



MINUTE SUMMARY
Regular Meeting of the Edina Planning Commission
Tuesday, November 24, 2009, 7:00 PM
Edina City Hall Council Chambers

MEMBERS PRESENT:

Chair Mike Fischer, Julie Risser, Nancy Scherer, Kevin Staunton, Michael Schroeder, Steve Brown, Floyd Grabiell, Jeff Carpenter and Karwehn Kata

MEMBERS ABSENT:

Arlene Forrest

STAFF PRESENT:

Cary Teague and Jackie Hoogenakker

I. APPROVAL OF THE MINUTE SUMMARY:

The minutes of the Planning Commission meetings of September 30 and October 28, 2009 were filed as submitted.

Chair Fischer addressed the Commission and members of the audience informing them that at this time there are no development proposals before the Commission so the focus of the meeting will be on the continued process of updating the Zoning Ordinance.

Chair Fischer stated he would like to hear Agenda Item III. "Community Comment" first. This would enable those who have comments the ability to do so without having to sit through the entire meeting.

II. COMMUNITY COMMENT:

Chris Rofidal, 5037 56th Street West, Chair Heritage Preservation Board had the following comments:

1. The HPB would be interested in documenting the demolition process of the public works building if Council approves a development project that would necessitate the removal of the building.
2. How would a resident "go about" applying for a position on the Small Area Plan community advisory team.

Chair Fischer explained that formulating the process for Small Area Plans is only in the conceptual stages. Once the Council makes the decision on how to proceed with the Small Area Plans the process would be clarified.

II. OLD BUSINESS:

Continued Discussion on the Updating of Edina's Zoning Ordinance

Commission Discussion

Chair Fischer began the discussion by explaining that topics pertinent to the ordinance update would be introduced at each meeting and at each meeting the topic(s) would either be acted on or continued to the next meeting. Chair Fischer explained that each topic introduced would be dated and summarized and those summaries would "travel" with each topic. Each topic would have its own set of minutes which would make tracking a topic easier. Concluding, Chair Fischer clarified that the discussion this evening is just that a discussion. All suggestions and/or recommendations would need to meet with the approval of the City Council and City Attorney.

Chair Fischer introduced Topic. Variance Process/Introduced 11/24/2009:

Chair Fischer explained that in 2007 a lawsuit was filed against the City regarding the variance process, adding that before the lawsuit the Planning Commission heard, reviewed and acted on all variance requests for all major developments. The Zoning Board of Appeals (a five member rotating board comprised of Planning Commissioners and Zoning Board of Appeals members) heard all residential and minor variance requests. As a result of the lawsuit all variances are now heard by the Zoning Board of Appeals.

Chair Fischer stated this change has created confusion and conflict on major projects that require multiple actions. Presently the Zoning Board of Appeals hears a variance request for a major project after it has received preliminary development approval from both the Commission and Council. This order can be awkward for Zoning Board members because they are making a decision on a project that has received preliminary approval. After the Zoning Board of Appeals acts on the variance request their action is forwarded to the Commission and Council for the final approval phase of the project. Chair Fischer asked Planner Teague if the City Attorney has weighed in on the process. Planner Teague responded that Mr. Knutson has expressed some concern with the current process; however, would work with whatever is chosen.

Chair Fischer stated he sees three options to administer variance requests:

1. Continue as is. The Zoning Board of Appeals hears all variances. The Zoning Board of Appeals is a rotating five member Board that meets twice monthly. All Planning Commissioners are members of the Zoning Board and were appointed by the Mayor and Council. The Board is also comprised of six additional members from the community appointed by the Mayor and Council to make up the full Zoning Board of Appeals.
2. Dissolve the Zoning Board of Appeals. The Planning Commission would become the "Zoning Board of Appeals".
3. Modify the current process. The Planning Commission acting as one of the Zoning Board of Appeals panels would hear and act on major development variances at the same time they consider the development proposal (Rezoning, Conditional Use, Final Development Plan, etc.). Residential and minor variances would continue to be heard as is. Try to establish a legal way to do this.

Chair Fischer reiterated that whatever is suggested needs to be reviewed by both the City Council and City Attorney. Planner Teague agreed.

Commissioner Grabiell commented the Zoning Board may be easy to dissolve but historically there was value in creating a separate Zoning Board of Appeals. Commissioner Grabiell acknowledged that since the lawsuit there has been a certain awkwardness with the change in process for larger projects; however, the residential variances do well in the present format. Commissioner Grabiell suggested the possibility of creating a hybrid. The Planning Commission (all Commissioners are members of Zoning Board of Appeals) would hear and act on large project variances and the "residential" variances would continue to be heard by the five member Zoning Board of Appeals.

Commissioner Carpenter said in his opinion it appears that the state statute is very strict, agreeing with Chair Fischer that any recommendation from the Planning Commission on the future of the Zoning Board should be reviewed by the City Attorney. Commissioner Carpenter suggested that staff research how others cities handle variances.

Commissioner Staunton said he is a bit concerned with the City's current process, adding if he is correct in his interpretation of the statute it appears to him that the ordinance could be in violation of the statute.

A discussion ensued with Commissioners considering whether to dissolve the Zoning Board or to reconfigure the Board. Commissioners acknowledged there is a difference in variances. A resident requesting a variance to enlarge their garage vs. a variance to construct a five-story office building is very different.

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Commissioners listed the following as concerns with dissolving the Board and creating the Planning Commission as the Zoning Board of Appeals:

- If the Planning Commission is appointed as the Zoning Board should residential and minor variances be heard differently:
 1. At the beginning of each meeting. Hearing residential and minor variances first would help with the flow of the meeting enabling residents with a residential variance request the opportunity to leave immediately after their issue is heard and not sit through the entire Planning Commission meeting.
 2. Hold two meetings per month. Residential and minor variances would be heard at the first meeting of the month and at the second meeting of the month large project variances would be heard.
 3. Start the residential and minor variance hearing at 5:30 pm and proceed to the regularly scheduled Planning Commission meeting at 7:00. At that time if there are large projects that require variances the hearing would take place.
 4. Staff would need to develop a new agenda style to accommodate the different public hearing requests.

Commissioners acknowledged that dissolving the Zoning Board does create timing challenges. Commissioners said in their opinion the goal should be to create clarity in the hearing process and in the ordinance. It was pointed out that there are a number of overlapping public hearings that could create confusion for the residents.

Planner Teague interjected and informed the Commission that previously he worked for two different cities that did not have a separate Zoning Board of Appeals (the Council was the Zoning Board) and those cities had certain variances that would be “tagged” as consent items and placed on the Council/Commission agenda as consent. Planner Teague pointed out that currently Edina’s Council agendas contain consent items, adding those items are handled with one motion. Planner Teague further clarified that a “consent” item could be pulled from the agenda at any time and discussed more thoroughly.

Commissioner Risser commented that she would like to make sure that residents are aware of the process. Commissioner Staunton agreed.

Planner Teague reported that residents are made aware of all proposals that require a variance(s) through mailed notification informing them of a public hearing. Planner Teague further explained that the majority of planning projects are public hearings that require mailings. Residents can receive a multitude of “notices” (Zoning Board, Planning Commission, City Council) for one project and that can create some confusion.

Commissioner Schroeder pointed out during the zoning ordinance updating process the Commission has indicated it would also consider establishing a PUD classification, adding if that occurs, large project variances would be reduced. Commissioner Carpenter agreed, also adding if during the updating process the Commission focuses on modifying the ordinance to better address some of the more routine variance requests the need for a variance would be reduced.

Commissioner Grabiell acknowledged that while having a separate Zoning Board of Appeals to hear variance requests worked well in the past the change in the review process as the result of the lawsuit has created a more cumbersome confusing process.

Community Comment

Janey Westin, 6136 Brookview Avenue, addressed the Commission and stated that she learned the process by attending numerous meetings, but acknowledged she still isn't clear why some issues are heard by this Board vs. that Board. Ms. Westin suggested that a review chart or graph be added to the ordinance and the City's website indicating the process and steps an application needs to go through. Concluding, Ms. Westin asked that the Commission also consider adding to the public hearing process a community rebuttal period.

Chair Fischer commented that creating a chart may be a good idea, acknowledging that making the review process easier to understand would benefit everyone. Commissioner Grabiell commented that instead of creating a chart or graph to understand the review process that the goal at this time should be to draft a clear and precise zoning ordinance that more clearly spells out the process. Charts and graphs could also be a matter of confusion and wrong interpretation.

Jackie Whitbeck, 6128 Brookview Avenue, commented that her property has suffered as a result of conflict in the Ordinance. Ms. Whitbeck encouraged the Commission to clarify the ordinance not only for the applicant but for the public as well. Continuing, Ms. Whitbeck said she agrees with the suggestion that if the Commission becomes the official Zoning Board that adopting some form of "issue order" makes sense with the smaller "issues" being heard first. Concluding, Ms. Whitbeck asked the Commission to remember that residents believe they are protected by the Planning Commission and the current ordinances and therefore may not attend meetings they are notified of.

Chris Rofidal, chairman to the Heritage Preservation Board stated his only comment is where in the variance process would a proposal be heard that also requires a Certificate of Appropriateness. There was confusion in the past with a driveway width variance. Who hears it first Zoning Board or HPB.

Action

Chair Fischer commented from the discussion so far it appears that the best direction for the City to take would be to dissolve the Zoning Board of Appeals and have the Planning Commission hear all variance requests; however, more needs to be discussed. If the Commission deems it appropriate to be the “zoning board” more needs to be discussed (how to deal with routine items, when is an item heard, how many meetings, etc.) Concluding, Chair Fischer directed Planner Teague to find out how neighboring cities administer variances and bring that information to the work session scheduled on December 9th.

Topic. Transportation, Heritage Preservation Board, Energy and Environment.

Chair Fischer stated at this time the Commission will review the process and the role taken by different commissions in the development process. Chair Fischer clarified that this discussion only pertains to the development review process, not other aspects of the Transportation, HPB or EEC. Chair Fischer said Planner Teague will summarize each Commission.

Transportation Commission

Planner Teague addressed the Commission and informed them at a past joint meeting with the Transportation Commission it was found that there appears to be the perception of a duplication of duties between the Planning Commission and the Transportation Commission. The Transportation Commission was formed in 2003 with their main focus on the bigger picture; the daily operation of a street and transportation system, and to also provide advice to the City Council on the impact of new developments on the City street system. This advisory status would take the pressure off the Planning Commission when they consider development plans and potential impact on City streets. As the process exists today new development proposals are required to appear before the Transportation Commission and after Transportation review and recommendation the project proceeds to the Planning Commission. This scenario creates another step an applicant has to go through. At this time the Commission needs to decide if the process should be continued as is, or should the process be streamlined by removing the Transportation Commission from a step in the development process and have the Planning Commission review all traffic studies as part of their overall review of development projects.

Commissioner Brown questioned if the Transportation Commission should have review authority over development projects. Commissioner Brown suggested that the Commission review the transportation elements of a proposal and if the Commission felt more information was needed the Planning Commission could forward the project to the Transportation Commission for their review.

Continuing, Commissioner Brown explained he served on the Transportation Commission as Planning Commission liaison and stated his understanding at the time was that the Transportation Commission reviewed development proposals to supply feedback on the projects impact on roadways, not on internal flow or other issues.

Commissioner Schroeder stated he is the current Planning Commission liaison to the Transportation Commission and it appears to him if the Transportation Commission is required to deal with each development project, site by site, time is taken away from the larger transportation and roadway issues.

Energy and Environment (EEC)

Planner Teague stated in the past the EEC has expressed the interest in taking a greater role in the development review process. Where would this fit into the development process. Should the ECC continue to focus on the bigger picture such as sustainability issues for the City or should the City Council require EEC review of development projects.

Chair Fischer noted that both the Transportation Board and the EEC don't have review authority.

Heritage Preservation Board (HPB)

Planner Teague noted that the issue was raised by members of the HPB in regard to conflicting standards for driveway width and side yard setbacks. Planner Teague added the HPB has also acknowledged as indicated previously by Chair Rofidal that there has been confusion as to when the Zoning Board of Appeals should review variances on property that also required review by the HPB. Concluding, Planner Teague said it would be a good idea if the Commission were to establish policies regarding when/if projects are reviewed by the HPB.

Discussion on Transportation/EEC and HPB Commissions

Chair Fischer questioned with regard to the EEC does the Commission need the EEC reviewing development projects.

Commissioner Risser, liaison to the EEC told the Commission at this time the EEC has no desire to review individual projects; however, the Chair of the EEC would like to be sent a PC packet to keep abreast of proposals and comment if needed. Commissioner Risser said the concern of the EEC is with individual plans that trigger ordinance amendments (Kellogg/Valley View proposal) that impact neighboring properties. Continuing, Commissioner Risser said the EEC is also concerned with wetland setbacks and would like to weigh in on that issue during the updating of the ordinance.

Chair Fischer directed the Commission to the HPB and said he believes the ordinance should establish language when there is a crossover between commissions/boards. Continuing, Chair Fischer said in his opinion the HPB should hear the issue first and forward their action to the board.

Commissioner Staunton agreed; however if the HPB were to issue a Certificate of Appropriateness (COA) that requires a variance and the Zoning Board hears the request and makes modifications would that need to go back to the HPB.

Commissioner Carpenter said in his opinion the ordinance update could implement different standards for the HPB. Commissioner Carpenter pointed out of the three Commissions discussed the HPB is the only Commission with review authority. Chair Fischer agreed pointing out that the City Attorney would need to weigh in on any language and process change.

Community Comment

Tom Bonneville, Member of the Transportation Commission suggested that when an item is approved at a "higher level" a document needs to be drafted and attached to the item as it is forwarded to a "lower level" Board/Commission. Continuing, Mr. Bonneville said he thinks that Small Area Plan needs to be included into a large area plan. With regard to the Transportation Commission Mr. Bonneville said he thinks the Transportation Commission should also review things that may not be considered a "transportation" issue to the Commission but is to the Transportation Commission.

Action

Commissioner Fischer said the opinion of the Planning Commission on the Transportation, EEC and HPB is:

- The Planning Commission reviews traffic studies when it reviews a development proposal. If the Commission feels more information is needed they would forward the development proposal to the Transportation Commission for their comments. This would speed up the review process by eliminating one step and duplicating efforts.
- Forward to the ECC Planning Commission packets.
- Draft ordinance language that establishes policies regarding when/if projects should be reviewed by the HPB. Also modify language on driveway width requirements.

Topic. Public Hearing during the Development Review Process.

Introduction

Planner Teague said the topic of public hearings came up at the last work session when public input was taken. At that meeting concern was expressed that both the Planning Commission and the City Council conduct public hearings. This created some confusion for residents on which meeting is the one they need to attend if they have time constraints. In 2007 the City Council directed that the Commission conduct the public hearings and the zoning ordinance was amended to accommodate that order. The reason the Council relinquished this aspect of the development review process was to help tighten up their meetings. However, since this change the City Council has continued to conduct public hearings, which is a duplication that includes additional Sun Current published notices and multiple mailings. Planner Teague suggested the following:

1. Continue as is.
2. Have the City Council conduct the public hearing. The Commission would continue as before the ordinance change.

Discussion

A discussion ensued with the Commission expressing the following:

- There should only be one body conducting the public hearing, and there should only be one public hearing.
- Have the Planning Commission conduct all public hearings on planning matters; however, if the Planning Commission thought that an additional public hearing was warranted for a specific proposal they would recommend to the Council that they also conduct a public hearing.
- Keep as is. Members of the Commission expressed reluctance in eliminating them from conducting the public hearing. If the City Council indicates they also want to conduct public hearings on planning issues both the Commission and Council should conduct them.
- Public hearings should be based on facts.

The discussion continued with the Commission noting that only the City Council can hold a public hearing on ordinance changes; however expressed their opinion that they should be the body that holds the public hearing on planning proposals. Having one body conduct the public hearings lessens the confusion for the developer and the public. Chair Fischer clarified that in all instances regardless of who conducts the public hearing public testimony is taken at all meetings. Commissioner Grabiell said if this discussion is on what the Planning Commission as a body would like to see which would be that the Planning Commission conduct the public hearing and recommend to the City Council.

The discussion turned to an issue raised by a resident on the option of adding a rebuttal period for residents. Commissioner Schroeder said he is uncomfortable

with having that as an option. He said in his opinion any decision made by the Planning Commission should be based on the facts presented, pointing out if a rebuttal period is added the discussion could bounce back and forth bringing in unchecked comments/issues. Commissioner Staunton asked if a resident has an additional question how that question would be answered after the public hearing is closed. Chair Fischer said there have been a number of hotly contested issues within the community and it has been difficult to achieve a fair and balanced summation if "new" facts/issues are brought up. Continuing, Chair Fischer acknowledged that it can be frustrating for residents when the Commission continues to ask questions of the developer. Commissioner Scherer commented that in her opinion the chair does a good job summarizing for the developer questions and concerns expressed by the residents.

III. INTERGOVERNMENTAL BUSINESS:

Chair Fischer acknowledged back of packet materials.

IV. ADJOURNMENT:

Commissioner Carpenter moved adjournment at 9:45 PM. Commissioner Risser seconded the motion. All voted aye; motion carried.

Submitted by