

CALL TO ORDER: Chairman Carlson called the meeting to order at 7:00 p.m.

PRESENT: Chairman Kent Carlson and Commissioners Jim Anderson, Gen McJilton, Bill Sharpe, John Studer, and Bob Werneiwski

ABSENT: Commissioners Brandon Gustafson, Council Liaison Darel Gustafson

OTHERS PRESENT: Zoning Coordinator Dale Cooney

MINUTES OF July 21, 2015

Motion by Commissioner Anderson, seconded by Commissioner Sharpe, to approve the minutes of July 21, 2015. Motion carried 6-0.

PUBLIC HEARINGS

No public hearings were on the agenda.

OLD BUSINESS:

Discussion related to the City's impervious surface limitations

Review first draft of ordinance language and City Council comments.

Chairman Carlson introduced the agenda item.

Zoning Coordinator Cooney said that the ordinance was a first draft and that changes were to be expected. He summarized the staff report:

Cooney said that City Council was presented with the four following policy recommendations from the Planning Commission:

- Impervious surface regulations will be expanded to include the entire city.
- Impervious surface regulations will incorporate a tiered system.
- Variances from impervious surface limitations will require stormwater mitigation.
- Stormwater mitigation systems will not be credited for reducing impervious surface coverage unless approved through the variance process.

Cooney said that he heard consensus on three of the four policy recommendations. However, the City Council was mixed on the recommendation to expand impervious surface regulations throughout the entire city.

Cooney also said that the City Council was concerned about the inspection and maintenance for any systems approved through the variance process. On this issue, the council agreed that:

- a) it should be the responsibility of the property owner to inspect and provide evidence that the system is functioning as designed;
- b) to simplify the reporting and inspection process, inspections should take place every five years, in year's ending in 5 and 0, regardless of when the mitigation system was installed; and
- c) the city should assume that the systems are not maintained, and that the city should only approve those systems that will maintain significant functionality without any maintenance.

Cooney said that the city council favored the concept of only giving partial credit for any stormwater mitigation system. The council also expressed a preference for natural systems such as

bioretention/bioinfiltration systems (raingardens, French Drains) over more heavily engineered or mechanical systems.

Cooney summarized the draft ordinance. He said that the city of Deephaven's impervious restrictions are likely to be more strict than the City of Orono. Tier 1 parcels (25% hardcover) within the City of Orono are generally within 250 feet of the shoreline. Tier 2 parcels (30% hardcover) are from 250 to 500 feet of the shoreline. Tier 3 parcels (35% hardcover) are from 500 to 1000 feet of the shoreline. Cooney said that within the City of Deephaven all Tier 1, 2, and 3 equivalent parcels are regulated at 25% hardcover within the Shoreland Management District. Orono's tier 4 parcels are regulated at 50% hardcover. The city engineer has not recommended any hardcover percentages in residential areas over 40%. Orono's tier 5 parcels would be roughly equivalent to our commercial areas. The remainder of the City of Orono (approximately 50%) remains unregulated by hardcover restrictions.

Cooney said that the primary objective of Orono's ordinance is water quality, while Deephaven's primary objective is managing stormwater runoff rate and volume. The engineers concluded that the best way to attempt to manage water runoff rates and volumes was based on lot size. Cooney said that the city engineers did not recommend hardcover over 40% for any residential lots, and suggested regulations in the 30% to 35% range.

Cooney said that variance requests seeking to exceed hardcover limitations will now be required to provide a stormwater mitigation system as part of the approval process.

Zoning Coordinator Cooney noted that the City Council, Planning Commission and city engineers also favored allowing only partial credit for any stormwater mitigation system and that based on the policy recommendations above (five year inspection schedule, and a preference for bioretention/bioinfiltration or recapture/reuse systems) the city engineers recommended a 50% credit for any installed system. Cooney also said that proposals that attempt to meet hardcover limits via use of a stormwater mitigation system without a variance will not be accepted. Variances will only be granted on the basis of the "practical difficulty" standard. Because of this, Cooney said it will be important to calibrate our impervious coverage restrictions appropriately.

Cooney concluded the summary of the staff report.

Commissioner Sharpe asked what the City Council's reluctance was toward expanding the impervious surface regulations. Chairman Carlson said that there is a reluctance to put a burden on the entire city when there are areas within the city that might not have an issue. Carlson said that he is interested in a solution before those areas become problematic in the future.

Chairman Carlson said that he preferred some kind of limit on impervious areas for commercial properties and was comfortable with the 85% proposed. Commissioner McJilton said that commercial parking areas often result in a lot of contaminants, and that she prefers some kind of limit. Chairman Carlson said that the watershed districts will likely be more restrictive, and the city should incorporate their restrictions into the city's ordinance.

Commissioner Sharpe asked if the proposed 50% impervious credit is too restrictive and might create a hardship for smaller builders. Chairman Carlson agreed that a 50% credit seemed too restrictive. Commissioner McJilton said that the cost could be prohibitive based upon the type of project proposed. Chairman Carlson said that he thought that a 75% credit would be more appropriate and that a system that is well designed and built well should last for a long time.

Commissioner Werneiwski said that a rain garden can require a lot of maintenance, particularly if it receives runoff from a road. Chairman Carlson said that the best systems would capture the water from the roof since that will greatly extend the life-expectancy of the system.

Commissioner Werneiwski asked if a percolation test should be required. Chairman Carlson said that an engineer would need to design the system and verify that the system would be able to handle the water.

Commissioner Werneiwski asked about how the five year inspection process would work. Commissioner Anderson asked about the administration of the mitigation systems, and asked how many potential mitigation systems might need to be built in the city. Chairman Carlson said that over the last two or three years, the city has approved four or five impervious surface variances per year. He said that lots in excess of 20,000 square feet are unlikely to request a variance and that lots over 40,000 square feet will almost never request a variance.

Commissioner Anderson asked what enforcement would look like. Zoning Coordinator Cooney said that he didn't have specifics on the mechanics or penalties for enforcement. Chairman Carlson said that enforcement would be from a third-party on behalf of the homeowner. He said that the city would send out a letter reminding residents that an inspection would be due. Carlson said that an inspection every five years should not be a cost burden.

Chairman Carlson asked, if based on the examples in the staff report, if there was a consensus on what the percentage of hardcover should be on the smaller lots. The Planning Commissioners expressed approval of the ordinance as written with 35% impervious limits for lots less than 10,000 square feet. Chairman Carlson said that he was also in favor of the 30% limit for all lots over 10,000 square feet in size.

Chairman Carlson asked the Planning Commission's opinion the draft ordinance excluding the first 100 square feet of decking or 100 square feet of pervious paving from the impervious surface regulations. Commissioner Studer said that he was in favor of the exemption. Zoning Coordinator Cooney said that he thought this exclusion could potentially eliminate a number of smaller projects from having to go through the variance process.

Zoning Coordinator Cooney asked if there should be an exception for any small projects to minimize possible variance requests. Chairman Carlson said that he preferred an exemption for decks and pervious patios only since they would provide some stormwater mitigation, whereas smaller additions would simply increase hardcover. Chairman Carlson asked if there was consensus for the allowance of exemptions for the first 100 square feet of decks and pervious patios. Several Planning Commissioners expressed consensus on this point, but Commissioner Werneiwski had some reservations with the pervious paver exemption because of installation concerns. Chairman Carlson thought that decks would be more common. Commissioner Sharpe said that most residents would not come into the city for this type of project. Commissioner McJilton said that this part of the ordinance could also be beneficial for enforcement of those property owners who are expanding hardcover illegally.

Chairman Carlson asked the Planning Commission's opinion on giving a 50% credit for any proposed stormwater mitigation systems. Commissioner Werneiwski said that he was not convinced that the systems will be well maintained and that 50% would be reasonable. Commissioner Studer said that because we are monitoring the design and installation, that the credit should be higher. Commissioner McJilton said that she agreed that since we are requiring significant third-party oversight of these systems, 50% credit seemed low. Chairman Carlson agreed that the 50% credit seemed low. Commissioner Sharpe said that he had concerns that the lower credit could increase the cost of compliance.

Zoning Coordinator Cooney asked if anything was missing from the proposed ordinance. Chairman Carlson said that it would be important to include language about providing the city engineer with documentation for the original mitigation system design and inspection of the system by a qualified third-party.

Chairman Carlson asked if the Planning Commission was comfortable with the set of preferred systems with bioretention/infiltration being at the top of the list. Commissioner McJilton asked how we would enforce that if someone came in with a different system design, and if the city would have the ability to

say no. Chairman Carlson said that it is a preference and not a requirement, but that the city could say no if the city thinks the proposed system would be inappropriate.

Chairman Carlson summarized the discussion and asked if the Planning Commission was still comfortable with an ordinance that expands impervious restrictions to the entire city. The Planning Commissioners expressed that they were still comfortable with this direction.

Commissioner Werneiwski expressed concerns about water quality issues and asked about people who fertilize their yard. Chairman Carlson said that it was possible to address issues of runoff from roads or driveways, but that he did not know how we would incorporate that particular water quality issue into the design of the systems.

Chairman Carlson asked if the Planning Commission was comfortable with the proposed ordinance's exemptions and mandatory inclusions. Commissioner McJilton asked, if someone was expanding their house but not adding a garage, would they be required to account for a second garage stall. McJilton said that she understood the requirement for new construction, but that the requirement would not make sense for an existing property, particularly for some of the city's smaller properties. Chairman Carlson said that the mandatory inclusions should apply to new construction.

Chairman Carlson said that this first draft will now be sent to the City Council for their review. Commissioner Werneiwski asked if the Planning Commission would see the ordinance again. Zoning Coordinator Cooney said that a public hearing will be required.

Chairman Carlson closed the discussion.

LIAISON REPORT

No report was provided since Council Liaison Darel Gustafson was absent from the meeting.

ADJOURNMENT

Motion by Commissioner Carlson to adjourn the meeting, Commissioner Sharpe seconded. Motion Carried 6-0. The meeting adjourned at 8:10.

Respectfully submitted,
Dale Cooney
Zoning Coordinator