

APPROVED  
Minnetonka Beach Planning Commission Meeting Minutes  
May 23, 2022

1. Call to Order

Chair Breazeale called the meeting to order at 7:00 pm.

2. Roll Call

Present: Commissioners Anderson, Blodgett (arrived at 7:04pm), Breazeale, Halverson, Steinfeld and Council Liaison Enlow. Absent: Swanson

Staff in attendance: Heidi Honey, City Administrator

3. Approve Agenda

Breazeale asked to add ROW Pre-Work as Item 6.2.

**(Halverson motion, Anderson second to approve the agenda amended; all ayes.)**. Motion passed.

4. Approval of Minutes

4.1. Regular Meeting of April 25, 2022

**(Anderson motion, Halverson second to approve the minutes of the regular Planning Commission meeting of April 25, 2022; all ayes.)**. Motion passed.

5. New Business

5.2. Public Hearing and Review of Proposed Tree Preservation Ordinance

Breazeale stated he anticipates review of the ordinance to take more than one meeting. The tree preservation ordinance task force was in attendance. Enlow reviewed a summary of the PowerPoint previously presented at the Tree Preservation Information Session on May 3, 2022. She described why tree preservation is important (city is within 1000 ft of Lake Minnetonka, the Comprehensive Plan states the city is committed to sustaining character and protecting the lake and wetlands and Planning is tasked to follow the Comp Plan, in 2018 the DNR suggested the city develop a community forestry management plan, in 2020 the city council approved a task force, and other surrounding lake communities have tree preservation ordinances). She went on to describe task force accomplishments (identified and reviewed other lake area cities' tree preservation regulations, reviewed the city's historical tree preservation efforts, identified tree and root benefits, recognized the city has limited staff and resources, and drafted the ordinance to conserve outside resources). Task force goals are intended to encourage alternatives to removal, decrease runoff to the lake, preserve heritage trees, and have replacement trees planted when protected trees are removed.

Enlow described key concepts: significant and heritage trees are considered "Protected Trees". Protected trees are valued for roots, canopy, size, and age to treat and limit runoff. The ordinance recommends a tree removal permit process which may be issued by either staff, a board, as part of a building project, or variance process depending on circumstances.

Enlow then described various scenarios of how the proposed ordinance would work with permitting prior to tree removal unless exempt: smaller than protected tree, dead based on an opinion of city arborist or inspector, noxious, or in an emergency when it is impractical to obtain a permit. She went on to describe the permit process with and without construction related activity.

Enlow discussed tree replacement requirements: when minimum density will not be met of one healthy protected tree per 2,500 sq. ft, heritage tree removal requires 1:1 replacement, if replacement trees cannot be planted then the city may accept a fee in lieu of planting if density is met and per council approval if minimum density is not met. She added that the task force will provide a spreadsheet showing the number of protected trees required at each property.

Breazeale opened the public hearing at 7:22 pm.

Bruce Palmer – 3135 Lafayette Ridge Road – Palmer stated he was two term mayor and has been involved extensively with the city. He thinks the tree removal permitting is an overburden for staff, Planning Commission, Council, and residents. He stated it is expensive for residents. He has a tree in his yard that he considers dead and it is a hazard. He has been told that the tree is not dead enough. He thinks he should be able to cut it down and requiring replacement is absurd. He added that the costs are very high for residents if trees need to be replaced. He is very concerned about his tree and having to wait for permission is ridiculous. Steinfeld asked if he is requesting an expedited process. Enlow stated the moratorium is strict and the tree preservation ordinance process will be easier. Palmer stated it is extremely complicated, and unnecessary government overreach.

Rick Cornelius – 3163 Lafayette Ridge Road – Cornelius stated he has been in the city 26 years, and he has not seen any visible evidence of a number of significant trees decreasing over that time. Some people who develop a lot take trees down but other people plant trees, and small trees are growing and becoming significant trees. He thinks this is unnecessary. He stated that if the DNR is requiring this, it should be a minimal policy. He said a tree removal permit of \$250 is expensive and unnecessary. He would advocate that if minimum tree density is met, they should not have to follow the process. He wants to remove some large trees so the smaller, healthy trees can grow. He stated that the proposed ordinance states if minimum density is met, removal MAY be allowed. If rules are met, they need to be allowed instead of no guarantee of approval. He went on to say definition of a heritage tree is ridiculous at 30' for coniferous. Enlow explained that the proposal is that staff approved permits are \$50 and other permits are \$250 when the city forester is involved because there are pass-through costs from the city arborist.

Nell Mathews – task force member – Mathews stated that she went to the Hennepin County website and her lot is 12,452 square ft so she would need to have 6 protected trees. She has 11-13 protected trees, a couple are on the lot line and is unsure how that would be counted. She stated the task force looked at this for each of their lots to determine one per 2,500 sq ft. She stated the goal is to protect tree canopy, and slow water runoff to the lake. She then discussed tree removal examples from other cities. Some cities allow harvesting percentages of trees per year, but it is expensive, staff intensive and requires a tree inventory of the property. Excelsior uses the minimum tree density method.

Bruce Palmer asked if the footprint of the building is removed from the minimum density calculation. Mathews stated no but they backed out 30% for hardcover so the number of trees for the minimum density standard is reduced on the front end.

Brenda Arndt - 3171 Lafayette Ridge Road – Arndt asked if someone is below minimum density to start with, would they need to plant replacements if a coniferous heritage tree is removed. Enlow state the Tree Preservation Review Board would need to review. The 30' definition of heritage for coniferous was discussed. Arndt stated that large spruce trees eventually lose their needles and need to come down. She then stated cottonwoods should be considered junk because they are weak and should not be protected in any way and should be able to come down. She has planted five large spruce trees but they will eventually need to come down because spruce start to lose needles even with proper care. Given this rule, she can't afford to replace trees foot for foot, it would be much too expensive. She is not convinced that there are city needs for limiting removal other than along the lake front or possibly new construction.

Joe Tilli – 3159 Lafayette Ridge Road – Tilli agrees there is value to trees. When they moved here, they noticed the charm and character that everyone wants to protect. He does not remember seeing hordes of arbor terrorists. Most people want to keep their trees. He asked about punitive fines for cutting down a tree without permission which is \$1,000 to 5,000. Being punitive is not Minnetonka Beach character. He thinks it is vital for the Planning Commission to focus on public areas, right of ways, along the lake front, and new construction for tree preservation. The general public is not just cutting down trees willy nilly, they try to keep the trees. The public is doing a great job of maintaining their tree canopy and they should decide.

Bridget Wortman – task force member – Wortman stated the tree canopy in Minnetonka beach is much less than it was in 2008. She talked about new construction being to fault and that not everyone wants to protect trees. Other communities do not allow 30" trees to be removed ever unless hazard or dead. They are not trying to be an outlier as other cities have requirements also, and they are trying to guard against the exceptions who do not care about the trees. The city is not regulating as the DNR and watershed district would want.

Breazeale closed the public hearing at 7:49 pm.

Planning commissioners discussed the ordinance.

Steinfeld –

- There should be a provision for border trees that are on a lot line as it can be common with arborvitaes and the same tree can count for both properties. It should be clear how to deal with this.
- Dead tree –If a tree is dead or certified diseased, the fee should be waived. The homeowner is doing a favor by removing the hazard.
- Cottonwood – should be allowed to be removed at any time. Petersen stated that cottonwoods absorb thousands of gallons of water in a season. They are short lived and soft wood but do a lot for bank stabilization.
- Built new home and removed trees, lost a tree, and replaced them with pine trees. Some of them had problems. Anyone who plants a tree who has to take one down because it is not what was represented, or it is going to be replaced under warranty

should not have to get a permit. Enlow stated there is a provision for replacing trees within the warranty period that die or are not healthy.

Breazeale – He did not remember this being referred to council in 2020. Enlow stated it was brought up when a driveway access was allowed on Northwood Avenue.

Breazeale reopened the public hearing at 7:57pm for a tree vendor who did not understand the public hearing process.

Joe Lyrek – Sunny Skies Property Maintenance – Lyrek stated he is the city's tree service and also does a lot of work for residents in the city and all over the lake area. He stated he does not see where there is malicious tree cutting happening except for some builders who clearcut like at 2663 Woodbridge. He is all for trees and does not see people removing trees for fun. They cut trees that are hazard. He thinks this is overreaching and other cities do not regulate to this degree. He stated this feels like a homeowners association, and not a city representing residents. He questioned the expertise of the task force members. Wortman asked how the other communities regulate. Lyrek has not had to pull these extensive permits in other cities. He stated the fines are too high but he understands that they are trying to make it expensive so people don't remove large trees. He then stated that other tree vendors are removing trees on the weekends because they want to avoid the work of the process so they just go in and get it done. Residents will pay the fine. Based on a number of calls he received from residents when the moratorium went into effect, he thinks there should be a compromise, there have not been enough meetings on this, and residents say there were unaware. He went on to say that he represents the city, he tries to represent the residents and he is trying to stay neutral but there needs to be a logical solution. Enlow explained that the moratorium is harsh to stop tree removal while they draft something that matches other city's ordinances. Lyrek stated he understands what they are trying to accomplish but it is not being accomplished. Wortman stated they are trying to be less restrictive than other cities. Lyrek stated that he has never taken a tree down that did not need to come down. He stated that the city should consider people's feelings because they think they have to keep an unsafe tree until the city allows it. He then talked about taking photos of proof of a tree's condition instead of paying the arborist to identify an obvious hazard. He stated he has had many customers in the city ask him to remove a tree but he is unable to even if he can clearly see the tree is dangerous. He thinks people's feelings should be considered and Hilgers should be able to inspect trees to determine condition.

Enlow stated that Lyrek's concerns were based on the moratorium regulations, not the proposed ordinance.

Breazeale closed public hearing at 8:06pm.

Breazeale stated that it appears tree canopy and density is the focus. He looked at his property as an example. He has a 43,459 square ft lot and his minimum density is 18 trees. He would need a tree every 50 ft in his usable yard space and they would overlap. He added that arborvitae should not be included as trees if they are trying to protect canopy when they do not have a canopy. Petersen stated that they absorb a lot of water. Breazeale thinks 1 per 2,500 sq ft is very dense and expressed concerns about meeting the minimum density on his lot. Wortman stated there is a variance process. Breazeale discussed allowing space for trees to spread out and have a large canopy.

Halverson stated she needs 22 trees. She has some sucker trees that are 6 inch diameter that she would prefer to take down but would not want to go through the process.

Steinfeld asked about having a marker of counting a very large heritage as more than one tree because it may be doing the work of multiple trees.

Breazeale asked Wortman to summarize in a table the requirements of the other cities so they can compare the proposed ordinance and give them confidence that what they are looking at is similar to other cities and not be overreaching. (density, fees, replacements, etc).

Wortman stated she can provide a “Did You Know” document that may answer some questions. Wortman stated she understood Breazeale’s concerns about density and stated the outlier events trigger complaints, and they are usually either from tree removal due to new construction or new owners. She added they want guardrails so that doesn’t happen.

Breazeale thinks it is restrictive and, if it were more modest, it would be more palatable. He would like to see other cities’ requirements and thinks a density of 1:2,500 sq ft seems like forest requirements. He then stated the task force’s intent is trees and canopy and not arborvitae hedges. He would prefer language not counting arborvitae and with a reasonable density because he thinks that is more of the intent of the ordinance. Wortman stated they want people to think before they cut down and people can ask for a variance.

Halverson stated that people are relying on subjectivity of who is on council at the time they ask for the removal. Breazeale stated that they want to have less subjectivity and fewer variances due to the code and, if the code is good, variances should be few and far between.

Mathews discussed heritage trees: Excelsior does not allow them to be removed. Wayzata requires 2” diameter replacement for 1” removal. She then discussed arborvitae and the canopy. She said they were trying to not overregulate, protect canopy and also get root structure. Task force members had different opinions and they wanted people to have the freedom to have arborvitae counted as trees if they want.

Blodgett asked about if there is a conflict between a person’s arborist and the city’s arborist. Enlow stated the resident or city arborist could determine the health of a tree. Honey stated that some arborists have lied for their client and the city has had to ask the city arborist to inspect. Enlow stated that this is discussed in the definitions of a dead and hazard tree.

Breazeale asked about the tree preservation review board. The review board would meet to streamline the process and hopefully issue permits more quickly than going to Planning Commission. It is proposed to be made up city administrator, city tree forester or inspector, and a resident.

Mathews stated it would be unusual circumstances where tree removal would be subject to a variance – heritage tree removal with resident not wanting to do the replacement and not wanting to pay a fee. Breazeale looked at situations going to the board is a form of a variance.

Breazeale then expressed concerns that new property owners should be able to understand rules and what is allowed from the city or the planner and it should be consistent. He doesn’t want someone to buy a property thinking they can do something but they can’t. He explained

that if code states approval is needed to remove a heritage tree, then the assumption should be that you cannot ever take down a heritage tree. Or there should be a formula where someone can figure out that they can remove the tree and that formula could be used on all properties. People can then decide to buy or build with this knowledge. This should be done instead of having an approval process of layers.

Steinfeld did not think there should be a ban on removing heritage trees. It may make it impossible to sell a lot or build anything on it.

Breazeale explained that rules should be clear so people can plan what they want to do on their property. If the intent is no removal of heritage trees, it should be clear. If the intent is removal of heritage is allowed, it should be clear. Enlow discussed the approval process and that some things being on a case-by-case basis. Breazeale discussed concerns with the review board discretion.

Blodgett discussed a person not being allowed to remove a heritage tree may poison the tree. What is the penalty for that? Wortman – hard to protect against devious people. If a person is caught, there is a \$5,000 penalty.

Breazeale feels the fee in lieu is distasteful. Some may chose to pay the fee instead and other residents cannot afford this. He wants to see what other cities are doing because it seems confusing.

He asked commissioners to summarize their thoughts on the ordinance.

Anderson wants to see that the city sticks to the ordinance. She is not comfortable with someone having to pay money to get a permit to remove a dead or hazard tree. Needs to see more information.

Steinfeld thinks that it is a good idea to have the ordinance but expressed concerns about paying a \$50 permit fee to remove a dead tree. He is more concerned about the builders, not so much the residents. He suggested more strict rules or increased fees to builders to recapture the \$50 fees. Wortman stated that some removal is from new residents. Steinfeld said until time is spent with community members, people don't appreciate the city. He said thought should be given on how to work with potential or new owners and maybe a review of the trees must be done, or potential owners pay a fee and are told in advance what can be done. He is in favor of the ordinance, but it needs to deal with new owners and builders. He would like to see the ordinance modified.

Halverson asked for permit fees for Excelsior and Wayzata. She would like to see permit fees and associated costs similar to neighboring communities. People would either remove due to construction, driveway, etc. or for a view. She wants to see percentage of trees being removed by people who are new who are not doing construction, although she understands this is difficult to determine. She asked for data and wants to make sure this is reasonable. She thinks more work is needed on this ordinance, especially after hearing from residents tonight. She supported the task force moving forward in a conscious way in making changes.

Mathews discussed other bedroom communities in the country with tree preservation. She talked about Greenwood and that they have higher permit fees for land use. The task force is trying to create a tree inventory on private property but have it happen with each application.

Breazeale stated this is a big topic and there are concerns of overreach. This is very normal to have a draft and get feedback. He understands the intent. He is curious about comparison to other cities to make sure this is reasonable and not overreach, he does not like including arborvitae as trees, he is concerned that the minimum density is too high and there will be workarounds if the ordinance is not canopy focused. He stated that canopy is talked about a lot in the intent of it. He went on to say removing trees and then adding a row of hedges is not the intent of this. He understands that arborvitae absorb water but does not think this is the intent. He pointed out references to canopy in the ordinance which are overhead leaves, not hedges. He asked the task force to not give a solution to each concern but instead understand the spirit of the concerns for them to come up with a solution. He thinks the density is high. He has concerns about variances and prefers a rule of “if you remove, then you have to ...” instead of issuing variances. He did not like having a discretionary board.

Steinfeld stated this will impact people who need to sell their homes, lakeshore taxes are high, you may not be able to sell it for what it should be worth because there is a large tree in the center of the lot. Having a heritage tree will impair the value of the property.

Blodgett likes the idea of this, but it needs fine tuning and also needs to have teeth. He would also like to see storm damage trees to be allowed to come down without a permit or fee. He then asked what Woodland does for an ordinance.

Halverson asked how the 6” diameter was decided upon. Mathews stated the city has always protected 6” trees measured at six inches off the ground, mostly in ROW, steep slope or bluff, or within 75 ft of the lakeshore. DBH of 6” is industry standard.

Mathews summarized the concerns: Fees are an issue. Concerns about fees for tree removal with construction (increased fees for new construction). Provide summary spreadsheet of other city fees, density, etc, so Planning Commission can determine if this is overreaching. Reduce the discretion in the process. People should know what the rules are if they want to build or improve their property, instead of layers of discretion. Write it in the code to have a permitting process and variance process instead of having a board.

## 6. Old Business

### 6.1. DNR/City Code Compliance Task Force Update

Breazeale stated that Commissioner Swanson was absent, and her update is in the packet.

Nell Mathews - task force member - stated they are working on the bringing back the ADU portion to the Planning Commission. They hope to have material for the June meeting. The Planning Commission needs to provide input on the options, there would then be a public hearing with proposed language. This will be on the next meeting agenda.

### 6.2. ROW Pre-Work

Breazeale stated that Blodgett is wanting to solicit petitions at this time as prework on the ROW project. He said it would not be proper for a Planning Commission member to stir up public petitions and discussions. It is lower on the priority list and Blodgett needs to halt work on it until further notice. Blodgett discussed plat maps and anyone who abuts ROWs can apply to develop it. Breazeale understands the risk but explained that prework needs to halt until the other projects are completed. Commissioners discussed that there are a lot of things happening and there are always consequences to what they do.

**(Halverson motion, Anderson second to place the ROW prework and all 2022 priority list prework on hold pending completion of the DNR compliance review. Roll call vote: Anderson – aye, Blodgett – no, Breazeale – aye, Halverson – aye, Steinfeld – aye.) Motion passed 4 to 5.**

Blodgett left the meeting at 9:41 pm.

## **7. Reports**

- 7.1. Chair Report – Chair Breazeale
- 7.2. Commissioner Reports
- 7.3. Council Liaison Enlow – Enlow reviewed council discussions including golf carts
- 7.4. Building Permit Report – received and filed

## **8. ADJOURNMENT**

**(Halverson motion, Anderson second, to adjourn; all ayes.)** Motion passed.

Chair Breazeale adjourned the meeting at 9:45 p.m.

PUBLIC IN ATTENDANCE – The following individuals were in attendance: Mayor Jaci Lindstrom, Tree Preservation Task Force – (Susan Enlow, Nell Mathews, Kim Petersen, Bridget Wortman, Patty Rezabek), Joe Tilli, Bruce Palmer, Joe Lyrek, Rick Cornelius, Brenda Arndt, Amy Melin

Minutes respectfully submitted by City Administrator Heidi Honey

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Heidi Honey, City Administrator