

**Planning Commission Meeting
July 25, 2019
7:00 PM**

Call to Order:

Commissioner Mark Azman, as appointed temporary chair, welcomed everyone to the meeting and called the meeting to order at 7:00 pm.

City Administrator Mike Robertson conducted Swearing in of Commissioner Azman as temporary Chair. Chair Azman then swore in new Planning Commissioner Nick Sandell. New Commissioner Jim Hara was unable to attend due to a long standing vacation.

Roll Call:

Present: Chair Mark Azman, Commissioners Stig Hauge, Nancy Reid, Nick Sandell, Sara Shah. Absent were Commissioners Joyce Yoshimura-Rank and Jim Hara. City Staff: City Administrator Mike Robertson, Recording Secretary Debbie Breen, City Planner Bob Kirmis, and soon to be City Attorney Kory Land.

Former Commissioners Katy Ross and Kara Ries also were seated at the table. Chair Azman, as per directive of the City Council as an overseeing body of authority, asked former Commissioners Ross and Ries to step away from the Planning Commission. Commissioners Ross and Ries gave prepared statements in disagreement with manner in which Ordinance 130, Chapter 34 regarding composition of the Planning Commission was recently enacted, stating they were grandfathered in. They stated they were harmed by not being allowed to remain on the Planning Commission. Following the directive of the City Council, Chair Azman asked Ross and Ries to leave the Planning Commission table. He encouraged anyone to share their thoughts on the issue with the City Council. Ries and Ross left the Planning Commission table.

Approval of Agenda:

Commissioner Reid moved to approve the agenda. Commissioner Hauge seconded. Motion approved unanimously.

Approval of Minutes:

Commissioner Reid moved to approve the May 30, 2019 meeting minutes. Commissioner Shah seconded. Motion approved unanimously.

Public Hearing – Request for Conditional use Permit – 33 Mallard Road

Combined Garage Space over 1,500 Square Feet – Fady Daw

Chair Azman opened the Public Hearing at 7:35 p.m.

Administrator Robertson reviewed the request by resident Fady Daw who is asking to convert his existing exercise room into additional garage space. Garage space over 1,500 sq. feet requires a Conditional Use Permit (CUP) per City ordinance. Originally, Mr. Daw was told that he would need a CUP to construct additional garage space, but he decided to use it as an

exercise room instead so he could begin home construction. He is now requesting conversion of the exercise room to garage space. The property is 1.53 acres, single family home, and zoned as Single Family by zoning. The house square footage is not changing and it meets floor area ratio (FAR) requirements. The proposed use of garage space doesn't appear to burden neighbors, traffic, drainage or endanger public welfare. These are all conditions that must be satisfied for approval. Proposed conditions of approval are: final plans must be approved by the Building Official and outstanding fees must be paid.

Commissioners Shah and Reid asked for a drawing of the request, which Administrator Robertson retrieved from the City office. Commissioner Hauge asked if the use as a garage vs. exercise space makes a difference per ordinances. Administrator Robertson stated that "Conditional Use" means use permitted with conditions put on it. Commissioner Reid inquired if NOHOA is looking at the landscape drawings, and Commissioner Shah asked for clarification on the role of NOHOA in Planning Commission rulings. Robertson stated that while we encourage residents to go before NOHOA under state law we can't deny a building permit if they haven't received NOHOA approval. Robertson stated per discussion with Executive Director Griffin, NOHOA indicated that they are close to resolving outstanding issues with Mr. Daw. Commissioners had questions about the location of the driveway, how to access the garage, etc. The applicant was not in attendance to answer questions. Commissioners Shah, Hauge and Reid all had driven by the applicant's property but were unable to get feel for the project with only the written description of the applicant's request.

Scott Reed – 28 Mallard Road

Mr. Reed is a neighbor to Mr. Daw, and feels he is a very nice guy but has a history of not following proper procedures. He is concerned that in winter, cars could end up in the pool because of the very steep driveway. Mr. Reed has done his own work on his own property and was required to follow all the processes and procedures. He feels Mr. Daw does everything backwards, does projects and then asks later. He also believes Mr. Daw's exterior lighting is not to code and inconsistent with natural area, as well as having 4 pillars which is 2 more than allowed.

Lisa Dujmovic – 15 Black Lake Road

As part of the NOHOA Architectural Review Committee, she indicated they are still working with Mr. Daw and not close to resolution. There are at least 7 open violations, and a date for the meeting with him has not yet been scheduled.

City Planner Kirmis mentioned that typically a CUP permit request for this sized garage would look at site plan and building impact, as well as any potential negative impacts and any unique features. Commissioner Sandell asked if it meets code setbacks from property lines. It does.

Susan Hinrichs – 55 East Pleasant Lake Road

Ms. Hinrichs asked procedurally what happens when there is a legal challenge to ordinances, and what the next steps are from a City perspective to ensure the planning is properly seated. Chair Azman stated there is not a legal challenge at this point. Administrator Robertson said

that on the next City Council Agenda is the request to approve the new attorney contract, as well as a request they review the newly enacted Ordinance 130.

Jo Ann Hanson – 5 Sumac Lane

Ms. Hanson asked for the date of the City Council meeting when the ordinance was passed removing the two planning commissioners. Robertson stated June 13, 2019.

Without further comments, the Public hearing was left open and adjourned until the next meeting.

Administrator Robertson stated that residents may do unusual things with their property, but the Planning Commission must look at the building code and ordinances in their decisions. Commissioner Reid wanted a site plan with locations of the septic, well and drain fields, and felt we are missing too much information to make a decision on the CUP request. Commissioner Sandell was in favor of tabling and waiting on more information.

Commissioner Shah moved to table CUP 19-04, the Request for Conditional use Permit at 33 Mallard Road for Combined Garage Space over 1,500 Square Feet, pending additional information requested. This includes: site plan with everything located (well, septic, driveway), engineer report on drainage, and applicant response on the lighting issue.

Discussion: Commissioner Shah asked if the Planning Commission can bring the outstanding ASC issues into the discussion, with Reid asking if we could get a list of those issues. City Planner Kirmis stated that typically within the City's responsibilities is adherence to ordinances, while a home owners association is responsible for imposing and enforcing any restrictions above and beyond ordinances. Administrator Robertson agreed to ask NOHOA staff if they would be willing to share the outstanding applicant issues as background information, however it is not a condition of the motion. He will also again encourage the applicant to attend the next meeting on the CUP application to answer questions by the Commission.

Commissioner Reid seconded the motion, and the Motion unanimously approved.

Planning Commission Training – Open Meeting Law, Social media

City Attorney Kory Land, with law firm LeVander, Gillen & Miller LLC, came to introduce herself and provide training on a variety of topics. She has a passion for helping governments do things the right way, and has been with the firm for 23 years since law school. She is looking forward to helping the City of North Oaks set things up in a thoughtful organized way. Covered in this 1st session: why Planning Commissions exist, their purpose, the opening meeting law, social media and general operating procedures.

Role of Planning Commission:

1. Planning Commissions exist because the state allows them to exist. Having this commission says to residents "These are the rules put in place and lets the community know if they play by rules they can do certain things here." The Planning Commission is advisory to the City Council.

2. Role and purpose: Develop comprehensive plan, review zoning/subdivision ordinances, subdivision regulations and applications, conditional use permits and variance requests. The perfect use of the Planning Commission was the review of the CUP Application for Mr. Daw immediately prior. The rule books for the Planning Commission are: comprehensive plan, zoning ordinances, any subdivision regulations.
3. Key general terms:
 - Comprehensive Plan: Long term vision for community, usually broad, not detailed, broad brush.
 - Zoning Ordinances: Takes information in the Comprehensive Plan and puts in more details for regulations such as height, zone, stories, open spaces, uses of buildings and structures. Zoning map divides into all the different types of zones, Residential, Commercial, etc., - more specific and particular.
 - Subdivision Regulations: Even further dividing into lot sizes, setbacks, trails, plats, etc. By the time the Planning Commission sees a plan, the City staff has primarily worked out many details.

Open Meeting Law:

Open Meeting Law says that “all meetings are open to the public”. All elected officials and commissions, or any committee the council has authorized must adhere to the Law.

Meetings aren’t specifically defined in statutes, but include:

1. Anytime a quorum of the body discusses, decides, or receives information as a group.
2. Information discussed is related to official business.

For City Council 3 of 5 discussing an issue applies, for the Planning Commission it would be 4 out of 7. Typically, this refers to in person meetings but also includes email and social media as the biggest pitfalls. Biggest concern: email when too many members involved results in quorum and violation. Emails with questions about an issue should only be sent to City staff. Staff can then copy all Commissioners with an answer. Commissioners should not do a reply all, which would constitute a quorum for discussion. If they need more info she suggests just reply to City staff as an individual.

Social Media – Facebook:

If you are friends on Facebook with a quorum of Planning Commissioners, don’t comment or discuss on anything that could possibly come before you as official business. The exception is unless the Facebook page is completely open to the public like the city page, then able to comment because it is open to the entire public. On the NOHOA Facebook page where all North Oaks members could be on the page – Commissioners can read the comments, but no response commentary. Hitting a “Like” button counts as weighing in on a decision, where you can’t comment on something that comes before you. This applies to personal Facebook pages, so just don’t discuss things on your Facebook page if you have a quorum and it could come before you. The penalties for a violation could include \$300 fine and public embarrassment.

What Requires a Public Hearing:

A Public Hearing ensures all sides of story are heard, that due notice is given, and that it is on the public record. This allows full presentation by the applicant, City and the public. Chair Azman asked about guidelines for conducting a public hearing, and thought asking for public comments 3 times would be sufficient guideline to provide opportunity to speak. Attorney Land responded that 3 is a good rule of thumb.

Due Process during meetings:

Staff provides information first, then gives others opportunity to present their case when a property interest is at stake. The Commission then makes a decision and adopts findings of fact that articulate the basis for decision.

Prior to a public hearing, the Planning Commission does not have the complete set of information, so they must leave the window open for an objective hearing of the application. If they deny an application without proper cause, the applicant can appeal. The result might be an overturned decision, or to send the application back to review for a possible new decision. Chair Azman asked if the record shows both sides of discussion, but found sufficient facts for approval (or denial), would it be upheld by a court? Attorney Land stated of utmost importance was to get findings of fact in the record. The City cannot supplement the record later if they realize an error was made. If there is additional information, it can be brought forth at the time the Council reviews the application for final decision. The key to is remain impartial until they make decision at the formal meeting.

Can I make own sight visit?

Attorney Land suggested that doing a drive by of the property to be reviewed is okay, but suggested not to engage with the applicant because they might get outside information that other Commission members don't have. The key is for all information to be received in the room at once. It is okay to do site visits solo or in groups of 2, unless posted as a "public meeting" and then they could go as an entire group in a van, etc. She recommends to advise an applicant who wants to tell you something that they need to come themselves to the public meeting to share that information. Any information received verbally from property owners or neighbors is hearsay. If that person has a message to tell they need to say it in person at the public meeting.

Findings of Fact:

Attorney Land reviewed valid Findings of Fact for approving or denying an application. If objecting to application, it is important for residents to show how an application endangers, injures or detrimentally impacts surrounding properties. They must be able to articulate what the damage is, with objections supported by some kind of fact.

Susan Hendricks of 55 East Pleasant Lake Road asked if there is an agreement in place, such as a developer negotiated agreement, if this might sign away rights to meeting some of these guidelines. Attorney Land can't speak to this without reviewing all the agreements, but in general commissioners must follow rules and not a gut feeling.

She reviewed appropriate questions to ask at a Public Hearing, and emphasized the Planning Commission can only be concerned with the outside of building and can't request the applicant make changes to the interior. Having rules make it a level playing field for all.

Reviewed Basic Meeting Protocol -Roberts Rules of Order.

Typical meeting order: Open the subject matter, staff overview, invitation to applicant to speak, open public hearing, take testimony, close public hearing, further discussion, motion and vote. The dialog between the Planning Commissioners is typically in the "further discussion" section. It is up to the Chair if they wish to reopen the Public Hearing after It is closed.

She recommended to try not to get sidetracked with things that are not in your pervue. Commissioner Hague mentioned that typically the Commissioners have discussion before the Motion, which Attorney Land indicated was fine. The Planning Commission must stick to things within your jurisdiction – let NOHOA do their thing, let Planning Commission do their thing. Can ask for things that concern them outside of this scope, but it is just background info. Do not be tempted to look things up during meetings, but ask for continuance for City staff to review issue(s). If on deadline for decision, recommend approve or deny – with request to get needed additional information upon recommendation to council. Know when to move on once your point has been made, regardless of whether you've convinced others to agree with you.

Attorney Land thanked the Commissioners for the opportunity to share with them, and will continue with part two of the session at a future date.

Next Planning Commission Meeting: Thursday, August 29, 2019

Adjournment:

Chair Azman thanked everyone for coming and their comments.

Commissioner Hauge made a motion to adjourn. Commissioner Reid seconded, and the motion unanimously approved. The meeting ended at 9:06 pm.