

City of Medina Planning Commission Minutes – May 9, 2006

PRESENT: Marilyn Fortin, Sharon Johnson, Steve Jacobson, Tom Crosby, Mary Verbick, Jeff Pederson and Doug Dickerson.

Also present: Council Representative Elizabeth Weir, City Planner Rose Lorsung, City Planning Consultant Sarah Schield, and City Office Assistant Dusty Finke.

1. **Call to Order:** Chair Tom Crosby called the meeting to order at 7:00PM.

2. **Public Comments:** No public comments.

3. **Update from City Council Proceedings –**
Council Representative Weir provided a City Council report.

4. **Planner's Report**

Lorsung introduced Dusty Finke, City Office Assistant. He will be taking minutes tonight as Janet Olson is ill.

Lorsung offered a correction that the pool ordinance will not come to the Planning Commission. If it is approved by the Council, it will take effect. Lorsung reiterated the Council's intent to allow for either a 4-foot fence or an automatic pool cover.

Lorsung gave an overview of items upcoming to the Council: If Adam's Pest Control receives good review by the Commission, it will continue to the next City Council Meeting and then on for resolution on June 6. Also on June 6, the Council will be discussing an RFP for a Wetlands Functions and Values Assessment.

Lorsung also gave a preview of Items coming up for the next Planning Commission: Conditional Use Permit for an Indoor riding arena for the Evanson Property on the east side of Willow. Also, the Willow Hill Preserve, a Rural Residential subdivision forming two additional lots will be coming before the Commission. This was a withdrawn application because of the moratorium. Also, there may be a few ordinances on the docket for next month as well.

Crosby stated that he liked the list of ordinances, but requested that the Commission have a discussion on an ideal time schedule. He suggested a discussion after the Sign Ordinance.

5. **Approval of Minutes from 4/11/2006 Planning Commission:**

Fortin moved, Jacobson seconded to approve the minutes from the April 11, 2006 Planning Commission as corrected. MOTION PASSES UNANIMOUSLY

6. Adam's Pest Control: Preliminary Plat, Site Plan, Conditional Use Permit, Public Hearing:

Schild began the report on the Adam's Pest Control application, and requested that Commissioners jump in with questions. This application had come in early in the year, but was held up awaiting a wetland delineation, which couldn't be done until the middle of April. At this time, the application is approaching the "60 day" requirements and it must be turned around quickly. In order to meet the deadlines, if the Commission gives support, this application will move to the Council at their very next meeting (next week) and on for resolution on the June 6th.

PROJECT ADDRESS: Adam's Pest Control – 922 Hwy 55. 872 Hwy 55 is also owned by Adam's Pest Control.

Schild reported that the applicant is in for three applications; Preliminary Plat, Site Plan, and Conditional Use Permit. Public notice was sent as required. Only one resident had contacted staff, and this was regarding some general transportation issues.

Schild made reference to City Ordinances, and stated that these regulations have to be met, and if they are, the city should be accepting the project.

Schild reported that the application involves three lots being combined as part of the plat.

Schild briefly reviewed the preliminary plat, showing the plat boundaries, existing structures (to be demolished for redevelopment) with two access points to Hwy 55.

Schild stated that staff uses six criteria to review: The first item that is reviewed is that a proposed subdivision "Should not be in conflict with the City's proposed plans." At the time of staff review, staff believed that the plan met these criteria. Since the staff report has been distributed, the applicant has stated that they were not granting the City the easement in the northeast corner. Schild stated that staff feels that this issue is very important and stated that this issue would be discussed later. Schild stated that the proposal does meet the other criteria.

Schild next reviewed the site plan. The lot would be 1.4 acres, but a majority of the property (especially on the west) is a wetland. Schild stated that all setbacks are being met except wetlands. Schild stated that utilities are available, and added that the city engineer suggests taking the water main to the north line of the property. Also, another fire hydrant needs to be added. Schild stated that the staff recommends that the changes suggested in the engineer's report be included as a condition for approval. Schild added that the applicant has expressed willingness to extend the water main to the north, where an eventual backage road could be located.

Schild discussed the issue of the wetland. The site plan shows the edge of the delineated wetland. The Urban Commercial zoning district requires a 10 foot setback for structures or driveways. Schild showed where the driveway encroaches into this 10-foot area. The applicant has applied for a wetland exception to fill in the wetland and the city engineer has accepted this plan. Schild stated that staff would rather support a variance than fill in wetlands.

Crosby asked if there was a standard for filling.

Schild replied that the limit is 400 square feet without mitigation.

Schild stated that staff recommends a condition that the applicant request a variance for the wetland setback. Although filling could reduce the amount of variance needed, it seems likely one would still be necessary.

Crosby inquired why a variance condition was being recommended if the wetland could be filled.

Lorsung responded that even with the 400 square foot of fill, it would be likely that a variance would be necessary, but that it would be smaller.

Schild added that staff has not even looked at this new plan with the applicant. The new plan might touch on it, but we do not know as of yet.

Crosby asked the Adams Pest Control representatives if the 400 feet of fill would solve the problem without the variance.

Leyse from Adams stated that it should, but that they would be willing to do whichever strategy the city requested (fill or variance).

Black stated that they would be willing to apply for a variance so that less of the wetland is impacted.

Schild added that the city's wetland engineer also would rather see a variance than filling the wetland.

Crosby inquired what the planning commission could do on this issue.

Schild replied that the Commission could list the variance as a condition for approval, as staff has suggested.

Crosby stated that he visited the site and thought that the existing building was in the wetlands already.

Lorsung agreed and pointed out that this was built before wetland setbacks were reviewed.

Schild stated that the Elm Creek Watershed District will be discussing this application on May 10.

Staff will make the minutes available for the Council if the project moves forward.

Schild clarified a report from the engineer regarding the storm water pond. The engineer stated that even if the driveway encroaches on the pond, they feel comfortable that the plan meets requirements and is acceptable. This item would not need to be included as a condition for approval.

Schild discussed the issue of transportation and a backage road. The city is looking at backage roads to cut down access to Hwy 55. While the transportation plan does not show the roadway, the Land Use Guide Plan does show a minor collector behind the property and its neighbors. Staff spoke with the applicant about a cul-de-sac on the north side of the property and receiving right-of-way along with this application. As the neighboring owners come in for other land use applications in the future, requests or conditions for right-of-way would be made as well. Staff feels strongly that this right-of-way be obtained at this time. If plans would change, portions of the area could always be turned back over to the owner. Schild showed the 10 foot radius cul-de-sac requested by the City on the site plan.

Verbick expressed concern that usually an application would be tabled if there was confusion and if plans were submitted the same day as a meeting; but that this application is not being tabled. Schield responded that the timeline is at the end of the “60 day” rule. This forces the city to act, unless an extension is granted by the applicant.

Schild stated that landscaping is another issue. The plan does not meet minimum requirements (plan shows three gallon shrubs, minimum required is 5). The number seems ok, but volume must increase. Landscaping must also be moved outside of wetland setback. Staff is suggesting that this landscaping plan be updated as a condition of approval.

Schild discussed the lighting plan. The staff report stated that the lighting exceeded the maximum foot candles requirements. Upon further review (after the report was distributed) the amount of light is within regulations. Schild added that the applicant would need to report on the height and the type of fixtures to be used.

Schild stated that the signage does meet ordinance requirements. The plan suggests that sign setbacks be specifically identified (although scaling the plan does show that the 25 foot sign setback is met. Another issue is that the elevations plan shows a wall sign that will have to be included into the maximum sign allowance (150 sq. feet signage). Schild pointed out, however, that the sign ordinance is under discussion and the application will need to meet the ordinance that exists at the time.

Schild discussed the Conditional Use application. Staff found that the fifteen CUP requirements are being met. In addition there are two items specific to pest control. First, no complaints were logged from surrounding properties. Second, the plan does show that chemical handling requirements are met.

Schild stated that staff recommends approval, with a number of conditions. Staff included granting of the right-of-way as a condition of approval. The Preliminary Plat does combine three non-conforming lots into one lot of 1.4 acres.

Schild stated that MnDOT and the applicant have negotiated to keep two access points open onto Hwy 55. Staff will receive a letter yet from MnDOT formalizing this agreement and will be available for the City Council.

Schild stated that in addition to the right-of-way condition, the wetlands setbacks issue must be addressed (whether through a variance or fill).

Crosby opened up the floor to representatives from Adams Pest Control.

Todd Leyse gave an overview of the company and the project. Adams is a local company, co-founded in 1971 out of the Leyse basement in Golden Valley. Over time, it has grown and moved to Medina in 1983. Leyse stated that he believes Adams put together a really good looking property for Highway 55. Although a challenging property (floodplain, wetlands, highway access), Leyse thanked city staff for the help.

T. Leyse discussed the issue of the backage road. A right-of-way was not shown in early plans because it what was being requested changed many times over the last few months. We've updated it on the more recent plan and it is shown as the area "requested by the city," not an area given. We are of the understanding that since the backage road is not in your plan, the city cannot force us to grant it. At this time, it is not given and Adams feels that the land should be purchased as would occur at surrounding properties. Leyse added that the site was designed with this rear entrance in mind, so it will not be an issue when the city wishes to purchase the land.

T. Leyse stated that Adams is willing to extend the water main to north side of property as requested by the city for future road access.

T. Leyse stated that there was some concerned about applying for the wetlands variance because of the "Hardship" criteria. A divot in the driveway may not meet this standard.

T. Leyse concluded that Adams is excited about this opportunity, waiting for the wetland delineation, but have been in a holding pattern. Now we are looking forward to moving ahead.

Jacobson asked if the amount of easement requested by the city would lower the property below 1 acre. Schield responded that it would not. Although the backage road is only listed in plans as a conceptual manner, there aren't specific plans on the road. However, staff suggests that since the application is before us, the opportunity exists to ask for the right-of-way.

Verbick asked what the next step would be if the applicant chose not to grant the right-of-way. Schield stated that the next step is to decide if it should be a condition for approval of this project. If it would not be included as a condition, it may need to be purchased by the city at a later time. MnDOT has urged that the backage road be planned for.

Fortin stated that when she walked the property, the location of this road seemed to be all water. Fortin asked how this roadway would interact with the stormwater pond.

Schild stated that the proposal is unique to the city, as a kind of an underground facility. City Engineer Tom Kellogg has completed a review, and the stormwater system will still meet regulations and standards.

T. Leyse explained the stormwater system. Water off the building is filtered through an in-ground system of chambers. It first goes into one chamber where is filtered out and then into another chamber through sand. From there it goes to the pond for holding. If the pond is made smaller, this should not impact the filtering because it happens elsewhere; the engineer report states that the pond could be made smaller for the backage road in the future.

Crosby asked if these two properties are Adams's only locations.

T. Leyse replied that they were, and that the plan is to move our offices into the new facility, and rent out most of the other facility.

T. Leyse explained that the western driveway at 872 Hwy 55 would be closed as per MnDOT.

Johnson inquired why both accesses at 922 Hwy 55 would be left open.

T. Leyse replied that this would be for deliveries and also noted that the fire marshal requested both access points be left. Adams is not opposed to the backage road.

Dickerson asked where the fire hydrant was going to go.

T. Leyse replied that this is not set in stone yet. They will be meeting with Loren Kohnen to decide. One location may be on the west side along the retaining wall. Leyse suggested that some time in the next week, he, Tom Kellogg, and Sarah Schield will make those decisions. Currently the plan is to place the hydrant next to the building on the west, but this may change.

Dickerson asked Loren Kohnen if emergency vehicles could get into the north side of the property. Loren stressed that this is why two driveways are very important; to allow the vehicle to turn around and back to the hydrant.

Leyse stated that one hydrant exists in the ditch, one will be added to the sprinkler room and one will be added to the west (with the water line to the north).

Public Hearing Opened at 8:07 p.m.

Peggy Rasmussen – 842 Highway 55 – Stated that the plan looks terrific. Although it is a difficult property, this looks good. Rasmussen stated that they have enjoyed having them as neighbors and look forward to continuing. Rasmussen stated that the only concern is the driveway, because Countryside just realized that they don't have an easement for the driveway, the business's only access point.

Crosby stated that an agreement between two property owners for a driveway easement is not within the city's purview.

Crosby inquired what the group would do as a commission. Two main items seem to be: 1) Wetlands and 2) Backage Road.

Crosby asked staff if they wished for the Commission to go over all of items on the staff report. Schield replied that this is what is usually done. Schield also pointed out that item 18 could be removed.

Crosby inquired what a staff recommendation would be on the project.

Schield replied that the staff recommends that the applicant provide more information so that the staff could review if wetlands setbacks are met, depending on any proposed fill.

Crosby inquired how the condition could be added.

Schield stated that number 2 on the staff report goes towards this. It states that the variance application must be submitted. This would make approval of the entire project contingent on approval of the variance.

Crosby asked if a variance for the wetland setback would have to come back to the Planning Commission. If so, would this hold up approval?

Schield replied that the preliminary plat could be approved with a condition that the variance be applied for. The application wouldn't be held up, and the applicant could apply for the variance in connection with the Final Plat. Schield stated that language could be added so that the site plan

would be approved contingent on the variance. Ultimately, if it is discovered that a variance would not be necessary because of filling, they would not need to apply for the variance and we would be ready to head forward.

Crosby stated that it was cloudy to him whether the city can require the right-of-way as condition for approval.

Schild stated that the city attorney has reviewed this application. It is important that the owner is treated the same as other owners. Schild stated that in site plans and CUPs, as well as plats, the city often sets conditions for approval. City attorney has said that because the backage road is a concept road in the city's plan, and because it is listed on Hennepin County's plans, this right-of-way can be asked for as a condition for approval.

Crosby stated that there was a New Hampshire case says that if the city overreaches, it is seen as a taking. The law is that when applications come in, the city can request things, but cannot overreach.

Schild stated that if the Commission did not want to include it as a condition, it will be shown in the minutes. Whichever decision is made, the City Council would discuss it in the company of the city attorney.

Schild apologized that this right-of-way issue came out of nowhere and stated that it was only found a few days ago that there had been a miscommunication.

Verbick stated that although this seems like a perfectly fine use of the property, it feels uncomfortable to be rushing ahead when the Commission would usually table an application that was in this shape.

Dickerson asked if the requirement of taking the right-of-way impact the size of the building?

Schild responded that the only thing it may impact is the layout of the building. What is now the front may become the back. The applicant has taken this into consideration.

Dickerson inquired if the land underneath the area requested for right-of-way has any development value now. It seems that since the city is the only entity that can do anything with it, a right-of-way makes sense.

Schild replied that the applicant is taking 1.4 acres and developing all the area that can be.

Dickerson asked if the right-of-way would actually add value to the property if developed.

Verbick asked what would happen if the applicant didn't dedicate a right-of-way and MnDOT decides to close access to Hwy 55.

Lorsung replied that MnDOT would have to give "reasonable access" to the property, most likely a right-in, right-out as has been done at other points along Hwy 55.

Schild reiterated that MnDOT and the applicant have negotiated that both accesses are needed in order to allow access for trucks and fire trucks.

Verbick stated that it would be poor planning on the city's part to not secure the right-of-way. However, she can also see the value of the land from the applicant's perspective.

Johnson asked how far west the backage road is planned in the transportation plan. Schield replied that the road would end at the west of this property line. Lorsung added that farther west is not really developable land.

Lorsung stated that it is unfortunate that this road was not included in the map of the transportation plan in last Comprehensive Plan because the project is in the work. In fact, it is the higher priority and large amounts of funding are being earmarked for it.

Crosby stated that because the area is a wetland, he would support making the right-of-way a requirement, if a clear legal opinion can be given that the city is within its rights to do so. From a planning perspective, the city obviously should require it. It would then come down to the city's lawyer and the applicant's lawyer to duke it out that it is within the city's right to do so. If we have the legal right to ask for it, let's ask for it.

Pederson asked if there could be a trade-off, the right-of-way in exchange for the variance. Crosby stated that this would be cagey and there is a lot of law in this area.

Crosby suggested that the commission go through the list one by one. 1 and 2 are linked regarding the wetland issue.

1. Received no suggestions or questions, and can be left as is.
2. Was suggested by Sarah, should read: "The approval of this site plan application is contingent on the wetland setback variance."

Verbick inquired about the fact that the applicant was not comfortable with a variance request. T. Leyse stated that the term hardship is uncertain and inquired what would this mean?

Lorsung stated that there are six criteria to show hardships, and that she would not want to give an impression the Council would accept it. There is no precedent as there has not been a variance for wetlands setback.

Schield reiterated that staff would prefer to give a variance than fill in a wetland. However, the hardship factor must be qualified.

Lorsung stated that usually an applicant will shrink or move the buildings or driveway once a delineation is completed.

Crosby stated that he understood that if the applicant was able to fill 400 square feet of the wetland, this issue would go away.

Schield stated that even with 400 feet filled; it most likely will not take away the need for a variance, but would reduce the amount needed. The decision is really to ask for a variance or to adjust the plans.

Weir stated that a variance is a hard standard to meet.

T. Leyse stated that when the engineer came, there were dandelions growing in this area. He had been told that dandelions can't grow in wetlands. This is why it is frustrating, because this issue came out of nowhere. While it would be possible to crook our driveway to go around the wetland, Leyse stated that they don't want to do this.

T. Leyse stated that Loren had told him that they installed sewer a few years back and had collapsed and had to be dug out. This may be why there is a low area; there probably wasn't even a wetland here before that time.

Dickerson asked if the applicant could get another engineer to look at the dandelions to see if they could determine if it was a wetland.

Schild replied that this could be an option. It would be better if the applicant would agree an extension on the timetable so there could be more review. Many of these issues may work themselves out.

Dickerson asked that if the issue would be taken care of if this area was not considered a wetland. Schild replied that if this was the case, the setback would not be needed.

Crosby inquired if there were other reasons to table this application. If we assume that the right-of-way issue is out of our purview.

Schild replied that the variance is probably the remaining item.

Crosby suggests adding a preamble to number 2 stating: "To the extent that the driveway does not meet the wetland setback requirements, the applicant must submit an variance application." This could allow this issue regarding the wetlands to be worked out among the engineers.

Lorsung stated that the Wetland Conservation Ordinance sets up something called a technical evaluation panel (TEP) to take care of disputes. This group then would make a final recommendation.

Crosby stated that he would hate to hold up this application on a matter where the answers are outside of this body, but are more technical and to be decided by engineers.

Weir stated that it would, therefore, be wise for the applicant to grant an extension.

Lorsung stated that if the applicant is not comfortable with the city's engineers delineation, then it would be in dispute and would have to go to the TEP Panel. Also, modifications could be made to the site plan in order take care of the issue.

Verbick asked if it would be a reasonable option to recommend that this moves forward to Council with these elements under consideration but also with a request for an extension. In this way, the right-of-way and the wetlands issues could be resolved.

Schild replied that usually, if there are things that are not worked out by the deadline, the Council would approve them as conditions. If the applicant would not be willing to meet the conditions, it would not be approved.

Verbick stated that she would not be comfortable recommending approval without asking for an extension, the City Council would be in a similar situation where they are hurried.

Continuing down the list:

3. "If the city has the legal ability to require a right-of-way dedication, the plan must be revised to clearly identify the city right-of-way in the northeast corner of the site."
4. No changes.
5. Leyse stated that there are actually 20 some trees, they did not know the plans needed to include this. The plans will be updated.
6. No changes suggested by Commission. This is shown in the newest plan.
7. No changes suggested by Commission.
8. No changes suggested by Commission.
9. No changes suggested by Commission.
10. No changes suggested by Commission. Schild stated that this item can be removed.
11. Leyse stated that the lights will not be this tall. Schild requested that future plans show the height as well as fixture details.
12. No changes suggested by Commission.
13. No changes suggested by Commission.
14. No changes suggested by Commission. Crosby stated that this is shown on the new plans.
15. Crosby suggested that this condition should reference the sign ordinance rather than a specific time, in case of ordinance changes in the future. Schild replied that the signage in the plan is subject to the ordinance at time approval, not as changed in the future. Crosby asked Weir to suggest to the Council that they reference the ordinance.
16. No changes suggested by Commission.
17. No changes suggested by Commission.
18. Schild stated that this condition can be removed following clarification from the city engineer.
19. No changes suggested by Commission.
20. No changes suggested by Commission.
21. No changes suggested by Commission.
22. Staff has stated that these are met. No changes suggested by Commission.
23. No changes suggested by Commission.
24. Schild stated that the date is not current because the letter has not been received. She recommended that the condition be updated to say "The applicant must comply with MnDOT requirements."
25. Schild clarified that the MnDOT requirement supersedes the engineer letter because the engineer did not know at the time of drafting the letter that MnDOT was going to allow two access points. No changes suggested by Commission.

Fortin suggested updating the dates on attachments to show updated letters and plans.

Dickerson stated that it was strange that the city would be willing to put a road in the wetland regardless of a wetland setback. Dickerson also inquired on the process if the applicant's engineer and the city's engineer disagree.

Schild replied that as Rose had stated earlier, a TEP panel is formed, where engineers from both sides, the watershed, BWSR (Board of Water and Soil) all come together (8-10 at the Ryan project) together to decide on the best delineation.

Dickerson asked if there is an appeal after the TEP?

Lorsung replied that she did not believe so.

Crosby stated that the applicant can avoid a TEP by adjusting the plans.

Verbick asked if the Commission was doing anyone any favors (the city or the applicant) in pushing this forward tonight. Not all information is current and there are a lot of things that need to be submitted.

Lorsung stated that the watershed district decides what kind of buffers or setbacks may be required.

Verbick stated that this information would not be available until tomorrow and that she feels uncomfortable approving anything without the information.

Crosby stated that if he were the applicant, he would do anything possible to get the engineers to knock heads to come to an agreement.

Weir stated that the Council likes having Adams Pest Control as a business in the city. Time is running out of time on the application, and it would be very sad to deny an application because of glitches. Weir strongly urged the applicant to grant an extension in order to work out the issues for everyone's sake.

T. Leyse asked if the Planning Commission and/or City Council would prefer another extension. He stated that Adams is comfortable giving a two-week extension so that it may be reviewed.

Lorsung suggested that the applicant grants a two week extension so that all of these issues can be fully reviewed before the June 6 City Council meeting. The issues are not insurmountable; more time is just needed to complete the review.

Verbick moves, Johnson seconds that the Planning Commission recommends that this application move forward to the City Council with the recommendation as discussed and presented tonight. Motion carries unanimously.

Motion to Recess: 9:03 p.m.

Meeting called Back to Order: 9:16 p.m. All members present.

Planning Commissioners directed staff to investigate outside storage at the parcel to the east of the Adam's Pest Control site.

7. Tree Ordinance, Public Hearing

Planning & Zoning Administrator Lorsung pointed out that the draft ordinance has changed since packets were sent out.

*****(Note for minute clarity)**** The two versions of the ordinance are referred to in the Minutes as either “Friday’s version” (draft dated May 5, 2006 and distributed in the Planning Commission Packet) or “today’s version” (draft dated May 9, 2006 and distributed to Commissioners before the meeting). *****

Lorsung stated that this ordinance was expected to be very easy to put together, but it turns out that it was quite difficult. Medina is a very unique community, not like neighboring cities, most of which have tree ordinances. Medina is still very rural, and has many lots with a lot of tree cover. It seems that there is agreement that it is time to have such an ordinance. Staff is seeing this Tree Ordinance as an interim solution to a problem that has arisen, ultimately to be reworked in the Open Space Planning efforts as discussions surround natural resources.

Lorsung suggested that Friday’s version be taken out. Lorsung explained that she and Council Member Weir reworked the ordinance draft for two main reasons. First, Friday’s version was difficult to interpret. It is important that the ordinance is understandable and usable for every type of permit or land use application. It is a city-wide ordinance, and wasn’t easy to interpret. Lorsung stated that Today’s version is to the point where she would be very comfortable administering it.

Lorsung continued that the second reason was to make sure that the ordinance does not create a major hardship for property owners. Land owners should be able to realize the value of their trees and be able to disturb trees for a reasonable use of their property. It should be understood that a certain amount of disturbance is acceptable, but anything over that point should be mitigated. The ordinance was changed to be applicable city-wide instead of concentrating on districts.

Lorsung stated that the real meat of the ordinance is the table showing allowed disturbance. Lorsung stated that she and Weir believed that this was the most equitable table we could put in the ordinance. The table divides into different types of lots, and then the type of tree coverage present (Old-Growth Forest remnants vs. non-Old Growth). The ordinance recognizes that some trees are a higher priority to preserve, maybe Maple Basswood forest, or Big Woods Oaks.

Lorsung explained that GIS data from the Natural Resource inventory can tell them the exact type of trees on the property. Once this is decided, there is a flat percentage of each type of trees (Old Growth vs. non-Old Growth) that could be disturbed depending on the size of the acreage.

Lorsung also pointed out inducements to set aside conservation easements, or take part in low impact development on the property to save trees. Mitigation would be reduced if they followed Best Management Practices. There are carrots and sticks like this throughout the ordinance. Again, the goal is to allow property owners to use their property by disturbing a certain amount and anything above and beyond would need to be mitigated.

Lorsung pointed out that the ordinance uses a mitigation ratio of 1:1 for non-Old Growth and 2:1 for Old Growth Forest remnants because the city sees them as higher value.

Jacobson pointed out that the definition of Old Growth is blank in the draft ordinance.

Weir read off the definition that was being worked with.

Lorsung stated that the definition would be signified on the Natural Resources Inventory and would be added to the draft that goes to council.

Crosby asked what "once cut" in the Old-Growth definition meant.

Weir stated that there are areas of dense, old trees that aren't the original trees, but had been cleared over a century ago and replanted. Including "once cut" in the definition attempts to say that even if the trees aren't original, they are still more valuable.

Crosby expressed concern that including "once cut" opens up questions and arguments over whether trees were cut.

Verbick added that many areas that were settled were cut, but never used. They re-grew and weren't actually part of the Old Woods. Even though they were cut, it was 100 years ago, and it now functions as an Old Woods Forest and it should be protected.

Lorsung stated that the legal department was looking at the restitution option in the ordinance.

Restitution would be an option if the owner does not want to mitigate on the property or work with the city for mitigation in a park or easement.

Crosby stated that he was uncomfortable with allowing an owner "to buy their way out of it" through restitution. It should be the option of the Council, not the owner. He stated that he would remove restitution as an option.

Lorsung stated that over-planting is also a worry that this clause was meant to address.

Crosby suggested a more specific clause that would give the Council some flexibility

Jacobson suggested that the Open Space Committee will find areas that the city would like to see replanted, and the mitigation could appear in those areas if not on the property itself.

Lorsung agreed and further suggested that the Open Space Task Force will probably be revising this ordinance as part of its work.

Verbick thanked Rose and Liz for the hard work on the ordinance draft.

Weir especially requested the Commission to look at the chart with allowed percentages to judge if they were reasonable.

Jacobson stated that he applauded the Friday version of the ordinance. For a city as unique as Medina, it is important and about time to have this ordinance with some teeth. But it seems that the teeth were knocked out of today's version. Jacobson asked if the chart in today's version used other cities as a guide.

Lorsung stated that today's version really did not change much over Friday's version.

Jacobson stated that he believed it is a lot more lenient and allowed for a lot more.

Crosby agreed, pointed out that the allowable Old Growth disturbance went from .25 to .75.

Lorsung explained the transition within the four drafts and that today's version was a compromise that was seen as the most reasonable.

Weir pointed out that measuring acres of trees was fairly difficult. Minnetrista and Plymouth, both said that they counted the total amount of significant trees and allow cutting of a percentage.

Jacobson asked what Plymouth allows, since it seems everyone just comes in with bulldozers and clear-cut everything.

Lorsung replied that they are allowed 30%.

Lorsung stated that Friday's version measures in acres and today's version measures in percentages of trees. Staff was concerned how to administer acres, knowing that not many properties had large acreage of trees and most have scattered significant trees.

Jacobson stated that Friday's version seems to address this issue well with the chart in clause f. Jacobson believed that it makes sense.

Lorsung stated that staff was told that the Friday version would not be likely to pass Council.

Weir stated that one Council Member said that it would be ridiculous to count individual trees.

Jacobson said that it does not seem to be unreasonable to count trees or count acres of trees. He stated that Medina is not like Plymouth and wants to preserve our areas of trees. Jacobson continued that he would like to see something strict, see if it's workable, and see it challenged if does present a hardship. The Friday version would make a land owner try to fit a home within the landscape, instead of bulldozing the land to fit the architect's plan because it looks good on paper.

Lorsung stated that a few years back, the city attempted to pass a tree ordinance, and it was met with large amounts of opposition, and did not pass because it was too strict. She added that this is why today's draft was crafted as it was.

Jacobson stated that the city is in a dangerous position now. The moratorium lapsed without a tree ordinance. He stated that he was fearful that something loose would be passed in a rush, but was cheering out loud when he saw Friday's version. He thought it was wonderful and would to see the Commission pass an ordinance with some teeth; that serves a purpose. Jacobson urged that the Commission pass it on to the Council and see what they do with it. If we don't have a strong ordinance, you'll never be able to get back what is lost.

Crosby expressed concern about passing something without having the opportunity to review it fully. He asked about the timeline.

Weir stated that there are a number of things coming forward to the city that lead her to wish that some version of the Tree Ordinance continues forward today. She added that she may be wrong about the "passability" of Friday's version, but reiterated that she'd like to see something passed.

Verbick asked what would happen if Friday's version, the tighter version, goes forward and the Council denies it?

Weir answered that it would come back to the Commission for more work.

Fortin stated that she reviewed Friday's version, and thought it looked great, but was concerned that she didn't get a chance to compare with today's version.

Crosby pointed out a few technical points. Looking at Friday's version, the two definitions of "Replacement Trees" should be consolidated.

Lorsung replied that this had been done in the version distributed tonight.

Crosby also suggested that the table should be in the exemptions, not in applicability section.

Crosby pointed out subdivision 6, where clauses a and b are inconsistent with the table. He suggested the table replace them. Crosby also suggested the removal of drafter's notes from the definition of Lost Trees in the second line of page 4.

Crosby asked about the phrase "Restores vital terrestrial ecological."

Jacobson stated that this refers to being below the canopy.

Crosby suggested sub-canopy, or something like that.

Dickerson questioned the requirement of at least 2 caliper inch trees, and the four foot height requirement. He thought that younger trees would be more likely to survive, consistent with the type of trees Medina sells at Clean-Up Day.

Weir stated that those trees are bare root trees, which don't have a high survival rate. In today's version, we specified that bare root trees were not allowed because of their low survivability.

Jacobson pointed also to the clause stating that trees must be alive following two years.

Lorsung added that today's version also specifies that the correct type of trees are planted in the correct soil.

Crosby stated that he was little muddled to how the Commission should continue forward. He said that he would hate to send "Friday's version" to the Council if Liz and Rose believed it was not complete. He asked why today's version mentions specific types of trees and Friday's doesn't.

Lorsung replied that Friday's version refers to the DNR list of trees and today's version includes the list itself. She continued that she thought it should be included so everyone is clear on what type of trees are being talked about.

Weir stated that if people were happy with Friday's list and if Rose is comfortable interpreting it, that list could be put into today's version.

Lorsung stated that staff is actually more comfortable with today's version. However, if the Commission likes the way that trees are measured and the number of trees from the table in Friday's version, that table could be inserted into today's version. She stated that this would be a better ordinance. The language in today's version is much better, but if the Commission likes the chart from Friday's version, it can be placed within today's version.

Jacobson stated that he would like to see that happen if it goes forward to the Council.

Public Hearing Opens: 9:50 p.m.

Joan Revels (525 Hackamore Road) – Stated that she is one of the owners of the Gorman Farm. They were appalled by what they saw when they drove by a neighboring property. She stated that her father allowed a 33 foot easement for a driveway back in the 70s, but it was never used. A new

owner (Cavanaugh) has now begun clearing a huge swath of large, beautiful trees out of this easement. She stated that they came tonight to see what the City does about something like that.

Lorsung stated that staff conducted a site visit today. Tom Gorman, another resident of the area also contacted staff about the work. The property in question is adjacent to Gorman Farms north of the Rolling Hills Club in the Northwest portion of the city, west of Wild Meadows. Staff observed that old, large, maple basswoods trees have been taken down from CR116 to the Cavanaugh site. Additionally, many of the trees on the site, perhaps four or five acres worth, have been clear-cut.

Lorsung stated that the work is in violation of a number of ordinances. Although there is no tree ordinance yet, there is a large amount of grading and erosion control issues that have occurred without a permit. The work is in violation of three ordinances and staff conducted a Stop-Work Order on the property and is investigating.

Revels showed Commissioners photos of the damage.

Lorsung added that staff has additional photos as well, provided by another neighbor. The lot is vacant and has never been built on. The easement was granted because the site is landlocked and did not have access.

Crosby asked what the city requires now for a right-of-way.

Lorsung replied that 33 feet is a half of a right-of-way now. Staff is looking at a number of issues, including whether wetlands on the site have been encroached upon, which would be an additional violation. Staff is also unaware if they are performing grading in violation of ordinance because there was never a permit application. Staff is investigating this as well.

Crosby asked if there was suspicion that this cutting was done in anticipation of a tree ordinance passing.

Lorsung replied that she did not feel comfortable saying yes or no, but had seen that activity in the past.

Weir stated that this is why the tree ordinance really needs to move forward.

Jacobson agreed, and reiterated that he was very sorry that the moratorium was allowed to lapse without adding a tree ordinance. He added that he mentioned it all along.

Crosby stated that Friday's version would technically allow this kind of work; this type of clearing could be done and then a person could wait a year and a day and develop.

Lorsung replied that this had been changed and is one of the reasons why staff is more comfortable with today's version.

Lorsung stated that staff has not yet calculated how many trees have been cut since we only found out about the work today. However, staff will be able to use existing Natural Resource Inventory and GIS data to determine how much clearing occurred and evaluate that based on what version of the ordinance would be passed. Nonetheless, it is clearly well over anything suggested in the drafts.

Crosby asked about the standard in today's version.

Lorsung stated that this site is an Old Woods remnant, with Maple Basswood forests. The site is over 10 acres, so the ordinance would allow 10% of trees to be cut. Instead they've cut upwards of 90% of the site.

Weir stated that there is mention within today's version that applies to preemptive cutting less than a year before the ordinance takes affect.

Lorsung added that although the restitution portion has been suggested to be taken out, Liz is speaking about Subdivision 3, d.

Fortin asked how long the city has had the Natural Resource Inventory.

Lorsung replied that it was put together in 2000, and is the basis of the Open Space Planning. It was conducted using a grant from Hennepin County.

Jacobson asked if there was legal action that could be taken against the land owner.

Lorsung replied that although no tree ordinance exists, they can be held liable for other unacceptable actions. Serious steps will be taken against this action. Lorsung reiterated that they cannot be held liable for the tree clearing, but there are other ordinances.

Verbick stated that there is also a concern that they removed trees from property that was not theirs.

Lorsung replied that this is being investigated, especially as pertains to the easement.

Verbick asked if the owner is supposed to apply for a Grading or Erosion permit.

Lorsung replied that they absolutely should have, and perhaps wetland conservation permit as well.

Public Hearing closed at 10:03 p.m.

Crosby asked about legal status. When does a project become regulated by this ordinance? He asked if a person coming in tomorrow with a sub-development, would be held under this ordinance.

Lorsung replied that although some districts have tree preservation clauses, there is no protection in the residential districts.

Crosby asked if the city could still pass a tree ordinance that would affect the Willow Hill Preserve development that will be discussed in a month.

Lorsung replied that the Preliminary Plat would have to be approved before the Ordinance is passed in order to be exempted. If the tree ordinance moved forward now, staff believes it could be passed before approval of the plat.

Weir suggested that the Commission should look at the charts in the two ordinances and see which one is the best to move forward with.

Lorsung added that staff is comfortable with both charts, if the Commission wants to move forward with either version. Staff can measure them in anyway that you'd like.

Jacobson asked about passing an ordinance with differences between Residential and Commercial districts.

Lorsung replied that staff feels that the trees are what are important, not what will happen on the land (be it residential or commercial). For this reason, there should be a standard applied to all properties, regardless of land use.

Lorsung added that there are already regulations within some districts (BP, UC, IP) that call for 1:1 mitigation for every tree removed. This tree ordinance would actually be less restrictive in this sense.

Jacobson asked if there was something that said the mitigation must be of the same species. Lorsung replied that it differentiates between Old Growth and non-Old Growth, and has different requirements for each.

Crosby asked if it was possible and legal for the Commission to recommend a general version, and then have a group of people work, within the Open Meeting Law, to clean up and combine the versions into one ordinance to take forward to the Council.

Lorsung replied that this could be done. The main direction that staff is seeking is for the Commission to choose one of the tables, so that it can settle how to measure disturbance and also maximum allowed disturbance.

Weir stated that this seems to be the best, that it needs to be swift.

Crosby suggests that the Commission start with the table from the Friday version.

Jacobson stated that he did not receive a chance to review today's version fully, but it looks like the teeth have been taken out of it. It seems that the Friday version urges property owners to plan more carefully around the trees on the parcel, rather than architecturally saying "I want the house here," and then clearing everything out, as is done in Plymouth.

Dickerson asked for explanation of the time issue, why the hurry. He added that he was uncomfortable with all of the changes and the inconsistencies. He also asked if it constitutes an open meeting for this smaller group to meet.

Crosby asked for two volunteers to work with Rose and Liz to work on getting the ordinance ready for the Council.

Johnson and Jacobson agreed to help.

Crosby moves, Fortin seconds that the Planning Commission approves the intent of the Tree Ordinance. Further move to appoint Commissioners Johnson and Jacobson to work with staff to finalize a final draft to present to the City Council.

DISCUSSION:

Dickerson asked if the ordinance would come back to the Planning Commission.

Crosby replied that it would not, but the draft that will go to the Council can be emailed to everyone for input before it heads there.

Verbick, Fortin both stated that the tree ordinance needs to be done.

Weir stated that there was discussion at the Council that this Tree Ordinance would kind of act as an interim ordinance until the Open Space Task Force is able to make a recommendation that may modify what is passed now.

Motion passes unanimously.

8. Sign Ordinance, Public Hearing:

Crosby stated that he likes to be done by 10:30.

Lorsung stated that tabling the sign ordinance would be ok, and that it wasn't time sensitive.

Verbick moves, Dickerson seconds to table the Sign Ordinance until the June Planning Commission meeting. Motion passes unanimously.

Jacobson asked if he could comment on it, and asked if the Sign Ordinance is a bunch of sets of regulations combined together to be one cohesive ordinance.

Lorsung replied that it is predominantly a combination, but there are a few additions. Since the last update, the rules in the sign world have changed and the types of projects have changed. With the Ryan project, the city has seen that the ordinance does not have enough information. Additionally, there have been a number of legal (First Amendment) cases that arose, that cannot discriminate about content.

Jacobson asked an estimate of new context over the last time the Planning Commission saw it before. Lorsung replied that maybe 2% is new.

Dickerson stated that an issue has always been the lighting of signs. The sign ordinance refers to the lighting ordinance, but it seems that it would be better to put it right in the sign ordinance as well, so that it is right in front of the person.

Lorsung replied that there are different lighting districts in the city, and that this may have an impact on how lighting can be discussed in the Sign Ordinance.

9. Operational Procedures

Crosby asked for direction on the Operational Procedures. He suggested that it will be a moving document and very well may change each year.

Verbick moves, Fortin seconds that the Planning Commission accept the Operational Procedures as a working document. Motion Passes Unanimously.

10. Planning Commission “To do list”

Lorsung stated that the sign Ordinance will be coming back in the July meeting. She asked if there were any hot button issues that the Commission would like to see come back sooner. Once the items in blue are finished, the Planning Commission will be sitting pretty good.

Crosby requested that Rose prioritize the green items. He added that staff knows where the rub is better than the Commission.

Dickerson stated that he was trying to read through the minutes on the grading at Gramercy. He stated that residents were shown a landscaping plan before buying and when moving got something totally different. The pond, fountain, and grass look bad. Is there a follow-up the city can do?

Lorsung replied that the city is holding escrow on this property. The developer did not meet the requirements of the Developer Agreements. The developer is trying to move on, but a number of things must be completed first. Prairie plantings should have been completed in winter, but were not. The boulder wall now be constructed is being done without a permit. A stop-work order was issued. Lorsung stated that money is held predominantly for landscaping because more sod should be laid and because a lack of irrigation and bad grading causing plantings to fail. The city is continuing to hold on to a portion of the escrow money (\$50,000) until these issues are resolved.

General consensus was that this amount was too low.

Lorsung stated that the city is mostly working with the owner’s association, because the developer is trying to leave because it is over 75% occupied.

Dickerson asked if there is anything the Commission can do to protect against these issues.

Lorsung replied that for one, the city started compiling a list of developers that are not good to work with.

Crosby stated that the development agreement can be beefed up and that the financial guarantee can be higher.

Jacobson asked if the city can hold up CO’s until after landscaping is done.

Lorsung replied that this is usually not done, because work is done in the fall and winter, when the landscaping cannot be completed.

Jacobson suggested that this could be used as inducement.

Verbick moves, Dickerson seconds to adjourn at 10:32 p.m. Motion passes unanimously.

Prepared by: Dusty Finke