

**APPROVED**  
**Minnetonka Beach Planning Commission Meeting Minutes**  
**June 26, 2017**

**1. Call to Order**

Chair Orehek called the meeting to order at 7:22 pm.

**2. Roll Call**

**Present:** Chair Orehek. Commissioners Anderson, Breazeale, Haag, Halverson, Moriarty (arrived late), Steinke, and Council Liaison Bartel. **Absent:** None

**Staff in attendance:** City Administrator Susanne Griffin, Zoning Administrator Ben Gozola

**3. Approve Agenda**

**(Steinke Motion, Haag second to approve agenda; all ayes). Motion passed.**

**4. Approve Minutes: May 22, 2017**

**(Anderson motion, Steinke second to approve the minutes of the regular Planning Commission meeting of May 22, 2017; all ayes). Motion passed.**

**5. Public Hearing**

**5.1. 2018-2022 Capital Improvement Program (CIP)**

City Administrator Griffin reviewed her letter in the packet explaining the Capital Improvement Program process which starts with the Planning Commission holding a public hearing on the draft 2018-2022 Capital Improvement Program. The Planning Commission's role is to determine whether the items on the proposed CIP are consistent with the Comprehensive Plan and to hold a public hearing on the proposed plan. The Planning Commission may offer input into the plan as well before making a recommendation to the City Council.

Commission Steinke expressed concern for the number of items for the 2018 CIP and asked Council Member Bartel if Council is concerned about the impact on the tax levy. Bartel responded that Council will be paying attention to each of the items and the amount, and the impact on individual property taxes.

Chair Orehek opened and closed the public hearing at 7:37 p.m. seeing no one in the audience wishing to offer input.

**(Halverson motion, Haag second to affirm the 2018 -2022 CIP as conforming to the Comprehensive Plan and recommend approval to the City Council; all ayes). Motion passed.**

**6. – Old Business**

**6.1. Transportation Projects**

6.1.1. Safe Crossing meeting – Chair Orehek stated that the subcommittee met on June 7<sup>th</sup> and they had good discussion, reviewed the county process, and presented a preliminary proposal for a crossing (Orehek had a handout from that meeting showing the possible location of a crossing). Commissioner Halverson stated that she felt the county was open to making some type of crossing happen and in working with the City. She explained that the county uses specific criteria and Minnetonka Beach's situation doesn't necessarily fall in line with that criteria, so they are looking at a variety of options and creative solutions. Orehek mentioned that by the next meeting the county will have collected data and had a chance to review the data so they can come back with cross walk options. He noted that anything that happens on County Road 15 related to a crossing will be paid for by the county and that the City would be responsible for costs related to accessing the crossing such as dirt paths and a bike path. They

also discussed connecting with Three Rivers Park District for funding as they often have grant funds to create access to trails. The City will be responsible for getting cost estimates on the dirt and bike paths.

The next Subcommittee meeting is scheduled for July 11<sup>th</sup> and staff will make sure the packet information gets published to the city's website.

### **6.1.2 Traffic Study Proposal**

Chair Orehek talked about the last council meeting when the issue of speed bumps came up because of discussion at Civic where concerns were raised about the curve in the road at 2315 Lafayette Road. City Administrator Griffin contacted some other lake area cities, Ben Young and local vendors to obtain information on types and costs of temporary speed bumps. Griffin also mentioned that she spoke to the City engineer about possibly utilizing Spack Consulting and asking them to do a narrow scope study on speed bumps at specific locations.

Commissioner Anderson stated that she was at the Civic Committee meeting and she highly recommends that the Commission make a recommendation to install speed bumps at the Lafayette Road location discussed at Civic. Anderson would like to see something happen as soon as possible. She believes that the neighbors in the area have been surveyed and are in support of installing speed bumps at this location. Commissioner Haag asked if there was opposition to speed bumps during the recent input sessions that the Planning Commission held last year and no one recalled such opposition. Commissioner Breazeale stated that it is probably more efficient to look at other locations that also came up in the recent traffic study input sessions as well as the location brought up by Civic. Chair Orehek stated that the results of the traffic study showed conclusive results in support of speed bumps. Orehek suggested the 2325 Lafayette Road locate be a trial location for speed bumps.

Commissioner Moriarty asked about next steps to go ahead with a trial location for speed bumps. After further discussion, it was decided to contact Spack Consulting so they can make a recommendation on location and number of speed bumps at 2315 Lafayette Road and the stretch of Lafayette Road that came up in the study.

**(Anderson motion, Haag second to request a proposal from Spack Consulting for speed bump recommendations at 2315 Lafayette Road, and recommend the purchase of the required number of speed bumps to the City Council; all ayes). Motion passed.**

After voting on the motion members discussed holding a hearing before making a final decision on locations and that the hearing could be held at the next Planning Commission meeting. All agreed that the 2315 Lafayette Road location was a priority, and the consultant should also consider the area on Lafayette Road that was raised in the traffic study last year (2406-2478 Lafayette Road). The Commission would expect to make a recommendation to the City Council at the next meeting.

### **6.2 – Zoning Code Amendments**

Chair Orehek stated that the Planning Commission has been working on the Zoning Code for several months and has held three public hearings, and that hopefully they would be able to make their final recommendations to the City Council at the end of the discussion. City Planner Ben Gozola stated that he didn't have a specific presentation as the most recent changes were discussed at the May meeting, but would be available for questions. He specifically mentioned the specialized lakeshore setbacks and the five residents who expressed objections to the lakeshore setbacks. He did prepare information on how those lots could be adjusted.

Chair Orehek stated that the language for the Board of Adjustments process had been raised as an issue. Gozola stated that the Planning Commission did discuss taking on the role of Board of Adjustments earlier in the process, but that no changes were ultimately recommended to the current process of the City Council acting as the Board of Adjustment at that time. The Planning Commission could still make that recommendation. This section language was not changed from the existing code. Commissioner Anderson that since the new zoning code would repeal the existing zoning code, how would they be assured that language that wasn't proposed to be changed wouldn't be changed. Gozola replied that the

updated annotated outline will cross reference the old and the new language to show how the old one reads in comparison to the proposed.

Commissioner Anderson read the proposed language about the City Council being the decision-making body and the zoning administrator being the recommending body, she thought this was odd because the appeal process would likely be done because someone is appealing the zoning administrator's decision. She thinks there should be a step or separation between the zoning administrator (who made the decision in the first place) and the Board of Adjustment when there are administrative appeals. The table in the proposed code (page 8) shows the zoning administrator making a recommendation on appeals to his/her decisions to the Board of Adjustment.

She stated that the City Council is an elected body and they are taking their recommendation from staff whose decisions are now in question, and she doesn't think it was be an unbiased review. She feels the Planning Commission should be involved since they likely would have had something to do with the initial decision/recommendation. She also mentioned that the city attorney was going to weigh in on the Board of Adjustment process to confirm that the process is consistent with state statute and wondered if they had heard anything from him and whether they should be making any decisions on this topic until they hear back from the city attorney.

Commissioner Breazeale also had questions about the role of zoning administrator as outlined in the code and based on his personal experience with the variance process in the past. He stated that if feels like the Planning Commission is more of a "rubber stamp" instead of the body that makes recommendations to Council. He read language from the existing ordinance (section 221) regarding responsibilities of the zoning administrator and it seems like the role has changed from an administrative role to a more authoritative role. Commissioner Steinke stated that this is consistent with feedback from public hearing #1. Breazeale asked whether the zoning administrator should be more advisor and the Planning Commission be the recommending body and present the Commission's recommendations to the City Council. He also doesn't like the fact that a contracted vendor can make work.

Commission Haag said that he feels the zoning administrator does a good job, however, in the past the Planning Commission had felt that their positions weren't being represented appropriately to the City Council, but that has been discussed and he felt it has been better. Chair Orehek pointed out that the zoning administrator does have the professional expertise and can give good advice but it's their community.

Commissioner Anderson stated that the Commission is appointed by the council, and Council is elected, and it's their community. The zoning administrator can give good advice from his professional perspective, but the Planning Commission knows what is best for the community and should make recommendations to Council based on that information. Anderson stated that in the past if the zoning administrator and the Planning Commission disagreed on a decision, the Planning Commission's recommendation was clearly stated and the zoning administrator stepped back.

Chair Orehek asked Gozola how he felt about his role being more advisory. He stated that they can direct him anyway they wish. He feels his reports are thorough and complete. He does work for other communities that don't ask him to make recommendations. Commissioner Steinke recalled a situation where the Planning Commission was not involved in a decision that the zoning administrator made, but Gozola clarified that it wasn't a variance so the Planning Commission wouldn't have been involved.

Commissioner discussed changing the zoning administrator's role as "recommender" in the table on page 8 and change those to "advisor". Commissioner Anderson still wondered if the Planning Commission should become the Board of Adjustments as other cities do.

Gozola clarified what is meant by "administrative appeal" and how that relates to variances. Variances always go before the Planning Commission and then to Council (as the Board of Adjustment) for the final decision. Administrative appeals that go before the Board of Adjustments are appeals of decisions that the zoning administrator has made on any number of issues but wouldn't include variances because the Council already has that role for variances.

Commissioners discussed variations on the Board of Adjustments. Some cities have a Board of Adjustment made up of planning commissioners and city council members, but many city councils don't want to give up the power of the board of adjustments. Commissioners asked Council Liaison Bartel to take the idea of making a change to the Board of Adjustment back to the City Council. They discussed how they would weight a combination of elected officials and appointed officials. Chair Orehek suggested three planning commissioners and four elected officials.

Administrator Gozola stated that some have expressed unfairness that the staff member was providing information during an appeal process, and he asked who from the City then would be providing that information and explain how the decision was reached to the Board during an appeal.

Commissioner Anderson explained that in 2013 the City cut back on the hours and responsibilities of the zoning administrator related to permits. She thought city staff reviewed applications and took over a number of these permit review duties. She doesn't think the zoning administrator needs to be approving driveway permits. City Administrator Griffin explained that what happened in 2013 was that city staff was only going to conduct an initial assessment on whether application materials were complete or not. She stated that city staff did not and still does not have the expertise to do zoning reviews of building permits, certificate of occupancies, or grading permits, and that driveway and temporary use permits are new.

Commissioner Moriarty pointed out an inconsistency in references to the Board of Adjustment where one place it was also referred to as the Board of Adjustment and Appeals. He found that some of the links in the document were broken and will forward them to Gozola. Moriarty asked about the section on fees. Gozola explained that consultation expenses are over the hour that the city generally allows for inquiries prior to submitting an application. There was a suggestion to include in the code that any consultation time over one hour will be billed to the resident as consultation fees.

Commissioner Halverson asked about code enforcement and who pays for investigating possible code violations. City administrator Griffin explained that it depends on the circumstances but generally if there is a permit on file and there is a complaint of a code violation it needs to be investigated. Expenses related to that investigation are billed to the resident who has pulled a permit to do the work regardless of whether the complaint is founded or unfounded. The question was whether this should be part of the code or as a policy issue. They felt it was a policy issue and Chair Orehek will include this in his report to the City Council and suggest a policy be adopted. They discussed again the one-hour of consultation not be part of the code, but rather policy. Moriarty pointed out a minor inconsistency in the use of the term "Staff and/or Consultation Time". Gozola will make this consistent.

They also discussed Table 3-3 on pages 58 and 59. It was clarified that where there is a red box with a number struck out it will be gray or not allowed. Commissioner Breazeale asked about outbuildings and storage sheds. He felt that they should not be allowed in the lake setback at all. Commissioners agreed so it was suggested that be changed.

The discussion changed to the issue of specialized lakeshore setbacks. Chair Orehek provided the background and past discussion on this issue. The main issue is protecting lake views. Commissioner Steinke stated this was not well received at the public hearing on this topic. Gozola said there were five speakers who were opposed to the lakeshore setback. Breazeale stated that he believes residents count on the commissioners to understand the issues and respond accordingly regardless of how many people show up for the hearings. There was much discussion on the specialized lake setbacks and ultimately there was lack of support from commissioners so the topic was set aside.

Commissioner Anderson asked for clarification on the one-acre minimum which would only come into play in subdivisions.

Commissioners went back to the topic of what should be allowed within the lake setback and concluded the following:

- Outdoor storage sheds and outbuildings – don't allow at all in lake setback
- Patios and pools should be allowed in lake setback but not within 75-foot setback
- Permanent BBQ's and fire pit – structures – Permanent structures such as tennis courts, play courts, hockey rinks, etc. should not be referred to as recreational equipment and not allowed in the lake setback-temporary structures like trampolines are ok

Commissioner Halverson clarified to keep the restriction on chain link fence. This is a new requirement and commissioners discussed it and felt the restriction should remain.

Moriarty pointed out a duplicate row in table 3-4.

Breazeale brought up page 176, item #3, non-conforming structures destroyed by fire. Gozola clarified that some of this language regarding non-conforming structures is statutory. Gozola can verify this language which is slightly different than the existing language to ensure the intent of the provision is clear. They also discussed the provision of rebuilding on non-conforming lots after time has elapsed.

Home occupations were discussed. Gozola reminded members that it was previously agreed that this language would remain the same as the existing code and they could discuss it at a future date.

Rip rap is currently counted as hardcover but would be proposed to be changed and not counted as hardcover since the city is encouraging residents to rip rap shorelines to protect them.

Commissioner Halverson asked about recreational vehicles on page 170. It is proposed that a permit would now be required. The reason for the permit was to establish when the timeline restriction starts. There was some discussion about table 3-3 on page 59 showing where the recreational vehicle can be placed. No change was recommended.

Commissioner Breazeale suggested that the old verbiage may be better than the proposed language on page 152, section (f) for clarity. On page 153 they discussed the difference between accessory uses and accessory structures (j) on page 152 and related table on page 153 clarifying what must be removed once the principle structure is removed. Breazeale asked about wireless communication towers and whether the language was strong enough or should they simply not be allowed. These are existing regulations and Gozola has not reviewed it, but all agreed that some regulations are necessary. They were written in such a way that like wind energy towers, would make it difficult to erect. Gozola did make the point that allowed conditional uses, if denied, it is up to the City to articulate why the use doesn't meet code. The telecommunication tower language will be flagged for the city council to decide whether this language is appropriate for the time.

The next steps are that Gozola will make the changes that they discussed and agreed upon during the meeting. Chair Orehek asked Administrator Griffin to note for a future meeting that the Commission create a "Frequently Asked Question" document about the zoning code.

Commissioner Haag started to make a motion to recommend approval of the proposed zoning code, as presented with changes as discussed, and approval of the draft ordinance, subject to final review by the chair, however, commissioners stated they wanted to see the changes before the council meeting. They talked about ways to see the document prior to it going to Council to ensure the changes were made.

**(Anderson motion, Steinke second to have Gozola make the changes to the zoning code document as discussed at the meeting, including minor grammatical changes, then email to the Commissioners via Chair Orehek prior to recommending approval to the City Council meeting; all ayes). Motion passed.**

Resident Nell Mathews asked to speak about the change made tonight about patios which would now be allowed in the lake setback. Chair Orehek stated she would have to take her comments to the City Council at this point as the time for public input had passed.

Chair Orehek clarified whether the Commission wants to see the final version once again before recommending it to Council. Some commissioners agreed but Commissioner Haag did not agree and offered a different motion.

**(Haag motion, Halverson second to direct Zoning Administrator Gozola make the changes to the proposed zoning code as discussed, including grammatical changes as identified, then recommends the updated document be forwarded to the City Council with a recommendation for approval; all ayes). Motion passed.**

It was discussed that if for some reason a Commissioner feels that a change was not properly made, they should notify the City Council and/or attend the City Council meeting. Chair Orehek stated that as many Commissioners as possible should attend the meeting in any case to be able to answer questions and provide information to Council as needed.

Commissioner Anderson then withdrew her previous motion.

## 7. Reports

- 7.1. Chairperson – no report
- 7.2. Commissioner Reports-none
- 7.3. Council Liaison Bartel reported on the last council meeting: June 12<sup>th</sup>: report from Three Rivers Park District on trail activity; report from Westonka Historical society; investment agreement with Ehler's Investment Partners was adopted along with Finance Committee investment recommendations and an investment policy; public hearing was held on the city's Stormwater Pollution Prevention Program; Civic report; Parks report by Chair Forbes – they are focusing on maintenance of existing parks, and not new projects; approved Police Contract with Orono PD; staff & Mayor authorized to move forward with replacement for Public Works Superintendent position; Council Member Myers authorized to submit a grant application for water tower historian to evaluate city water tower for Historic Registry; discussion occurred regarding a concern by resident Nell Mathews about contractor invoices-Treasurer Howarth and Council Members Myers and Lindstrom will be considering the issue; Council Member Kozloski is working on code of conduct for council members; audio recordings of city meetings now online; discussed legal representation for land use issues; discussed Northview retaining wall issue; possible city code recodification will be part of 2018 budget discussion
- 7.4. Planning and Zoning Administrator – no further report – if anyone has questions about the zoning code they can contact him
- 7.5. Building Permit Report – Received and filed

## 8. ADJOURNMENT

**(Breazeale motion, Moriarty second to adjourn; all ayes).** Motion passed. Meeting adjourned at 10:00 p.m.

**PUBLIC IN ATTENDANCE** – The following individuals signed the sign-in sheet: Nell Mathews, Andrea Swan, Nate Wissink, Tom Enlow.

Minutes respectfully submitted by City Administrator Susanne Griffin.

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Susanne Griffin, City Administrator