

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
June 4, 2018**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

AGENDA ITEM 1. Call to Order and Roll Call

Chair Buchanan called the meeting to order at 7:00 p.m.

Present at roll call were Commissioners: Plantan, Murray, Buchanan, Iverson, and Douglas.
Absent: Young and Flannigan. Director of Planning and Building Jeff Thomson and City Attorney David Schelzel and Attorney Allison Lewis from the City Attorney’s Office were also present.

AGENDA ITEM 2. Approval of Agenda

Chair Buchanan asked for a motion to approve the agenda for the meeting.

Commissioner Douglas made a motion, seconded by Commissioner Plantan, to approve the June 4, 2018 meeting agenda as presented. The motion carried unanimously.

AGENDA ITEM 3. Consent Agenda

- a.) Approval of May 21, 2018 Meeting Minutes**
- b.) Adoption of Report and Recommendation of Approval of Conditional Use Permit and Variance for Benedict’s at 845 Lake St E**
- c.) Adoption of Report and Recommendation of Denial of Conditional Use Permit and Variance for Baja Haus at 830 Lake Street E**

Chair Buchanan read the items on the Consent Agenda and asked if any Commissioner wished to remove an item for further discussion.

Hearing no requests, Chair Buchanan asked for a motion to approve the Consent Agenda, as presented.

Commissioner Iverson made a motion, seconded by Commissioner Plantan, to approve the Consent Agenda as presented. The motion carried unanimously.

AGENDA ITEM 4. Old Business Items:

- a.) None.**

1 **AGENDA ITEM 5. Public Hearing Items:**

2
3 **a.) Right-of-way Ordinance**

4
5 Director of Planning and Building Jeff Thomson stated during the 2017 state legislative session,
6 the legislature enacted a new law relating to Minnesota's Telecommunication Right-of-Way users
7 to clarify the rules applicable to all wireless service providers and to treat them similar to other
8 telecommunication service providers under State law. The new law creates a separate streamlined
9 permitting system for placement of small wireless facilities on City-owned structures in right-of-
10 ways. In order to be consistent with the changes in State law, the City needs to amend its Right-
11 of-Way Ordinance. The City Attorney has drafted an amendments to the City Code that
12 incorporates the changes made by the State law for small wireless facilities in the City's right-of-
13 way. City staff has also taken the opportunity to review all of the parts of the City Ordinance that
14 address uses in the right of way, and consider other if there are other changes that would be helpful.
15 Changes being considered include combining these various parts of City Code into one
16 comprehensive Right-of-Way chapter of City Code, and making other changes based of staff's
17 experience with administering the current ordinance and recent applications, including sidewalk
18 cafes, trees and landscaping, encroachments, and vacations of Right-of-Way. Mr. Thomson noted
19 that the City currently regulates outdoor dining patios located on the public sidewalk in the Zoning
20 Ordinance through the conditional use permit process. City staff thinks that dining patios located
21 on City right-of-way are best regulated through the Right-of-Way Ordinance.
22

23 Attorney Allison Lewis presented an overview of the legislation passed by the Minnesota
24 legislature in 2017 relating to small wireless facilities located in the public right-of-way. The
25 changes were based on the fact that the State has an interest in ensuring that the use and regulations
26 of public right-of-way be carried on in a fair, efficient, competitively neutral and substantially
27 uniform manner. The new law gives telecommunications right-of-way users the right to deploy
28 "small wireless facilities" in the right-of-way and to use the right-of-way to deliver wireless
29 services. One of the primary goals of the new State law is to make utility poles in the right-of-way
30 available for installation of wireless facilities. Cities may determine whether a utility pole can
31 support small wireless facilities, and may deny a permit based on health, safety and welfare
32 concerns. In order to be authorized, any new utility pole cannot exceed 50-feet in height or 10-feet
33 above any existing pole that is being replaced unless authorized by the city. The ability of a city
34 to restrict or prohibit placement of small wireless facilities in the right-of-way in certain zoning
35 districts is limited, and cities may only require wireless providers to obtain a CUP for small
36 wireless facilities located in right-of-ways within residential or historic districts. The amount of
37 rent that a city may charge is limited to \$150 annually plus \$25 for maintenance for each site. The
38 proposed new ordinance would replace the current version and ensure compliance with state law
39 with respect to small wireless facilities. The proposed ordinance covers all aspects of right-of-
40 way management and creates several different right-of-way permits for different categories of
41 uses, including obstruction and encroachments, excavations, small wireless, small wireless
42 conditional use permits, outdoor sidewalk cafés, and landscaping. Under the new ordinance, the
43 City will give notice to the owners of properties abutting the area to be vacated and owners of
44 properties located within 350-feet of the area to be vacated.
45

1 Commissioner Iverson asked if the City's utilities poles would support telecommunication
2 facilities.

3
4 Mr. Thomson stated the City's utility pole would support these small wireless facilities.

5
6 City Attorney Schelzel clarified the new ordinance would require a CUP for only those requests
7 for small wireless facilities located in residential districts.

8
9 Commissioner Plantan asked who was responsible for the routine maintenance of these small
10 wireless facilities.

11
12 Mr. Schelzel explained the new ordinance would require telecommunications companies to sign
13 an agreement with the City that would cover items such as maintenance.

14
15 Commissioner Iverson asked if carriers would share poles.

16
17 Ms. Lewis stated carriers could share poles, but the City can also establish spacing requirements.

18
19 Commissioner Murray asked if there are any restrictions to aesthetics imposed by the new State
20 law.

21
22 Ms. Lewis stated there was nothing in the draft ordinance or referenced in State law that related to
23 aesthetics, per se. The City could adopt something pertaining to aesthetics as long as it is not
24 burdensome or overly costly to the vendors.

25
26 Mr. Schelzel stated staff could look at adding language to the ordinance about aesthetics, as well
27 as the co-location agreements.

28
29 Commissioner Iverson asked if streets or sidewalks would be shutdown while these sites were
30 installed.

31
32 Ms. Lewis stated this could also be addressed in the co-location agreement.

33
34 Mr. Thomson reviewed the other amendments to the right of way ordinance the City is proposing
35 related to sidewalk cafes. The City currently regulates sidewalk cafes through the conditional use
36 permit process in the zoning ordinance. The right of way ordinance would be better means of
37 regulating sidewalk cafes because it would allow the City to review cafes annually, and the right
38 of way ordinance would not grant a land entitlement to property owners to use the right of way.
39 The draft right of way ordinance would generally keep the same standards for sidewalk cafes in
40 the right of way as the present ordinance. However, he requested the Commission consider
41 removing the minimum 42-inch aisle requirement for service and access, and change it to a
42 requirement that service and access be located internal to the café, and not from pedestrian clear
43 zone. He also suggested the Commission consider allowing small wait stations in the sidewalk
44 café, and removing the requirement of a specific number of trash receptacles to make the standard
45 more flexible. He stated the City does not have regulations pertaining to outdoor patios on private
46 property. He recommended separate conditional use permit standards that would allow the City

1 to draft specific standards for outdoor dining areas located on private property, and not within the
2 City's right of way.

3
4 Commissioner Iverson asked if there was a way to require customers waiting to be seated to wait
5 inside, versus waiting outside on the sidewalk. She referenced the number of people waiting at
6 Benedicts to get a seat, and that it had been difficult for others to use the sidewalk.

7
8 Mr. Schelzel stated although Benedict's was granted a CUP, if there are safety hazards created by
9 the use that violate any City standards or the agreement, then the City can address these issues
10 with them.

11
12 After further discussion, it was the consensus of the Commission that staff should draft standards
13 for outdoor patios on private property for the Commission to review.

14
15 Commissioner Douglas asked if the 42-inch aisle for service and access pertained to those outdoor
16 patios that do not do service, such as Caribou Coffee.

17
18 Mr. Thomson stated Caribou is not required to have an enclosure because they do not have a liquor
19 license, and the 42-inch aisle only pertains to those outdoor patios that require an enclosure. As
20 part of the permitting process, the size and location of patios must be provided.

21
22 Commissioner Douglas asked if the City could require a specific type of trash receptacle.

23
24 Mr. Thomson stated the Ordinance language reads: one covered trash receptacle matching the
25 appearance of other furniture shall be provided for every eight tables.

26
27 Mr. Schelzel stated if the patio is in the City right-of-way, the City could decide to install uniform
28 trash receptacles in the right-of-way to help applicants meet their requirements.

29
30 Mr. Thomson stated the draft Right-of-Way ordinance would also require a permit to plant, trim
31 or otherwise impact any tree or other planting in the right-of-way. He stated encroachments would
32 be further defined in the new ordinance to include awnings, private improvements, structures, and
33 would prohibit buildings and portions of buildings in the right-of-way.

34
35 Mr. Thomson advised the Planning Commission to open the public hearing on the draft Right-of-
36 Way Ordinance amendments but continue the public hearing to June 19, 2018, to consider the
37 balance of the draft amendments to the Zoning Ordinance which would incorporate the changes to
38 the Right-of-Way Ordinance.

39
40 Chair Buchanan opened the public hearing at 7:46 p.m.

41
42 There being no one wishing to address the Commission, Chair Buchanan continued the public
43 hearing to the June 19 Planning Commission meeting.

44
45
46

1 **AGENDA ITEM 6. Other Items:**

2
3 **a.) Review of Development Activities**

4
5 Director of Planning and Building Jeff Thomson stated there would be three new applications on
6 the June 19 Planning Commission agenda: a PUD amendment request for Broadway Place, a
7 variance request for 224 Broadway Ave N, and an application from Wayzata Bay Car Wash.

8
9 **b.) Rescheduling July 2nd Planning Commission Meeting**

10
11 Mr. Thomson proposed that in light of the July 4th holiday, the July 2nd Planning Commission
12 Meeting be rescheduled to July 30, 2018.

13
14 After brief discussion, Commissioner Murray made a motion, Seconded by Commissioner Iverson
15 to reschedule the July 2, 2018 Planning Commission meeting to July 30, 2018. The motion carried
16 unanimously.

17
18 **c.) Next Meeting is June 18, 2018**

19
20 Mr. Thomson noted the next meeting of the Planning Commission is scheduled for June 18, 2018.

21
22 **d.) Other Discussion**

23
24 Chair Buchannan asked if the Commissioners had any other items to discuss.

25
26 Commissioner Iverson stated Walgreen's landscaping is not looking good. She asked if the City
27 had any say on the quality and care of their plantings.

28
29 Mr. Thomson stated staff would review this and follow up with them.

30
31 Commissioner Iverson stated as part of the development application, Walgreen's had been required
32 to have planters at the front entrance and they only have trashcans. She asked that staff also look
33 into this.

34
35
36 **AGENDA ITEM 7. Adjournment.**

37
38 There being no further discussion or business on the agenda, Chair Buchannan asked for a motion
39 to adjourn.

40
41 Commissioner Iverson made a motion, seconded by Commissioner Plantan, to adjourn the
42 Planning Commission meeting. The motion carried unanimously.

43
44 The Planning Commission meeting was adjourned at 7:53 p.m.
45
46

- 1 Respectfully submitted,
- 2 Tina Borg
- 3 *TimeSaver Off Site Secretarial, Inc.*