



MAYOR & COUNCIL COMMUNICATION

DATE: 7/06/2010
REGULAR
ITEM #: 5
MOTION *Ordinance 08-026*

AGENDA ITEM: Consideration of Ordinance 08-026 Amending the Definition of “Wayside Stand”

SUBMITTED BY: Lake Elmo Planning Commission
Kyle Klatt, Planning Director

THROUGH: Bruce A. Messelt, City Administrator

REVIEWED BY: Dave Snyder, City Attorney
John Baker, Greene Espel, PLLP

SUMMARY AND ACTION REQUESTED: The City Council asked to consider a unanimous Planning Commission recommendation to modify by Ordinance 08-028 the definition of “Wayside Stand” in the City Code. That definition, in Section 11.01 of the City Code, presently defines a Wayside Stand as a “temporary structure or vehicle used for seasonal retail sale of agricultural goods produced by the operator of the wayside stand on-site or on other property in Lake Elmo.”

The proposed revision to be considered would delete from the definition the words “or on other property in Lake Elmo.” The recommended action to accomplish this is as follows:

SUGGESTED MOTION: *Move to adopt Ordinance 08-026 Amending the Definition of Wayside Stand in Section 11.01 of the City Code, pursuant to the unanimous recommendation of the Planning Commission and the denoted findings of fact.”*

BACKGROUND INFORMATION: The current definition of Wayside Stand has been in place for over ten years, during which it has been changed only by adding the word “temporary” and the phrase “or vehicle” to this sentence. In the interim, the City has modified its Zoning Code to increase the types of zoning districts in which a Wayside Stand is a permitted use or structure. Most recently (in 2008) the City added “Wayside Stands” to the list of permitted uses and structures in the Rural Residential (RR) category of zoning districts.

At its staff report to the City Council in advance of its December 1, 2009 City Council meeting, City staff recommended that the Planning Commission and City Council add to the 2010

Planning Commission Work Plan the evaluation of certain types of commercial/agricultural uses or practices. As that staff report explained, this would allow the Commission and Council to accomplish several things, including studying options for regulating these uses as a commercial activity and reviewing the differences between wayside stands and seasonal sales; specifically whether or not the sale of produce grown off-site should be allowed.

At the December 1 Council meeting, the Council unanimously directed the inclusion of Staff’s recommendations in the Planning Department’s 2010 Workplan. As a result, in the intervening period, City staff has been researching these issues, reviewing other community ordinances, seeking input from potentially affected stakeholders and other interested parties, and considering alternatives, with the expectation that concrete recommendations would be made by mid-2010.

STAFF REPORT: Research has shown that a “produced on the premises” limitation on retail sales in an agricultural district is quite common. Such a limitation reflects that commercial districts (such as the Lake Elmo’s General Business district) are a more compatible place for grocery stores and other retail-oriented businesses, but that the sale of a particular piece of produce is often an incidental part of its production. A “produced on the premises” limitation serves to differentiate between agricultural and commercial uses in a way that helps to ensure that, if this type of retail sales occurs outside of a commercial district, it remains just an incidental part of the core agricultural purpose of the district.

However, a provision like the City’s current definition of “Wayside Stand,” which, while not only potentially ambiguous in terms of application and interpretation, is also more generous because it is not limited to the sale of produce grown on-site but currently includes sales of produce grown in the City, is not as common. “Wayside stand” definitions are more often limited to produce grown on the premises. The City understands that there are often better locations for wayside stands than on the very property where the produce was grown, and has, for that reason, been more permissive in its definition.

The City’s willingness to be more permissive has been misunderstood, by one set of local growers and several actual or potential suppliers, as reflecting an intention to protect local economic interests and to discriminate against out-of-state economic interests. The “on other property in Lake Elmo” language has become a lightning rod for an effort to nullify all current limitations on the retail sale of produce in the agricultural and rural residential zoning districts. Thus, as part of City staff’s performance of the responsibilities that the Council directed it to perform at the December 1 meeting, City staff recommends that the Planning Commission and City Council consider an amendment of this type.

PLANNING COMMISSION REPORT: At its June 28th, 2010 Meeting, the City of Lake Elmo Planning Commission held a Public Hearing on the proposed modification, deliberated the efficacy of the proposed change, and recommended to the City Council affirmative consideration of such. A brief summary of their deliberation and actions is attached. Of particular note:

- Two Lake Elmo residents spoke during the Public Hearing, one supporting the proposed change and one expressing opposition. One written comment from the individual who spoke in opposition was also submitted to the Planning Commission;
- The Planning Commission requested additional information on whether the Code’s use of the term “operator” covered both property owner and property renter or leaseholder. Subsequent research by the City Attorney has determined that “operator” would apply to either the property owner or effective party under a valid lease or rental agreement. This has been added to the Findings of Fact for Council consideration;
- The Planning Commission separated but equally endorsed the proposed recommendation for the City to effect a farmers market or equivalent for the City and community of Lake Elmo, cognizant of cost and resource considerations. This proposed action is included in tonight’s suggested motion;
- The Planning Commission requested future consideration of how the City might address the following two potential situations with respect to Wayside Stands:
 - Community Gardens or communal farming arrangements; and
 - Common ownership of multiple but non-contiguous parcels and the potential for allowing consolidation of produce from such to a single wayside stand. Subsequent research by the City Attorney and City Staff has determined that the predominant application of such ordinances is based upon specific land parcel and its allowable land use (zoning) and not upon ownership. However, additional investigation may afford for subsequent consideration of an alternative (or additional) approach;
- The Planning Commission actions were unanimous, with 7 Commissioners voting in the affirmative, no Commissioner voting in the negative, 3 Commissioners absent, and 1 Commissioner recusing him/herself due to potential apparent or perceived conflict of interest.

ADDITIONAL INFORMATION: Cognizant of the desire of the community to continue to allow reasonable local access to fresh produce through such wayside stands, and recognizing past efforts by the City Council, its Community Improvement Commission, and other community entities to facilitate a farmers’ market or similar temporary seasonal sales area, the Planning Commission endorsed staff’s recommendation to establish a Lake Elmo Farmers’ Market (or equivalent), to allow interested individuals or parties to set up wayside stands and offer fresh produce and related goods to the local community. Such market would operate similar to other farmers’ markets and would be located in appropriate available public or private locations.

In the near future, staff will also be investigating further revisions to the City’s agricultural sales business and agricultural entertainment business regulations in response to the previous direction from the Council; and in particular, will be evaluating how the commercial (and off-site) sale of agricultural products might be incorporated into the City’s Zoning Ordinance. As part of this analysis, Staff will be making recommendations to the Planning Commission regarding the

zoning districts and areas that would be most suitable for this type of activity, as well as the appropriate review and permitted prices for such uses. In advance of this review, tonight’s amendment to the Wayside Stand definition will help clarify the overall structure of the City’s agricultural sales regulations.

For Information purposes only: While not scheduled for discussion tonight, by means of background information, the City’s definition of Agricultural Sales Business (which applies only in a Rural Residential or Agricultural zoning district), which is also incorporated in the definition of Agricultural Entertainment Business (which applies only in an Agricultural zoning district), presently permits the holder of a ASB or AEB conditional use permit to engage in the retail sale of fresh fruits, vegetables, flowers, herbs, trees, or other agricultural, floricultural, or horticultural products “produced on the premises.”

RECOMMENDATION: Staff recommends that the City Council affirmatively Consider the Planning Commission’s recommendation of the proposed amendment to the definition of “Wayside Stand,” as documented in the attached draft Ordinance. In addition, staff recommends though passage of such affirmation of the Planning Commission’s recommendation to pursue establishment of a Lake Elmo Farmers’ Market (or equivalent), to not only preserve but enhance the current and future offering of fresh produce and related goods to the local community. The suggested motion to undertake this action is as follows:

Move to adopt Ordinance 08-026 Amending the Definition of Wayside Stand in Section 11.01 of the City Code, pursuant to the unanimous recommendation of the Planning Commission and the denoted findings of fact.”

Alternatively, the City Council does have the authority to table this item at its discretion for future consideration, take no action (in essence denying the recommendation), remand this item with or without direction for further staff and Planning Commission evaluation, or amend the recommended action. If the later is done so, the appropriate action of the Council following such discussion would be:

Move to adopt Ordinance 08-026 Amending the Definition of Wayside Stand in Section 11.01 of the City Code, pursuant to the unanimous recommendation of the Planning Commission and the denoted findings of fact [as amended at tonight’s meeting].”

ATTACHMENTS:

1. Ordinance 08-026 Amending the Definition of “Wayside Stand”
2. Planning Commission Report – July 1st, 2010
3. June 28th, 2010 Letter from Mr. Keith Bergmann, Country Sun Farm

SUGGESTED ORDER OF BUSINESS:

- Introduction..... Bruce A. Messelt, City Administrator
- Report by Staff..... Kyle Klatt, Planning Director
- Questions from the City Council Mayor & City Council
- Public Input, if Appropriate Mayor Facilitates
- Call for a motion Mayor Facilitates
- Discussion of Motion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates