The contractor shall keep the site, all streets, all sidewalks, boulevard areas and adjacent properties clean from waste, materials or refuse resulting from his operations on site. Equipment not usable on the work site shall be promptly removed and the site shall be maintained in a neat and orderly condition at all times. All empty cans, paper, plastic, etc. that is not needed for construction shall be removed and cleaned from the site every evening prior to leaving the construction site. Where work on a project lies within areas of pedestrian access traffic and/or vehicular traffic the project area will be cleaned and swept and all materials related to the project will be stockpiled in appropriate areas. No materials may be deposited or stockpiled on the public streets, boulevards or sidewalks. At the end of each working day, the Contractor shall remove any soil that washed or was deposited on any public sidewalk or street and shall remove any trash or debris that washed or was deposited on any public property. No dumpsters, portable toilets, building materials, or equipment may be stored on a public street, sidewalk or boulevard area.

Issue: Damage to existing property including, trees, cracks, streets.

Solution: 1. Pre-construction soil testing and excavation plan pre-approved by City. 2. Set up escrow account equal to % of total remodel costs.

Issue: Elevation of house.

Solution: Apply limits relative to neighborhood average, just as is done currently for front yard setbacks.

Issue: Drainage:

Solution: Landscape architect submits drainage prevention plan prior to construction. Plan can include/address limits due to topography.

Issue: Amount of lot coverage for 50-foot lots.

No solution expressed.

Issue: Egress windows should not be allowed at lot line.

Solution: Addressed by setback requirements in Code. No egress windows allowed at lot line.

Group Two:

Issue: Neighborhoods overwhelmed by construction in day to day lives.

Solution: Enforce and improve Construction Maintenance Plan.

Issue: Builders (foxes) shouldn't be guarding our chickens.

Solution: Require builders to stay within City Codes.

Issue: Front loading garages are too big for the neighborhood (Morningside).

Solution: Give a percentage limiting garage "wall". Establish side yard setbacks of 5-feet and 8-feet.

Workshop Notes



Issue: Who is valuing our neighborhood context.
No solution expressed.

Issue: Loss of trees

Solution: Create reasonable tree preservation ordinance. Be responsible to neighbor's trees that are located near the property line. All trees within 3-5-feet of the property line should have measures implemented to protect them.

Issue: Access

Solution: Stagger setbacks - one side needs to be large for access; 5-feet on non-egress side and 8-feet on egress side.

Issue: Streets to match the existing grid.

No solution expressed.

Group Three:

Issue: Setbacks on small lots.

Solution: Stagger setbacks 10-feet on one side 5-feet on the other side. All access must occur within setback.

Issue: Storm water run-off

Solution: All storm water runoff must be dealt with on site or directed to the street.

Issue: Tree ordinance

Solution: Give incentives for saving trees - tax break for number years. Require tree permit fee. Establish certain size tree circumference to be saved or replaced. Pay attention to trees and their drip line and require location of trees on surveys. Ensure roof safety so they aren't crushed. City enforce your rules.

Group Four:

Issue: Shadowing - Light and space considerations and loss of trees

Solution: The scale of new construction needs to be matched to the scale of the existing neighborhood. Zoning requirements should be tailored to each neighborhood.

Issue: Drainage issues - changes in topography and roof size and run-off

No solution expressed.

Issue: Vibrations during construction causing structural damage to neighboring home.

Solution: Construction Management Plan enforcement - inspect homes adjacent to new construction for mechanicals, cosmetic, before demolition and construction and during construction and after construction. Have builder establish escrow account or bond to cover damages if damages occur.

Group Five:

Group five concurred with all issues and solutions.

Please note the following written and verbal comments by category:

Zoning Ordinance Changes:

- Suggestion to "change" the ordinance for lots less than 50-feet in width. Leave the rest alone.
- Can the ordinance do something about yards being shadowed by these overly large homes (setback increase). (this could be building too if as part of the permit application a shadow study is required)
- Access to the rear yard needs to be provided on each lot. Ordinance requirement(?)
- Reconsider building height / how would one measure a flat roof?
- Are there requirements regarding outbuildings (sheds) in terms of setback, size, height?
- Side setbacks are too small for small lots. Not enough room.
- Address egress window with setbacks.
- Change ordinance for lots less than 9,000 square feet or lot width under 60 - feet
- Need setbacks for sheds - 2-story sheds too close to neighbor blocks sunlight.
- **Tree preservation ordinance.**
- Increase setbacks on 50 foot wide lots.
- Setbacks - homes should line up. Home across the street was allowed to be built further back on the lot. Street looks better when homes line up as in the Country Club; not all over the place.
- **Tree preservation, conservation - restrict cutting down trees - protect trees on property line - replace tree if removed and protect health of existing trees.**
- Implement rewards for correct building practices. Enforce existing codes.
- Are corner lots treated differently than lots in the middle of the block. Are corner lot setbacks different.
- Consider a limit on height of fences installed on top of retaining walls.
- Setbacks for egress windows for lots 50-feet or less - the window well cannot impede neighbor's access to their own backyard (?)
- Need setback requirements to address light and space impact on adjacent homes.
- Suggest that a "FAR" be set at no more than 2-times the existing house "footprint" excluding garage allowed on the lot. A FAR like this would limit the height of "Monster" sized houses.
- 50-foot lots need different specs than larger lots.
- City should follow rules in place.
- Identify and define neighborhood character for each neighborhood.



Engineering:

- Instead of changing the ordinance consider the "problem" of overly large houses that impact everyone in the City; not only Morningside (i.e. water runoff require that water runoff be directed to the street).
- Require soil testing (this could also belong in the building permit area or construction management)
- Asphalt breaking up as the result of construction vehicles using road (This would also fall under the construction management plan).
- Water runoff from all sides must go to the street – this must be enforced.
- Storm water drainage and enforcement by existing ordinance.
- Rainwater comes off the neighbor's roof and flows into my yard.
- Enforce water runoff requirements– it's currently not enforced.
- A real concern for drainage problems – especially in South Harriet Park where lots are 50-foot wide.
- Make sure water from new house drains into the street.

Construction Management Plan:

- Vibrations from construction machinery – is the builder responsible for issues or damage to neighboring homes.
- No response from the City after complaint is registered.
- Can hours of construction be re-reviewed.
- Should there be standards regarding vibration during construction.
- Geothermal install.
- Have builders take soil samples to know possible impact on neighboring homes (this could fall under building permits/engineering review)
- Create definitive consequences for code violations for builders.
- We paid for our new streets about 4-years ago. Now the new construction vehicles are destroying them. Is there any recourse?
- Redirect the exhaust from construction equipment.
- Damage done to home next door due to new construction or from demolition, can the City require that the builder place monies in escrow for repair to neighbor's property. Require proof of inspection (by the City) prior to construction, after demolition and after construction.
- Currently no consequences when developers violate codes.
- Require pre, during and post construction inspection
- Hire more staff – too many teardowns for current staff to keep up with.
- There should be a parking plan for each new house built. I am constantly asking people to move their vehicles so I can get out of my driveway.
- If a home owner inquires about construction issues – can City respond in writing to them, and not just send written notice to contractor/remodeler and owner.

- Require a damage deposit from developers.
- Require soil testing for new construction.

Aesthetics:

- Front loaded garage "walls" that are greater than 30% of the front façade are too much for our neighborhood.
- No value to the context of the neighborhood when building new homes.

Trees:

- Loss of trees – seems replacement plantings are often just shrubs and ornamental trees.
- Tree loss from construction occurs and on top of the Dutch elm and tree loss due to old age – the majority of trees have life expectancy of 50 + years and many were planted 50 + years ago.
- Builder promised to build up all around all the trees on the lot and he ended up cutting down all four trees on the lot. He proceeded to build a house that completely shades the south side of my house.
- Damage to neighbors trees.
- Seen abuse of trees that are left standing during construction; only to die a slow death.
- Can Edina create a tree ordinance. In South Harriet Park between 54th – 56th Kellogg and Oaklawn trees have been lost because of teardowns.

Miscellaneous:

- What impact does major change in a neighborhood have on incentives for existing homeowners to maintain their "teardown" house?
- How do we manage the dramatic scale differences between new and existing homes to preserve the character of the neighborhood?
- Our interests aren't being protected, little trust with the City - City seems to favor builders.
- Re-review the construction noise limits.
- Get professionals who work on the current home owner's behalf not the builders (?)
- Need people who are skilled in conflict resolution/facilitators.
- Urban planning designers.
- Snow slides off the roof of the new house onto my steps of my side door on my property.
- Are speculators buying up properties before prospective buyers have a chance to buy into an affordable neighborhood.
- Could not get explanation for why City required changes to plans.
- Issue of difference in size of new home when compared to original home.
- Losing affordable starter homes to builders.

Workshop Notes



- What is the historic square footage and lot size in Morningside?
- Neither side of the house is passable in the side yard with a lawnmower.
- New house next door that exceeds lot area ratio never applied for a variance.
- Current home owner's interest is not important to the City. They seem to coddle builders and they have favorites. I am not convinced that building inspectors hold builders to the Code.
- Asking builders to help fix the problem is like asking the fox to guard the hen house.
- Can building materials for retaining walls be regulated to prevent premature bowing or disrepair
- Need teeth for code violations.
- Education document – maintain "character" = more home value. Possibly influence new construction with economics.
- Does Edina support existing homeowners with low cost remodel loans like St. Louis Park does to upgrade existing homes.
- Not want lenders Come Home to Edina Program for first time homeowners.(?)

Platteter, Potts and Forrest thanked everyone for their participation. The meeting was adjourned at 9:00 PM

Submitted by _____



(Previous) PC Residential Working Group Timeline

	January 2013	February 2013	March 2013
Blog on "Speak Up Edina" for Resident Feedback	Blog Discussion Jan-Feb		
Planning Commission – WG Initial Presentation	Jan 9th		
Public Input Forum – Senior Center 10-Noon	Jan 26th		
Public Input Forum – Senior Center 7-9	Jan 31st		
Summarize Feedback for Preliminary Recommendations		Jan 31 st - Feb 12th	
Planning Commission – Working Group Report Out		Feb 13th	
Planning Commission Discussion with City Council			March-April
Council Hearings			July-Aug



(Previous) PC topics for City Council Work Session

Specific recommendations

- Enhance Construction Management Plan
- More city staff enforcement on jobsites
- Penalties for construction violations
- **Implement Tree Ordinance**
- Regulate soil import/export for projects
- Improve storm water management standards
 - Surface & sub-surface water control
 - Infrastructure impact
- No egress windows in side yard setback
- Rear yard access required via side yard
- Eliminate requirement for two car garage

General recommendations

- Review single Residential Zoning district
- For lots under city minimums, explore buildable area definition revisions
 - Increase side yard setback dimension(s)
 - Decrease maximum building height and modify means of determining height
 - Make lot coverage limits more consistent within city code
- Establish front-loaded garage standards (position relative to front-of-house)



Residential Zoning Comparisons

Less Restrictive **More Restrictive**

	Richfield	Hopkins	Wayzata	SLP	Mpls	Bloomington	Edina
Height	Richfield	Hopkins	Wayzata	SLP	Mpls	Bloomington	Edina
Front Setback	Wayzata	Mpls	Mpls	Richfield	Hopkins	Bloomington	Edina
Side Setback	Mpls	Richfield	SLP	Hopkins	Bloomington	Wayzata	Edina
Bldg. Coverage	Bloomington	Richfield	SLP	Hopkins	Wayzata	Edina	Mpls*
Impervious Area	SLP	Hopkins	Edina	Mpls	Richfield	Wayzata	Bloomington
Min Lot Size	Mpls	Richfield	Hopkins	SLP	Edina	Wayzata	Bloomington
Min Lot Width	Mpls	Richfield	Hopkins	SLP	Wayzata	Edina	Bloomington

* Minneapolis allows 50% lot coverage, but with a .5 FAR requirement

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B. Tree Ordinance

Planner Presentation

Planner Teague reported that Commissioners Claudia Carr and Michael Platteter drafted an Ordinance regarding tree preservation. Teague said the draft was circulated to staff with staff raising the following concerns/questions:

- Enforcement. General enforcement of the ordinance, including monitoring newly planted trees in the first three years of their life may require additional staffing. The city forester is a part time position.
- Two for one replacement. This may be restrictive?
- Requirement of native trees. The forester is concerned that a limitation to native species would take away options for property owners to make individual decisions.
- Violation Penalties. The city attorney recommends that number (13) be eliminated. Violations are covered in another section of the code. Additionally, the city attorney does not believe that the city has statutory authority to impose this type of penalty. In practice, the city would not issue a Certificate of Occupancy until the violations have been corrected.
- Preservation Easement. The city attorney recommends number (8) is eliminated as it is only a recommendation.
- Added cost for residents. With additional information required on a survey, there will be an added cost.

Commissioner Presentation

Commissioner Platteter addressed the Commission and explained that he along with Commissioner Carr wanted to craft an Ordinance that "got our foot in the door" with regard to tree preservation. Platteter said they chose to limit the scope of the proposed Tree Preservation Ordinance to tear downs/re-builds. Platteter explained that teardown and rebuilds appeared to be a good place to start because they have created holes in the City's tree canopy. Concluding, Platteter stated; again, this is only a start.

Comments/Questions

Commissioner Scherer asked Commissioner Platteter under (2) Definitions: Removable Tree how they arrived at the list of removable trees. Commissioner Platteter responded that they researched the subject and for the most part chose trees that are typically thought of as nuisance. Platteter said he also believes any tree

not listed or not found under Significant Mature Tree would be removable trees. Platteter commented that the wording "Significant Mature" could be changed to "Protected".

Chair Staunton asked Planner Teague to comment on his findings. Planner Teague explained that staffing enforcement would be a concern, adding it's possible that the Redevelopment Coordinator could fold some of these "duties" into her work load, cautioning much would depend on Ordinance wording. Teague also observed if the City through Ordinance were to require trees to be depicted on the surveys that would be an additional cost to the homeowner.

Chair Staunton said he understands the Commissioners approach with regard to teardown/rebuilds; however, he noted large additions could have the same impact on the tree canopy. Commissioners agreed.

Commissioner Fischer said at least in his experience there is a lot of peer pressure in the community to retain and maintain the City's forest. Residents don't typically cut down a tree unless necessary.

Commissioner Grabiell questioned how/who would enforce the two for one, or one for one replacement suggestion; and if violating that caveat of the Ordinance would be considered criminal. Grabiell said he wouldn't want to see the Ordinance go in that direction.

Commissioners discussed the issue of enforcement and wondered if tree replacement could be tied to the escrow funds.

Commissioner Forrest commented that in her opinion this is a good start.

Commissioner Scherer stated that she didn't recall finding a definition of preservation easement, adding number 8 as mentioned by staff is only a recommendation.

Commissioner Grabiell commented that it may be easier to just require replacement of all trees removed.

The discussion ensued with Commissioners agreeing that enforcement of tree replacement could become problematic; however, liked the idea of enforcement linked to the escrow.

Commissioner Scherer commented that she understands the "nuisance" concern for buckthorn and other types of trees; however, thinks that more consideration should be placed on the size of the tree removed and not so much the variety. Scherer stated in her opinion it is good to have different species of trees especially because of the potential for disease. Also removing a large tree that is considered undesirable does have impact.

Commissioner Schroeder said he was pleased at this start pointing out maintaining the urban forest is part of the Comprehensive Plan. Continuing, Schroeder said he agrees with the observation shared by Commissioner Scherer on tree size. He pointed out Cottonwoods are large trees with a very large canopy and if they are permitted to be removed the impact is tremendous. Schroeder stated in his opinion trees that provide canopy need to be replaced and replacement at 1-1 may not be adequate. Schroeder also noted the preservation of the canopy isn't limited to a site; canopy is enjoyed by many. Concluding, Schroeder said in certain instances he doesn't believe a two for one replacement is onerous.

Commissioner Forrest commented that she agrees with Schroeder and Scherer on their observations; however, smaller lots may not be able to support the two for one replacement suggested by Schroeder. Schroeder responded that the two for one doesn't necessarily need to be accomplished on the site. A tree could be planted in the City parks adding to the urban forest and canopy.

Chair Staunton thanked Commissioners Platteter and Carr, adding the proposed draft was a great start and the Commission looks forward to more work on this topic.

A discussion ensued on the timing of proceeding with discussions on the proposed Tree Preservation Ordinance with Commissioners agreeing that another draft is needed so the discussion could proceed. It was agreed that the Commission would address another draft at a future meeting.

C. Subdivision Ordinance

Planner Presentation

Planner Teague introduced to the Commission a draft revision of the current Subdivision Ordinance and asked for Commissioners for their comments.

Comments

Commissioner Forrest said at first glance she was interested in considering the plat vs. shrinking the neighborhood option; however, without a "clear" definition of plat that would be difficult. Planner Teague agreed that defining plat would be difficult.

Commissioner Fischer commented that in his opinion the perceived problems with the Subdivision Ordinance comes in phases; questioning if amending the Subdivision Ordinance definition of "neighborhood" from 500-feet to 250-feet really solves the issue. Fischer said it may be best if the Commission used the common sense approach and worked within the Ordinance as it is.

Commissioner Grabel said maybe it would be clearer to define "neighborhood"

Commissioner Carr stated she agrees the rezoning makes sense; it's a good land use choice; however, she said she continues to be concerned with the two driveways. Carr said it's not only a safety issue for her but an aesthetic issue. She suggested revisiting this concept.

Commissioner Schroeder asked Planner Teague how this area is guided in the Comprehensive Plan. Planner Teague responded the Comp Plan guides this area as low density attached residential. Schroeder commented that it appears the rezoning moves this parcel more into compliance with the Comprehensive Plan. Continuing, Schroeder said he can support the rezoning; pointing out this parcel is also adjacent to an apartment building and other multiples. Schroeder also added he is concerned with guest parking and the common areas, adding that may need to be revisited. Mr. Mortenson said in this area guest parking is accommodated on the street or in the driveways. He also noted the near public ramp parking and the adjacent apartment building has a guest lot.

Commissioner Carr complemented Mr. Mortenson on his interest in developing a sustainable building.

Commissioner Forrest stated she really likes the concept of the shared front door and the flexibility this design provides for residents to "age in place".

Commissioner Kilberg said he applauds the project; however would like to see a more enhanced street view. Kilberg said in his opinion character needs to be added to the structure to give it a more residential feel. A landscaping should also be developed.

Chair Staunton commented that the proposed new home(s) sits on a hill and asked Mortenson if he knows how the height of the old and new buildings compares. Mr. Mortenson responded that he believes the new structure would be higher than what exists today; possibly by six-feet.

Chair Staunton said in summary he believes the request to rezone the subject site and build a double dwelling unit makes sense; however, there are concerns with drainage, building design, profile, garage access and building height that need to be further addressed and clarified.

Planner Teague informed Mr. Mortenson that the Sketch Plan will be forwarded to the City Council for their feedback before formal application is made.

Chair Staunton suggested to Mr. Mortenson that he provide the City Council with a narrative explaining their intent and final goal.

C. Tree Preservation Ordinance

Planner Presentation

Planner Teague reminded the Commission that this was discussed at their previous meeting on January 8th. Teague thanked Commissioners Platter and Carr for their work on the Tree

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Ordinance and reported that at this time the City's attorney is reviewing the language, adding at first look the Attorney is considering placing this Ordinance in 4 I I/Residential Reconstruction

Comments/Discussion

Chair Staunton observed that it may make sense to place it there; however, 4 I I only addresses tear down rebuilds.

Commissioner Platteter said the revisions to the proposed Tree Ordinance were to capture canopy width, protected tree removal one for one, trees not identified as a protected species removable and capture a more inclusive "tree family" protected list.

Commissioner Carr said their research found that in general language referred to "family of trees" and questioned if omitting the "species" list adding "family of trees" would serve the Ordinance better.

Chair Staunton said in reference to species or family of trees it has always been difficult to know if too inclusive or less is best in any Ordinance language.

Commissioner Schroeder commented that in his opinion in this instance the City may want the advice of the City Forester in determining tree preservation. He said defining "family of trees" can be very complicated. Schroeder referred to the Ordinance part 2 6. B. disease resistant as another instance where Forester input would be valuable. He pointed out in #5 it indicates "if a protected tree is less than 5" in caliper, it must be moved to another location on the property, if impacted by areas in paragraph (7) below". Schroeder said not all trees of that size are worth moving, and in his opinion the City should have the forester review the tree before it's moved. Concluding, Schroeder said his focus and sensitivity is to the impact provided by the existing canopy of all trees and if that canopy is lost regardless of the tree, protected or not, that canopy is sorely missed and the Tree Ordinance should address this loss.

Platteter said he agrees with Commissioner Schroeder about the importance of the tree canopy; however found it difficult to write an ordinance that would reflect that.

Commissioner Scherer stated that in her opinion the Ordinance should be clearer; she noted "demo permits" and "building permits" are also required for internal modifications, adding a tree inventory should not be required for internal modifications. Commissioners agreed. Scherer also noted she recently had a bathroom updated, adding that required multiple building permits; however, in no way impacted trees. Concluding, Scherer said the intent of the proposed Ordinance needs to be clearer, adding originally she thought that this Ordinance applied to only tear down rebuilt properties.

Commissioner Platteter said the intent of the tree ordinance is to require a tree inventory for teardown rebuilds and any house modification that requires a building permit or demolition permit.

Commissioner Forrest said she likes the way the Ordinance is written; pointing out a permit is required for a new roof, adding roofers should be made aware of the trees on the site and keep their protection in mind during the roofing process. Commissioner Scherer reiterated in her opinion further clarification is needed; especially with #12.

Chair Staunton commented that when considering the suggestion from the City Attorney to place the Tree Ordinance in 411 in his opinion that location may not work. He pointed out as previously mentioned 411 is drafted solely for tear-downs and rebuilds. Commissioner Platteter acknowledged that point, reiterating the intent of this Ordinance applies to anything that modifies a house size plus tear-downs rebuilds. Staunton agreed adding the Commission isn't interested in inserting ourselves unless there is structural modification going on. Commissioners agreed.

Commissioner Potts questioned if the trees would be required to be depicted on a survey or some type of tree inventory document. Commissioners Platteter and Carr commented their intent at this time was to require a tree inventory; however there are options, the tree inventory can be depicted on the survey, but if not, a separate document would be required.

The discussion ensued with Commissioners in agreement to move forward with the Tree Ordinance; however, tweak it as discussed for final draft review at the next Commission meeting on February 26th. The final draft would be forwarded to the City Council for their comments and review.

VII. CORRESPONDENCE AND PETITIONS

Chair Staunton acknowledged back of packet materials, Council Connection and Attendance.

VIII. CHAIR AND COMMISSION MEMBER COMMENTS

None.

IX. STAFF COMMENTS

None.

X. ADJOURNMENT

Commissioner Fischer moved meeting adjournment at 8:15 PM. Commissioner Scherer seconded the motion. All voted aye; motion carried.

Respectfully submitted

Commissioner Schroeder told the Commission he likes the location of the drive-through and the way the mass of the building addresses the street/highway. Schroeder suggested that the applicant find a way to work with MNDOT to the mutual benefit of both to provide better fencing and landscaping to help create a signature look for this building. Schroeder pointed out this building is very visible and a gateway into Edina off the freeway. Dovolis responded he would be happy to work with MNDOT and asked if the City could help facilitate that connection

Chair Platteter echoed Commission comments and said he fully supports working with the Temple on the cross easement arrangement. Platteter also suggested that the subject site; adjacent property to the west, and the Temple talk with each other to create the best redevelopment of the two lots as possible. Platteter thanked the applicant for his presentation.

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D. Tree Preservation Ordinance

Planner Presentation

Planner Teague reminded the Commission they have been discussing the proposed tree ordinance for the past couple meetings adding changes were made to the previous draft that need to be discussed. Teague said included in the revisions was the following:

Sec. 10-82. Preservation, protection and replacement of Protected Trees: This ordinance applies to all demolition permits; building permit applications for a structural addition; and building permits for accessory structures including a garage, deck or a pool.

Sec. 10-82 (4) added subject to review of the city forester. The caliper of Protected Trees shall be measured at four and one half feet (4.5') above the ground.

b. Protected Trees removed in subparagraphs a. and b. above must be replaced with one (1) tree, subject to the species listed above in (2) Definitions and the conditions listed in subparagraphs 1. Through e. of paragraph 5 above; and finally;

(8) The survey must indicate how the Protected Tree would be protected during construction subject to staff review and approval.

Teague also noted that the public hearing on the Tree Preservation Ordinance has been set for February 26, 2014.

Discussion

Commissioner Grabiell said he has one concern which has to do with the City Forester. He said in his opinion the Forester needs a standard rationale statement and/or policy as he reviews trees.

Commissioner Schroeder stated he still is concerned about removing trees that aren't protected; noting they provide significant canopy and ecological aesthetics. Schroeder said he would prefer to see a 1-1 replacement requirement also for removable trees. Platteter said he agrees with that comment, adding this could be addressed and discussed at the public hearing level. Commissioners agreed the public hearing would be the place to get final feedback.

Commissioners indicated the revisions are acceptable and indicated they look forward to the public hearing on March 4th.

VIII. CORRESPONDENCE AND PETITIONS

Chair Platteter acknowledged back of packet materials.

IX. CHAIR AND COMMISSION MEMBER COMMENTS

Commissioner Carr reported that the Living Streets committee has been meeting and making progress. Carr said that the committee recently discussed watershed issues.

Chair Platteter stated that he believes at the Commission's next meeting (26th) they will be saying goodbye to Commissioners Grabel and Fischer.

X. STAFF COMMENTS

Planner Teague reported that the City Council heard the sketch plan review on the double proposed for West 49th Street. Teague said the Council; like the Commission, supported the use; however believed the plan needed revisions. The applicant indicated he would be back with another plan.

XI. ADJOURNMENT

Commissioner Scherer moved meeting adjournment at 10:05 PM. Commissioner Fischer seconded the motion. All voted aye; motion to adjourn carried.

Respectfully submitted.

A discussion ensued with Commissioners expressing their hesitancy in approving a preliminary rezoning and development plan that doesn't include housing and without more detailed plans. It was further noted that there is the option to vote against the proposal as submitted. Commissioners reiterated their desire for housing and acknowledged that in the end because of the scope of this project the City will be entering into a long term relationship and partnership with the applicant. Commissioners did suggest that a statement be added indicating where appropriate housing would be included; however it was acknowledged that statement may be too general. Commissioners did state with a PUD rezoning the applicant needs to be aware that the City expects things in return. Approval should not create missed opportunities to ensure that the site has measureable metrics during the process.

Commissioner Grabel moved to recommend preliminary rezoning from MDD-6, Mixed Development District to PUD, Planned Unit Development; and an Overall Development Plan subject to staff findings and subject to staff conditions. Commissioner Fischer seconded a motion.

A discussion ensued on how the City can ensure that the conditions for approval are met. Of concern were the recommendations of creating a recreational system that promotes walking, health and wellness and the incorporation of public art. It was noted that these measures could be completed through alignment with the approved TIF. Further discussion also noted that the City continues to reserve the right to "drill down" plans at final approval to achieve the goals outlined in the findings and conditions.

Commissioner Schroeder offered an amendment recommending that a recreational system that promotes walking, health and wellness be implemented in alignment with the TIF Plan through a development agreement between the City and the Developer.

Chair Grabel and Commissioner Fischer accepted that amendment.

Chair Staunton called for the vote; Ayes, Scherer, Schroeder, Fischer, Potts, Carr, Forrest, Grabel, Staunton. Abstain, Platteter. Motion to approve carried.

C. Tree Preservation Ordinance

Presentation

Planner Teague reminded the Commission they tabled this issue at their last meeting requesting minor revisions to the Ordinance. Teague stated the revisions were made. He also noted that at the last meeting the Commission requested that additional information on staffing be supplied for the enforcement of the proposed Ordinance.

Commissioner Scherer asked Planner Teague if he knows the cost of a certified tree inventory and who the enforcement officer would be.

Planner Teague said at this time he doesn't know what the cost would be for a certified tree inventory and discussions continue on who would enforce the ordinance.

Chair Staunton opened the public hearing.

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Public Testimony

John Crabtree, 5408 Oaklawn Avenue said that while he understands the proposed ordinance he wonders if the City is requiring more trees than can be sustained on one lot. Crabtree also questioned how far the City is willing to go if someone doesn't comply with the new ordinance. Concluding, Crabtree said one must always be careful of unintended consequences.

Chair Staunton asked if anyone else would like to speak to the issue; being none Commissioner Scherer moved to close the public hearing. Commissioner Fischer seconded the motion. All voted aye; motion carried.

Discussion

A discussion ensued with Commissioners noting that the proposed ordinance could create difficulties in areas where trees need to be removed without penalty (i.e. utilities). Commissioner Platteter said the Commission could ask the City to work with the utility companies on tree removal or preservation in utility easement areas.

Commissioner Platteter explained that the proposed ordinance was to save trees, adding in his neighborhood specifically all trees were taken down on a tear down rebuild lot. Platteter said for a developer it may be easier to just cut the trees down and not save them. Concluding, Platteter said the way new houses are popping into certain areas of the City the tree canopy can be lost completely.

Commissioner Schroeder said as he has mentioned many times that the tree canopy is important regardless of the tree species. The trees and their canopy both contribute to the character of the City. Schroeder suggested with non-protected trees that a variance process could be implemented to address non protected tree removal, adding buckthorn is undesirable; however, does provide cover. Continuing, Schroeder said in his opinion the City Forester should make the final judgment on all trees.

Commissioner Forrest inquired who will do the monitoring of the trees and who will pick where the replacement trees go. She noted Buckthorn is an evasive species that can be removed without issue. Continuing, Forrest commented what happens if a resident wants to cut down trees to create garden area. She noted the issue is complex.

Commissioner Grabel said on this issue he has leaned one way than another. Grabel said there are many valid points about when a tree can be removed without issue and when it requires replacement. Grabel said in his opinion if any tree is taken down a permit should be required and possible replacement regardless of species.

Chair Staunton said in his opinion putting tree replacement in construction context is a good start. Staunton further agreed there is a question with enforcement and how that will be calibrated.

Commissioner Platteter said that the ordinance as proposed is a start; he noted that in some City's they even require permits to trim trees and other vegetation. Platteter said this ordinance hasn't gone that far but in the future that could be a possibility.

The discussion continued with the Commission directing staff to look into the enforcement issues and cost and bring back those findings at the next meeting of the Planning Commission.

Planner Teague said in response to comments that there would be additional fees for a resident to provide a certified tree survey, adding much would depend on who does the inventory. Teague said in his opinion a surveyor would probably do the inventory because the City is requiring a certified inventory. Teague said enforcement would be another issue and pointed out currently the forester is a part time position that focuses on the City's public land. Teague concluded that the Council would ultimately decide on the staffing issues.

Chair Staunton asked Planner Teague to bring the Tree Preservation Ordinance back to the Commission at their next meeting providing some background on enforcement issues and make minor changes to the ordinance.

VII. CORRESPONDENCE AND PETITIONS

Chair Staunton acknowledged back of packet materials.

VIII. CHAIR AND COMMISSION COMMENTS

Chair Staunton reminded the Commission that on March 22nd at the Senior Center from 9-11 am City Attorney Roger Knutson will present a workshop. Staunton said if any Commissioner has questions or ideas to send those questions/ideas to Planner Teague so he can forward them to Knutson.

Chair Staunton said it is now time to say another goodbye to Commissioner Fischer who stepped in to fill out Commissioner Carpenter's term when he retired. Chair Staunton and the Commission thanked Commissioner Fischer for stepping in to fill out Carpenters term. Commissioner Fischer said in was an honor serving the City and working with the Commission and Staff for all these years.

Commissioner Staunton said it is also time to say goodbye to Commissioner Grabel for his 9-years of service on the Planning Commission. Staunton said Commissioner Grabel would be sorely missed. Staunton concluded that he would dearly miss Commissioner Grabel. Commissioner Grabel thanked Chair Staunton for his words and said it was his honor and privilege to serve the City and to work with the quality of people that served on the Planning Commission and with City Staff. Grabel said the City is blessed with talented residents and stated it was a pleasure to serve.

IX. ADJOURNMENT

Commissioner Fischer moved meeting adjournment at 11:35 PM. Commissioner Grabel seconded the motion. All voted aye; motion to adjourn carried.

Jackie Hoogenakker
Respectfully submitted

Forrest, Platteter, Carr, Lee, Potts, Olson, Staunton. Abstain, Schroeder. Motion carried.

Commissioner Lee commented in being new to this process that she has a concern with the overall volume of the subject structure. She noted the subject house has a hipped roof which reduces the mass by offering the feeling that the structure is moving away from the setback line. A straight up expansion without acknowledging the architectural features of the existing home that reduce volume may not be wise. Volume should also be considered.

VII. REPORTS AND RECOMMENDATIONS

A. City Code Amendment – Tree Preservation

Chair Staunton asked Planner Teague to give a brief overview on the Commissions progress on the proposed Tree Preservation Ordinance.

Planner Presentation

Planner Teague reminded the Commission the Tree Preservation Ordinance adoption was continued to allow for suggested revisions to the Ordinance. Teague summarized the following revisions and requirements:

- The ordinance applies to all demolition permits including those for accessory structures including a garage, deck or pool.
- All permits are required to include a certified tree inventory plan
- Protected trees include birch, balsam fir, black walnut, buckeye, cedar, elm, hemlock, hickory, ironwood, linden locust, maple (except silver maple) Norway pine, oak, spruce and white pine varieties.
- Healthy protected trees that are removed within a building pad, or a 10-foot radius of the building pad or within a driveway or parking area must be replaced 1 to 1.
- Any protected healthy tree that is removed within 10-feet of the building pad or within the driveway or parking area must be replaced 2 to 1.
- Protected trees must be protected during construction; and
- Staff is required to monitor all construction projects with protected trees and/or replacement trees to ensure that all trees are properly established for three years.

Concluding, Teague also noted there would be staffing concerns; however, this would be a decision of the City Council in regard to staffing.

Discussion

Chair Staunton commented that the Ordinance only applies to tree removal one year prior to construction not after. He noted that trees could be removed after the final CO was issued. Commissioners agreed with that statement.

A discussion ensued with Commissioners supporting the revisions as referenced.

Commissioners did express hesitation on #4 of the proposed Ordinance and compatibility between numbers 5 and 7. It was further discussed that a variance process should be considered if for any reason a property owner cannot comply with the proposed Tree Preservation Ordinance. Further discussion focused on cost issues for the City (staffing) and property owners. It was further pointed out that "relocating" a tree may be more expensive than replacing a tree; and if a property owner could have an option.

Motion

Commissioner Platteter moved to recommend approval of the Tree Preservation Ordinance with the following revisions:

- **Delete paragraph #4**
- **#7 – Remove underlined text and replace it with like text found in #5.**
- **Add a paragraph that establishes a variance process.**

Commissioner Forrest seconded the motion. All voted aye; motion carried.

Commissioner Platteter stated he is also waiting for comment from the Energy and Environment Commission on the proposed Tree Preservation Ordinance. Platteter said he hopes to have their response by the time the City Council hears the Ordinance. Platteter stated he anticipates that the City Council will review the proposed Tree Ordinance at their April 22, 2014, meeting.

Chair Staunton thanked everyone for their effort during this process adding Tree Preservation can now be removed from the Commission's Work Plan.

B. Wooddale and Valley View Road/Small Area Plan

Chair Staunton told the Commission Commissioners Platteter and Forrest are working with City Staff on implementing a small area plan for the Wooddale and Valley View area. Staunton noted that the small area plan for this area is included in the Commission's 2014 Work Plan.

Platteter reported that Karen Kurt, Assistant City Manager is also a member of the City staff he and Forrest will be working with on this plan. Commissioner Platteter delivered a power point presentation outlining for the Commission a broad overview of the process. Platteter and Forrest stood for questions.

Commissioner Carr suggested considering adding an additional staff resource from either the Transportation Commission or Living Streets Committee for additional input; especially as it relates to transportation and streets.

Commissioner Forrest also noted that this neighborhood is a "true" neighborhood node that has the potential to be heavily utilized by neighbors.

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Date: March 12, 2014

To: Planning Commission

From: Cary Teague, Community Development Director

Re: City Code Amendment Consideration – Tree Preservation

The Planning Commission tabled this item at the February 26, 2014 meeting, and requested that some revisions be made to the proposed Ordinance. Additionally, the Commission requested additional information on staffing required for enforcement of the Ordinance.

Revisions have been made to the Ordinance as recommended by the Commission; those changes are underlined on the attached Draft Ordinance. Information in regard to staffing concerns, are highlighted on page 2 of this memo.

The following is a summary of the proposed Ordinance:

- This ordinance applies to all demolition permits; building permit applications for a structural addition; and building permits for accessory structures including a garage, deck or a pool.
- All such permits are required to include a certified tree inventory plan indicating where Protected Trees are located and, their species, caliper, and approximate height and canopy width. The plan must show how Protected Trees are preserved and protected during construction. The plan must also show if any Protected Trees are proposed to be removed and the location, species and size of all replacement tree(s).
- Trees to be protected under this Ordinance include: birch, balsam fir, black walnut, buckeye, cedar, elm, hemlock, hickory, ironwood, linden, locust, maple (except silver maple), Norway pine, oak, spruce and white pine varieties.
- Any healthy protected tree that is removed within a building pad, or a 10-foot radius of the building pad or within a driveway or parking area must be replaced 1 to 1.



- Any healthy protected tree that is removed as part of a demolition permit; building permit application for a structural addition; or building permits for accessory structure that is outside of the building pad, within 10 feet of the building pad or within the driveway or parking area must be replaced 2 to 1.
- Protected Trees to remain must be protected during construction.
- Staff is required to monitor all construction projects with Protected Trees and/or replacement trees to ensure that all trees are properly established for three years.

The proposed Ordinance would add an expense to a building permit for inclusion of the certified tree inventory. This would be done by the surveyor either on the main survey submitted with the building permit, or on a separate survey. In either case, the surveyor would be responsible for siting trees on the property and developing a plan for relocation and placement of new trees, and showing them on the survey.

Ordinance Enforcement

Enforcement of the Ordinance would likely require additional staffing. The city forester is currently a part time position (34 hours per week on average). The forester has reviewed the proposed Ordinance, and believes that an additional staff person (possibly part time) would be required to adequately enforce the Ordinance, and still maintain the level of service that they currently provide. The primary focus of the forester is on the city's 600-800 acres of public land; although he does occasionally work with residents regarding tree issues on private property.

The new ordinance would require the following additional staff review:

- Review of the "tree plan" as part of the building permit. This is the review of the survey showing existing trees, those that would be removed, and those proposed to be planted. Given the last couple years of permit activity, this could be between 150-200 permits per year; this would include new home construction after a tear down and additions to existing homes.
- Inspection of each of these construction sites. To ensure compliance with the proposed plans and protection of existing trees on site.
- On-going monitoring. The code requires staff monitoring for three years. Potentially, that could mean that up to 600 sites would be actively monitored.

This would ultimately be a decision of the City Council in regard to staffing.

ORDINANCE NO. 2014-__
AN ORDINANCE AMENDMENT REGARDING TREE PRESERVATION

The City Council Of Edina Ordains:

Section 1. Chapter 10, Article III of the Edina City Code is amended to add Division 3 as follows:

DIVISION III. TREE PROTECTION

Sec. 10-82. Preservation, protection and replacement of Protected Trees: This ordinance applies to all demolition permits; building permit applications for a structural addition; and building permits for accessory structures including a garage, deck or a pool.

(1) Purpose: Edina is fortunate to have a robust inventory of mature trees that form an integral part of the unique character and history of the city, and that contribute to the long-term aesthetic, environmental, and economic well-being of the city. The purpose of the ordinance is to:

- a. Preserve and grow Edina's tree canopy cover by protecting mature trees throughout the city.
- b. Protect and enhance property values by conserving and adding to the distinctive and unique aesthetic character of Edina's tree population.
- c. Protect and enhance the distinctive character of Edina's neighborhoods
- d. Improve the quality of life for all stakeholders, including city residents, visitors and wildlife.
- e. Protect the environment by the filtering of air and soil pollutants, increasing oxygen levels and reducing CO2; managing erosion and stormwater by stabilizing soils; reducing heat convection; decreasing wind speeds; reducing noise pollution and decreasing the urban heat island effect.
- f. Protect and maintain healthy trees in the development and building permit processes as set forth herein; and prevent tree loss by eliminating or reducing compacted fill and excavation near tree roots.

Existing text – XXXX

Stricken text – ~~XXXX~~

Added text – **XXXX**

(2) Definitions:

- a. **Protected Tree:** Any tree of the birch, balsam fir, black walnut, buckeye, cedar, elm, hemlock, hickory, ironwood, linden, locust, maple (except silver maple), Norway pine, oak, spruce and white pine varieties.
- b. **Removable Tree:** Any tree not defined as a Protected Tree, or as defined as an invasive species as defined by the Minnesota Department of Natural Resources.

(3) Demolition and building permit applications must include a certified tree inventory plan indicating where Protected Trees are located and, their species, caliper, and approximate height and canopy width. The plan must show how Protected Trees are preserved and protected during construction. The plan must also show if any Protected Trees are proposed to be removed and the location, species and size of all replacement tree(s).

(4) If a Protected Tree is less than five inches (5") in caliper it must be moved to another location on the property, if impacted by areas in paragraph (7) below, subject to review of the city forester. The caliper of Protected Trees shall be measured at four and one-half feet (4.5') above the ground.

(5) If a Protected Tree is removed, except as allowed for in paragraph (7), it must be replaced with two (2) trees, subject to the following conditions:

- a. Replacement trees must be varied by species and are limited to the species listed above in (2) Definitions.
- b. Replacement trees must not be subject to known epidemic diseases or infestations. Disease or infestation resistant species and cultivars are allowed.
- c. Replacement trees must be at least two and one-half inches (2.5") in caliper for deciduous trees and a minimum of seven feet (7') tall for coniferous trees.
- d. Replacement tree plans are subject to approval by the City Forester before implementation.
- e. If a replacement tree location cannot be found on the property, it must be placed in a public area, subject to approval by the City Forester.

Existing text – XXXX

Stricken text – XXXX

Added text – XXXX

(6) Protected Trees may be removed, in the following areas:

a. Including, and within a ten-foot (10') radius of, the building pad of a new or remodeled building.

b. Within driveways and parking areas.

Protected Trees removed in subparagraphs a. and b. above must be replaced with one (1) tree, subject to the species listed above in (2) Definitions and the conditions listed in subparagraphs a. through e. of paragraph 5 above.

(7) Removable trees five inches (5") or less in caliper may be removed for any development or building permit, without replacement. Removable trees greater than five inches (5") must be replaced at a 1 to 1 ratio. If a Protected Tree is dead, diseased or hazardous it must be approved by the City Forester before removal.

(8) During the demolition and building permit processes, the permit holder shall not leave any Protected Tree without sufficient guards or protections to prevent injury to the Protected Tree, in connection with such construction. The survey must indicate how the Protected Tree would be protected during construction, subject to staff review and approval. City staff monitoring is required for all projects with affected Protected Trees and/or replacement trees to ensure that all such trees are properly established and maintained for three (3) years. Tree protection during construction is subject to the city's Construction Management Plan (CMP).

(9) If Protected Trees were removed within one (1) year prior to the date the development, demolition and building permit applications were submitted, these Protected Trees are also subject to the replacement policy set forth in paragraph (4) above.

Section 2. This ordinance is effective immediately upon its passage and publication.

Existing text – XXXX

Stricken text – XXXX

Added text – XXXX

First Reading:
Second Reading:
Published:

ATTEST:

Debra A. Mangen, City Clerk

James B. Hovland, Mayor

Please publish in the Edina Sun Current on:
Send two affidavits of publication.
Bill to Edina City Clerk

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Ordinance was duly adopted by the Edina City Council at its Regular Meeting of _____, 2014, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____, 2014.

City Clerk

Existing text – XXXX

Stricken text – ~~XXXX~~

Added text – **XXXX**

To: Cary Teague
From: Scott Busyn – Great Neighborhood Homes
Subject Proposed Tree Protection Ordinance
Date: February 19, 2014

Hi Cary,

I wanted to pass on my feedback on the proposed tree protection ordinance from the perspective as a 25 year resident as well as a builder who has built over 40 infill homes in Edina over the past 7 years. Before I begin, I have to disclose that I like trees and as a builder dislike the large expense of removing them! In other words, I will do whatever I can to keep as many trees as I can when building a new home.

1. The tree ordinance seems to single out property owners who pull demo or building permits. If we are really concerned about tree protection, why are we only tasking this subgroup with tree protection? Seems discriminatory against those that are already investing in adding value to the community. Why not have it apply to all property owners? Based on the feedback for the Residential Development Coordinator, concerns about tree removal recorded a paltry 2% of all complaints. Is the Planning Commission once again trying to come up with a solution without a problem? In doing an informal drive around last week, it seems that most teardown/rebuilds keep most of the existing trees on the site. Trees are expensive to remove, and most builders try to work around the existing tree inventory on the site.
2. It seems odd that the Planning Commission is putting all this energy into protecting trees on construction sites when nothing is being done to date regarding the larger city wide tree preservation issues in Edina. Dutch Elm and Emerald Ash Borer are a looming threat to our tree canopy, much greater of a threat than residential construction. Many stretches of France Avenue, 50th Street, Valley View, etc have huge stretches where there are no boulevard trees in the city easements. Other cities around us seem smarter about focusing their energy on the strategies that will have more impact than just the construction sites. Builders

are easy targets since they need to pull a permit, but is this where we should be focusing our energies?

3. The proposed tree ordinance is just one more layer of regulation Edina is adding onto the many layers of regulation on building and remodeling in Edina. In the past few years, we have added over \$10,000 to the cost of a home for the increased cost of demo permits, surveys, stormwater management plans, soil tests, residential development coordinators, etc. In addition, these added layers of bureaucracy have increased the time it takes to get a permit approved as well as the amount of communication between builder and the new building bureaucracy in Edina. This has distracted good builders from being on the site and working with neighbors/clients on executing the project. Now you want to add another layer of regulation, fees, costs, etc for tree preservation and it sounds like you want to hire more regulators to make it more expensive and cumbersome. The net affect of all this regulation to good builders like us is zero changes to how we run our business except the distraction and workload of paperwork which keeps us away from doing the best we can on jobsites. With upcoming changes to building code including mandatory sprinklers I don't know how these out of control costs will affect the demand for new housing in Edina.
4. The ordinance as written is overly complex and hard to execute. If you must have an ordinance it should be simplified and not require all the steps, documentation, and expense. For example, we already provide tree inventories on existing conditions surveys for demo permits. We don't need the added expense of a certified tree inventory plan. The added layers of inspection (up to three years out!) seem impractical.
5. Tree protection during construction: This needs to be defined. I am sure an arborist will want fencing at the dripline. As the dripline on many sites may cover the entire site, this is not feasible. Not only do we need access to the site, but worker safety needs to trump tree protection if we are not giving workers adequate room to work. Contractor should have final call on this

as he is responsible for building the home and the safety of the workers.

6. Tree inventory plan: It is unrealistic that we will know what species replacement trees will be when we apply for a demo permit. You are asking us to alter our design process with clients. We don't typically do landscape plans until later in the project and the house is framed up.
7. Moving Trees: This is a very bad idea. Moving trees rips out 80% of the absorbing root system. Plus most small caliper trees are usually volunteer trees that were poorly planned allowed to grow in a random location. Plus moving a bad tree on a construction site that will have a lot of activity will further threaten its survival. Finally, to force a homeowner to keep a tree they may not like is just too much government control.
8. I don't like the added layers of inspections. You are requiring the City Forester to approve replacement tree plans. This just adds more time and workload for the builder/homeowner, as well as requiring the obvious need to hire more city staff.
9. Other areas you need to allow protected trees to be removed: patios, utilities (gas, sewer, water, electrical).
10. Staff monitoring of trees for three years: Again, very cumbersome and requiring adding forestry staff. Not necessary. If a homeowner pays someone to install a new tree on their site, they expect that the tree survives. Plus, the installer typically provides a warranty on the tree. These are the market forces that will promote the health of our trees. We don't need a nanny state to watch over our trees.

Again, this seems like a very complex ordinance, requiring a lot of staff and expense/workload for homeowners/builders. After driving around looking at jobsites this doesn't seem to be a problem needing a solution. I recommend scrapping this ordinance and shifting the Planning Commission's focus on more comprehensive tree programs for the city. This ordinance is extreme, punitive against property owners, and not in the interests of our citizens.

Thanks,

Scott Busyn
4615 Wooddale Avenue
Edina, MN 55424

Cary Teague

From:
Sent: Wednesday, February 19, 2014 10:37 AM
To: Cary Teague
Subject: RE: Tree Ordinance

Cary,

Thanks for your email. I zipped through the proposed ordinance quickly...but here are my initial thoughts:

1. The extensive "purpose" cited indeed seems to be well intentioned. Therefore, if this is such a high priority of the City then why is it not for all property in the City (existing homes, new homes, remodels, golf courses, commercial properties, etc...)? I know one of the local golf courses took down 90 trees this winter. I suggest if the City wants to "preserve the canopy" then let's take it seriously and include all trees, City wide.
2. Wouldn't this ordinance, as drafted, essentially create covenants that would be required to travel with properties as they are sold based on paragraph 8? What will this do to property values for this singled out homes that now have "covenants"?
3. How many properties a year would this affect? How much strain does it put on the City Forrester? How much does the City Forrester staff need to grow? How does this get paid for?
4. How much cost will this add to the permitting homeowner to do a required certified tree inventory?
5. Per paragraph #4, what if a homeowner "moves" a tree and it doesn't survive? Who is going to police this? How will enforcement be paid for?
6. If I want to add a play-set in my backyard for my kids to improve the quality of their life and take a tree down can I? What about a shed? What about removing a tree for a vegetable garden? Or to allow sunlight to reach a vegetable garden?

My quick two cents. Feel free to contact me if you need to.

Thanks again for reaching out to me.

Andy Porter
REFINED
Cell: 612.991.9301
Fax: 952.303.3170
Email: aporter@RefinedLLC.com
www.RefinedLLC.com

Cary Teague

From: aporter@refinedllc.com
Sent: Friday, February 28, 2014 9:24 AM
To: Cary Teague; Cary Teague
Subject: Planning Commissioner correction

Cary,

I viewed the most recent Planning Commission meeting related to the possible tree preservation ordinance. I would like to point out one correction that needs to be made. Commissioner Platteter spoke about the newly constructed home next to his personal home. He mentioned that he thought the home was a "spec" home and that the builder had clear cut the yard of many mature trees (3:51:55 on the video). The home, in fact, was not a "spec" home. Our company built the home specifically for a homeowner. Our Client decided they wanted to have the largest open backyard possible for their kids to play and they decided to have the trees removed.....not unlike a homeowner of an existing home anywhere in Edina. We also built the home next to that one specifically for a homeowner. On that project we spent a lot of money to re-nourish and protect the mature chestnut tree in the front yard per our Clients direction.

The Planning Commission should understand that the majority of the new homes we, and others, build are at the direction of our Homeowners. Same goes for the protection, trimming, or removal of their trees.

Please make sure to ask the planning commission to make a correction to the Commissioner's statement.

Thank you,

Andy Porter
REFINED
Cell: 612.991.9301
Fax: 952.303.3170
Email: aporter@RefinedLLC.com
www.RefinedLLC.com

Cary Teague

From: Ross Bintner
Sent: Monday, March 17, 2014 7:39 AM
To: Cary Teague; Tom Horwath
Subject: FW: EEC Postition on the Planning Commission's Residential Task Force's Proposed Tree Protection Ordinance

See below from EEC member Latham.



Ross Bintner, PE, Environmental Engineer

952-903-5713 | Fax 952-826-0392

RBintner@EdinaMN.gov | www.EdinaMN.gov

...For Living, Learning, Raising Families & Doing Business

From: Dianne Latham [<mailto:Dianne@LathamPark.net>]
Sent: Friday, March 14, 2014 4:15 PM
To: Ross Bintner
Cc: Bill Sierks; John Heer; Keith Kostuch; Rebecca Foster
Subject: EEC Postition on the Planning Commission's Residential Task Force's Proposed Tree Protection Ordinance

3-14-14

Ross,

Please forward the following to the members of the Planning Commission, the members of the EEC, to Cary Teague and to Tom Horwath. At the 3-13-14 EEC meeting I was directed to draft EEC's response to the Planning Commission's Residential Task Force's proposed ordinance on Tree Preservation. The EEC response was to take the form of the findings of EEC's Urban Forest Task Force (UFTF) report. The UFTF report was approved by the EEC, then was approved by Council at the June 18, 2013 EEC/Council Work Session to move forward to the Park Board. The following can be incorporated into the EEC minutes for the 3-13-14 discussion on the Planning Commission's Residential Task Force's proposed Tree Preservation ordinance:

The EEC's Urban Forest Task Force had substantially different findings than did the Planning Commission's Residential Task Force with respect to the need and scope of a tree preservation ordinance, as well as with respect to the best use of the City Forester's time. The UFTF found as follows:

"The UFTF found that generally, there was little wonton removal of trees on public or private property within Edina other than in isolated instances. It is very costly to remove a mature tree and consequently trees are generally only removed in cases of disease or of relandscaping; such tree removals are not in need of regulation. When trees are removed in such circumstances they are generally replaced with new trees within a few years... Although teardowns occur throughout Edina, most complaints stem from those teardowns on lots less than 75 feet wide. As such the UFTF believed that it would not be prudent to design an ordinance applying to the entire city to address the localized problem of small lot teardowns. Problems unique to small lot teardowns should be addressed by the Planning Commission's Residential Task Force (RTF) and any enforcement accomplished by the proposed city teardown overseer.

To more effectively control noxious weeds and address other environmental issues in the park system, the UFTF recommends hiring a full-time Natural Resource Manager, as opposed to a part-time Forester. More knowledge of ecology is required today given the arrival of many invasive plant, insect and aquatic species. A passive forestry program with a philosophy of 'Natural Forest Succession' and one primarily focused on tree diseases such as oak wilt and Dutch Elm Disease, is no longer adequate... With a full-time Natural Resource Manager the following can be accomplished:

more grants can be applied for, more parks can be certified as Audubon Cooperative Sanctuaries, more trees can be planted, more buckthorn and other noxious weeds can be controlled, more habitat can be restored, and more educational programs can be offered to residents. In addition, full-time positions attract candidates with more extensive applicable natural resource education and more applicable experience as opposed to part-time positions.”

Dianne Plunkett Latham
Commissioner, Edina Energy & Environment Commission
Chair, EEC Urban Forest Task Force
7013 Comanche Ct.
Edina MN 55439-1004
952-941-3542
Dianne@LathamPark.net

Cary Teague

From: Dianne Latham <Dianne@LathamPark.net>
Sent: Thursday, May 01, 2014 11:10 AM
To: Ann Swenson; James B. Hovland; Joni Bennett; Josh Sprague; Mary Brindle (Comcast)
Cc: Scott Neal; Brian Olson; Tom Horwath; Edina Mail; Cary Teague
Subject: Please Oppose the Proposed Tree Ordinance

5-1-14

Honorable Mayor Hovland and City Council Members,

I am writing in opposition to the proposed Tree Ordinance because the proposed ordinance:

1. Far exceeds the scope of the perceived problem
2. Prevents residents from achieving alternative environmental objectives
3. Over reaches private property rights
4. Requires large amounts of nonexistent staff time
5. Unreasonably restricts work space in construction projects
6. Unreasonably restricts landscaping options
7. Is impractical from a horticultural view point
8. Is vague in many places
9. Is easily circumvented, thus saving few trees
10. By forcing a landowner to donate trees to city parks when they cannot comply with the proposed ordinance, constitutes a tax on those seeking to renew and upgrade their property

The proposed tree ordinance far exceeds the scope of the perceived problem

The Energy and Environment Commission's (EEC) Urban Forest Task Force (UFTF) had substantially different findings than did the Planning Commission's Residential Task Force with respect to the need and scope of a tree preservation ordinance. The EEC's UFTF report states "The UFTF found that generally, there was little wonton removal of trees on public or private property within Edina other than in isolated instances. It is very costly to remove a mature tree and consequently trees are generally only removed in cases of disease or of landscaping; such tree removals are not in need of regulation. When trees are removed in such circumstances they are generally replaced with new trees within a few years... Although teardowns occur throughout Edina, most complaints stem from those teardowns on lots less than 75 feet wide. As such the UFTF believed that it would not be prudent to design an ordinance applying to the entire city to address the localized problem of small lot teardowns. Problems unique to small lot teardowns should be addressed by the Planning Commission's Residential Task Force (RTF) and any enforcement accomplished by the proposed city teardown overseer."

Michael Platteter of the Planning Commission indicated that at the Planning Commission's hearings on tear downs, 80% of those testifying did not mention tree removal as being a problem. Thus, the proposed tree ordinance far oversteps any possible need in instances of small lot tear downs, by applying not only to all tear downs, but also by applying to "all demolition permits; building permits applications for a structural addition; and building permits for accessory structures including a garage, deck or a pool."

Prevents residents from achieving alternative environmental objectives

The ordinance requires:

- 1) Two for one replacement if any of 16 varieties of over story and large conifer Protected Trees of any size are removed more than 10 ft from the building pad and outside of the driveway or parking area.
- 2) One for one replacement of any Removable of over 5 inches in diameter including invasive species.
- 3) One to one replacement of a Protected Tree of any size, or Removable tree over 5 inches in diameter including invasive species within 10 ft of the building pad of a new or remodeled building or within driveways and parking areas.

The replacement trees must be of one of the 16 specified varieties, all of which are very large at maturity. On small lots, one or two of these large trees in the front and back yard is about all that a lot could accommodate. On even a large lot (1/2 acre or more) doubling the number of Protected Trees through the two for one requirement of over story trees would completely shade the lot, if the lot could even accommodate the number of required trees and still allow them to be healthy.

Although the specified over story and large conifer replacement trees constitute a worthwhile environmental objective, residents should not be compelled to landscape their lots for the resulting shade. Many worthy environmental objectives require sunny lots. This includes vegetable gardens, pollinator gardens and wildlife ponds. By restricting choices to just 16 varieties of trees, lots will begin to look quite similar. Small stature trees (15ft – 30ft) are eliminated because they are not on the list of specified replacement trees and there won't be room for them. Many of these small stature native trees have beautiful spring flowers, fall color and berries for birds. This includes Pagoda Dogwood, Service Berry or Nanny Berry. Many beautiful small stature ornamental trees such as Magnolia or Japanese Tree Lilac are similarly eliminated by being squeezed out a proposed landscape plan by the required over story and large conifer replacement trees. Oftentimes a small stature tree serves a small lot far better than larger trees, which can be out of scale with the small lot and overlap their neighbor's yards.

It is important to encourage residents to invest in solar panels. The best time to design a home for solar panels is when a home is rebuilt or remodeled. Large designated replacement over story trees can prevent a homeowner or their neighbor from using solar panels, whereas smaller stature trees are compatible with them.

The proposed tree ordinance prevents residents from achieving alternative environmental objectives for which they should have the choice, and thus the ordinance far over reaches private property rights.

Requires large amounts of nonexistent staff time

The city forester is a part time 4/5 position whose time is presently fully engaged. Even if converted to a full time staff person the following requirements of the proposed ordinance could not be accomplished:

10.82 (6) Approve the removal of any Protected Tree if the owner proposes that it is "diseased or hazardous". What constitutes diseased or hazardous? How diseased or hazardous does a tree need to be before it can be removed? The ordinance is vague. It is often extremely difficult to know if a tree is diseased to the extent that it must be removed. Homeowners could be left with trees that are not thriving. Conversely, a tree capable of recovery, with some horticultural assistance, could be taken down. These decisions should be left to homeowners. If the tree looks bad to the homeowner and they have the resources to remove it, they should have that option. To do otherwise oversteps private property rights.

10.82. (4) (d) "Replacement tree plans are subject to approval by the City Forester before implementation" – Over 100 tear down permits have been issued for each of the past two or more years. If all the "demolition permits; building permits applications for a structural addition; and building permits for accessory structures including a garage, deck or a pool" are added, the number would be much larger. And what is it that the City Forester is supposed to do with all these plans? No policy of guidelines state when he should approve or disapprove them. The ordinance is vague.

10.82 (4) (e)" If a replacement tree location cannot be found on the property, it must be placed in a public area, subject to approval by the City Forester." The ordinance is vague – what is a public area? Is it a city park? Boulevard? A large number of trees could be donated, which could over run the city's ability to find suitable locations, plant, mulch and water them. The EEC donated 16 small trees to Braemar Park and it was with some difficulty that enough places were found to plant them. The result was that the two large stature conifer seedlings were improperly planted in what was intended to be

a prairie, which was supposed to be kept sunny. In addition, two deciduous over story trees were planted in an open area with peat under laying it, causing the trees to die.

10.82 (7) "The survey must indicate how the Protected Tree would be protected during the construction, subject to staff review and approval." And what is it that the City Forester is supposed to do with the survey? No policy or guidelines state when he should approve or disapprove them. The ordinance is vague.

10.82 (7) "City staff monitoring is required for all projects with affected Protected Trees and/or replacement trees to ensure that all such trees are properly established and maintained for three (3) years." Multiply the number of annual demolition permits (tear down, remodeling, decks, garages, pools) times 3 and the City Forester will have a staggering number of trees to review annually. No one can guarantee that a newly planted tree will last for three years despite their best efforts. This is due to acts of God such as drought, insects, storms, etc. And what happens if the City Forester finds that a tree died? If it was not the homeowner's fault, should they have to replace it? How do you decide whose fault it is? The ordinance is vague.

In 2002, both the Planning Commission and the City Council expressed concerns about the proposed 2002 tree ordinance proposal because the City Forester did not have enough time to comply with all the demands of the proposed ordinance. If anything, the demands of the proposed 2014 tree ordinance are greater than those of the 2002 proposed ordinance and most assuredly more impractical.

To the extent that the City Forester has any surplus time, or to the extent that the City Forester position would be converted to a full time position, the EEC's Urban Forest Task Force had substantially different findings than did the Planning Commission's Residential Task Force with respect to the best use of the City Forester's time. The UFTF found as follows:

"To more effectively control noxious weeds and address other environmental issues in the park system, the UFTF recommends hiring a full-time Natural Resource Manager, as opposed to a part-time Forester. More knowledge of ecology is required today given the arrival of many invasive plant, insect and aquatic species. A passive forestry program with a philosophy of 'Natural Forest Succession' and one primarily focused on tree diseases such as oak wilt and Dutch Elm Disease, is no longer adequate... With a full-time Natural Resource Manager the following can be accomplished: more grants can be applied for, more parks can be certified as Audubon Cooperative Sanctuaries, more trees can be planted, more buckthorn and other noxious weeds can be controlled, more habitat can be restored, and more educational programs can be offered to residents."

Unreasonably restricts work space in construction projects

The City of Minnetonka Tree Protection ordinance at City Code 300.28, Subd. 19 states that:

"R-1: For the construction of a principal structure on a vacant R-1 lot or for redevelopment of an existing R-1 lot, protected trees may be removed with no mitigation only within the "basic removal area". The "basic removal area" is defined as:

- a. Within the areas improved for reasonably-sized driveways, parking areas and structures without frost footings and within ten feet around those improvements;
- b. Within the footprints of, and 20 feet around buildings with frost footings; and
- c. In areas where trees are being removed for ecological restoration in accordance with a city-approved restoration plan.

Edina's proposed ordinance at 10.82 (5) only allows removal of trees within "a ten-foot (10') radius of the building pad of a new or remodeled building" (as opposed to Lake Minnetonka's 20 ft) and "within driveways and parking areas" (whereas Minnetonka gives these a 10 ft radius). Removed protected trees in Minnetonka's above ordinance need not be replaced, while Edina's must be replaced one for one.

Contractors need room to work and the Lake Minnetonka Tree Ordinance provides that. Edina's proposed ordinance does not. Neighbors do not appreciate it when contractors leave construction materials on sidewalks, in streets or on their property as a result of having insufficient room in which to work. It would be very difficult to protect a tree, especially one in the front yard on a small lot less than 75 ft wide, which is filled with construction vehicles, equipment, tools and building materials. It would be more successful to remove the trees and relandscape, which probably needs to be redone anyway due to new sight lines and aging or overgrown trees.

But here is the catch 22. The only complaints about tree removal seem to be coming from the neighbors of tear downs on small lots less than 75 ft wide, which tend to exist predominately in Morningside. With 750 residences, Morningside constitutes 5% of the city's approximately 14,000 residences. Demolition permits elsewhere in the city do not result in tree removal complaints and have no need of regulation. If you give contractors the room they need to work as under the Lake Minnetonka Tree Ordinance, virtually no trees will be preserved in either the front yard or the side yard of tear downs on small lots less than 75 ft wide. Trees in the back yard would be protected, especially on deep lots, but few of those are being impacted in any event.

I do not recommend even trying to preserve trees in the front or side yards on small lots less than 75 feet wide as it is grossly impractical given all the construction vehicles, equipment, tools and construction materials that must be amassed there. Furthermore, it is not good governance to design an ordinance that meets the needs of only 5% of the city. A city wide ordinance needs to be suitable for the vast majority of residents, and the proposed ordinance clearly is not.

Unreasonably restricts relandscaping options

When housing is renewed by virtue of a remodeling or a tear down project, so too must the landscaping be renewed. It is not possible for the city to micromanage this relandscaping process as too many personal choices must be made. With housing renewal, the sight lines change. If perfectly healthy mature tree what once made sense in its location, no longer does so, it must be removed. When we enlarged our deck and put in a pond and gazebo we found that that we had to remove two mature locust trees and one standard apple tree so that we could see the new landscape features from the new deck. We also found that the 5 mature pines along the back of the lot that screened us from the neighbor looked pretty threadbare after over 40 years of the utility company's repeated pruning to keep them off the power lines. We replaced them instead with four native Pagoda Dogwoods that would grow but 15 ft high and would not need any pruning by the utility company. They would furthermore provide flowers in the spring, fall color and berries for the birds. The service berry, planted near the pond does as well, plus being a small stature tree, it will never reach over to the pond and drop unwanted leaves into the pond. We also added an espalier of five honey crisp apples, one magnolia, one over story ginkgo tree seedling, two white pine seedlings, two 3 ft tall Techny Arborvitae and one 6 ft tall black hills spruce.

In our remodeling and relandscaping project we removed a total of 7 mature trees, 6 of which would have been considered Protected Trees. We replaced them with 15 trees, only one of which would have been allowed from the list of required replacement trees and of the required size. Under the proposed ordinance we could not have landscaped our yard as we did. Our yard has been on many garden tours, won awards and been featured in magazines and newspapers. The proposed ordinance would have instead required us to plant 13 over story or large conifer trees from the approved list of 16 trees. With the 13 required (2 for 1 of the 6 protected trees and one for one of the one non protected tree) over story or large conifer trees, a shady yard would have resulted and we would not have been able to have a vegetable garden, pollinator garden, wildlife pond, or the small stature pagoda dogwood trees fitting in under the power lines and providing berries for birds. It took us a year to plan our relandscaping project using a professional landscape architect. There were multiple revisions of the plan. Surely the City Forester cannot be expected to become involved in such projects. The proposed ordinance far oversteps private property rights.

If residents are forced to plant more over story and large conifers then they can use – where will they plant them so as to preserve their sunny yard? Most likely they will plant them on the property line where they will unreasonably shade their neighbor's yard and force their neighbor to rake their tree's leaves or trim those portions of the tree that overhang the neighbor's property. This will increase neighbor disputes.

Vague

Many instances where the ordinance is vague have been cited above. In addition, note the following:

10.82 (2) The list of Protected Trees needs to provide the scientific names, not common names. Birch can include paper birch, which is not suitable for zone 4. Maples can include Norway and Amur maple, which are on the DNR Do Not Plant list. Furthermore, the list is arbitrary and capricious and seeks to micromanage a resident's choice of trees.

10.82 (2) (b) Missing citation/URL for DNR list of invasive trees. Is it the intent to include trees from the DNR Do Not Plant list as well? If so, another citation/URL is needed.

10.82 (3) "Demolition and building permit applications must include a certified tree inventory." Certified by whom?

10.82 (4) (a) "Replacement trees must be varied" By how much? Does each have to be different? What percent can be alike?

10.82 (4) (b) "Replacement trees must not be subject to known epidemic diseases or infestations". What is "known"? Is there a list of diseases or infestations? Known by whom? If a homeowner is not aware of it, is that sufficient?

10.82 (7) states "The permit holder shall not leave any Protected Tree without sufficient guards or protections to prevent injury to the Protected Tree in connection with such construction." What constitutes "sufficient"? What constitutes "injury"? During our garage enlargement project new footings extended 45" deep and the trench extended 3 feet from the trunk of a mature honey locust tree, which constitutes a Protected Tree under the proposed ordinance. Three inch diameter roots were severed and hung over the trench. Does that constitute an injury? What, if anything, would be required to protect such a tree? We did nothing. Would we have been in violation of the ordinance? If so, what is the penalty? Does the City Forester actually have to look into each construction trench and render an opinion? Tom Horwath, the City of Edina Forester, estimates that about 75% of trees in such situations survive. In fact, our trench tree is still thriving 9 years later behind the garage. Trying to regulate something that you really can't do much about is folly.

Impractical from a horticultural view point

Many instances where the ordinance is impractical have been cited above. Furthermore, the ordinance is impractical from many horticultural perspectives. This is undoubtedly because the Planning Commission's Residential Task Force, which drafted the proposed tree ordinance, neglected to invite the City of Edina Forester to a single meeting. The Energy and Environment Commission's Urban Forest Task Force had the Forester participate at every meeting.

Sidewalks and Driveways - The proposed ordinance does not allow tree removal when a tree is immediately adjacent to a sidewalk or driveway, though Lake Minnetonka does. In these situations tree roots will cause the pavement to heave and become a tripping hazard. And who wants to have a tree right next to a drive way when you are backing out at night, or are backing out on a slippery surface. Trees next to driveways are well positioned for accidents. Trees within 10 feet of sidewalks and driveways need to be removed as provided in the Lake Minnetonka tree ordinance.

Swimming Pools - Having to replace Protected Trees two for one when a swimming pool is being added is utterly impractical. Pools cannot have trees in proximity or they become dirty with leaves and other tree debris.

Wildlife Pond - We added a wildlife pond in our relandscaping project. For these you cannot use chemicals to kill the mosquito larvae or you will poison the wildlife that comes to the pond. To control mosquito larvae you must add fish to the pond, which will eat the mosquito larvae. When you have fish you must have cover or the small pond becomes too hot during the summer and the fish die due to lack of oxygen in the water. The best way to do this is to add water plants such as water lilies, lotus, etc., as we did. These aquatic plants need sun, thus you can't have the over story trees as required by the ordinance in proximity to a wildlife pond. Such trees also cause the water to become dirty with tree debris, which negatively impacts the fish.

Saplings - 10.82 (4) states "If a Protected Tree is removed... it must be replaced with two (2) trees" Tree seedlings in the list of 16 protected trees often come unbidden, carried in the air, by water, or by squirrels and other animals via their feces or through their food storage habits. No size is specified for a protected tree. Does this mean that every unbidden sapling/seedling must be replaced or allowed to grow?

Conifers - 10.82 (4) (c) Requires replacement conifers to be at least 7 feet tall. Transplanting a large conifer over 6 feet tall is extremely expensive and difficult. The success rate of transplanting medium or large conifers is very poor. Our neighbor purchased a 6 ft pine and had it professionally planted. It died in less than a year and the landscaper would not honor the warranty as each pointed the finger at the other. As part of our relandscaping project we had a 6 ft black hills spruce professionally planted for \$600. It lived but did not thrive. After ten years we had it removed. As part of the relandscaping project we also had two 3 ft tall Techny Arborvitae professionally planted. One died in less than a year and the landscaper replaced it. The two white pine seedlings that we planted as part of the relandscaping thrived and grew

rapidly. Nine years later the seedlings are 6 ft tall. The smaller the tree the easier it is to transplant not only from a labor perspective but also from a success rate perspective. Requiring 7 ft conifers is expensive and more likely to fail.

Overgrown Conifers – Turning overgrown conifers into Protected Trees discourages residents from removing them. Having overgrown conifers from in front of home doors and windows poses a security risk. Robbers often target homes with overgrown conifers obscuring entry ways. A former neighbor of mine was twice broken into by robbers who kicked in her front door. With overgrown conifers obscuring her front door the robbers could work with needed cover. Residents should not be penalized for removing overgrown conifers, which often are out of scale with the home as well as being positioned so as to become a security risk.

Buckthorn and other weed trees - 10.82 (2) (b) includes buckthorn as a removable tree because it is defined by the MN DNR as an invasive species. 10.82 (6) states “If a removable Tree greater than five inches (5”) is removed, it must be replaced with one tree.” Drive through Indian Hills or any areas where there are large lots. There you will see many buckthorn trees greater than 5” in diameter. Requiring residents to replace these on a one for one basis would only discourage a homeowner from removing their buckthorn. Buckthorn is a shade tolerant understory tree, which grows closely together. Replacing them from among the sun loving trees on the required list of 16 trees would necessitate replacement trees being planted so closely together that the replacement trees could not thrive. This is highly impractical. And do you really want to compel residents to replace other Removable Trees such as weedy trees like silver maple, box elder, Siberian elm, etc? The resident likely did not plant them. They were volunteers that arrived unbidden and no one got around to weeding them out.

The ordinance is easily circumvented, thus saving few trees

10.82 (8) states “If Protected Trees were removed within one (1) year prior to the date that the development, demolition and building permit applications were submitted, these Protected Trees are also subject to the replacement policy set forth in paragraph (4) above.”

It takes considerable time to plan a remodeling project. All a homeowner needs to do is to remove any Protected Tree one year and a day prior to applying for the permit, then spend the year planning their remodeling project before applying for a demolition permit. In the alternative, the resident could wait until the remodeling is finished, then begin the tree removal and relandscaping. A savvy developer will tell their prospective seller to do the tree removals prior to closing and then add the removal cost to the selling price of the home. The seller who removed the trees won't be applying for the permit, and by the time the developer/purchaser closes on the home and applies for the permit, the lot's Protected Tree survey will show a bare lot. In the alternative, a builder can simply donate trees to the city and raise the cost of an already high priced home.

The bottom line is that if a property owner does not want a tree, it will be removed sooner or later and there is little that a city can do about it other than to educate residents about the value of trees, or perhaps provide discount trees for residents like the City of Plymouth does. With all the loop holes, the ordinance isn't really about protecting trees. It's about hurling roadblocks in front of developers in a misguided effort to discourage tear downs.

Constitutes a tax on those seeking to renew and upgrade their property

Forcing a landowner to donate trees to city parks when they cannot comply with the proposed ordinance constitutes a tax on those seeking to renew and upgrade their property. This has been done primarily to discourage tear downs on small lots less than 75 feet wide and has overzealously been extended to remodels, additions and pools on lots of all sizes.

Solutions

I believe that tree removals are not really the problem here. Trees are a renewable resource. No one builds a \$500,000 - \$1,000,000 home and then fails to relandscape with trees. Although they may not relandscape immediately, due to time and financial limitations, they will eventually relandscape. Developers are required to submit a landscape plan. That should be part of the meeting with the neighborhood. If the neighborhood meeting finds the landscape plan insufficient they should talk to the developer about it and work it out with the City tear down supervisor. If the tear down supervisor has some landscaping guidelines, the proposed ordinance is unnecessary.

Residents can hardly complain about large trees being replaced with young trees because all their lots once had young trees when their homes were new. You need to constantly renew the urban forest before trees age out. You don't want to wait until a tree falls on your home or on another structure.

Some residents have complained to me about tear downs. But when they sold their own homes, they sold them to developers who they knew planned to tear them down. They did so because the developers paid them more money. Residents cannot have it both ways.

Let's face it, tree removal complaints are a smoke screen for the real complaint – tear downs. Council needs to solve the right problem, and it is NOT tree removals. Unless Council is willing to make Morningside or other affected small lot tear down areas a historic preservation district much like Country Club, or at least designate some homes in these areas for historic preservation, tear downs will continue. And frankly, some of the homes have been poorly maintained and do warrant being torn down and replaced with homes that are energy efficient and better meet the needs of modern families. But for the vast majority, it is a loss of affordable starter homes. If that loss is not of concern to Council, the accompanying tree loss should not be of concern to council. Whereas the trees can and undoubtedly will be replaced, the starter homes cannot be replaced.

Everyone needs to understand that as long as it is legal to renew a home by remodeling it or tearing it down, so too must it be legal to renew the landscape to fit the renewed homes' needs. Micromanaging residents landscaping is nothing but a sink hole for city staff time and does little to preserve trees in the long run.

Thank you for the opportunity to express my views. If you have any questions, do not hesitate to contact me.

Dianne Plunkett Latham
7013 Comanche Ct
Edina MN 55439-1004
952-941-3542

Cary Teague

From: Dianne Latham <Dianne@LathamPark.net>
Sent: Thursday, May 01, 2014 11:31 AM
To: Ann Swenson; James B. Hovland; Joni Bennett; Josh Sprague; Mary Brindle (Comcast)
Cc: Tom Horwath; Brian Olson; Cary Teague; Edina Mail; Scott Neal
Subject: Please Oppose Proposed Edina Tree Ordinance

5-1-14

Please include the following in the 5-6-14 City Council packet. Thank you.

Dianne Plunkett Latham
Edina Garden Council
Chair, Conservation Committee
7013 Comanche Ct
Edina MN 55439-1004
952-941-3542

From: Twinoaks50@aol.com [<mailto:twinoaks50@aol.com>]
Sent: Wednesday, March 19, 2014 10:28 AM
To: dianne@lathampark.net
Subject: Cutting down Trees

Hi Dianne,

Minnesota garden writer Don Engebretson (*The Renegade Gardener*) has some strong and humorous views on the right to cut down trees without replacing them. In light of the proposed tree ordinance, you may enjoy these columns.

~Elizabeth

The 10 Tenets of Renegade Gardening

Full version is required reading:

<http://www.renegadegardener.com/content/tenets.htm>

1. Gardening should be challenging, relaxing, and fun.
2. Renegade Gardeners are cautious and wise when perusing the plethora of products and plants sold by the commercial gardening industry.
3. Gardening involves commitment.
4. Renegade Gardeners learn the Latin names of the plants they grow.
5. Gardening is not always easy.
6. Renegade Gardeners come to realize that lawns are essentially a dumb idea.
7. Gardening and rock music do not mix.
8. Renegade Gardeners buy first from local growers.
9. **There is nothing wrong with cutting down a tree on your property.**
10. Irreverence is essential.

"9. There is nothing wrong with cutting down a tree on your property.

It's your tree, and just like any perennial, shrub, or concrete statue of a little boy with a fishing pole, for that matter, if it's fallen into disfavor, it's perfectly all right for you to make it go away. People have extrapolated news of the deforestation of the Brazilian rain forest into a belief that trees should no longer be cut down. Trees should no longer be cut down in the Brazilian rain forest because the loggers there are clear-cutting, lack any reforestation program, and ample substitutes are available for the hard woods being harvested.

This has nothing to do with that damn spruce planted by a previous owner seven feet off the corner of your house that has had the audacity to attempt to grow twenty feet wide, or the white pine planted by the owner before that, that now sits half-dead under the sixty-foot canopy of a red oak that, when planted, was the same height as the pine. If you want to plant a tree every time you cut one down, great, but if you remove a tree from your property because it's planted in a dumb spot, has been improperly pruned, succumbed to disease or storm damage, or simply impacts your ability to create the landscape you envision and you don't plant a tree afterwards, that's fine too. Never take any grief about it from the twelve year-old kids on your block, or their socialist parents, either. "

On Cutting Down a Tree, or Three

<http://www.renegadegardener.com/content/81cutdowntree.htm>

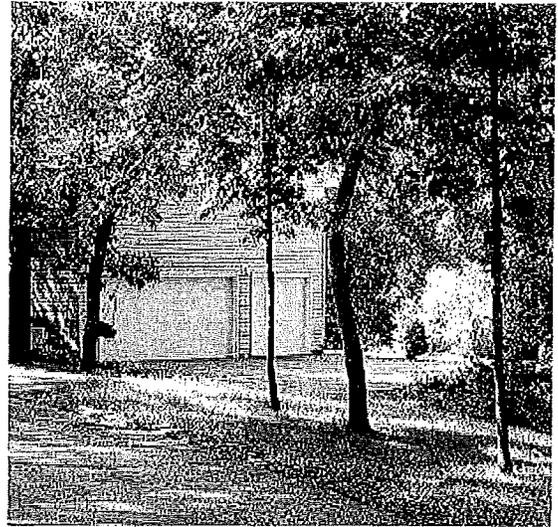
My neighbor Dave wandered into my yard the other day and we lied to each other about what we were planning to accomplish in our gardens by season's end. I mentioned one event definitely taking place on my humble half-acre during the winter: The removal of three excruciatingly mature trees (an oak, an elm, and, to be fair, a maple) from my front yard.

Dave withered, slumped, his face grew white and his eyes started rolling back in their sockets. He recovered, gave a low whistle, looked at his shoes, shook his head. I knew what was coming. Since we were standing beside the maple, he started his cross-examination there.

"You're going to take down this maple? This beautiful tree?" he asked.

The maple in question is forty-five feet tall with a crown width of around twenty-five feet. It's a Norway, *Acer platanoides*, referred to by many in these parts as a "black" maple. I pointed out to David that the tree in question had been pruned, badly, as a youngster, so that the trunk now splits into two large trunks at a point about seven feet above the ground. The dual trunks immediately curve in parallel to the southwest, and exhibit all manner of lesions, cracks, and wounds. The crown is jagged, lop-sided, and gives the impression the tree is off balance. It has never provided any noteworthy fall color display.

Despite my pruning and the professional trimming I paid for a decade ago, it remains the ugliest maple in Deephaven, and that's saying something. The final strike against it is that whereas it sits in a good spot for a tree, *it's the wrong tree for the spot*. It's too close to my house for a large tree, it's out of scale, it looms over and clutters my driveway, and it shades an area in front of my house for five hours in the afternoon. Plus, as I've already stated, it's ugly. A proper gardening solution? Remove it.



Deephaven maples

The best advice I can give new gardeners, particularly those who have just purchased a home and yard, is **FIX YOUR TREE SITUATION FIRST**. Had I taken the maple out fifteen years ago, and planted in its spot the tree that I'll be planting next spring (an Eastern Redbud), the redbud would be sixteen feet tall by now, nearing its max, and looking gorgeous.

I'm always floored by people's reactions to the thought of having trees removed from their yards. Where I live, many of the trees in literally a thousand yards were not planned, were not planted as an element of landscape design. They just grew, maples especially. I refer to maples in ridiculous locations in a yard as a "Deephaven Maple," and every spring I remove over a hundred of them from my front, back and side yards. These trees are an inch or two tall and are sprouting up from the previous year's seed drop.

Every spring, everyone in my neighborhood does the same. Fail to do it and ten years from now, one would have a thousand, twelve-foot maples growing on a half-acre lot. But that never bothers anyone, removing over a thousand maples from their yards in a decade, because they are young. But let a few grow until they cause problems, then cut one down, and you get anonymous letters in the mail.

How many big trees were removed when my house was built in 1946? Ten? Twenty? Fourteen very large trees remained when I bought the house, so I imagine at least ten were given the ultimate prune by the builder when he put in the foundation and driveway. No one ever thinks about that. People who live in their \$550,000 wood homes and decry the loss of six trees when a builder finally wrestles away ownership of an undeveloped lot across the street from them don't ever think about the fifteen trees that were cut down when their house was built. Or the forty that were cut down to supply the lumber for it.

Two of my original fourteen trees — classic Deephaven Maples — were in my back yard, too close together, right off my patio, blocking the view from my kitchen and dining room windows. They existed for no reason except they hadn't been pulled by a previous owner when they were a few inches high. I neglected them, and one died, gratefully, following the drought of the early 1980s. When I took it out I took the other one out.

Everyone hears about the deforestation of the various rain forests on the globe, particularly in South America, and many people curse logging (sometimes justly, sometimes unjustly), but these

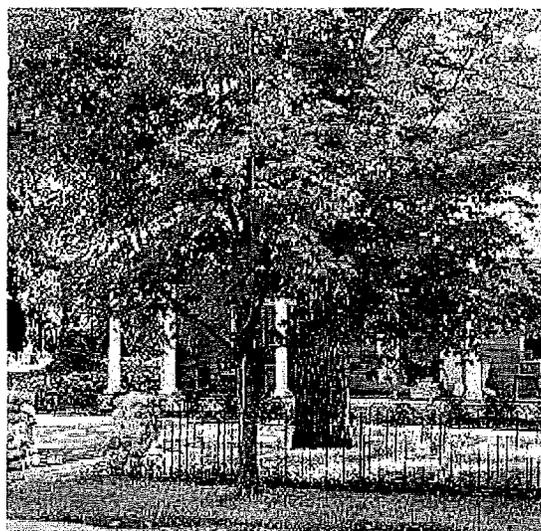
situations don't equate to tree removal in residential landscapes. In fact, it's fair to say that the number of trees being planted (and new trees slowly working their way to one hundred-year-old status) in residential America are up from previous decades.

Proof? Development of the southern, western, and northern, second-ring suburbs of Minneapolis — and probably your nearest city. These were farmlands, some as close as two miles from my current home. They were clear-cut by farmers one hundred and fifty years ago, and farmed for generations.

Guess what? The U.S. doesn't need as much farmland as it once did; yield per acre is much higher than it was in the 1800s, or the 1950s, for that matter. All across Minnesota, treeless farmland is being turned into residential home developments, with, granted, ghastly street names. But my point is that trees are being planted, by the thousands across the Twin Cities, and by the millions across America.

Builders are getting better at not dooming so many trees when they do build homes, and have learned not to change the soil level around trees they want to save. New, disease resistant strains of trees, from crabapples to elms, are being developed and marketed, and nurseries can't keep up with demand from builders, landscapers and homeowners.

Getting back to my trees, the maple, as discussed, is history. The elm is coming down (I explained to Dave) because it's very old, parts of it have been lost in numerous storms, and if I leave it up it will certainly go down in a storm, possibly on my house, within the next five years. It's also in a really dumb spot, smack in front of my house, up way too close.



Deephaven maple after new home construction:
Would you plant a tree there?

The red oak, which sits eight feet from the elm, is a nice-looking tree but is also in a dumb spot, even closer to my house (twelve feet) than the elm. This oak is fifty feet tall and could well be one hundred years old. I've debated the oak, but decided finally to take it out because in my new front yard plan, I'd never put any type of tree where it stands. I'm having it removed in eight, ten and twelve-foot lengths, then calling up a friend of mine with a portable sawmill he tows behind his pickup. Come spring he'll saw it into 8" x 8"s and 10" x 10"s for use in an elaborate arbor structure I'm going to build off my home's new addition. I like that.

I'm sure one reason the elm and the oak were left (they most certainly existed before the house was built, and were not planted as a part of any landscape plan) was to shade and cool the house. They sit directly south. Air conditioning was not available to the original owner in the 1940s, so these two trees provided shade to the roof and front of the house in summer, then lost their leaves and allowed the sun to shine on the house in the winter. Well, I put in central air conditioning four years ago. This opens up my options.

So I'm taking three trees out. Big ones. Before you phone the Sierra Club and report me, may I also point out that I am planting three trees in my yard. I mentioned this to Dave and he was

immediately back to liking me, so I didn't mention that my planting three trees was sheer coincidence. You don't need to plant a tree every time you take one down (see Tenet 11).

Some people find that hard to believe. I was doing a yard consultation last week with a young couple down the road, nice house and lot, many beautiful trees, and as we walked around a corner of their house we came upon the second ugliest maple in Deephaven. Twenty years old, perhaps. A previous owner had hit the tree, repeatedly, with the mower blade, so that the trunk actually grew in a brazen "s" as it struggled for sunlight under a full canopy of far more mature trees. It was too close to the house, all alone, fixing to die in one of the few areas on the entire one-acre lot in which I would never plant a tree.

The couple asked me what I thought about "the little maple." It goes, I said. "That's what the neighbors all say, but we wanted an expert opinion." I know when to bite my tongue. Then the wife asked, "So what type of tree should we plant there after it's gone?"

ORDINANCE NO. 2014-__
AN ORDINANCE AMENDMENT REGARDING TREE PRESERVATION

The City Council Of Edina Ordains:

Section 1. Chapter 10, Article III of the Edina City Code is amended to add Division 3 as follows:

DIVISION III. TREE PROTECTION

Sec. 10-82. Preservation, protection and replacement of Protected Trees: This ordinance applies to all demolition permits; building permit applications for a structural addition; and building permits for accessory structures including a garage, deck or a pool.

(1) Purpose: Edina is fortunate to have a robust inventory of mature trees that form an integral part of the unique character and history of the city, and that contribute to the long-term aesthetic, environmental, and economic well-being of the city. The purpose of the ordinance is to:

- a. Preserve and grow Edina’s tree canopy cover by protecting mature trees throughout the city.
- b. Protect and enhance property values by conserving and adding to the distinctive and unique aesthetic character of Edina’s tree population.
- c. Protect and enhance the distinctive character of Edina’s neighborhoods
- d. Improve the quality of life for all stakeholders, including city residents, visitors and wildlife.
- e. Protect the environment by the filtering of air and soil pollutants, increasing oxygen levels and reducing CO2; managing erosion and stormwater by stabilizing soils; reducing heat convection; decreasing wind speeds; reducing noise pollution and decreasing the urban heat island effect.
- f. Protect and maintain healthy trees in the development and building permit processes as set forth herein; and prevent tree loss by eliminating or reducing compacted fill and excavation near tree roots.

(2) Definitions:

- a. Protected Tree: Any tree that is structurally sound and healthy, and that meets one of the following:

Existing text – XXXX
Stricken text – XXXX
Added text – XXXX

i. a deciduous tree that is at least 15 inches dbh, except box elders, elm, poplar, willow, silver maple, black locust, fruit tree species, and mulberry.

ii. a coniferous tree that is at least 20 feet in height.

b. Removable Tree. Any tree not defined as a Protected Tree, or as defined as an invasive species by the Minnesota Department of Natural Resources.

(3) Demolition and building permit applications must include a certified tree inventory plan indicating where Protected Trees are located and, their species, caliper, health and approximate height and canopy width. The plan must show how Protected Trees are preserved and protected during construction. The plan must also show if any Protected Trees are proposed to be removed and the location, species and size of all replacement tree(s).

(4) If a Protected Tree is removed, except as allowed for in paragraph (7), it must be replaced with one (1) tree, subject to the following conditions:

a. Replacement trees must be varied by species and are limited to the species listed above in (2) Definitions.

b. Replacement trees must not be subject to known epidemic diseases or infestations. Disease or infestation resistant species and cultivars are allowed.

c. Replacement trees must be at least two and one-half inches (2.5") in caliper for deciduous trees and a minimum of seven feet (7') tall for coniferous trees.

d. Replacement tree plans are subject to approval by the City Forester before implementation.

e. If a replacement tree location cannot be found on the property, it must be placed in a public area, subject to approval by the City Forester.

(5) Protected Trees may be removed, in the following areas:

a. Including, and within a ten-foot (10') radius of, the building pad of a new or remodeled building.

b. Within driveways and parking areas.

Existing text – XXXX

Stricken text – ~~XXXX~~

Added text – XXXX

(6) During the demolition and building permit processes, the permit holder shall not leave any Protected Tree without sufficient guards or protections to prevent injury to the Protected Tree, in connection with such construction. The survey must indicate how the Protected Tree would be protected during construction, subject to staff review and approval.

(7) If Protected Trees were removed within one (1) year prior to the date the development, demolition and building permit applications were submitted, these Protected Trees are also subject to the replacement policy set forth in paragraph (4) above.

Section 2. Subsection 32-7. Variances are hereby amended as follows:

Sec. 32-7. Variances.

(a) *Grant by Council.* In connection with the preliminary or final approval of a plat or subdivision the Council may grant variances from the provisions of this Section. The Council shall grant variances only upon finding that an unusual hardship exists as to the land within the plat or subdivision, and specifically that:

~~(1) The hardship is not a mere inconvenience;~~

~~(2) The hardship is due to the particular physical surroundings, shape or topographical condition of the land;~~

~~(3) The condition or conditions upon which the request for a variance is based are unique to the property being platted or subdivided and not generally applicable to other property;~~

~~(4) The hardship is caused by this Section and not by the applicant;~~

~~(5) The variance will result in an improved plat or subdivision; and~~

~~(6) The variance, if granted, will not alter the essential character of the land within the plat or subdivision or in the neighborhood.~~

(1) That there are special circumstances or conditions affecting the property such that the strict application of the provisions of this title would deprive the applicant reasonable use of their land.

Existing text – XXXX

Stricken text – XXXX

Added text – XXXX

(2) That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which property is situated.

(3) That the variance is to correct inequities resulting from an extreme physical hardship such as topography, etc.

A grant of a variance by the Council shall be deemed to include a favorable finding on each of the variance grounds set out above even if not specifically set out in the approval resolution or the minutes of the Council meeting.

(b) *Conditions.* In granting a variance the Council may impose conditions to ensure compliance with the purpose and objectives of this Section and other applicable provisions of this Code and to protect adjacent properties. The conditions may be made a part of any Development Contract required by article IV of this chapter.

(c) *Variations from Section 36.* When Variations are requested from Section 36, requirements for lot areas and dimensions, the Planning Commission and City Council may consider the following criteria in addition to Section 36-98:

(1) The impact of the proposed plat or subdivision, and proposed development, on the character and symmetry of the neighborhood as evidenced and indicated by, but not limited to, the following matters:

a. The suitability of the size and shape of the lots in the proposed plat or subdivision relative to the size and shape of lots in the neighborhood; and

b. The compatibility of the size, shape, location and arrangement of the lots in the proposed plat or subdivision with the proposed density and intended use of the site and the density and use of lots in the neighborhood.

(2) The impact of the proposed plat or subdivision, and proposed development, on the environment, including but not limited to, topography, steep slopes, vegetation, naturally occurring lakes, ponds and streams, susceptibility of the site to erosion and sedimentation, susceptibility of the site to flooding and water storage needs on and from the site.

Existing text – XXXX

Stricken text – ~~XXXX~~

Added text – XXXX

- (3) The consistency of the proposed plat or subdivision, and proposed development, and compliance by the proposed plat or subdivision, and the proposed development, with the policies, objectives, and goals of the Comprehensive Plan.
- (4) The compliance of the proposed plat or subdivision, and the proposed development with the policies, objectives, goals and requirements of chapter 36 including, without limitation, the lot size provisions and the floodplain overlay district provisions of chapter 36.
- (5) The impact of the proposed plat or subdivision, and proposed development on the health, safety and general welfare of the public.
- (6) The relationship of the design of the site, or the improvements proposed and the conflict of such design or improvements, with any easements of record or on the ground.
- (7) The relationship of lots in the proposed plat or subdivision to existing streets and the adequacy and safety of ingress to and egress from such lots from and to existing streets.
- (8) The adequacy of streets in the proposed plat or subdivision, and the conformity with existing and planned streets and highways in surrounding areas. Streets in the proposed plat or subdivision shall be deemed inadequate if designed or located so as to prevent or deny public street access to adjoining properties, it being the policy of the City to avoid landlocked tracts, parcels or lots.
- (9) The suitability of street grades in relation to the grades of lots and existing or future extension of the City's water, storm and sanitary sewer systems.
- (10) The adequacy and availability of access by police, fire, ambulance and other life safety vehicles to all proposed improvements to be developed on the proposed plat or subdivision.
- (11) Whether the proposed plat or subdivision, or the improvements proposed to be placed thereon are likely to cause substantial environmental damage.

Existing text – XXXX
Stricken text – ~~XXXX~~
Added text – XXXX

Section 3. Chapter 32. Article III. Evaluation of Plats and Subdivisions is hereby revised as follows:

Sec. 32-130. Considerations.

~~The Commission in reviewing proposed plats and subdivisions and in determining its recommendation to the Council, and the Council in determining whether to approve or disapprove of any plat or subdivision, may consider, among other matters, the following:~~

- ~~(1) The impact of the proposed plat or subdivision, and proposed development, on the character and symmetry of the neighborhood as evidenced and indicated by, but not limited to, the following matters:
 - a. The suitability of the size and shape of the lots in the proposed plat or subdivision relative to the size and shape of lots in the neighborhood; and
 - b. The compatibility of the size, shape, location and arrangement of the lots in the proposed plat or subdivision with the proposed density and intended use of the site and the density and use of lots in the neighborhood.~~
- ~~(2) The impact of the proposed plat or subdivision, and proposed development, on the environment, including but not limited to, topography, steep slopes, vegetation, naturally occurring lakes, ponds and streams, susceptibility of the site to erosion and sedimentation, susceptibility of the site to flooding and water storage needs on and from the site.~~
- ~~(3) The consistency of the proposed plat or subdivision, and proposed development, and compliance by the proposed plat or subdivision, and the proposed development, with the policies, objectives, and goals of the Comprehensive Plan.~~
- ~~(4) The compliance of the proposed plat or subdivision, and the proposed development with the policies, objectives, goals and requirements of chapter 36 including, without limitation, the lot size provisions and the floodplain overlay district provisions of chapter 36.~~
- ~~(5) The impact of the proposed plat or subdivision, and proposed development on the health, safety and general welfare of the public.~~
- ~~(6) The relationship of the design of the site, or the improvements proposed and the conflict of such design or improvements, with any easements of record or on the ground.~~

Existing text – XXXX

Stricken text – XXXX

Added text – XXXX

- ~~(7) The relationship of lots in the proposed plat or subdivision to existing streets and the adequacy and safety of ingress to and egress from such lots from and to existing streets.~~
- ~~(8) The adequacy of streets in the proposed plat or subdivision, and the conformity with existing and planned streets and highways in surrounding areas. Streets in the proposed plat or subdivision shall be deemed inadequate if designed or located so as to prevent or deny public street access to adjoining properties, it being the policy of the City to avoid landlocked tracts, parcels or lots.~~
- ~~(9) The suitability of street grades in relation to the grades of lots and existing or future extension of the City's water, storm and sanitary sewer systems.~~
- ~~(10) The adequacy and availability of access by police, fire, ambulance and other life safety vehicles to all proposed improvements to be developed on the proposed plat or subdivision.~~
- (11) Whether the physical characteristics of the property, including, without limitation, topography, vegetation, susceptibility to erosion or siltation, susceptibility to flooding, use as a natural recovery and ponding area for storm water, and potential disturbance of slopes with a grade of 18 percent or more, are such that the property is not suitable for the type of development or use proposed.
- (12) Whether development within the proposed plat or subdivision will cause the disturbance of more than 25 percent of the total area in such plat or subdivision containing slopes exceeding 18 percent.

(3) Comply with Section 10-82.

- ~~(13) Whether the proposed plat or subdivision, or the improvements proposed to be placed thereon are likely to cause substantial environmental damage.~~

Section 3. This ordinance is effective immediately upon its passage and publication.

First Reading:

Second Reading:

Existing text – XXXX

Stricken text – XXXX

Added text – XXXX

Published:

ATTEST:

Debra A. Mangen, City Clerk

James B. Hovland, Mayor

Please publish in the Edina Sun Current on:
Send two affidavits of publication.
Bill to Edina City Clerk

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Ordinance was duly adopted by the Edina City Council at its Regular Meeting of _____, 2014, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____, 2014.

City Clerk

Existing text – XXXX
Stricken text – ~~XXXX~~
Added text – XXXX

