

## **PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS**

Tuesday, July 6, 2010 – 7:00 p.m.  
City Hall Chambers - 8150 Barbara Avenue

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

Commissioners Present: Tom Bartholomew  
Paul Hark  
Dennis Wippermann  
Harold Gooch  
Tony Scales  
Pat Simon

Commissioners Absent: Damon Roth (excused)  
Christine Koch (excused)  
Mike Schaeffer

Others Present: Allan Hunting, City Planner  
Heather Botten, Associate Planner

### **APPROVAL OF MINUTES**

The minutes from the June 1, 2010 meeting were approved as submitted.

### **CITY OF INVER GROVE HEIGHTS – CASE NO. 10-20ZA**

#### **Reading of Notice**

Commissioner Simon read the public hearing notice to consider the prohibition of outdoor wood burners/boilers (“OWBs”) or regulation of OWBs through establishment of performance standards for OWBs including, but not limited to, minimum setbacks, minimum stack or chimney height, use only in certain zoning districts, times of operation, and acceptable burning materials. 11 notices were mailed.

#### **Presentation of Request**

Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that recently the City Council passed a moratorium on the construction of outdoor wood burners or boilers, also known as OWBs, within the City to permit time to further study their potential regulation. The City Council then directed staff to hold a public hearing to consider the prohibition of OWBs or the regulation of OWBs through the establishment of performance standards. These performance standards would only apply to OWBs and not fireplaces, fire pits, or indoor wood stoves. She advised there are currently five known OWBs located in the City and the issue originally arose from a complaint received by a resident regarding an existing OWB and the concern of health hazards. She stated many OWBs are significantly more polluting than other home heating devices. She advised they can create heavy smoke, especially when used improperly, are located too close to property lines or nearby homes, or have smoke stacks that are not tall enough. Ms. Botten requested that the Commission discuss the following alternatives: 1) doing nothing at all and continue the practice of allowing OWBs but requiring a City building permit prior to installation, 2) regulate OWBs with performance standards, and 3) consider prohibiting OWBs either through the nuisance ordinance or through the zoning ordinance. At this time staff is looking for public input and direction from the Planning Commission as to how to proceed with the OWBs so a draft ordinance can be prepared for further consideration at an additional public hearing. The Planning staff does not have a recommendation at this time. Staff has received three emails from residents (copies of which have been given to the Planning Commission) which

support the prohibition of OWBs.

Chair Bartholomew asked where the most recently reported OWB was located, to which Ms. Botten replied 7038 Angus Avenue.

Chair Bartholomew asked if staff knew the approximate setbacks.

Ms. Botten replied that the lot was approximately three acres in size and was zoned Agricultural. She did not know the OWB's exact location on the lot, however, as she could find no permit for it.

Chair Bartholomew asked if a permit was required for an OWB, to which Ms. Botten replied that currently it was.

Chair Bartholomew asked when the permit process was put in place, to which Ms. Botten replied that she was unsure of the exact date but knew it was in place at least since the arrival of the current Chief Building Official.

Chair Bartholomew noted there was no permit for 11068 Albavar Path and asked what year it was installed, to which Ms. Botten replied she was unsure.

Commissioner Simon asked if the homeowner would be required to get a permit after-the-fact.

Ms. Botten replied she had not yet asked the Chief Building Official how he would prefer to handle the situation. She added that the homeowner would have to comply with any performance standards that were established by the City through this process.

Commissioner Gooch asked if the OWBs with permits had been inspected and were in compliance, to which Ms. Botten replied in the affirmative.

Commissioner Wippermann asked for clarification of a statement from the League of Minnesota Cities stating that "pre-existing uses that are declared a nuisance and regulated as such are not protected as lawful non-conformities".

Ms. Botten stated that the attorney in question felt that if it was considered a nuisance then it would be exempt from that legal nonconformity. However, our City Attorney interprets the ordinance as OWBs being a legal nonconformity. Therefore the City could not automatically require that existing OWBs be removed; however, they would have to comply with established reasonable conditions.

Chair Bartholomew asked if it was accurate that the City could ban future installation of OWBs if they could prove they were a nuisance, to which Ms. Botten replied in the affirmative.

### **Opening of Public Hearing**

Robert Heidenreich, 11632 Akron Avenue, stated that in addition to the five known OWBs in the City, he also had an OWB which has been on his property since 1997.

Chair Bartholomew asked if he had a permit for his OWB.

Mr. Heidenreich replied that at the time of construction he spoke with the City's inspection clerk, who advised him that the City was not issuing permits for OWBs as there were no rules to enforce it. He stated he lived in a neighborhood of five acre lots, his OWB was 400 feet from the nearest property line and 700 feet from the nearest residence, and he had received no complaints from his neighbors.

Scott Kramer, 4301 – 64<sup>th</sup> Street, stated his home is located in the I-1, Industrial zoning district, he has owned an OWB since 1997, and has received no complaints. He questioned banning OWBs because of one complaint.

Chair Bartholomew asked Mr. Kramer what type of burner and fuel he used.

Mr. Kramer replied he used seasoned dry wood in a Central Boiler. He advised that the City noticed his boiler 3-4 years ago and requested he get a permit. However, once staff determined that it had been there since 1997 they stated it was conforming at the time.

Chair Bartholomew asked if he then received an after-the-fact permit, to which Mr. Kramer replied no permits were issued in 1997 so he was exempt.

David Gaydos, 11660 Albavar Path, stated he supported a ban on OWBs. He stated that the smoke from the two OWBs located on Albavar Path would infiltrate somebody's house no matter which way the wind was blowing because of the configuration of the neighborhood. Mr. Gaydos felt that raising the chimney height would not be effective as the smoke was heavy and fell to the ground. He stated the issue was not how many complaints had been lodged, but the fact that they were hazardous. He stated that OWBs lowered the neighboring home values.

Richard Larson, 7038 Angus Avenue East, stated he was opposed to prohibition and did not feel OWBs should be any more strictly regulated than fire pits, fireplaces, or inside wood burners which also burn wood. He stated that establishing guidelines for chimney height and types of material burned would be reasonable, and that the use of OWBs was a fairly sound environmental practice in terms of fuel.

Chair Bartholomew stated the information he received indicated OWBs were not a very efficient burner and they emitted large particulates.

Mr. Larson stated when they burn they burn efficiently, but the concern is when the forced air shuts off and the unit is idling. He stated his neighbors have no issues with his OWB.

Armando Lissarrague, 11730 Albavar Path, stated he lives on a five acre parcel and three years after he moved in his neighbors installed a large outdoor wood burner 150 feet from his property line which they use to heat a woodworking shop. He stated the OWB has turned into a major nuisance for his family. Mr. Lissarrague displayed photographs showing smoke in his back yard and deck area. He advised that OWBs create an issue different from fireplaces or indoor wood stoves because OWBs cycle between oxygen rich and oxygen deficient burning cycles which creates a thick, dangerous smoke. He advised that even with their windows and doors tightly shut the smoke filters into their home, and he is concerned about adverse health effects. He advised that the owner of the OWB raised his stack in an attempt to resolve the issue, however, the smoke still fell down to the ground.

Commissioner Hark asked when the higher stack was installed, to which Mr. Lissarrague replied December 2009.

Commissioner Hark asked if the stack was higher than Mr. Lissarrague's house, to which Mr. Lissarrague replied it was not. He advised that his home was approximately 26-28 feet in height whereas the stack was approximately 18 feet in height.

Commissioner Hark asked if the smoke was continuous or intermittent, to which Mr. Lissarrague replied it was intermittent but enough to pose a danger to his family.

Commissioner Hark asked if the smoke tended to occur at the same times every day.

Mr. Lissarrague replied that it was random, stating they have smelled smoke as early as 5:30 AM.

Commissioner Hark asked if the burner burned year round or just in the cold months.

Mr. Lissarrague advised that last year it only burned during the cold months; however, some years it has been year round. He stated at times his family was not able to use their property to hang laundry, ride horses, use the pool, etc. He stated his family members have allergies and he has coronary disease, and the particulate emissions from the OWB exacerbate these problems in addition to causing respiratory problems, colds, sore throats, and eye irritations. He advised that Federal EPA studies indicate that OWBs produce 1,000 more fine particulate matter than traditional interior gas or oil furnaces and produce 15 times more particulate pollutants per hour than EPA certified. He stated that the OWB to the south of him basically makes his property poisonous and he does not feel that Inver Grove Heights is the right location for an outdoor wood burner. Mr. Lissarrague requested that the Commission recommend to City Council the banning of all present and future OWBs, and that if there was any grandfathering of existing units that it be dealt with sternly.

Commissioner Hark asked the height difference between the shorter and taller smoke stack on the OWB south of Mr. Lissarrague.

Mr. Lissarrague stated that no matter how tall the chimney was the stack height would not resolve the problem.

Richard Elbert, 8569 Alverno Avenue, stated he has been a pipefitter since 1970, working predominantly with burners (gas, oil, wood burners, etc.). Mr. Elbert stated that stack height would not eliminate the issue as the smoke would eventually go toward the ground no matter how high the stack was. He stated that OWBs burn at low temperatures, and when burning at low temperatures the particulate matter coming out is usually large and heavy and falls to the ground. He encouraged Commissioners to look at the State of Connecticut website which advises that particulates which carry carcinogens can flow for half a mile. He stated he suffers from lung disease and he feels it is a result of working on OWBs. He stated that OWBs should be banned from Inver Grove Heights.

Chair Bartholomew questioned why OWBs have higher particulates than a fireplace or indoor wood stove, to which Mr. Elbert replied it was due to OWBs having an incomplete combustion because of the lower temperatures.

Chair Bartholomew asked if that was a requirement of the design.

Mr. Elbert replied it was a function of the design. He advised that when you burn at lower temperatures the creosote buildup inside the boiler increases tremendously whereas when you burn at a higher temperature the creosote buildup is minimal which indicates that OWBs are emitting creosote along with the smoke.

Doug May, 11780 Albavar Path, advised that he installed a boiler 4-5 years ago and always uses two year dried oak. He disagreed that OWBs burn at lower temperatures, stating he could melt steel inside his boiler. He advised that smoke is emitted when the damper opens up until the fire catches again and that a person can install devices that light the wood quicker and result in less smoke. He stated he added six feet to his chimney and plans to add another eight feet. Mr. May advised that in his opinion most smoke issues are due to temperature inversions, and that by shutting down the OWB when a temperature inversion is anticipated a person can eliminate most

smoke issues. Mr. May noted there were two emails to the Mayor from neighbors on Albavar Path who were not opposed to OWBs. He noted as well that the cities of Minneapolis and St. Paul allow garbage and wood burners in their cities.

Chair Bartholomew asked how tall Mr. May's smoke stack was, to which he replied 18 feet and he plans to add an additional eight feet.

Chair Bartholomew advised that the report he received from the State of New York was quite alarming in its description of the size of the particulates generated from OWBs.

Mr. May agreed that OWBs do emit smoke, but stated that wood is carbon neutral and that decaying wood puts out as much carbon as burning wood. He questioned what kind of restrictions would be reasonable and could completely exempt anyone from ever smelling smoke.

Chair Bartholomew stated his concern was how much particulate OWBs put into the air.

Commissioner Simon asked if Mr. May's OWB had a white or an orange performance tag, to which Mr. May replied he was not sure.

Chair Bartholomew advised that Mr. May likely installed his OWB prior to them being tagged.

Mr. May stated he was willing to work with his neighbor.

Chair Bartholomew stated the key was to control the particulate.

Scott Kramer, 4301 – 64<sup>th</sup> Street, stated that the table on Page 23 of the packet shows the grams of particulate matter per hour on various OWBs. He noted that they varied widely from one to the next and that he did his research and purchased a unit with low particulate emissions. He stated that sources could pick and choose which numbers they wanted to use in order to sway the numbers.

Chair Bartholomew asked which unit Mr. Kramer owned, to which he replied a Central Boiler. Mr. Kramer stated that the particulate totals were highly dependent on what was burned and how it was burned.

Chair Bartholomew noted that even in the best case scenario the OWB was higher in particulate matter than a conventional wood burner. He then asked Mr. May if his OWB was 85% efficient, to which Mr. Kramer replied he was unsure.

Rob Whiteford, 11665 Albavar Path, stated he lived across the street from an OWB and does not smell smoke as the prevailing winds carry the smoke towards the Koch Refinery. He stated OWBs were appropriate in a rural setting, where neighbors are not in the direct vicinity, however, he could understand it being a problem in an urban setting.

Barbara Johnson, Burnsville, stated she was affiliated with the organization 'Take Back the Air'. She advised that the City of Burnsville has banned OWBs because of their known health effects and in her opinion the issue tonight is smoke inhalation and property rights and the right for every citizen to deem their property smoke-free. She stated that burning wood produces noxious chemicals and carcinogens which can penetrate closed windows and get into a person's lungs and bloodstream. She advised that the American Lung Association's 'State of the Air 2010 Report' states that particulate pollution is dangerous to breathe and may trigger illness, hospitalization, and premature death. She stated there was no safe level of wood smoke.

Dave Gaydos, 11660 Albavar Path, stated it was difficult to determine the efficiency of different OWBs, the emission levels for various smoke stack heights, and to monitor the emissions.

Armando Lissarrague, 11730 Albavar Path, stated he has a neighbor with an indoor wood stove and it has never been a nuisance. He noted also that the Planning Commission was given an email from one of his neighbors which states he noticed smoke coming from the OWB on Albavar Path at 6:30 AM in April.

Doug May, 11780 Albavar Path, advised he did not run his OWB past March 28 so he questioned where the smoke that was seen in April was coming from.

Robert Heidenreich, 11632 Akron Avenue, agreed that sometimes smoke could be a nuisance, but he felt that establishing restrictions would eliminate most issues. He stated that smoke was most noticeable when fresh wood was put on, however, much of that smoke was actually steam caused by the snow on the wood's surface. He stated his OWB is very efficient and saves him thousands of dollars annually in fuel costs.

Armando Lissarrague, 11730 Albavar Path, stated he was informed by a realtor that living next door to an OWB could decrease his property value by \$50,000.

#### **Planning Commission Discussion**

Commissioner Scales stated he supported establishing standards and regulations of current and future boilers. He added that he was concerned about labeling something a nuisance as one person's nuisance could be another person's livelihood.

Commissioner Wippermann stated that after learning how detrimental OWBs were to the environment and to a person's health he did not feel anyone should have to live next door to one. He advised he was leaning towards banning them as he was concerned about whether it would be possible to establish standards that could guarantee citizens would not be affected by a neighboring OWB.

Commissioner Hark stated there appeared to be two issues - how to deal with future OWBs and how to deal with existing OWBs. He feels that OWBs are a health hazard and therefore future OWBs should be banned. He was unsure of how to deal with the existing OWBs, however, but felt at the very least there should be strict regulations regarding setbacks, chimney height, etc.

Chair Bartholomew stated he was appalled to discover how much particulate OWBs put in the air and he did not believe they belonged in an urban setting. He supported banning all future OWBs and establishing acceptable performance standards for existing OWBs.

Commissioner Scales stated he agreed that OWBs were a health hazard but was concerned that basing the ban on OWBs being a nuisance could lead to other issues in the future.

Chair Bartholomew recommended that the creation of appropriate performance standards be done by people or agencies knowledgeable in this area.

Commissioner Gooch recommended that all future OWBs be banned, and that existing OWBs be subject to conditions set forth by the MPCA or Minnesota Department of Health. He added there should be zero tolerance and any unit that could not meet the standards should be removed.

Commissioner Simon suggested the Planning Commission consider the OWBs on two separate motions - one for existing OWBs and one for future OWBs. She asked for clarification of the process.

Ms. Botten explained that if tonight the Planning Commission recommends a ban on future OWBs and establishing performance standards for existing OWBs, staff would draft an ordinance banning future OWBs and prepare a list of performance standards for existing OWBs. The item would then be published in the paper and brought back to the Planning Commission for a formal recommendation to City Council.

Commissioner Wippermann noted that one of the articles in the report referenced issuing operating permits for existing OWBs and having conditions attached which would allow the City to pull the permit if the conditions were not met.

Ms. Botten stated if the Commission wanted to entertain that option she would have to run it by the City Attorney and Chief Building Official to see what would be required from them.

Commissioner Wippermann stated it would not necessarily have to be an annual permit; just something that would trigger the ability for the City to act on a non-compliance.

Commissioner Hark supported a required permit for existing OWBs, stating there were so few in the City that inspection of the units would not be labor intensive.

Commissioner Gooch asked staff if the MPCA had guidelines in place for OWBs.

Ms. Botten replied they did not have anything official at this point; however, they were in the process of working on regulations similar to those for indoor stoves. She stated the EPA has a voluntary partnership program in place, however, which many companies have joined.

Chair Bartholomew recommended regulating existing OWBs by establishing performance standards as written in the report, including minimum setbacks, lot size requirements, smokestack height, time of operation, and also to consider requiring an operating permit.

#### **Planning Commission Recommendation**

Motion by Commissioner Simon, second by Commissioner Wippermann, to recommend the prohibition of future outdoor wood burners/boilers ("OWBs") in the City of Inver Grove Heights.

Commissioner Scales asked if they should state the basis for the recommendation.

Chair Bartholomew stated OWBs should be banned because they are a health hazard and tonight's testimony would reflect the basis.

Motion carried (6/0).

Motion by Commissioner Simon, second by Commissioner Scales, to regulate existing OWBs through the establishment of performance standards, which may include operating permits, in addition to minimum setbacks, minimum stack or chimney height, times of operation, and any other appropriate performance standards.

Commissioner Simon stated she would like a minimum of a 500 foot setback.

Commissioner Wippermann stated although he would be voting in favor of the motion, he was concerned about whether the performance standards would be definitive enough to manage specific issues on certain properties.

Motion carried (6/0).

Ms. Botten advised that the current timeline indicates that staff will send a notice to all known existing OWB owners and anyone who testified tonight notifying them that this will come back to the Planning Commission on August 17.

**OTHER BUSINESS**

Mr. Hunting advised that City Hall will be closed on July 30 as staff will be making the temporary move into the Public Safety Addition. He advised that the August 4 Planning Commission meeting would likely be cancelled.

Commissioner Simon asked when Commissioners would receive copies of the 2030 Comprehensive Plan, to which Mr. Hunting replied shortly.

**ADJOURNMENT**

Chair Bartholomew adjourned the meeting at 8:32 PM.

Respectfully submitted,

Kim Fox  
Recording Secretary