

**City Council Agenda Item #12_
Meeting of April 21, 2008**

Brief Description: Introduction of ordinance regarding tree protection.

Recommended Action: Introduce the ordinance and refer it to the planning commission.

The City of Minnetonka has a long history of balancing individual property rights with the shared community values of environmental protection and responsible development. Ordinances and polices designed to balance these values date back to such early efforts as the subdivision ordinance task force of the mid-1990s. As the community has evolved, the city has continued to modify its development philosophy through policy and ordinance revisions. Direction has also been provided through project approvals.

Over the last several years, the city has reviewed a number of development projects which have resulted in considerable tree impact and removal. The city also receives regular feedback from residents about tree removal on all scales: large subdivisions, small lot divisions, and even home reconstruction. These various issues prompted several council discussions to more clearly define the city's expectations regarding natural resource protection.

Background

Protecting Minnetonka's unique natural environment has long been a high city council priority, and community survey results consistently confirm that residents support strong environmental protection measures. Several times in recent years, council has discussed various policy issues in response to growing pressures for the use of remaining vacant land through lot splits and higher density redevelopment. These discussions provided guidance for the preparation of natural resource ordinances:

April 14, 2004 Study Session. At this initial study session, council discussed potential policy approaches to natural resource protection, and provided general staff direction for the preparation of draft ordinances.

June 7, 2004 Study Session. Council discussed more specific options at this session, including the use of a performance standard approach. Environmental standards would be required as conditions of approval, with applicants allowed to request variances, particularly to save natural resources, such as trees, steep slopes and wetlands.

Council members emphasized the need to avoid tree impacts, and generally agreed that high priority trees and woodland preservation areas should not be removed unless council allowed such removal for a greater public good or granted a variance. General principles supported by the council included:

- Developments would be designed with the land, respecting the site' s natural features. Specific performance standards would be defined for shoreland, floodplain, wetland, forestry, topography and open space resources.
- Clustering of buildings would be encouraged to preserve open space and trees. Performance standards would consider smaller lot areas, reduced side yard setbacks, reduced street widths and rights-of-way. Special consideration would be given to saving natural features when considering setback variances.
- Standards for lot-behind-lot developments would respect the rights of individual property owners, while ensuring compatibility with the surrounding neighborhood. Land area would need to be sufficient to provide public access to all lots, and in a manner consistent with the city code.
- Conservation easements would be required over reasonable portions of the property to permanently protect valuable natural resources, such as significant trees and wetlands. Requirements would be proactively monitored and enforced.
- Environmental protection would be actively encouraged through community education, and by following best practices on city properties.

March 20, 2006 Study Session. At this meeting, council further discussed the need to balance tree preservation with the right to develop. There was general support for encouraging the use of Planned Unit Development (PUD) to provide the city with more leverage and discretion to negotiate site layouts that would preserve trees. Specifically, council discussed the possibility of providing incentives or disincentives related to the number of allowable lots.

February 4, 2008 Study Session. Most recently, council provided additional direction, which generally moderated the conclusions of previous discussions. Three potential principles were discussed:

- *Development standards would be consistently applied, while allowing exceptions as tradeoffs for public benefits.*

Under this principle, the proposed tree ordinance would prohibit the removal of higher priority trees and trees in woodland preservation areas, except in circumstances where council determined such removal would result in greater public benefits. For example, this principle would not have limited

tree removal associated with Shady Oak Road improvements approved in 2007, since council could have determined the overall community benefits of traffic safety, residential lot preservation, public trails and retaining wall aesthetics outweighed the benefit of preserving high priority trees. Council generally supported this principle.

- *Standards would focus on mitigating potential environmental impacts of new development and redevelopment, rather than on existing residential properties.*

Under this principle, tree preservation and mitigation standards would only apply to new developments and teardowns, but not to additions or site improvements to existing properties. As an example, the grading required for a new walkout house on a relatively flat Rowland Road site would have impacted several large oak trees, and this principle would require the preservation of many of these trees and replacement of others. Tree removal would also be allowed if the owner was proposing an addition to the existing house or a new pool in the rear yard. Council generally supported this principle.

- *Natural resource protection standards would require strict performance, but be flexible enough to encourage best practices by responsible developers.*

Under this principle, developers would be encouraged to utilize PUD zoning in woodland preservation areas and in areas of high priority trees. In addition, Council could chose to reduce the proposed density of a subdivision in these areas to preserve trees, within limits. Such standards could have significantly altered the density and configuration of the Crosby Cove development approved in 2003, since Council would have had access to more “ tools in the toolbox” to require reasonable accommodations to preserve trees.

With this principle, the tree ordinance would include mitigation standards for removal of certain trees in certain areas. Flexibility would be provided, since the ordinance would recognize that in some instances the required replacement may not be practical. In these cases, council could grant responsible development proposals flexibility from the mitigation standards.

This flexibility was used in the Lake Rose Highlands development approved in 2007. The developer worked with the existing site conditions, minimized tree loss and received the incentive on the back end by only having to mitigate one-third of the required tree inches.

Council did not fully support this principle, indicating that the tree ordinance should focus on woodland preservation areas, rather than on individual high priority trees. Accordingly, the recommended draft tree ordinance is now directed at saving portions of woodland preservation areas. Specifically, applicants would be required to preserve 25% of woodland preservation areas by only allowing one lot per acre. For more density, applicants would have the option of using a PUD, which would allow the city more discretion to negotiate the placement of more lots in such a way to preserve trees. It is important to note that this change would permit the Crosby Cove development to take place as it did.

Neither did council agree with the incentive for tree mitigation coming on the back end of the project, like that used in the Lake Rose Highlands project. Council also thought that the proposed inch-for-inch standard was too high. Accordingly, the draft tree ordinance now only requires inch-for-inch mitigation for high priority and woodland preservation area trees, and only for those located outside the buildable area.

The previous principle would have prohibited any woodland preservation area trees or high priority trees from being cut, unless council specifically authorized their removal. Even with such approval, developers would have been required to mitigate any removal on an inch-for-inch basis. Under the new draft ordinance, all trees could be removed from the buildable area, which is defined by the current ordinance as the building footprint plus 20 feet, driveway area plus 10 feet, and in the area of some easements. Inch-for-inch mitigation would only be required for high priority and woodland preservation area trees, and only if they were outside the buildable area. Significant trees would be replaced on a tree-for-tree basis.

Community Values

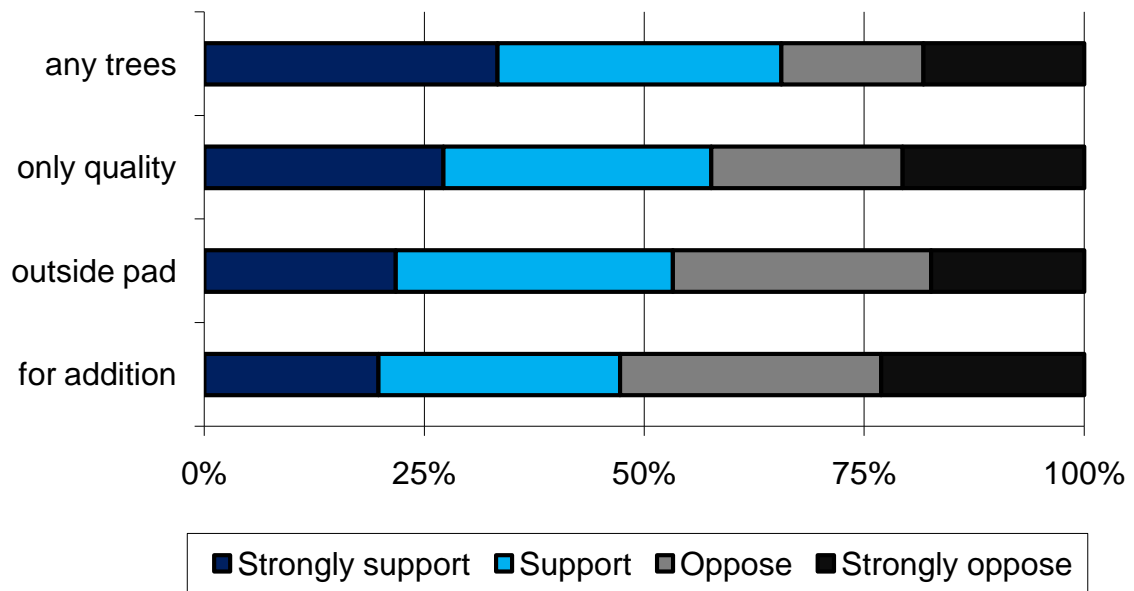
Unlike most other communities, which tend to more highly value public safety,

Minnetonka residents equally value the community's natural resources. This priority is regularly evident through community surveys, participation in the tree sale program, and community focus groups. In fact, when community members are asked why they like living in Minnetonka, the most important reasons relate to the natural environment.

This year's community survey included questions designed to explore resident support for various development policies, including tree preservation. Specifically, residents were asked whether they supported or opposed various potential policies the city might consider regarding tree preservation:

- Prevent cutting down any trees in privately-owned wooded areas
- Only prevent cutting down larger, high-quality trees in privately-owned wooded areas
- Prevent cutting down trees to make room for an addition onto an existing home
- When a new home is built, prevent cutting down trees outside of the area for the house and driveway

Survey results indicate strong support for tree preservation among residents; two-thirds would prevent cutting down trees in privately-owned wooded areas. Residents more strongly supported the protection of all trees, noting the difficulty of distinguishing "quality." Not surprisingly, restrictions on tree removal were favored more strongly on other persons' properties – residents were more inclined to allow additions onto existing houses, than to support new development.



The survey results point to the challenge council faces in balancing the rights of individuals to develop their own properties with residents' broader community and neighborhood interests.

Proposed Ordinance

Most other metro area communities take a very mechanical approach to the removal and replacement of trees. For the most part, these cities use mathematical equations to regulate tree removal on individual sites. This type of regulation views properties in a vacuum, an approach that does not adequately address the high value Minnetonka residents place on the woodland resources of the community.

Reflected past council discussions, the draft tree ordinance takes a more holistic approach to tree preservation by focusing on areas or pockets of trees which should appropriately receive more protection. At the same time, the proposed ordinance continues to recognize and respect individual rights for the reasonable use of property.

Tree protection versus tree removal. In accordance with council direction to more clearly define expectations, the proposed “tree protection ordinance” outlines specific standards for tree preservation. This is a notable shift from the current “tree removal ordinance,” which simply regulates the replacement of trees removed during the course of development, regardless of the natural environmental qualities of the site.

Balancing rights. The city’s existing ordinance provides a maximum allowable area for removal of trees before mitigation is required - 20 feet around a building area, 10 feet around a driveway area and within some easements . The proposed ordinance preserves this right, but also recognizes that not all trees should have equal protection. The draft ordinance provides for levels of protection based on: ecosystem, health, species and size of trees. Within these protections, the ordinance also provides allowances for homeowners to add onto existing homes and make property improvements, like pools and garden structures.

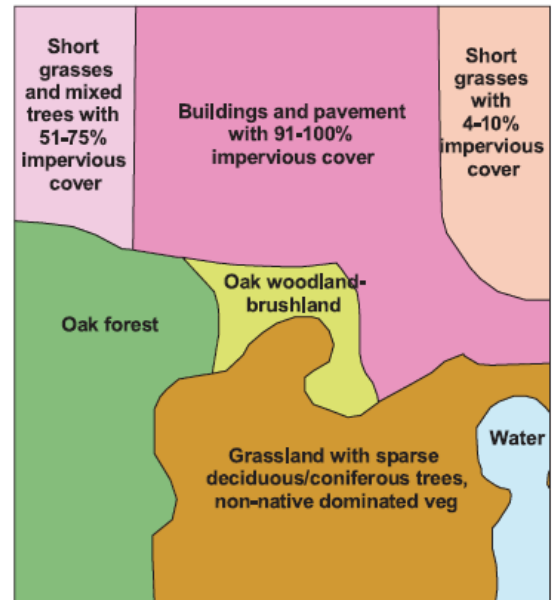
Tree classifications. A major shortcoming of the current ordinance is that it may save a number of trees, but the trees may not be the most important aspect for long term preservation. The proposed ordinance remedies this weakness by categorizing trees based on their importance to the city’s ecology. This classification system provides a solid and consistent foundation with which to apply the ordinance, consistent with previous council direction:

- **Woodland Preservation Areas.** Woodland Preservation Areas consist of remnant ecosystems that are at least two-acres in size. These areas have been mapped through the city’s Minnesota Land Cover Classification System (MLCCS). As shown in the example, the MLCCS is a vegetation classification system designed to identify natural land cover types using a standardized

method. Trees within this area would have a higher standard of protection in the development process. Specifically, if a property located within a woodland preservation area is proposed for subdivision:

- Subdivision could occur at no more than one lot per developable acre of property, unless the property was rezoned to planned unit development (PUD).
- Only 25 percent of the woodland preservation area trees could be removed without mitigation. This provision would ensure proper building site locations.

MLCCS inventory



- **High priority and significant trees** that are not located within a woodland preservation area could be removed, so long as building pads were situated to minimize tree loss. Since such trees are important to the site and neighborhood character, this would allow the city to require that proposed to be relocated to preserve such trees, which would have to be structurally sound and healthy, and of a certain size.

Tree removal and mitigation standards. The draft ordinance provides for a higher rate of mitigation for the more substantial forested areas of the city, while preserving the rights of property owners to place homes without any required tree replacement. Both removal and mitigation on a subject property would be based on the classification of trees located on that property.

- **Tree removal** would be allowed in order to construct a building, driveway, addition, or accessory structure on existing lots. Tree removal is also anticipated in these same areas during subdivision of property. No mitigation would be required for trees removed in this "basic tree removal area." However, the city

could require the relocation of proposed buildings, driveways, utilities or stormwater facilities to preserve trees.

- **Tree mitigation** would be required for any removal of trees outside of the allowable area as outlined above. Mitigation standards would be based on the size, species, and health of the trees removed. If the city determined that a site contained no appropriate location for some or all of the trees required for mitigation, the requirement could be reduced or waived. As a deterrent, any trees required to be saved and subsequently removed, would have to be mitigated at a rate of 2:1. In such cases, the city could also impose a financial penalty of \$500 per inch of removed trees.

Additional ordinances. Staff also recommends consideration of additional language in the city's PUD ordinance that would reflect and relate to the tree ordinance revisions. As council knows, subdivision processes which utilize planned unit development standards are more collaborative, and can be the most effective way to lay out building sites that fit the particular attributes of a property. While not legally required, the proposed changes use incentives to encourage the use of PUD's.

Previous Public Input

Public input has been solicited throughout the past year, and the proposed draft ordinance reflects this input:

- August – the draft ordinance was posted on www.eminnetonka.com, with an invitation to comment via an online survey form. To date, no submissions have been received via this web survey form.
- August and September - two *Minnetonka Memo* articles about prospective tree preservation were published. The articles also announced a planned community meeting in September to present and invite public comment on potential tree ordinance changes. Feedback was also invited on the city's website.
- August - direct mailing to contractors and developers describing the potential changes, with direction to the city's website for more details. No written comments have been received to date.

- September – Lakeshore weekly article about the ordinance revisions.
- September – a community meeting was held on September 19 to provide an opportunity for public input on the potential ordinance changes. Fourteen people attended, and comments included concerns about the ability to subdivide property in the future, requirements for additions to homes, technical questions about tree replacement, and questions about natural area mapping data.
- October – City wide open house, which included a booth where residents could provide input on the prospective tree ordinance. Comments similar to those shared at the community meeting were received.
- November – two articles appeared in the *Star Tribune*, one addressing trees on Shady Oak Road.
- March - this year's community survey included specific questions relating to potential changes in the tree ordinances.
- May – another reminder will be included in the May *Minnetonka Memo* that the city is considering changes to the ordinance, and inviting public comment.

Staff Recommendation

The purpose of introducing an ordinance is to give council the opportunity to review an ordinance before sending it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval.

Introduce the ordinance on pages A1–A18 and refer it to the planning commission.

Submitted through:

John Gunyou, City Manager
Ron Rankin, Community Development Director
Julie Wischnack–AICP, City Planner

Originated by:

Jo Colleran, Natural Resources Manager

Susan Thomas, Principal Planner

G:\Projects\Moratorium\Tree Ordinance\000 Introduction Folder\96096-120307 CC Intro Rpt.07a.doc