

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

**Minutes April 4, 2014**

A meeting of the Planning Commission of the City of Saint Paul was held Friday, April 4, 2014, at 8:30 a.m. in the Conference Center of City Hall.

**Commissioners Present:** Mmes. Merrigan, Noecker, Padilla, Shively, Thao, Underwood, Wencl; and Messrs. Edgerton, Gelgelu, Lindeke, Nelson, Oliver, and Ward.

**Commissioners Absent:** Mmes. \*DeJoy, \*Reveal, \*Wang, and Messrs. \*Connolly, \*Makarios, \*Ochs, \*Wickiser.

**Absent:** \*Excused

**Also Present:** Donna Drummond, Planning Director; Peter Warner, Peter McCall, City Attorney's Office, Allen Torstenson, Jake Reilly, Hilary Holmes, and Sonja Butler, Department of Planning and Economic Development staff.

**I. Approval of minutes March 21, 2014.**

Chair Wencl announced that the minutes are not available at this time. However they will be ready for approval at the next Planning Commission meeting.

**II. Chair's Announcements**

Chair Wencl reminded the Commissioners about the Great River Gathering Dinner held this year at the Union Depot.

Chair Wencl also announced that she has appointed Wendy Underwood to the Transportation Committee, which Wendy will start next week.

**III. Planning Director's Announcements**

Donna Drummond announced that on Wednesday at City Council there was a public hearing about the T2 Transit Amendment and there was no testimony so it is anticipated that it will be adopted at next week's Council meeting. Distributed at this morning's meeting is a memo and spreadsheet with the applications for this year's Neighborhood STAR Program. There are 42 proposals requesting \$5.2 million in funding. The Comprehensive Planning Committee will be reviewing and commenting on the applications as to Comprehensive Plan conformance.

**IV. Zoning Committee**

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

Two items to come before the Site Plan Review Committee on Tuesday, April 8, 2014:

- Walgreens, renovate existing bank building for a Walgreens and relocate existing drive through window at 1578 University Avenue West.
- Metro Transit Downtown Hubs, improve two existing transit hubs/stops and relocate another; Cedar at 5<sup>th</sup> Street, 5<sup>th</sup> Street at Minnesota, 6<sup>th</sup> Street at Cedar.

Three items to come before the Site Plan Review Committee on Tuesday, April 15, 2014:

- Goodwill, new retail store with donation drop-off at 1245 University Avenue West.
- Village on Rivoli Housing, 12 new single-family houses at 700 Rivoli Street.
- CP Rail, expand existing rail yard at 1010 Shop Road.

### **OLD BUSINESS**

#13-247-474 BLD Property Management – Establishment of legal nonconforming use status as an administrative office. 260 Aurora Avenue, SE corner at Galtier.  
(Hilary Holmes, 651/266-6612)

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

### **NEW BUSINESS**

#14-186-369 Port Authority of Saint Paul – Rezone from T2 Traditional Neighborhood to I2 General Industrial. 943–959 7<sup>th</sup> Street East, NE corner at Forest. (Jake Reilly, 651/266-6618)

***MOTION:*** *Commissioner Nelson moved the Zoning Committee's recommendation to approve the rezoning. The motion carried unanimously on a voice vote.*

#14-186-591 New Plan Learning Inc. – Conditional use permit for education facility. 169-176 Jenks Avenue between Lawson and Case. (Jamie Radel, 651/266-6614)

Commissioner Merrigan said that she had voted against this at the Zoning Committee meeting because she thinks rezoning from the current mix of zoning would be better for orderly development. She noted that a conditional use permit accommodates the tight schedule for opening the school, the neighborhood supports it, and the school and the school may look at rezoning the site in the future.

***MOTION:*** *Commissioner Nelson moved the Zoning Committee's recommendation to approve the conditional use permit subject to an additional condition. The motion carried 12-1 (Merrigan) on a voice vote.*

#14-095-630 West Grand Avenue Apartments – Lot coverage variance for a proposed apartment building: 35% maximum coverage permitted; 53% proposed. 2138 Grand Avenue.  
(Tom Beach, 651/266-9086)

*Commissioner Nelson announced that the applicant has requested a continuance.*

#13-243-494 Grand West Apartments – Site plan review for a new 14 unit apartment building. 2138 Grand Avenue. (Tom Beach, 651/266-9086)

*Commissioner Nelson announced that the applicant has requested a continuance.*

Commissioner Nelson also announced that the next Zoning Committee meeting on April 10, 2014 has been cancelled.

#### **V. Comprehensive Planning Committee**

Commissioner Merrigan reported that at the committee's April 1<sup>st</sup> they continued discussion of the West Midway Industrial Area Plan and industrial policy white paper. They also looked at the City's draft comments on the Metropolitan Council's Thrive MSP 2040 vision document. The next meeting is on April 15<sup>th</sup>.

#### **VI. Neighborhood Planning Committee**

Vertical Subdivision by Registered Land Survey – Informational Presentation by the City Attorney's Office.

Peter Warner, City Attorney, noted the committee report and recommendation for a study to consider adding provisions for vertical subdivision by RLS Registered Land Survey to the City's subdivision regulations. This is desired by the development community, particularly for mixed-use buildings. Vertical subdivision by CIC Common Interest Community plat is commonly done for residential condominiums, and works well for that. However, some of the requirements in the CIC statute create challenges for the kind of mixed-use buildings the city wants along transit corridors. We had hoped to have Angela Christy from Faegre-Baker-Daniels and Joanne Matzen from Winthrop & Weinstine at the meeting to talk about why vertical subdivision by RLS is needed and how it works. The weather kept them away, so Mr. Warner stood in for them.

Mr. Warner said that state statutes allow vertical subdivision by RLS, but it has rarely been done in St. Paul. We don't have a clear process or standards for local review and approval, and vertical subdivision for Town Square Park and the Commerce Building proved to be problematic. Attorneys working on projects to develop mixed use buildings, recently including a couple of projects along University Avenue, say they would be facilitated by being able to use a registered land survey rather than a CIC to vertically subdivide space into separate ownership parcels. If the City is going to consider approving vertical subdivision by RLS we need to ensure it meets reasonable standards to protect the public health, safety, and welfare. The draft language in the committee report to provide a process and standards for city review of vertical subdivision by RLS is a work in progress. City fire and building code officials, who have strong concerns about how this would be done, have been involved in drafting the language. It has also been reviewed by lawyers who do this type of development work, and reflects some of their suggestions.

Commissioner Padilla asked if language for this used by other municipalities had been looked at.

Mr. Warner said the draft language borrows heavily from a couple of municipalities in California where this seem to be more common, but it evolved in conversations with building and fire code officials in the Department of Safety and Inspections, and with outside legal consul.

Commissioner Ward noted the need to subdivide underground space, such as for underground parking that has different ownership than the buildings above, and Mr. Warner agreed that vertical subdivision by RLS can be used to vertically subdivide underground space.

Commissioner Nelson asked about surveying techniques to plat and mark parcel boundaries in the air, and what happens if something gets built that encroaches into a different vertical parcel.

Mr. Warner referred to provisions in Minnesota Statutes, Chapter 508, regarding Registered Land Survey, for delineation of three-dimensional space.

Commissioner Edgerton asked about liability, and who would be responsible for something that damages a neighbor. Who owns the land and who owns the outside wall? Is the vertical subdivision predicated on the building actually being there? What happens to parcels in the air if the building comes down? Are there special issues if a building with multiple vertical owners becomes run down or condemned and is torn down?

Mr. Warner said those are all issues that would need to be addressed through easement and maintenance agreements. He spent many hours trying to figure out the easement and maintenance agreements for the vertical subdivision of the Commerce Building, and whether they were complete. If approval is recommended for adding provisions for vertical subdivision by RLS to the City's subdivision regulations, he would recommend a second ordinance for a higher fee to recover the cost of city review, which is going to be a more labor intensive and time consuming operation for the Department of Safety and Inspections (DSI) and the City Attorney's Office than what would be necessary for a normal plat review.

Commissioner Shively said she supports a higher fee to cover the cost of City review. She asked how this is different from DSI working with a CIC. She understands someone typically owns the land and shared spaces, and the owners of vertical space within a building pay them a negotiated amount for all the shared spaces and things. With a Common Interest Community (CIC) they've got common interest ownership in it all, and it's a different involvement and relationship.

Mr. Warner said that he can't speak for DSI, but he thinks they would prefer a CIC approach. Developers and people such as Angela Christy and Joanne Matzen who work on mixed-use projects would be better able to explain why they want to use an RLS for vertical subdivision.

Commissioner Merrigan, speaking from personal experience, said she is concerned that because of the things that we might do to facilitate development, and the City taking on responsibility for review and approval of easements and systems, when the developers and finance people are gone the people left to sue are the City and the architects.

Mr. Warner said that legally you can do this but it's a big policy issue for the city to consider. The study process will give the Planning Commission the opportunity to have people from DSI and Fire come in and talk about what's involved. From his past two experiences, it's very complicated and difficult.

Donna Drummond, Planning Director, clarified that the action before the commission is a recommendation from the Neighborhood Planning Committee to release this draft and set a public hearing date. There has been extensive discussion with DSI and other departments about how to provide for vertical subdivision, reflected in the draft ordinance language. Releasing it for public review provides a process to get additional comments and further information. Hopefully

the two attorneys who could not attend today can be at the public hearing and provide the kind of information that people are looking for.

Commissioner Noecker questioned the study process and the action requested today.

Ms. Drummond said initiating a zoning study, releasing draft language for public review, and setting a public hearing before the Planning Commission is the process that is often used to move an issue forward and begin to get public input and testimony. We have been hearing from the development community that this is a pressing issue for them. The study is the whole work of the commission on the issue, including holding a public hearing, committee discussion based on community input, and then a Planning Commission recommendation to the Mayor and City Council followed by another public hearing before the City Council.

Chair Wencil said there might need to be an extended period of time for more study after the public hearing.

Ms. Drummond said that that has happened in the past, where issues raised at a public hearing lead to taking time for additional study. There is no deadline for this, so the committee has time for more work on this if necessary.

Commissioner Nelson discussed the potential liability the City might be taking on, and the time impact on the City Attorney's Office and DSI to evaluate easement agreements for very complex building systems.

Mr. Warner said he would review case law related to the liability issue, and mentioned a principle in *Cray Craft vs City of St. Louis Park* that he thinks would apply.

Commissioner Edgerton said he is very interested to hear from DSI and fire code officials about their concerns, and from the two attorneys for developers of mixed use projects about how this would work.

Commissioner Shively said that the draft ordinance language does not authorize something that currently cannot happen in the city, but rather clarifies the process and standards for city review and approval of vertical subdivision by RLS to protect the public health, safety and welfare. The draft ordinance amendment is a good basis for public review and comment, so on behalf of the Neighborhood Committee she moved the committee's recommendation.

Ms. Drummond said the purpose of zoning study initiation by the Planning Commission is to let the community know that something is being looked and there is going to be a public hearing.

Vertical Subdivision by Registered Land Survey – Initiate study, release draft for public review and schedule a public hearing for May 16, 2014. (*Allan Torstenson, 651/266-6579*)

***MOTION: Commissioner Shively moved on behalf of the Neighborhood Planning Committee to release the draft for public review and set a public hearing on May 16, 2014. The motion carried unanimously on a voice vote.***

Commissioner Oliver announced the items on the agenda for the next Neighborhood Planning Committee meeting on April 9, 2014.

**VII. Transportation Committee**

Commissioner Lindeke announced that the committee met last week and discussed the Gateway Corridor scoping process and repaving projects for Ramsey. John Tompkins from MnDOT gave an informational presentation about Urban Freight Trucking in Saint Paul. Commissioner Lindeke then announced the items on the agenda for the next Transportation Committee meeting on April 7, 2014.

**VIII. Communications Committee**

Commissioner Thao had no report.

**IX. Task Force/Liaison Reports**

None.

**X. Old Business**

Commissioner Thao thanked Commissioner Noecker for sending out an email to announce the Commission's annual gathering on Monday, April 7, 2014.

Commissioner Noecker asked everyone to RSVP by the end of the day.

**XI. New Business**

None.

**XII. Adjournment**

Meeting adjourned at 9:50 a.m.

Recorded and prepared by  
Sonja Butler, Planning Commission Secretary  
Planning and Economic Development Department,  
City of Saint Paul

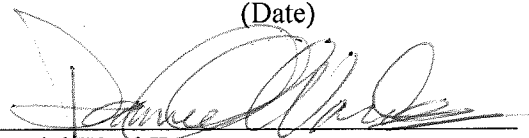
Respectfully submitted,



Donna Drummond  
Planning Director

Approved May 16, 2014

(Date)



Daniel Ward II  
Secretary of the Planning Commission