PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, November 17, 2020 – 7:00 p.m.
REMOTE MEETING

Chair Maggi called the Planning Commission meeting to order at 7:00 p.m.

Commissioners Present:	Elizabeth Niemioja Annette Maggi Brett Kramer Dennis Wippermann Pat Simon Scott Clancy Jonathan Weber Kate Challeen Joan Robertson
Commissioners Absent:	
Others Present:	Allan Hunting, City Planner Heather Botten, Associate Planner

APPROVAL OF MINUTES
The minutes from the November 4, 2020 Planning Commission meeting were approved as submitted.

Chair Maggi noted that the first two items on the agenda are being tabled to December 1, 2020.

RODGER ESPESETH – CASE NO. 20-37Z (tabled to December 1, 2020
Commissioner Simon read the public hearing notice to consider a rezoning of a portion of the parcel from I-1, Limited Industry to I-2, General Industry, for the property located at 10900 Clark Road. 7 notices were mailed.

BUILDER LOT GROUP (EAGLES LANDING) – CASE NO. 20-38SV (tabled to December 1, 2020)
Commissioner Simon read the public hearing notice to consider the request for a preliminary plat for a 10-lot subdivision to be known as Eagles Landing, and variances from the minimum lot size and width, for the property located at 2655 – 70th Street.

JOE GIBBS – CASE NO. 20-40V

Reading of Notice
Commissioner Simon read the public hearing notice to consider the request for a variance from the 75% clear visibility opening required for a fence from the outside corner of the lot, for the property located at 6512 Arctic Way. No notices were mailed.

Chair Maggi noted that this afternoon Commissioners received an amendment to this request, which was an additional variance related to the height of the fence at the corner.

Presentation of Request
Heather Botten, Associate Planner, explained the request as detailed in the report. She noted that notices were mailed to abutting property owners. She advised that the property is on a corner lot in a planned unit development (PUD). The applicant is requesting an after-the-fact variance to

allow a five-foot picket fence that provides 50% visibility within the outside corner of the property on a corner lot. The property is surrounded by three roads and the fence is installed along the corner side, rear, and side of the property. City Code states that the outside corner of any corner lot shall be free of any fence unless it provides a 75% clear visible opening. The applicant is also requesting a variance for a five-foot fence, details of which were sent to commissioners earlier today. The code states that the outside corner shall not have a fence higher than 42 inches. The area of the variances pertaining to opacity and height are 30 feet in each direction of the outside corner. The intent of these rules appears to be mainly for sight lines and visibility for traffic and emergency vehicles along street intersections and from driveways. The applicant's fence provides 50% visibility and is five feet tall. The fence is located 27 feet from the intersection of 65th Street and Alverno Avenue. The property is unique in the fact that the City planted evergreen trees along 65th Street, but they are on the applicant's property, are taller than 5 feet, and provide a denser screening than what the picket fence does. Staff does not believe that the applicant's fence is affecting traffic visibility from the street intersection or from 65th Street. Staff recommends approval of the request. Commissioners received a copy of an email that was signed by 15 neighboring property owners who are opposed to the request and state that the fence poses a safety hazard from oncoming traffic and for people utilizing the sidewalk.

Chair Maggi asked staff to address the potential for the other exit from this development to be closed eventually.

Allan Hunting, City Planner, advised that the temporary connection to 70th Street from the southern cul-de-sac would eventually go away once a connection to 67th Street to new Argenta Trail is established.

Chair Maggi asked if this would be a fairly high traffic corner.

Ms. Botten replied in the affirmative.

Commissioner Niemioja stated the applicant originally applied for the fence permit in August 2020, but it was not approved as it did not meet zoning or engineering requirements. In October 2020 the applicant received approval of an encroachment agreement from the engineering department to install the fence within a drainage and utility easement. She asked for clarification of the difference between the two and when was the fence built.

Ms. Botten stated that fence permits get reviewed by numerous departments. The way it is set up now is all people reviewing the plans receive them electronically and do their reviews independently. Everyone involved tries to keep each other informed of what is going on and if there are issues. In this case there is a large drainage and utility easement in the back of the lot, so the applicant had to work with the engineering department separately to get an encroachment agreement to install a fence within that easement. The fence was installed on or around the time this encroachment agreement went to City Council.

Chair Maggi asked if the applicant received a permit denial.

Ms. Botten replied that the City just did not approve the permit, and the applicant was notified of what the issues were.

Chair Maggi stated there could have potentially been confusion on the applicant's part between the fence permit and the encroachment agreement.

Commissioner Kramer asked what the timing was of the Stop Work Order that was brought forth while the fence was under construction.

Ms. Botten replied that once she was made aware that the fence was being built without a permit or issues being addressed, she worked with the Chief Building Official, who posted a Stop Work Order. Staff later heard that the fence continued to be installed.

Commissioner Kramer asked if the fence was 15 feet from the curb, as it looks closer than that in person.

Ms. Botten replied that it was slightly over 15 feet from Alverno Avenue and also was not a solid fence.

Commissioner Simon noted that the neighborhood letter states that the work was finished right after the inspector left the property, and she asked what date the Stop Work Order was posted.

Ms. Botten replied that she did not know offhand but could research that further.

Commissioner Robertson asked if Mr. Gibbs received approval to build the fence in the easement but did not receive a building permit and in fact was issued a Stop Work Order, would the lack of a building permit and the imposition of a stop work order have precedent over the engineering approval regarding the encroachment agreement.

Ms. Botten replied that the encroachment agreement would not supersede any permitting process; a fence permit would still be necessary from the Inspections Department.

Commissioner Robertson asked for confirmation that the applicant did not have a permit from the City, had a stop work order, and proceeded anyway.

Ms. Botten replied in the affirmative, stating the stop work order was issued because there was no permit from the City.

Commissioner Robertson asked if there was a required setback from the sidewalk.

Ms. Botten replied there are no required setbacks from a sidewalk, but code states there shall be no solid fence closer than 15 feet from the face of the curb.

Commissioner Robertson asked if the fence was 15 feet from the curb.

Ms. Botten replied in the affirmative.

Commissioner Weber asked if the fencing contractor was a certified contractor with the City.

Ms. Botten replied that they do have a current license with the City.

Commissioner Weber noted that if they had done work here before they likely knew the rules.

Opening of Public Hearing

Joe Gibbs, 6512 Arctic Way, advised he was available to answer any questions.

Chair Maggi asked the applicant if he read and understood the staff report.

Mr. Gibbs replied in the affirmative. He advised that he and his wife were out of town when the fence panels were installed and were not aware, they were being installed at that time. The person who was managing the project, Dave, was also out of town. Unbeknownst to their fence contractor

or himself a crew came and installed the panels while they were both out of town. He advised that Michael Wright, in the Engineering Department, had indicated to Dave that they were okay to install the fence in the drainage and utility easement once the encroachment agreement was notarized and approved by Council. Before applying for the fence permit, they first got approval from their HOA as to the style and height and location of the fence. They approved a height up to five feet tall with equal gapping of plank in the picket fence. As the moved along in the process they became aware there were additional levels of city involvement.

Commissioner Robertson advised that the HOA standards would not have precedence over the City ordinance and therefore the City standards should have been taken into account before designing the fence.

Mr. Gibbs advised that today is the first time he was told that the height of five feet was not appropriate.

Ms. Botten agreed, stating the addendum addressing the height variance was sent to the Gibbs at the same time it was sent to the commission earlier today.

Commissioner Robertson asked for clarification that the City in its permitting process did not address the height of the fence.

Chair Maggi advised that during her conversation with staff today it was determined that the five-foot height was an issue at this corner because of visibility. The applicant could lower the fence in that specific corner, but it might be a bit odd.

Ms. Botten added that the 42 inch fence heigh requirement is only required within 30 feet from the northwest corner of the property; the rest of the fence could be up to seven feet tall per the zoning code and five feet per the HOA.

Commissioner Challeen asked for more information on the timeline of the permit and installation process.

Mr. Gibbs advised that he submitted the fence permit application through the electronic Portal system in August, Michael Wright then reached out regarding the drainage and utility easement and they eventually agreed on an encroachment agreement and removable panels, he gave the City a $1,500 escrow check to pay for staff or legal time associated with preparing the encroachment agreement, Dave got the okay from Michael Wright to install in the drainage and utility easement as the posts start to go in, and at that point they became involved with Ms. Botten. At the beginning they were only hearing from Michael Wright and once they got the encroachment agreement notarized and approved, they started to proceed with the posts.

Commissioner Wippermann asked the applicant why he was not able to comply with code.

Mr. Gibbs replied that the trees planted in his yard by the city provide a denser coverage than his fence, and when vehicles make a stop at this intersection they are already beyond his fence and the evergreens so they would not be an obstruction.

Commissioner Wippermann asked the applicant, regardless of the trees, what prevented him from following code.

Mr. Gibbs replied he was not aware until today of the height restriction at that particular corner and they were just working with Michael Wright regarding the encroachment agreement.

Commissioner Wippermann asked Mr. Gibbs if he was aware of the 75% visibility requirement.

Mr. Gibbs replied he was not aware of that in the beginning.

Commissioner Niemioja asked the applicant if he ever received an orange permit card to post.

Mr. Gibbs replied he was not aware there were three levels of staff that needed to be involved in this, which is very unique. The building inspectors never contacted him until they issued the stop work order when he was out of town.

Commissioner Niemioja understood that three levels of staff could be confusing but questioned whether the applicant received a physical permit at his house.

Mr. Gibbs replied they were not given one, nor instructed by Mr. Wright to obtain one.

Commissioner Robertson asked Mr. Gibbs if in his discussions with Ms. Botten he was aware that he had not actually received approval for a fence permit. She noted that most construction requires a permit from the city before work can begin. She asked also why the fencing installer proceeded without knowledge of the stop work order or a visible permit from the city.

Mr. Gibbs replied that he could not speak for the contractor, but he felt that once the City took his first check for the encroachment agreement, he was not aware that additional funds were to be collected. Also, at the beginning the only person that contacted him was Michael Wright.

Commissioner Clancy asked Mr. Gibbs when he was made aware of the visibility triangle requirement by Ms. Botten, what was the timeline of the installment of the fence from setting the posts to, putting in the panels when Mr. Gibbs was out of town, and when did he get approval from Mr. Wright to build within the drainage and utility easement.

Mr. Gibbs advised that he submitted a fence permit application through Portal, was contacted by Mr. Wright about the encroachment agreement, and had not heard from other levels that needed to be involved. Mr. Wright did not indicate there were other steps, so they proceeded with their project.

Commissioner Clancy asked if Mr. Gibbs knew when he spoke with Mr. Wright.

Ms. Botten advised that according to her research, they applied for the fence permit on August 17. On August 19 Mr. Wright sent the Gibbs' an email regarding the encroachment agreement and what would be required to put the fence in the drainage and utility easement. Ms. Botten called the Gibbs on August 21 about meeting the visibility triangle. She spoke with their fence contractor in early September regarding the request. On September 15 the fees were paid for the encroachment agreement for the city attorney to draft the agreement. On October 16 the stop work order was issued. On October 26 the encroachment agreement went to City Council for approval.

Commissioner Clancy asked what day the contractor installed the fence

Ms. Botten replied that the stop work order was issued on October 16. Work was started prior to that and then after the stop work order was issued as well.

Commissioner Weber asked Mr. Gibbs if he or the contractor pulled the fence permit.

Mr. Gibbs replied that he applied for the fence permit through Portal, not the contractor.

Commissioner Weber asked if the fencing contractor had had a conversation with the City about building in the drainage and utility easement.

Mr. Gibbs replied that Mr. Wright and his contractor had spoken, and they did not start any work until the drainage and utility easement was okay. From his perspective it was okay to proceed at that time.

Commissioner Weber asked if the denial of the permit was based on the drainage and utility agreement being needed or all factors.

Ms. Botten replied all factors.

Commissioner Weber asked how that information was conveyed to the applicant.

Ms. Botten replied that she did not send Mr. Gibbs any written correspondence stating the permit was going to be denied; they typically just do not issue the permit.

Commissioner Simon asked if an encroachment agreement was a permit and, if so, was it different from a fence permit.

Ms. Botten replied that an encroachment agreement is a document drafted by the city attorney and signed by the applicant and approved by City Council. It is then recorded against the property.

Commissioner Simon asked if that was considered a permit and perhaps the applicant thought the one permit covered the entire fence.

Ms. Botten replied that she could not speak for the applicant as to whether he was confused, but the two processes were very different and separate and had different fees associated with each.

Commissioner Kramer asked if the applicant was told why the encroachment agreement was needed. He could understand where a homeowner might get confused if they were told they needed the encroachment agreement to build a fence.

Ms. Botten replied that for Engineering to approve the building permit they needed the encroachment agreement approved first.

Chair Maggi asked if the easement would have been identified in the legal documentation for the property when it was purchased.

Ms. Botten replied that it was depicted on the Certificate of Survey for the property.

Mr. Gibbs advised that he and his wife are first time homebuilders. They were upfront with Lennar that they would be constructing a fence and they were never told that extra steps would be required due to the city infrastructure in their backyard. They were assured by Lennar that it would be no issue, especially if they followed the HOA guidelines and city requirements.

Kris Staples, 6503 Arctic Court, HOA President, advised that the HOA approval specifically directed Mr. Gibbs to work with the City to follow all appropriate codes so that is a point of confusion when arguing about the ignorance of fence building rules. In addition, the fence guidelines are posted on the City's website and specifically states the 42-inch maximum height and 75% visibility requirements. The fence contractor's website also includes a link to the Inver Grove Heights' guidelines. There are statements about the timeline and knowing that the permit did not

exist but continuing to build anyway that they disagree with from the standpoint of various email chains. The letter submitted by residents outlines their opposition to this request and notes that this is a safety issue, and the fence should comply with corner lot restrictions.

Mr. Gibbs stated he has been in contact with City staff since August and their intention to build the fence was always good. He advised they have been very communicative with staff once they were made aware of who they needed to speak with, they have paid $1,800 in fees, and they don't believe their fence is a safety concern as the trees are dense than the fence and a vehicle stopping at the stop sign would be past those objects.

Chair Maggi closed the public hearing.

Planning Commission Discussion

Chair Maggi stated that she can appreciate the Gibbs' being first time home builders with no experience with knowing the regulations, it is a somewhat unusual property because of the easement, but the challenge is to come up with a practical difficulty. Staff outlined a practical difficulty being the trees, but she did not recall planted trees being a practical difficulty as typically it would have more to do with the natural inherent nature of the land. In her mind they should look at this from the perspective of if the request had come in prior to the fence being installed would they have approved it.

Commissioner Weber stated that the process can be confusing to people that do not build homes or pull permits on a regular basis. He feels the applicant went above and beyond what he would consider normal practices for individuals in this circumstance. He understands what this looks like from the standpoint of being asked to approve something after-the-fact, but he would have a hard time telling someone to remove their fence because their contractor did not follow the city's regulations. He would be in favor of approving the variances at this point.

Commissioner Niemioja disagreed, stating she was extremely disappointed that a licensed contractor would move forward on this project without seeing a permit on the front door. She feels for the homeowner because the easement situation is complex, but she does not want to set a precedent, especially since this fence has two issues and there is a lack of a practical difficulty. If they had obeyed the stop work order they would likely be in a different place now.

Commissioner Challeen liked Chair Maggi's suggestion to look at this request as if it was coming to them before the fence was built. She asked if there was a compromise position anyone could come up with or are they basically at the fence stays or the fence goes away.

Chair Maggi replied that unfortunately it is probably the latter.

Commissioner Robertson stated she did not support the request and from her perspective the trees were not a practical difficulty. The fence could have been built inside of the trees, which would have resolved a large portion of the issues being discussed tonight. Ultimately the homeowner is responsible for making sure orange permit sign is visible. Also, although there is no required setback from a sidewalk, she is concerned that the fence will act like a snow fence and the sidewalk, that is intended for public safety, will fill up with snow and be a hazard. She was surprised that the contractor did not express similar concern. She was also concerned about setting a precedent for future after-the-fact variances. If this fence is approved, it would allow everyone along that line of trees to build a fence of varying height and design and she does not think that was the intent of the people who purchased homes there. She struggled to understand how the homeowner could be completely unaware of the permit process and code requirements and she would not vote for approval of the request.

Commissioner Kramer stated he reluctantly could not support the request because of the precedent it would set for homeowners to use their contractors' misstep as grounds for going against city code or using trees as a practical difficulty. If the rest of the neighborhood had come out in support of the request perhaps that might have tipped the scales a little bit.

Commissioner Weber noted that if Mr. Gibbs' abutting neighbor went by the city code regulations, they could build a 7-foot fence all around their backyard, including enclosing the trees. In his opinion this would not necessarily set a precedent because there are so few lots that would have a large boulevard immediately to the north of them. If you pull up to the stop sign next to their lot, you are fully clear of their fence. With what has gone on with this process, and looking at the recommendation by staff, it would be difficult for him to deny it because he feels the homeowner took every step they knew how to take, and the fact that they have a unique lot, and it would be difficult to read through city code and have a clear understanding of what they needed to do. He is in support of the request but feels there could have been better communication between the contractor and city to the homeowner.

Chair Maggi asked Commissioner Weber how he would define a practical difficulty.

Commissioner Weber replied that it would utilize the large right-of-way along 65th Street and he would include the natural screening per staff's suggestion because in 10 years you will not be able to see past those trees.

Chair Maggi noted that in 10 years the homeowner could have cut down every one of those trees.

Commissioner Weber stated that the next person that buys the house could remove the fence too. He questioned how long the trees needed to remain in place as it was difficult to cut down trees in an easement.

Chair Maggi asked staff to address the removal of trees in the easement.

Ms. Botten replied that trees cannot be removed from conservation easements. In this case it is just a standard drainage and utility easement and to her knowledge there is no requirement on how long they have to stay in place.

Commissioner Niemioja stated she was concerned about the precedent of being ignorant of the law and the code. She stated whatever communication took place that somehow made the contractor think they could send a crew to their house without the homeowners being present was very unfortunate, but she had an issue with someone continuing work after receiving a stop work order.

Commissioner Wippermann stated it was unfortunate what the property owners are facing, and the contractor should have given better guidance. However, he agrees that there is no practical difficulty.

Commissioner Weber suggested the practical difficulty be that the lot is surrounded on three sides by right-of-way, which is quite unusual.

Commissioner Robertson struggled with the number of right-of-ways being a practical difficulty.

Chair Maggi agreed, stating given that the variances are for height and visibility of fencing.

Planning Commission Recommendation
Motion by Commissioner Robertson to deny the request for a variance from the 75% clear visibility opening required for a fence from the outside corner of the lot, and to allow a five-foot-tall fence whereas 42 inches is the maximum height allowed within a corner lot clearance area, for the property located at 6512 Arctic Way. Also, to deny the issuance of a permit due to lack of a practical difficulty.

Chair Maggi advised that denying the issuance of a permit was not within their purview.

Commissioner Robertson amended her motion to include only denial of the variances.

Second by Commissioner Simon.

Kim Fox, Recording Clerk, noted that notices were mailed to four property owners.

Motion carried (8/1 - Weber). This item will go to City Council on November 23, 2020.

VANSOUTH LIMITED PARTNERSHIP – CASE NO. 20-39CUP

Reading of Notice
Commissioner Simon read the public hearing notice to consider the request for a conditional use permit for a drive-thru restaurant, for the property located at 1322 Mendota Road. 24 notices were mailed.

Presentation of Request
Allan Hunting, City Planner, advised that the applicant is proposing to construct a stand-alone drive-thru Caribou Coffee shop in the southwest corner of the Southridge Shopping Center site within the existing parking lot. They are requesting a conditional use permit (CUP) to allow a restaurant with a drive thru. There should be no impact on traffic circulation.

Heather Botten, Associate Planner, advised there would be a net reduction of 39 parking spaces; however, the shopping center will still exceed the overall parking minimums. Access to the site is not changing and they are meeting the general CUP criteria. Staff recommends approval of the request with the conditions listed in the report.

Commissioner Weber was concerned about the traffic flow, stating Caribou Coffee drive-thrus typically have quite a few cars in line, especially during morning and evening rushes.

Mr. Hunting stated they did not do a traffic study but do not see that as an issue as there is a lot of available stacking space.

Opening of Public Hearing
Bianca Fine, Fine Associates, Architect Cassie Anderson, and Engineer Don Parr advised they were available to answer any questions.

Chair Maggi asked the applicant if she read and understood the report.

Ms. Fine replied in the affirmative. She advised that the western boundary line along Robert Street was not accurate on the map, but they were working with Dakota County to correct that on their website. She added that they have not yet received the various agreements.

Mr. Hunting noted that he is working with engineering staff to compile the necessary documents.

Chair Maggi closed the public hearing.

Planning Commission Recommendation
Motion by Commissioner Wippermann, second by Commissioner Clancy, to approve the request for a conditional use permit for a drive-thru restaurant, for the property located at 1322 Mendota Road, with the conditions listed in the report.

Motion carried (9/0). This item goes to the City Council on November 23, 2020.

DAWN GAETKE – CASE NO. 20-33ZA

Reading of Notice
Commissioner Simon read the public hearing notice to consider the request for an ordinance amendment to Title 10 of the City Code (Zoning Regulations) to allow market gardening as an allowed use in the E-1, E-2, R-1A, R-1B, R-1C, and R-2 and single family planned unit development districts. No notices were mailed.

Presentation of Request
Allan Hunting, City Planner, explained the request as detailed in the report. He advised that the request is to allow market gardening in single-family residential districts. A market garden is essentially the same as a personal or community garden, which are allowed, with the difference being that these are for growing with the intent to donate or sell rather than just for personal consumption. The way the code is drafted market gardens would be allowed as a principal accessory use in single family zones. It is drafted to allow retail sales if the item is grown on the site and complies with specific conditions, including that sales must occur inside the house with no sales tents, sales be limited to three days per week, and a license would be required if selling on site. The remaining standards are the same as for community gardens. Mr. Hunting stated that staff supports the concept and noted that two other urban agricultural uses have previously been approved (chickens and community gardens). Staff noted three concerns; including 1) having retail activity take place in a residential district could blur the lines between residential and commercial and is not allowed with any other type of home occupation, 2) staff suggests having a one acre minimum lot size to minimize the impact to neighborhoods, and 3) a notification process is recommended to inform the neighbors of what is being proposed. Staff supports the ordinance amendment but would like commissioners to discuss the three topics raised.

Chair Maggi asked if only the crop itself in an unprocessed form could be sold, such as hemp versus CBD or strawberries versus jam.

Mr. Hunting stated the intent is to sell the food that is grown but suggested that the applicant address the question.

Chair Maggi asked if the ordinance would allow someone to purchase a vacant residential property and plant a market garden.

Mr. Hunting replied that personal gardens and community gardens can be a principal use on a property so the language should be changed if Commissioners were not agreeable with a market garden being the sole use.

Commissioner Weber stated the City recently prohibited someone from storing their tree trimming equipment in their own garage and he was concerned about how this would blur the line with regard to home occupations.

Commissioner Challeen stated regarding lot size, this would be somewhat self-limiting as there would likely not be enough return on a small lot for a market garden. She supported urban agriculture and thinks they could set clear parameters regarding equipment, manufactured goods, etc.

Commissioner Simon asked if signage would be allowed.

Mr. Hunting replied that the zoning code allows home occupations to have a small sign and the intent was to apply that to market gardens as well.

Commissioner Simon advised that in her opinion allowing some signage with information such as hours of operation, contact information, etc. would be appropriate.

Commissioner Robertson stated she would be reluctant to approve this ordinance until they received more input from the public as there could be impacts of market gardens that the Planning Commission was not aware of.

Mr. Hunting stated if commissioners wanted a broader discussion, they could add to their motion that they would be supportive of more public input. Currently the process for ordinance amendments is to post notice outside City Hall and on the City's website, publish it in the newspaper, hold a public hearing with the planning commission, and then it goes to the City Council for three readings.

Commissioner Kramer asked how other twin cities suburbs handled market gardens.

Mr. Hunting replied that he did not do a review of other cities' ordinances, but the applicant has stated they are allowed in Minneapolis and St. Paul.

Commissioner Wippermann stated he was not in favor of encouraging more commercial activity in residential areas. Allowing retail sales for the selling of produce is a home occupation and it raises the issue regarding how does the City treat this differently than they treat other home occupations.

Opening of Public Hearing

Dawn Gaetke, 7477 Cahill Avenue, advised she was available to answer any questions.

Chair Maggi asked the applicant if she read and understood the report.

Mrs. Gaetke replied in the affirmative. She stated that to her knowledge no other cities in Dakota County have a market garden ordinance. Throughout the country, however, many cities are embracing urban agriculture, including Minneapolis, St. Paul, and a number of cities in Wisconsin. Regarding the lot size issue, she does not think a minimum lot size needs to be specified because if someone's yard is too small, they probably would not bother with a market garden. Regarding a previous question about processed produce, someone could not produce hemp and then sell CBD because that process is not covered. They could; however, grow strawberries and sell strawberry jam because the Minnesota Pickle Bill allows people to sell home canned products from their homes. Whether this ordinance passes or not, people are allowed to do that today. They would; however, have to sell it through the internet or take it to a farmer's market. Regarding home occupations, she stated that many people are already conducting commercial activity from their homes through the internet, so approving this ordinance amendment would essentially just allow a physical retail sale as opposed to an internet retail sale.

Commissioner Robertson asked for clarification on what is typically allowed in cities that permit

urban agriculture.

Ms. Gaetke replied that most urban agricultural programs are fairly intense and will allow for almost commercial growers. On a vacant city lot, they will allow al grower to establish gardens and sell from there. In most bigger cities it is looked at as a way to avoid urban blight. Suburbs do not necessarily have abandoned lots with urban blight, but they have residents with yards big enough to help supplement their incomes.

Chair Maggi closed the public hearing.

Planning Commission Discussion

Commissioner Niemioja supported this ordinance amendment, stating it is a quiet activity that could help supplement peoples' income and was unlikely to create traffic issues. She recommended that there be a notification process to the abutting neighbors and agreed that community input would be helpful.

Commissioner Weber suggested following the Minnesota MDA guidelines regarding licensure, notification, etc.

Commissioner Wippermann stated there were a number of ways a market garden could impact neighbors, such as traffic and parking.

Commissioner Challeen noted that smell is also a consideration as many gardeners fertilize with manure.

Commissioner Kramer stated his primary concern was how this could affect the neighbors and he believed a notification process was necessary to give abutting property owners the ability to raise their concerns.

Chair Maggi stated it sounds like the commission would like additional information before making a recommendation. She asked what additional information would be needed besides neighbor notification and traffic.

Commissioner Robertson stated that before she could make a recommendation she would need a better understanding of the State guidelines and how they could include those in our ordinance. She noted there are sometimes issues when food is not handled in a way that assures public safety.

Chair Maggi asked if it allowing retail sales for market gardens was a concern when retail sales were not allowed with other home occupations.

Commissioner Robertson agreed that allowing retail sales for a market garden would set a precedent and needed more vetting before moving forward. Also, they should review the criteria for home occupations and see if they should be applied to market gardens as well.

Chair Maggi asked how many residents have gotten urban chicken licenses.

Mr. Hunting replied he was not sure as his department does not handle those.

Commissioner Niemioja asked if setting up a table at the end of someone's driveway and selling vegetables was allowed.

Mr. Hunting replied that currently was not allowed and would continue not to be allowed with the

proposed ordinance amendment.

Commissioner Challeen agreed that this needs more discussion before final recommendations can be made. She hoped they could come up with creative ways the community could help support the idea, perhaps even a community marketplace where people could bring their homegrown food rather than having to sell it from their home or at a farmer's market.

Commissioner Niemioja agreed that she too would like to get input from the community on market gardening, perhaps via a survey or open house.

Chair Maggi noted that home occupations evolve over time and there should be a discussion about this evolving space and how should the city accommodate it, so they are not 20 years behind. For example, the City had many discussions regarding VRBO's and basically renting out people's homes. She stated it would be helpful to understand how similar ordinances are written in other communities.

Mr. Hunting replied that he could work with the applicant on researching other ordinances. He noted that people are already allowed to have personal and community gardens; this ordinance relates more to whether to allow retail sales of the produce from the place where it is grown.

Commissioner Kramer asked how garage sales were regulated, stating this seemed similar to a garage sale in that people show up at certain hours of the day, park their cars on the street, and go to a resident's home for a couple minutes to buy something.

Mr. Hunting replied he was not familiar with the regulations around garage sales but believed there was a limitation on the number of sales that could take place per year.

Chair Maggi stated it sounds as if commissioners would like to table the request in order to get more information.

Mr. Hunting advised they should probably table it until further notice as he was unsure of an exact date this would come back. It would likely take 4-6 months to put something in the newsletter, perhaps create a survey, and give the public time to respond.

Ms. Gaetke responded to earlier questions about State licensing requirements, advising that the State does not require any licensing for selling produce. Produce selling happens with no regulation. It is not until you start processing food that regulation is needed. Regarding the Minnesota Pickle Bill, people can sell up to $5,000 worth per year with taking simple online training. For anything over $5,000 growers must take a course through the University of Minnesota. People are allowed to sell only food that is considered non-dangerous and canned or baked goods need to be labeled appropriately. She noted that the information she forwarded earlier to commissioners included a link to Minneapolis's city code for urban agriculture.

Planning Commission Recommendation

Motion by Commissioner Simon, second by Commissioner Weber, to table until further notice the request for an ordinance amendment to Title 10 of the City Code (Zoning Regulations) to allow market gardening as an allowed use in the E-1, E-2, R-1A, R-1B, R-1C, and R-2 and single family planned unit development districts, in order to get public input.

Motion carried (9/0).

The meeting was unanimously adjourned at 9:00 p.m.

Respectfully submitted,

Kim Fox
Recording Secretary