

Minnetonka Planning Commission
May 15, 2008

- Brief Description:** Items concerning ordinances regarding tree protection:
- 1) Ordinance amending the tree protection standards within *City Code 300.28 – Performance Standards*;
 - 2) Ordinance amending the landscape standards within:
 - *City Code 300.22 – PUD District*
 - *City Code 300.27 – Performance Standards*
 - *City Code 300.31 – PID District*
- Recommended Action:** Recommend the city council adopt the proposed ordinances.

Introduction

Staff is proposing several ordinances that would amend existing regulations pertaining to tree protection and landscaping standards. The planning commission considered the ordinances and held a public hearing regarding the proposed changes on May 1, 2008. (See the staff report and minutes on pages A3–A10.) The following report outlines and answers various questions raised at that recent meeting.

Questions

1. How are Woodland Preservation Areas determined?

In 2002 the city conducted a Minnesota Land Cover Classification System (MLCCS) study. MLCCS locates and analyzes types of natural land cover including woodlands, wetlands, and prairie communities. Following completion of the study these natural communities were mapped using Geographic Information System (GIS) technology. (See pages A29-A33)

The MLCCS serves as a guide. It is not survey accurate, similar to the city's wetland inventory. In the late 1980s the city inventoried local wetlands and mapped these areas. The inventory establishes whether a wetland exists on a parcel or not. However, field verification of the inventory is needed in order to determine: (1) if, in fact, the wetland exists; and (2) the exact location of the wetland boundary. In some instances a wetland may be present even if it is not indicated on the inventory or it may be bigger or smaller than was originally mapped. While the inventory serves as a guide, only the field verification or delineation determines the presence and location of the wetland.

Using the MLCCS information, Woodland Preservation Areas within the city have been mapped. Just as with wetlands, field verification is necessary to determine if the map is accurate. Since the commission's last meeting, staff has looked at

three sites in the city at the request of property owners and/or developers. Staff determined that the woodland preservation area exists on two of the sites, though not as large as originally mapped. On the third site, staff found that the Woodland Preservation Area encompasses more of the site than is mapped.

2. How does someone know their property includes a Woodland Preservation Area?

Residents and developers can obtain a copy of the mapped natural communities corresponding to their properties by contacting the city's planning department. Further, natural resource staff is available to meet with property owners to discuss the woodland areas on their properties.

3. How would a property owner or potential developer proposing a change to a property understand what regulations apply to them?

Generally, an applicant and their development team will meet with planning, engineering and natural resource staff before submitting an application for a site. The applicant communicates their intent and staff guides them as it relates to the city regulations: including setbacks, roadway requirements, stormwater requirements, grading and erosion control, wetlands, floodplains, shorelands, steep slopes, and trees. Staff also attempts to review and provide various maps and aerial photos of the site. At that time the applicant is informed of the information they will need to provide.

4. What information do applicants need to provide regarding trees?

To have a comprehensive site plan of existing conditions, a tree inventory is required on all projects. If a Woodland Preservation Area exists on a property, the inventory is additionally valuable in order to determine the exact location of that area. Staff acknowledges more time may be spent inventorying smaller-sized trees in the transition area of Woodland Preservation Area to non-woodland preservation. However, this is needed in order to determine the boundaries of that area.

5. How does the tree ordinance prohibit subdivision of property?

The tree ordinance would not prohibit or prevent a property owner from subdividing their property. Subdivision of property in the city is regulated by subdivision and zoning ordinances. Proposed subdivisions are reviewed and approved or denied based on their compliance with minimum lot standards – lot area, buildable area, width, depth, and frontage on a public street – as well as standards pertaining to natural resources.

There are several properties in the city which are larger than 1-acre in size. However, some of these properties cannot be subdivided, regardless of the presence or lack of trees. In some cases, subdivision of these sites would simply not meet minimum lot standards. For instance: (1) a lot may be quite large, but to

narrow to provide right-of-way for a public street; or (2) a lot may be quite large, but severely sloped, such that the steep slope ordinance would not permit subdivision.

5. How would the presence of a Woodland Preservation Area limit the full development potential of a site?

Use of a property is regulated by the zoning designation of that property. Use may be further regulated by “overlay” zoning designation. The most familiar “overlay” zoning designation is the wetland overlay. Development of a residential property that is encumbered by a wetland must meet minimum zoning standards for residential zoning districts – lot area, buildable area, width, depth, and frontage on a public street. Development of the site must also meet standards of the wetland overlay district, including specific structural setbacks from the wetland and provision of conservation easements. Staff views Woodland Preservation Areas as a similar zoning overlay, attempting to protect a valuable natural resource while still allowing reasonable development.

Based on discussion of property owners and commission, staff suggests the following modified proposed language as it relates to subdivision of property within Woodland Preservation Areas:

- 1) *Property must be subdivided at one lot per developable acre of land. Only 25% of the woodland preservation area that exists on the subject parcel may be removed; or*
- 2) *The land may be subdivided under the standards of the traditional zoning of the parcel such that only 25% of the woodland preservation area that exists on the subject parcel is removed; or*
- 3) *The property is rezoned to Planned Unit Development. In reviewing the planned unit development, the city will consider the following;*
 - a) *The development builds with the integrity of the site and tries to maintain the character of the existing landscape;*
 - b) *Loss of the woodland preservation area is minimized;*
 - c) *Restoration of the remnant eco-system has been undertaken in the past, is currently started or will be undertaken as part of the development project;*
 - d) *The amount of woodland preservation area placed into conservation easement to ensure the long term survival of the remnant eco-system.*

Staff believes that the revised language would preserve Woodland Preservation Areas, while allowing reasonable development of property, not penalize property owners who have woodland preservation areas on their properties, and recognize that residents strive to be good stewards of their property. The ordinance gives such owners credit for their stewardship efforts.

6. Why are not all property owners treated equally regarding notification and application of the proposed ordinance?

Over 2,300 property owners were notified regarding the proposed changes to the tree ordinance. The notification was mailed to owners who: (1) have a Woodland Preservation Area on their property; or (2) have a property line that touches one of these Woodland Preservation Areas.

Not all parts of the zoning ordinance apply to all properties. As such, one could say that not all property owners are treated equally. Where one property may have a Woodland Preservation Area, another may not. The same can be said for wetlands, steep slopes, and areas of small lot development. Properties with such features are regulated differently than properties without such features. However, all properties with a Woodland Preservation Area would be regulated equally. Similarly, all properties with Manage-I wetlands are regulated equally, as are all properties with slopes of over 30 percent.

Every property has its own unique character and development of that property is reviewed uniquely. The appropriate zoning regulations are applied to development as they pertain to the specific features of the given parcel.

7. Why are small trees and/or large shrubs protected as high priority trees in the proposed ordinance?

Small trees and large shrubs were including in the definition of a high priority tree for several reasons:

- To recognize that these species make up the understory or sub-canopy of a woodland and provide a vital component of the overall forest. This middle layer of vegetation can provide a buffer or screen from one property to another, sometimes more so than large trees that have a canopy of 50-70 feet tall.
- To recognize and protect these understory species which provide benefit in woodland areas, but do not meet the size criteria of a Woodland Preservation Area. For example, understory trees in a grove or woodland area that is less than 2 acres in total size area would not be considered a Woodland Preservation Area but rather a high priority tree and would have additional protections under the proposed language.

Staff recognizes the differing values people have regarding these smaller species. As such, staff would propose the following language to clarify when these smaller species should be considered high priority trees:

A small tree or large shrub that is at least two inches diameter breast height (dbh) consisting of species such as ironwood, serviceberry, hawthorn, viburnum, chokecherry, pagoda dogwood or other native

species that at maturity is typically no greater than twenty-five feet in height and is located within thirty feet of adjacent property line but is outside of the basic tree removal area.

8. Should conifers be inventoried based on diameter breast height (dbh) instead of height as proposed?

Staff agrees with comments at the recent commission meeting. Conifers should be inventoried based on dbh. However since the nursery industry sells coniferous trees by the foot, mitigation will still need to be provided foot-for-foot. A handout will be prepared by staff for use in converting dbh inches of coniferous trees to feet.

9. How does Leadership in Energy and Environmental Design (LEED) and the Green Building Council (GBC) award points for tree preservation?

The goals of LEED and the GBC have been used in new commercial construction for several years. However, LEED certification in new residential construction and development is relatively new. The proposed ordinance would be consistent with the preliminary goals established by the GBC. (See pages A1–A2.) New residential construction projects would receive credits for:

- Restoring or protection a minimum of 50% of a site area with native or adapted vegetation.
- Limiting site disturbance to specific perimeters around structures and paved surfaces.
- Situating buildings to minimize disruption to existing ecosystems.

10. Why does the proposed ordinance include a two-year “look back” clause?

Staff acknowledges that most property owners would not clear cut their lots prior to development; trees are a factor that makes the lots more marketable. However, the two year look back clause is provided to give the city the ability to require appropriate mitigation on a development site *if* clear cutting were to occur two years prior to development. Without this provision the city could not require any additional mitigation for tree loss.

Summary Comments

The City of Minnetonka has a long history of balancing individual property rights with the shared community values of environmental protection and responsible development. As the community has evolved, the city has continued to modify its development philosophy through policy and ordinance revisions. The proposed tree ordinance and associated ordinances:

- continue to provide tree protection;

- place a higher protection standard on remnant woodlands; and
- continue to allow for responsible development.

Staff Recommendation

- 1) Adopt the tree ordinance and associated ordinances on pages A11-A28 of this report. Approval is based on the following findings:
 - a. The ordinances protect, promote, and enhance the quality of the community's forest.
 - b. The ordinance protects diversity of age and species.
 - c. The amendments to associated ordinances would ensure consistency with the tree ordinance.

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