

## EAST BETHEL PLANNING COMMISSION MEETING

March 27, 2012

The East Bethel Planning Commission met on March 27, 2012 at 7:00 P.M for their regular meeting at City Hall.

MEMBERS PRESENT: Brian Mundle, Jr. Eldon Holmes Tanner Balfany Joe Pelawa  
Lorraine Bonin Glenn Terry Lou Cornicelli

MEMBERS ABSENT:

ALSO PRESENT: Stephanie Hanson, City Planner  
Heidi Moegerle, City Council

### Adopt Agenda

Chairperson Mundle called the March 27, 2012 meeting to order at 7:00 P.M.

**Mundle motioned to adopt the March 27, 2012 agenda. Holmes seconded; all in favor, motion carries.**

### Commission Appointment and Oath of Office

At the January 24, 2012 Planning Commission meeting, Commission members Holmes and Terry took the Oath of Office. Since Commission member Pelawa was absent, he will take the oath of office this evening.

I, Joe Pelawa do solemnly swear or affirm that I will support the Constitution of the United States of America and the State of Minnesota, and faithfully discharge the duties as a member of the City of East Bethel Planning Commission in the County of Anoka and the State of Minnesota to the best of my ability. So help me God.

### Public Hearing: Zoning Text Amendment to Allow Automotive and/or Motorcycle Internet Distribution Sales in the B3-Highway Commercial Zoning District and Establishing Regulations

At the January 24 Planning Commission meeting, Mr. DiMuzio and Mr. Valder of Valder Vehicles made a presentation discussing open sales lots. After much discussion, Planning Commission recommended staff to propose a zoning text amendment (ZTA) that would allow for open sales lots with regulations.

City Council discussed this same matter at their regular scheduled meeting on February 1 and again on February 15. It is the consensus of City Council, the City Attorney, and City Staff that the proposed business can be defined as "Internet Distribution Sales." The City Attorney drafted a definition for "Internet Distribution Sales" and Staff and the City Attorney have developed draft language to regulate the use. The draft language was provided to City Council at the February 15 meeting. City Council directed staff to proceed with the zoning text amendment.

On February 28, 2012, Planning Commission discussed the proposed language and directed staff to make some modifications and to prepare for the public hearing to be held this evening.

The proposed changes are as follows:

## **SECTION 01 GENERAL PROVISIONS OF ADMINISTRATION**

*Motor Vehicle and/or Motorcycle Internet Distribution Sales (only):* A business predicated on sales through internet communication elements of which consist of the following: at least ninety-five (95) percent of all sales are initiated and secured through internet communication between buyer and seller; the business has no pre-sale acquired inventory; all sales are substantially completed before the product is delivered to the business site for delivery to the customer; there is minimal need for automotive storage on site with the exception of automobiles awaiting customer pickup; there is limited need for exterior storage, and no automotive repair or maintenance is conducted outdoors.

*Motorcycle:* Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, including motor scooters and bicycles with motor attached, excluding tractors.

## **SECTION 47 HIGHWAY COMMERCIAL (B-3) DISTRICT**

Interim Uses: Motor Vehicle and/or Motorcycle Internet Distribution Sales; limited to no more than a two (2)-year permit.

## **SECTION 10 GENERAL DEVELOPMENT REGULATIONS**

Motor Vehicle and/or Motorcycle Internet Distribution Sales

An interim use permit is required and is limited to no more than two (2) years in duration, upon initiation or renewal.

- 1) At least ninety-five (95) percent of all sales shall be initiated and secured through Internet communication between buyer and seller.
- 2) Exterior storage area for vehicles and/or motorcycles is limited to 4,000 square feet and shall not interfere with access to required parking spaces. Exterior storage is limited to no more than twenty (20) vehicles and/or motorcycles for a maximum of forty-five (45) days.
- 3) Exterior storage of inoperable vehicles and/or motorcycles, equipment, parts, or materials used in the conduct of the business is prohibited. On site storage of damaged vehicles and/or motorcycles is prohibited.
- 4) Minor vehicle and motorcycle maintenance is permitted as an accessory use as to vehicles and/or motorcycles awaiting sale and delivery only, within a structure. All vehicles awaiting maintenance must be stored inside the principal structure. Body work is prohibited.
- 5) Vehicle and/or motorcycle storage area shall be surfaced with concrete or bituminous and shall meet required parking setbacks. Vehicles and/or motorcycles must not be stored in the right-of-way.

- 6) All necessary state and city licenses shall be obtained prior to operation and displayed for public view during business hours.
- 7) Business owner must submit records of sales type as requested by city staff within fourteen (14) days of request.
- 8) All signs associated with the use shall be in compliance with the East Bethel Sign Ordinance.

Staff requests Planning Commission to hold the public hearing for the ZTA to permit automotive and/or motorcycle internet distribution sales in the B3 – Highway Commercial zoning district with restrictions. After the public hearing, Staff requests Planning Commission make a recommendation of approval to City Council. This matter will be heard at the April 4, 2012 regularly scheduled City Council meeting.

Public hearing was opened at 7:04 p.m. and was closed at 7:05 p.m.

Holmes stated we already have an Internet sales business that will have a problem with the regulations, Crashed Toys. Hanson stated that it is a legal non-conforming use for the location. Holmes stated the General Development Regulations have a problem. Hanson stated they are an existing business that is legal, non-conforming. If they wanted to expand their business to vehicle sales, it could affect them. Balfany stated there isn't any preview sale and all the vehicles are not owned by Crashed Toys, they are owned by insurance companies. Holmes stated if they want to expand, they would be prohibited by this ordinance. Hanson stated they do have an entity that does cars, and that is in Ham Lake. Balfany stated he doesn't see this as an issue at this point. Holmes stated he can see it as a problem.

Terry stated he has a question on number 3. He read number 3 - Exterior storage of inoperable vehicles and/or motorcycles, equipment, parts, or materials used in the conduct of the business is prohibited. On site storage of damaged vehicles and/or motorcycles is prohibited. Hanson stated the second sentence should be removed, as they say the same thing.

Terry stated he doesn't understand why we need number 8. All signs should be in compliance with our sign ordinance. Holmes likes it in there, since we have issues with that all the time. Terry withdrew his complaint. Cornicelli stated it looked like all the items that were discussed at the last meeting were incorporated.

**Balfany made a motion to recommend approval to City Council of the Zoning Text Amendment to Allow Automotive and/or Motorcycle Internet Distribution Sales in the B3-Highway Commercial Zoning District and Establishing Regulations, with the change of removing number 8. Motion was seconded by Mundle; all in favor, motion carries.**

This matter will be heard at the April 4, 2012 regularly scheduled City Council

meeting.

**Discussion of  
Proposed Changes to  
the Tree Preservation  
Ordinance**

The existing East Bethel Code regulates tree preservation within all new subdivisions but lacks regulations for the mass removal of trees on non-developing parcels.

Over the past few years, there have been instances of significant tree clearance and clear cutting. Currently, the City of East Bethel Code regulates tree removal as part of the subdivision process (Chapter 66, Article VIII) but there are no regulations for the mass removal of trees in preparation for future development on non-developing properties. Also, the current ordinance is vague as to when a tree preservation plan is to be submitted and is not specific as to tree replacement calculations, tree replacement schedule, tree warranty, and mitigation measures.

In response to this situation, staff has prepared amendments to the existing Tree Preservation Ordinance (Chapter 66, Article VIII) and recommends regulations for tree removal on non-developing parcels, and addresses the deficiencies in the existing ordinance. The proposed changes will also add measures to improve the enforcement of the ordinance.

The draft proposal was prepared in consultation with the City Attorney. Should this proposal move forward and be approved at a later date, the ordinance would be moved from Chapter 66, Subdivision, to Chapter 26, Environment. Attachment #1 includes the proposed changes in an underlined format.

Staff requests Planning Commission to discuss the proposed changes and provide staff with direction in regards to amending the tree preservation ordinance to include regulations for tree removal on non-developing lands.

City Council did look at it at their last meeting and they requested that Planning Commission discuss the proposal.

Hanson stated when the subdivision ordinance was first completed, there was a section about tree removal on non-developing lots but it was removed because it did not have the support; it was thought to be too restrictive. Balfany asked if this proposal came from other cities. Hanson stated not a lot of cities have a tree preservation ordinance but the cities she talked to wished they would had one because clear cutting has been an issue.

Bonin stated a tree removal is not separate from the development thing, their intention is development, and it should be developed. Balfany stated if someone wants to make the area cornfields or something, they should be able to do what they want. But if it gets developed, they need to do something with the land.

Hanson explained if you do cut trees on your property and it is developed within 10 years, then you need follow the tree preservation plan. Holmes stated is this residential or commercial property.

Hanson stated if a residential property is existing and you are clearing it for a

garage, it is kind of like free trees. Mundle stated he thought that personal land can be cleared, when he was looking at platted residential lots area of the proposal. Hanson stated on page 20 it states owners of platted residential lots can remove up to 100 percent of the trees on the lot without replacement. Terry stated why 100 percent. Bonin stated that is kind of a lot. Mundle clarified if they are specimen trees, they need a permit. Balfany stated he has over one-third of an acre lot; in his back yard he has really tall pine trees and a small tree in his front yard. Personally he would like to see all of the trees in his backyard gone and he wouldn't notice a change with all the trees around him. Bonin stated if there are evergreens planted for windbreaks, would they be affected. Hanson stated for coniferous trees there are also specifications. Terry stated to him it would make a difference if a lot was in a wildlife corridor or a residential area. Holmes stated there he doesn't think people would clear cut their lots. Cornicelli stated his neighbor is doing it right now.

Terry had an addition on page 12, under nuisance. He thought invasive species could be added, such as buck thorn. Mundle asked if we had a city forester/inspector. Hanson stated we did at one point but isn't sure if the Public Works Manager is a tree inspector.

Mundle stated where it says 'dead, dying or diseased trees', is there anything that takes into account storm damage to trees. He explained half of a tree could fall off, but the whole tree isn't dead. The tree is lopsided or looks ugly. If a tornado comes through, and one-half is mangled, they could be taken down. Bonin stated if a tree is injured due to a tornado, it will fill in again. Balfany stated if they want to remove it because they don't like it anymore, they should be able to remove it.

Pelawa asked if the forester has to be certified by the State of Minnesota. Hanson stated yes, they do, and she also believes that the City Public Works Director may have his. Hanson stated if there is a mass removal of trees you need to have a tree preservation plan.

Pelawa stated he wants to be clear that the City is going to tell people what they can do on their property. Is there recourse if a property owner does sell to a developer – what would require them to follow the preservation plan? Terry asked if a property owner wants to use property for agriculture and they clear cut it, then they sold it to a developer, would they have to put in trees.

Bonin stated regarding 209<sup>th</sup>, this would help prevent people from clear cutting and then not developing the area. Balfany stated those trees were cleared for plans to develop the area. Bonin stated they thought they would get it ready to sell the property and nothing ever happened. Cornicelli stated it would eventually go back into being a forest. Balfany stated they do have their right to do what they want on their property. Bonin stated she has an objection to that it is their property. We are a steward of the property to use it until someone else comes along. She stated technically they don't own the land and they are just using it. They have rights, yes, but not to do whatever they want. Balfany stated it is their opinion to do what they want with their land. It comes down to opinion. Pelawa stated they pay taxes on the land. Holmes stated then why do we have the rules whereby you can't put a 57 story building on the property. If you clear cut land

and it may affect your neighbor's property.

Moegerle stated her issue is that there should be another time limit, a person can cut 25 percent one year, then 25 percent another year, and then 25 percent another year. She is interested in comments on 25 percent, and what that means. Mundle stated he had a question on how many times this can be done. Pelawa stated you will never get to 100 percent; you might get to 95 percent. He stated that sort of language is also in the shoreland state statutes. Balfany stated you can add 10 percent sand to your shoreline, or one dump. Bonin stated it should be for the full 10 years, and if things change within that time frame they need to have discussions with the City. Balfany stated it should be setting limitations based on the size of your lot. It is residential and if he needs to cut down those trees due to insurance or if he is tired of looking at naked pine trees that are killing his grass. Mundle stated residential is exempt. Hanson stated if you have an existing lot, page 20 addresses residential lots.

Holmes stated if it is a commercial property you have to put in trees and shrubs – it is a state law. Holmes went on to say why would you clear cut the property. Pelawa stated from an economic standpoint, it is easier to clear cut a property and then build the property out. He stated why are we so pro development; we will be losing the nature. Bonin stated you can have reasonable development and then you won't lose the trees. Pelawa stated you will be removing the forest and keeping a patch. Bonin stated we don't have that much forest. Cornicelli stated yes, we do. Pelawa stated we did have a lot on Highway 65, and a lot of that was cut.

Cornicelli stated what about addressing based on lot size. Balfany stated kind of like we do with animals. Cornicelli stated this would be future commercial. Such as 10 acre parcels or bigger. Terry stated he still thinks location trumps the size. Cornicelli stated that means we would have to look at what forests are not developed and what is outside of the Highway 65 corridor. You are looking at 10/12 acre parcels. This really addresses what is left on Highway 65 and we could almost get it down to individual parcels, decide how big they are, and go from there.

Balfany stated if a developer is trying to be creative and buy two neighbors, and then possibly clean out what he can, he sees Pandora's box opening. Hanson stated there aren't a lot of multiple lots. Hanson stated she can take an aerial on the commercial area on Highway 65 and then take a look at it. Cornicelli stated east/west of Highway 65 is protected and there is some agricultural.

Pelawa had a question on page 19, under number 4. Item C and E where it says the city will issue a permit within 14 days for removal of trees and the landowner must notify within 14 days. E implies the City will issue the permit within 14 days. Bonin stated in compliance it will be issued. Pelawa stated the wording implies they will be issued; it should say within 14 days the city will make a determination. Bonin stated it states if you are in compliance, you will get a permit. Cornicelli stated it puts the onus on the City to issue the permit if they are in compliance.

Pelawa stated on B, landowners may remove 25 percent as of the date of the ordinance. Moegerle stated but what is the end date. Pelawa stated how often the City looks at these ordinances. Mundle stated could it be written as once within a 10 year period. If they want to do more within a 10 year period they would have to consult with the city forester and they would need a forest management plan.

Pelawa wanted to know if anyone knows what it costs for the forest management plan. He explained for 160 acres it is almost \$3,000.00. It may not seem like a lot, but it is. What needs to be in a forest management plan? Hanson stated the Regional Forester will be the one looking at the plan as it deals with forest management. Moegerle stated the Tree Preservation Plan is smaller. Hanson stated the Tree Preservation Plan has more details since it consists of a tree inventory, tree sizes, and a survey of tree location. Moegerle stated really.

'In excess of 25 percent' should be added to 4F. Bonin stated if you are saying that then they would have to replace in excess of 25 percent. Then you are giving them permission to remove more than 25 percent. Mundle stated the developer would be the responsible party to replace in excess of 25 percent. Hanson stated we would use aerial photographs to figure it out. The county does yearly aerials now. Pelawa stated there seems to be more of a problem in the 7-county metro areas.

Terry asked about page 20, B. – if a property owner is removing a tree on their property (specimen). Mundle: would this be approval or a permit. Hanson stated they haven't discussed if there would be a fee or just a permit. Mundle stated a lot of people wouldn't pay \$50.00 to cut down their tree. Holmes stated didn't they at one time have a fee based on the diameter of the tree. He thinks it use to be that way. Hanson stated the fee schedule is typically based on the size of the trees. Usually developers can look at the fee schedule or do plantings. Pelawa stated where we were talking about platted residential lots or lots of record. Hanson stated we might want it to state *existing lots of records*.

Pelawa stated his neighbor has 6 trees with oak wilt and only has 10 trees. Hanson stated the bugs have been out since March 15 this year. Terry stated there is a neighbor that has clear cut a bunch of trees on his street. He doesn't know why they did that, there is oak wilt in the area. It totally changes the territory of that area. He doesn't know how it will affect in the future. The gentleman to the south of him just wanted a view, and clear cut everything down to the creek. Pelawa stated there would be DNR rules that would affect that. Hanson stated they don't deal with the trees of the shoreland district. Terry stated this wouldn't affect his one based on the buffer. It really disrupted the continuity of the area. Pelawa stated there should be a buffer around lakes and rivers. Terry stated he thought there was something in our ordinance. Pelawa stated that is something that should be addressed. Bonin stated before you were saying it is their property and they should be able to do what they want, and now you are saying you should protect an area. Pelawa stated there are quite a few people that allow people to fill a wetland or unintentionally fill in a wetland.

Moegerle stated in the dead, disease, and dying – does that section need more information such as whose responsibility is it? Cornicelli stated most of us don't

need the City to come out and say that a tree has oak wilt. Bonin stated the implication is calling them all dead and dying; you can't prove that they weren't dead after you have cut them down. Bonin stated she has an oak tree that has a branch that is broken off, and it still gets leaves, and you couldn't look at it and see that it died this year or last year. Pelawa stated his neighbor has a limb that has fungus growing on it. Is someone going to come out and say something to them about it? Bonin stated if the damage doesn't happen during the period, it will scar over and it isn't an issue.

Mundle has a question on unauthorized tree removal that starts on page 19/ goes to 20, looking at D. Looking at the fee, who pays the fee to the City or who would replace the trees, also who is penalized? Balfany stated would it be seller or the buyer. If the seller is not penalized, if there is no violation against the landowner for doing this. If the developer gets stuck with the fee, why have all this. Hanson is going to see if this can be on file with the property at the county. Pelawa stated it would be a lien against the property. Moegerle wanted to know how educated the developer is. Mundle stated it might look like a natural land area, and they took out a bunch of trees before. If something is attached to the title, then it is a different story. Pelawa stated once you start opening that up, if they sell it within the first 5 years, they need to come into 100 percent compliance with the ordinance. How about within 8 years, they have less to be in compliance. Do we need a tier and step program with this?

Mundle stated page 19/20 5 A-E, if there is no penalization against the land owner. Balfany stated if the penalty is to the developer, then the current owner has no penalization. Terry stated then this negates the purpose of this. Terry stated the purpose is not to punish, but to have good stewardship. Mundle stated do we want to cross our fingers and hope they do the right thing with their property. Balfany stated currently there is nothing in the ordinances. It is not like someone is coming through and clear cutting the City. The residents are acting in good faith.

Holmes wants to know what cities have as ordinances. Hanson stated Lino Lakes, Andover, and Woodbury has ordinances. Holmes stated maybe call Bemidji, Duluth, Brainerd, and International Falls.

Cornicelli stated there are two issues – one looking at residential lots and also commercial lots and what the restrictions are. There are two separate issues. Holmes stated if someone wants to develop a piece of property they can clear up to 25 percent. It would be a common law. Cornicelli stated he technically agrees with Bonin on the first issue. But he also knows that a lot that is clear cut, it will eventually revert back to what it is. Clear cut isn't necessarily a bad thing. Hanson stated staff will get an aerial map and see what properties and how many would be affected by the code, especially in the 65 corridor.

Moegerle asked if the MIDS grant we received will have anything to do with this. Hanson stated no that will not, the MIDS pilot program focuses on treating storm water on site.

Pelawa stated the forest management plan is referred to as a woodlands

stewardship plan by the DNR. That plan covers management for deer, grouse, hunting, etc., in addition to trees. This is more conducive to what is happening than development.

Hanson stated she has some information to bring back to staff. Mundle asked if this will go back to staff for more work, and then it will go back to Planning Commission. Pelawa questioned number 13, number 4. What is a common tree? Cornicelli stated it is defined in number 1. Pelawa stated so basically it is anything else.

Balfany stated in the case of a large residential lot, where someone wants to sell ½ of the lot to their child, would they be able to clear ½ their lot to let their child build. Is that addressed in here? Hanson stated typically when people come in they would stake out the houses and 20 feet away from the house you could clear the trees. The trees removed for streets, building pads and driveways aren't counted against you, and that would also include the septic/drain field area.

Pelawa stated what if you have 10 acres, and 7 acres is grass and 3 are wooded, and they want to build their house in the woods – will that be allowed. Mundle stated on page 14, 3A, it discusses that the developer will make the best effort not to remove trees. Balfany stated he doesn't want it to be more restrictive for new development. Bonin stated if somebody is that easily discouraged, let them go. Mundle stated if one person is going away, how many people are turning away for that reason. Balfany stated he would hate to see ourselves open ourselves up. It only has to be one bad word out there, where they don't even consider us based on the reputation.

Moegerle stated that Columbus is a tree city, do we know what the regulations are, and should we be one of them. Pelawa stated it is a lot of work. Moegerle asked what does that mean. There is a lot of paperwork, inventory of trees, etc. to gain the certification of a tree city. Moegerle asked what do you get out of that. Pelawa stated you get to call yourself a tree city and fill out a lot of paperwork. Moegerle retracted the interest in becoming a tree city.

Balfany stated the development along Durant, where there is newer development, how restrictive is what we are finishing up, and going to restrict the development of those lots. Holmes stated if people don't want trees then you are in the wrong area, if a person doesn't want trees they won't look at a treed lot. If a person wants trees, they won't buy a cleared lot.

Balfany stated he doesn't want to see developers handcuffed, and doesn't want this ordinance to be too restrictive. We don't want to force a set of parameters. Holmes stated a developer will look at all different areas. Balfany stated we need to let them know we will work with them. Balfany stated he is not saying to do this, he just doesn't want to see them browbeat it to death. He doesn't want to see them come into the City and they can only do certain things. Holmes stated you can't keep everyone happy, granted we will work with them.

Moegerle stated one of the things that have been recommended is to put together a developer packet.

Terry stated he has a possible moot point on something that we didn't discuss on the bottom of page 13. If it were him, if I wanted to do this on a property, and he would want to do the survey himself and that would save him a bunch of money. If he was a developer, he would have someone on their staff do it. Balfany stated it should say, plan prepared and submitted to staff for review.

Pelawa stated you might want to have criteria on how this is presented. Maybe there should be a short little list of what they need. Hanson stated there are tree preservation requirements on page 14.

Pelawa asked if we have a developer checklist. Hanson stated we do have checklists in place for anything dealing with land uses. Moegerle stated we don't have a welcoming packet. Hanson stated staff is putting one together right now, and it is more an informational packet for developers of the development process and contact information. Pelawa asked if it is more just informational rather than detailed. He stated someone could pick one up today, and then come back with the information 5 years later. Terry stated it might be a good idea to have a date on it.

**Mundle motioned for staff to review the proposed changes and recommendations with regards to amending the tree preservation ordinance to include regulations for tree removal on non-developing land, make changes and bring it back to the Planning Commission in the future. Bonin seconded, all in favor, motion carries.**

### City Council Report

City Council Member Moegerle will give Planning Commission an update on issues currently before the City Council. Things are moving forward for a 3-jurisdiction agreement for the utility line for the GRE. Cornicelli was wondering if it is Route A. Moegerle stated it is not Route A. For tomorrow evening's meeting, there is going to be a presentation from the Small Business Administration. Staff and council has had more meetings today with Ady Voltage. That is coming along and we are a month ahead of schedule. You are doing a fabulous job on the minutes.

### Approve February 28, 2012 Planning Commission Meeting Minutes

**Terry had a correction on page 31, third from bottom paragraph. He asked it to be changed from EBAY item, strike word do and put in the word sell and add an s after items.**

**Bonin stated they will have cars on site; some of them may not want the car. She thinks the semicolon should be taken out, and because should be added.**

**Balfany is misspelled.**

**Bonin corrected on Page 26 Bonin stated that the east side. She asked it, not stated it.**

**Moegerle asked about a \$4.00 budget. Should it be a \$4.0 dollar budget? Should be corrected to \$4.0 million dollar budget.**

**Holmes motioned to approve the March 27, 2011 minutes as presented with discussed changes. Cornicelli seconded; all in favor, motion carries.**

**Adjourn**

**Holmes made a motion to adjourn the meeting at 8:40 PM. Terry seconded; all in favor, motion carries.**

Submitted by:

Jill Teetzel  
Recording Secretary