

**Saint Paul Planning Commission
City Hall Conference Center
15 Kellogg Boulevard West**

Minutes May 2, 2014

A meeting of the Planning Commission of the City of Saint Paul was held Friday, May 2, 2014, at 8:30 a.m. in the Conference Center of City Hall.

Commissioners Present: Mmes. DeJoy, Merrigan, Padilla, Reveal, Shively, Thao, Wang, Wencl; and Messrs. Connolly, Edgerton, Gelgelu, Lindeke, Nelson, Ochs, Ward, and Wickiser.

Commissioners Absent: Mmes. *Noecker, *Underwood, and Messrs. *Makarios, and *Oliver.
*Excused

Also Present: Donna Drummond, Planning Director; Allan Torstenson, Josh Williams, and Sonja Butler, Department of Planning and Economic Development staff.

I. Approval of minutes April 18, 2014.

MOTION: *Commissioner Reveal moved approval of the minutes of April 18, 2014. Commissioner Ward seconded the motion. The motion carried unanimously on a voice vote.*

II. Chair's Announcements

Chair Wencl had no announcements.

III. Planning Director's Announcements

Donna Drummond announced that the Mayor had asked Kit Hadley, Director of Libraries, to serve as the Interim PED Director while they do a search for a new permanent Director. Allen Carlson, the Director of Housing for PED, is retiring at the end of June. Patty Lilledahl, the Director of Economic Development, will become the Director of Housing. PED staff person Martin Schieckel has been appointed Interim Economic Development Director. The position of PED Department Director has been posted for an open application process.

IV. Zoning Committee

SITE PLAN REVIEW – List of current applications. *(Tom Beach, 651/266-9086)*

One item came before the Site Plan Review Committee on Tuesday, April 29, 2014:

- Beacon Bluff Business Center Soil Corrections, Phalen Blvd. between Forest and Wells.

Three items to come before the Site Plan Review Committee on Tuesday, May 6, 2014:

- Brandy Chase Apartments, regrade/repave parking lot to improve drainage, 2310 Benson.
- Saint Catherine University Butler Center (athletic facilities) expansion, 2004 Randolph.
- McDonald's restaurant demolition and reconstruction, 2322 West 7th Street.

NEW BUSINESS

#14-193-483 Form-A-Feed – Conditional use permit for equipment pits below the regulatory flood protection elevation and motor control shed elevated using an alternative to fill, in the flood fringe district. 0 Eaton Street, North and west of the barge channel.
(Josh Williams, 651/266-6659)

MOTION: *Commissioner Nelson moved the Zoning Committee's recommendation to approve the conditional use permit subject to additional conditions. The motion carried unanimously on a voice vote.*

#14-193-576 Hamline Park Plaza Auto Storage – Establishment of nonconforming use for motor vehicle storage. 570 Ashbury Street at Edmund. (Josh Williams, 651/266-6659)

Commissioner Lindeke asked if there was any discussion about possible use of this facility for parking for businesses along University.

Commissioner Nelson said the discussion was about the type of parking and storage that was there, without adding too much traffic to the neighborhood streets. The main concern of the property owner is financing so the property does not go into foreclosure.

Commissioner Padilla thanked Josh Williams for the additional memo and condition that address issues raised by the committee.

Commissioner Merrigan commented that the primary focus of the Zoning Committee is the immediate zoning application in front of them, not so much broader, longer term policy issues.

Commissioner Lindeke replied that he was just raising a longer term idea. Snelling is going to be a transit investment corridor where parking spaces that might be collective or used for the whole neighborhood may be needed.

Josh Williams, PED staff, noted that a zoning study currently being conducted in the area may look at broader, longer-term issues in considering appropriate future uses and zoning.

Commissioner Reveal noted the compelling immediate issue here that the current use needs to be legally nonconforming to allow refinancing.

MOTION: *Commissioner Nelson moved the Zoning Committee's recommendation to approve the establishment of legal nonconforming use subject to additional conditions. The motion carried unanimously on a voice vote.*

Commissioner Nelson announced the item on the agenda at the next Zoning Committee meeting on Thursday, May 8, 2014.

V. Comprehensive Planning Committee

Commissioner Merrigan said that the West Midway Industrial Area Plan item was taken off the agenda today to allow time for preparation of a cover memo since this is a Comprehensive Plan amendment. There has been staff transition on this project, with Allen Lovejoy retiring and Hilary Holmes taking over, and Hilary has been away at a planning conference. This will be on the on May 16, 2014, Planning Commission agenda. The next Comprehensive Planning Committee meeting is scheduled on Tuesday, May 13, 2014.

VI. Vertical Subdivision by Registered Land Survey – Presentation by Joanne Matzen from Winthrop & Weinstine.

Ms. Joanne Matzen, with Winthrop & Weinstine, said she has been practicing in real estate law for the last 25 years. She has worked with the Minnesota Common Interest Ownership Act, the statute in Minnesota that governs townhomes, condominiums and cooperatives, for vertical subdivision of buildings. She has also subdivided buildings using a registered land survey (RLS) coupled with a reciprocal easement agreement.

The Minnesota Common Interest Ownership Act, which requires certain disclosures and at its core is a consumer protection act, is a good statute for residential development. It allows regular people to buy condos without expensive due diligence because everything is covered.

The Minnesota Common Interest Ownership Act is less of a good fit for commercial projects because it gives each owner a say in the other businesses. For mixed-use projects, lenders and investors often will invest only in the residential portion or only in the commercial portion. Low income tax credits for affordable housing can only be used for residential development.

Splitting a building into separate legal tracks can be done by creating CIC (Common Interest Community) condominiums or using an RLS with a reciprocal easement agreement. Outside of Saint Paul she would use an RLS with a reciprocal easement agreement because that's all she has to do. The reciprocal easement agreement assigns responsibilities for maintenance and so forth, and states who is going to pay for what. If she were to use a CIC, then she needs to do a CIC plat, which is not much different from an RLS except that the city statutorily does not have the obligation to review and approve a CIC plat, which the city has with an RLS. She would have to do a CIC declaration, a somewhat complicated document, and she would have to create an association to run the CIC.

Ms. Matzen explained how a CIC would work for a two-unit mixed-use commercial-residential project with an LLC owning the commercial portion and a partnership with a low income tax credit investor owning the residential portion. She would need to create an association including the two separate owners, and articles of incorporation and bylaws for the association, to run the CIC. The state statute requires three natural persons as board members, and the board members have liability, so they need to buy directors and officers insurance. They need to be recognized as a nonprofit corporation, hold regular meetings, keep a separate set of books, file annually with the state, and hire an accountant to do annual tax returns. Because they are subject to the Minnesota Common Interest Ownership Act they have to monitor that statute because it gets amended every few years. There is a lot more and expense and hassle with a CIC than there would be with an RLS and reciprocal easement agreement.

There are some unknown risks with a CIC because the statute requires that residential units can't be sold without a full disclosure statement, and there is liability if something is not fully disclosed to a buyer. A CIC provides statutory warranties that cover suitability of the building for its purpose and defects in construction. The CIC also creates liability for anything said to the purchaser that the purchaser reasonably relies on as an expressed warranty. Warranties do not begin until the actual sale of the residential unit and they last for 6-years, which can be reduced to 2-years, but the liabilities cannot be waived. In addition, the CIC statute was recently amended to require replacement reserves for building components, which can become a cash flow issue. The only way to waive that is by a vote of the unit owners, and by statute the declarant and the affiliates of the declarant can't vote.

With an RLS, three dimensional space can be defined in thin air or with reference to structural parts of the building once it exists. This is true of a CIC plat as well. Upper and lower boundaries can be defined relative to sea level. Separate tracts can be defined based on how they are used. There can be separate ownership for common areas. Common areas can also be owned by tenants in common, as for CIC condominium common elements.

The reciprocal easement that has to accompany an RLS includes easements for support, encroachments, utilities, access, and maintenance. The reciprocal easement agreement would dictate who maintains the shared spaces, rights to bill the other owners for their share of the costs, lien rights on units and the right to foreclose if there is nonpayment. It's not much different in a CIC, where the association has lien rights. In the case of fire, a reciprocal easement agreement can do what a CIC can do and require rebuilding at least to the extent necessary to honor the easement to get to the upper floors. The easement agreement can also include rights of first refusal for residential owners of upper floors, for example, to purchase a lower commercial tract that the owner does not want to rebuild. Ms. Matzen said she likes to include a requirement that the owners have a common insurance carrier.

Commissioner Ward asked about statutory requirements relating to warranties, and what happens if there is structural failure.

Ms. Matzen replied that a reciprocal easement agreement would impose maintenance obligations on the owners. In the commercial context, owners can negotiate their own warranties without any kind of statutory requirement. They are sophisticated people who will do their due diligence.

Commissioner Connolly said we want to be a development and business growth friendly city, and using an RLS for vertical subdivision is a tool to enable developers to be flexible and creative. He asked why it can't be done now.

Commissioner Nelson replied it can and has been done in the city. Proposed code amendments are to make sure the city and the developers are communicating in the same language. He asked if developers would choose to do an RLS in order to get around CIC warranties.

Ms. Matzen said that an RLS requires starting with Torrens property. Sometimes when the property isn't already Torrens they may opt to do a CIC for timing reasons.

Commissioner Nelson asked about the city's role extra work in reviewing registered land surveys, which isn't required for a CIC.

Ms. Matzen said that the city has to sign off on a registered land survey for vertical subdivision as for a regular two dimensional subdivision plat. How much review they do is up to the city. In her experience she has not had cities look very closely at the reciprocal easement agreements.

Commissioner Ochs said he is concerned about protecting the owners within the building and also those of adjacent property. For reciprocal easement agreements, is there a requirement for an association or maintenance manager responsible for shared spaces? Who ensures access in an emergency? What about responsibility for the skin of the building?

Ms. Matzen said that, while not required, all of that should be covered in a well-drafted reciprocal easement agreement. She has seen cities require an easement in favor of the city for access in case of an emergency.

Commissioner Ochs said then the onus may be on the city to require something in the easement agreement to protect property owners and the public health, safety and welfare so that these spaces don't become a burden to the city.

Ms. Matzen said the interests of the owners are aligned with that.

Commissioner Edgerton asked about where vertical subdivision by RLS is done, and who would be responsible if something related to such subdivided property damages adjacent property (such as flooding from stormwater runoff).

Ms. Matzen said that she has done vertical subdivision by RLS in Richfield, Hopkins and Minneapolis, and knows of projects in Duluth that have used it. Responsibility for damage to adjacent property would fall to whoever has title to the tract related to the cause unless the reciprocal easement agreement puts the maintenance obligation on somebody else, in which case they probably both would have some liability. Litigators would sue both of them.

Commissioner Padilla said that lawyers will sue everybody possible and can work it out if there is a question about who might be liable or who has the insurance to cover damage.

Ms. Matzen said for that reason it's best to have a single insurance carrier for the entire vertically subdivided property.

Commissioner Edgerton said it would be best try to avoid having to go to litigation, and that we should particularly try to minimize the chance of litigation that could involve the city.

Commissioner Padilla said that when the city gets involved in a private project through the HRA they usually indemnify themselves against liability.

Commissioner Shively said that when this was presented to the Neighborhood Committee it was noted that the Department of Safety & Inspections (DSI) is used to dealing with the CICs, and is comfortable with using CICs for vertical subdivision, but had some concerns about vertical subdivision by RLS. She asked about how to address DSI concerns.

Ms. Matzen replied that in her smaller project example she doesn't understand DSI's concerns, and doesn't see a difference between dealing with a CIC association or a couple of separate

owners.

Donna Drummond, Planning Director, explained that vertical subdivision by RLS has been done a few times in St. Paul and there have been problems due to issues about who's responsible. The proposed code amendments would clarify the process and procedures for city review and approval of registered land surveys for vertical subdivision of property.

Ms. Matzen said some of the easement documents for vertical subdivision by RLS years ago weren't as good as what they should be now, and that all potential issues may not have been thought through as well. She hopes that wouldn't happen now, but can't guarantee it. There are good and bad drafters of reciprocal easements. A well informed buyer has an interest in making sure the easement documents are clear and workable.

Commissioner Ward asked if the finance people would weigh in on this, and Ms. Matzen replied that they would.

Ms. Drummond reminded everyone that there will be a public hearing on the proposed subdivision regulation amendments pertaining to vertical subdivision by registered land survey at the next Planning Commission meeting on May 16th.

VII. Neighborhood Planning Committee

Donna Drummond, Planning Director, reported that the Neighborhood Planning Committee's meeting scheduled on Wednesday, May 7th has been cancelled. However staff plans on bringing an update on the Shepard Davern area planning process to the Neighborhood Committee for the meeting after that. That planning process is still underway and there are a lot of interesting issues happening at the western end of West 7th Street. The drafting of the plan is nearly complete, the zoning study is underway, and there are several transportation studies underway that affect the area. The committee will get a full briefing on all of these items.

VIII. Transportation Committee

Commissioner Lindeke announced that the committee's last meeting included a field trip to the Sixth Street sidewalk project. They also discussed the TIGER grants that Saint Paul is applying for bike infrastructure projects. At the next meeting on Monday, May 5th there will be continued discussion of the TIGER funding application process in addition to a Snelling BRT update from Metro Transit.

IX. Communications Committee

Commissioner Thao had no report.

X. Task Force/Liaison Reports

Commissioner Reveal announced that the final West Side Flats Task Force meeting was Wednesday night. The task force had voted to approve the plan several months ago but subsequent to that, Friends of the Mississippi River and the Port raised two issues to reopen and the task force agreed to do that. They had two sessions primarily focused on the height issue. It was resolved Wednesday night and the plan being released will have the lower height limits. The

plan now will go to the (WSCO) West Side Community Organization and their process is expected to take a few months so it won't be back at either Comprehensive Planning Committee or Neighborhood Committee or both until mid to late summer. It should be in front of the Planning Commission by fall.

Chair Wenzl announced that the Gateway Station Area Planning Task Force will be meeting this Tuesday, May 6th for its first meeting at the Conway Recreation Center from 5:00 – 6:30 p.m.

XI. Old Business

None.

XII. New Business

None.

XIII. Adjournment

Meeting adjourned at 9:41 a.m.

Recorded and prepared by
Sonja Butler, Planning Commission Secretary
Planning and Economic Development Department,
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Respectfully submitted,



Donna Drummond
Planning Director

Approved May 30, 2014

(Date)



Daniel Ward H
Secretary of the Planning Commission