

MINUTES

Greenwood City Council Meeting

Wednesday, January 6, 2016

20225 Cottagewood Road, Deephaven, MN 55331



1. CALL TO ORDER | ROLL CALL | APPROVE AGENDA

Mayor Kind called the meeting to order at 7pm.

Members Present: Mayor Kind; Councilmembers Bill Cook, Tom Fletcher, Bob Quam, Rob Roy

Others Present: City Zoning Administrator Dale Cooney

Motion by Kind to approve the agenda. Second by Cook. Motion passed 5-0.

2. CONSENT AGENDA

- A. Approve: 12-02-15 City Council Worksession Minutes
- B. Approve: 12-02-15 City Council Meeting Minutes
- C. Approve: 12-02-15 City Council Closed Session Minutes
- D. Approve: November Cash Summary Report
- E. Approve: November Certificates of Deposit Report
- F. Approve: December Verifies, Check Register, Electronic Fund Transfers
- G. Approve: January Payroll Register
- H. Approve: 2nd Reading Ord 250, Amending City Code Sections 300.07 & 600.7 Regarding Building Permits and Simple Subdivisions

Motion by Kind to approve the consent agenda. Second by Roy. Motion passed 5-0.

3. MATTERS FROM THE FLOOR

No one spoke during matters from the floor.

4. PRESENTATIONS, REPORTS, GUESTS, AND ANNOUNCEMENTS

- A. Announcement: Greenwood Night at the Old Log Theatre, 7:30pm, Friday 01-22-16

No council action was taken.

5. PUBLIC HEARINGS

- A. None

6. PLANNING & ZONING ITEMS

- A. Consider: Res 14-15 Findings for Hardcover Variance Request and Res 15-15 Findings for Grading Conditional Use Permit Request, Mary McQuinn, 5025 Covington Street

Zoning Administrator Cooney presented the staff report. He said that the item was reviewed in December, and staff was directed to draft findings for approval for the January meeting.

Motion by Quam to approve the resolutions as presented approving the variance request to exceed the maximum allowable impervious surface limitation, and approving the grading conditional use permit request of Mary McQuinn, 5025 Covington Street. Second by Roy. Motion carried 3-2 with Councilmembers Cook and Fletcher voting against the motion.

- B. Consider: Dining Patio Conditional Use Permit Request, Excelsior Entertainment (Old Log Theatre), 5185 Meadville Street

Mayor Kind introduced the agenda item. She noted that this was not a public hearing, but that public comments would be heard.

Zoning Administrator Cooney presented the staff report. He said that Excelsior Entertainment, LLC is proposing to add outdoor dining space to their existing restaurant operation at the Old Log Theater. Cooney said that the 670 square foot dining patio would increase the restaurant capacity by 32 dining seats. He said that the proposal also accounts for the 4 parking stalls to meet the City of Greenwood's parking requirements. Cooney said that the

proposal requires a conditional use permit under City Code Section 1123.30. He noted that the staff report addresses only the proposed expansion of the business, since the remainder of the business currently operates as a lawful use under Section 1123.25 of the City Zoning Ordinance.

Cooney said that the impacts from the outdoor dining patio were likely to include noise, odor and light. Cooney said that he did not anticipate increased traffic from either restaurant attendees or deliveries. He said that based upon the requirements listed in Section 1150.20 of the Zoning Code that staff recommends approval of the conditional use permit with the following conditions:

- A. Amplified music shall not be permitted in the patio area.
- B. Parking shall be expanded to meet the requirements of Section 1140.45 of the Zoning Code.
- C. Cooking shall not take place on the patio area.
- D. Light fixtures for the patio area shall be downcast fixtures, with a preference for full cutoff fixtures.
- E. The proposed fireplace shall burn only natural gas.
- F. The proposed lounge chair seating beyond the patio area shall not have access to food and drink service.
- G. Authorization of the Conditional Use Permit will expire after one year if the proposed patio expansion is not completed according to the submitted plans.

Cooney said that the Planning Commission recommended that the City Council deny the application on the grounds that the property does not currently have enough required parking to expand the business, and that the proposed additional required parking accessing the business via Covington Street would impact the health, safety, and welfare of the neighborhood.

Mayor Kind asked the City Council if they had questions for the Zoning Administrator.

Cook asked if the CUP could be tested for a couple of years before it became permanent. Cooney said that he would need to ask the City Attorney, but that he was not aware of the ability to sunset a CUP. Kind said that she believed that the city has the power to add conditions to an already approved CUP.

Kind asked Cooney about the parking. Cooney said that the applicant demonstrated that there was enough area for any overflow parking, but that they were not currently proposing to pave the parking area. Kind said that meant that they currently have enough parking on-site and a condition that they meet those requirements is unnecessary. Cooney agreed.

Cook said that full cutoff fixtures should be a requirement and not a preference.

Mayor Kind asked if the applicant would like to speak.

Marissa Frankenfield, applicant from the Old Log Theater: Said that the patio would have 8 tables, 32 seats, gas fireplaces, down lighting, and no outside music. She said that the patio would be open June 1 to September 15 and close at 10 p.m. each night.

Mayor Kind said that the Old Log Theater currently operated as a legal non-conformity and not under a conditional use permit. Kind summarized a memo she received from City Attorney Mark Kelly. Kind said that, by state statute, the city is not obligated to allow an expansion of the lawful non-conforming use, but that a change in the manner of use of the property may be allowed with a Conditional Use Permit. Kind said that if the proposal is in part an expansion, and in part change in the manner of use, the Council will have to address the competing elements of the application separately.

Mayor Kind opened the public comment period.

T. White, 5290 Meadville: Spoke against the proposal. He said that the Cast & Cru restaurant has additional spaces in the back and asked how that was allowed to happen without a Conditional Use Permit. He said that Covington was a substandard an illegal road. He said that there was a three-foot drop off along Covington and no shoulder where a truck could easily roll into the nearby house. He said that this was egregious. He said that Covington and Meadville are not set up for expansion. He says that the Cast & Cru restaurant has put stress on the neighborhood and that expansion is not what we need.

Ted Hanna, 4960 Meadville: Spoke against the proposal. Said that the biggest issue is that the residents do not want to live in a commercial district. He said he was not anti-business, but he wants to put the needs of the residential neighborhood first.

Kristi Conrad, 21780 Fairview: Spoke against the proposal. She said that she is both a neighbor of the Old Log Theater and a member of the Planning Commission. She said that Greenwood has a unique character. She said that she is concerned that the interests of the business owners are taking precedence over the residential community. She said that the city should enforce the comprehensive plan related to business impacts

encroaching into residential neighborhoods, and that the current business plan at the Old Log Theater does not work for the neighbors. Councilmember Quam asked about Conrad's comments at the Planning Commission that there should be able to be a solution between the neighbors and the Old Log Theater. Conrad said that the two sides have taken their respective corners and are not able to work through a solution.

Patti Loftus, 5165 Meadville: Spoke against the proposal. She said that she echoes Commissioner Conrad's sentiments. She said that Greenwood is residential. She also said that she was here representing her renters. She said that the patio will be open in the summer when people will want to sleep with their windows open. She said that the expansion will bring more noise, weddings and a broader clientele.

Bob Newman, 5230 Meadville: Spoke against the proposal. He said that there are those who live adjacent to the Old Log Theater, such as the public in attendance tonight, and those who don't live adjacent such as the members of the City Council, and the Zoning Coordinator. He said not to dismiss the statements of the people opposed to the project. He said that the rules changed when the restaurant became a separate entity. He said that the owners kept the windows closed to limit the noise. He said then the owners proposed a sign that was not residential in character and there has been a 180 degree turnaround. He said that the owners of the Old Log Theater claim they need to compete with patio dining options. He said that the people opposing the expansion are not obstructionist, but just protectionist. Newman claimed that, if approved, the worst fears will be realized. He asked about possible future phases of the restaurant. Councilmember Quam asked Newman if he was more concerned about noise or traffic? Newman said that he is concerned about both, but that traffic is a solvable issue and that noise is not because you cannot stop noise at the source.

Jan Gray, 5170 Meadville: Spoke against the proposal. She said "ditto" to all that has been said tonight. She said that 39 residents are here tonight, and that 45 neighbors representing 1300 years of tenure in the city have signed the petition against the expansion. She said that it is not just long-term residents averse to change, but that many newer residents have also signed the petition. She said that the city's comprehensive plan says to maintain the residential nature of the community and to avoid undue encroachments of the business into the neighborhood.

Matt Gallagher, 21775 Fairview: Spoke against the proposal. He said that he has seen a dramatic change in the neighborhood in 4½ years. He said that 32 people would make significant amount of noise and that the business is a pub. He said that the findings of fact in the city staff report are matters of opinion. He asked if there had been noise and real estate studies commissioned to verify the findings of fact. He said that there should be protections for worst-case scenarios. Councilmember Quam asked Gallagher if he did not like the traffic signs that were installed. Gallagher said that he did not like that there was a need for them.

Biff Rose, 5165 Meadville: Spoke against the proposal. Said that this constitutes an expansion, not a change in the manner of use, and that the Old Log Theater should be denied. Councilmember Quam said that an expansion can have conditions, and that it doesn't necessarily mean that it has to be denied.

John Ekelund, 5135 Meadville: Spoke against the proposal. He said that he looked into sound issues. He said he talked to sound engineers and that they said that it is difficult to know what sound will do because of the different surfaces that might impact the sound waves. He said that he did a sound test and that he could hear one voice. He said that 30 to 40 voices would be easy to hear from his backyard. He said that alcohol would lead to louder voices. Ekelund said that once the patio is approved, the noise impacts will be hard to undo. He said that noise impacts would need to be disclosed and handed out a real estate disclosure document.

Julie Ekelund, 5135 Meadville: Spoke against the proposal. She asked what is the evidence used to determine the approval or disapproval of the CUP. She said that the information she was presenting were simple facts. She said that 52 people have signed the petition. Ekelund displayed a map that showed where the residents who signed the petition lived. She said that 100% of the people that about the Old Log Theater have signed the petition. Ekelund passed out a summary of the letters given to the Planning Commission, a summary of the comments made at the Planning Commission, a document of the determining factors for a CUP, and a fact summary. Ekelund respectfully asked for denial of the CUP request.

Wade Fairchild, attorney for the applicants: Asked about the implementation of the conditions. He asked if the application was denied, would the conditions regarding the general operations of the theater need to be implemented.

Mayor Kind closed the public comments section of the meeting.

Kind said that she will attempt to answer the questions that came up during the public comments. Regarding substandard streets, Kind said that many of Greenwood's streets were substandard and that restrictions were not always practical. Regarding speeding, Kind said the new police chief will be proactive. Regarding the Planning Commission comments to look into City Zoning Code Section 1140.70, Kind said those regulations only applied to

the C-1 and C-2 zoning districts and are not applicable to the R-1C zoning district. Regarding the paving at the Old Log Theater, Kind said that the paving was placed over Class 5 gravel, which is considered hardcover and, therefore, the hardcover was not expanded. Regarding the applicant's attorney's question, Kind stated that any conditions placed upon a CUP would only apply if a patio were to be built.

Councilmember Fletcher said that he had done some investigation into noise impacts. He said that he was able to hear a single voice talking at a distance equal to the proposed patio to the nearest residential property. He said that he had also plugged some numbers into an online program to help try and understand the possible sound implications. He distributed printouts of his calculations and spoke about the results.

Motion by Cook to direct staff to draft findings for approval to include the following conditions: a) no amplified sound, b) additional parking would be served by an area not requiring access via Covington Street, c) requiring full cutoff light fixtures for the patio area, (d, e, f, and g conditions would be the same as staff's recommendations), h) outdoor patio and fire pit to close at 9 p.m., i) noise mitigation and measurable performance requirements at property line favorable to residents. Second by Quam.

Cook said that there are other things he would like to see addressed that are outside of the scope of the CUP such as load limits and appropriate traffic management and control on Covington Street. Quam stated his biggest concern was traffic on Covington Street. Cook said that he wants to look at ways to adjust traffic and make it difficult for Covington to be the route of choice.

Councilmember Roy asked how Covington Street would be policed. He said that he visited the Covington Street side of the Old Log Theater three times and saw 20, 12, and 16 cars parked in that area where each time there was plenty of parking available in the main parking lot. He said that the city needs to protect Covington.

Mayor Kind said that she would vote to approve the CUP request so that conditions can be added in an attempt to address the existing problems on Covington regarding parking and truck traffic. She said it might be difficult to address these issues otherwise. She said that she would also want to see conditions on where the buses can idle and to ensure protection of the wetland. Regarding the question of expansion, she said that the idea of expansion is not as clear-cut as it might seem since the number of dining seats have been significantly reduced from when the Stoltz family owned the theater.

Councilmember Fletcher said that there needs to be more thought and details put into any conditions. He said he would have difficulty supporting the CUP. Councilmember Fletcher read a memo outlining his findings which would be the basis for a motion for denial. Kind asked if Cook's proposed conditions would address Fletcher's concerns. Fletcher said that they do not get to the heart of the issue and that he did not feel that a happy medium could be reached.

Councilmember Quam said that he shared Fletcher's concerns about the ability of any conditions to effectively manage the concerns raised by the community. He said that he felt that the impacts would be negative and that the Covington Street traffic issue needs to be resolved. Quam said there were too many open questions remaining for him. He said that the Old Log Theater and the neighbors should work on getting along better.

Kind asked if she could attach additional conditions to Cook's approval motion. Cook said that he did not think the motion would pass regardless. Kind asked for a vote on Cook's motion.

Motion failed 1-4. Kind, Quam, Roy, and Fletcher voted against the motion.

Councilmember Fletcher made a motion that the City take an additional 60 days to review the Conditional Use Permit request of Excelsior Entertainment, LLC in order to have staff draft findings for denial based on the city council discussion. Second by Roy. Motion carried 3-2. Mayor Kind and Councilmember Cook voted against the motion.

Kind said that she voted "nay" because she thought there was an opportunity for a win-win with the appropriate conditions. Quam said that a win-win is still possible but that the business and the neighborhood need to work together.

C. 2nd Reading: Ord 245, Regarding Accessory Structures and Uses and Res 03-16, Summary of Ord 245 for Publication

Councilmember Fletcher proposed changes to the ordinance. He requested that, on page 8 of the ordinance, in Subd. 4, the ordinance should read "*The maximum total combined ~~square-foot~~ footprint per property for pergolas ...*" Also on page 8, Fletcher requested that Miscellaneous Secondary Accessory Structures have yard setbacks of 50 (front), 10 (side), 30 (exterior), 10 (rear), and 50 (lake) feet, otherwise all Miscellaneous Secondary Accessory Structures would require a variance.

Motion by Fletcher to approve Ordinance 245 as amended. Second by Cook. Motion carried 5-0.

D. 1st Reading: Ord 249 Security Deposits & Agreements

Councilmember Fletcher proposed changes to the ordinance. Fletcher proposed the following change for Subd. 2(D) on page 1, Subd. 7 on page 2, and Subd. 4 on page 3: *"For each month thereafter (or part thereof) during which the required landscaping remains uncompleted in a manner satisfactory to the city zoning administrator, the city may impose a like fine and ~~forfeit same~~ the same will be forfeited to the city."*

Councilmember Fletcher proposed that in the Section 4, in the table on page 3 of the ordinance, to change the fine to be the greater of \$1000 per month or .4% of the building value of the permit application per month.

Motion by Roy to approve Ordinance 249 as amended. Second by Quam. Motion carried 5-0.

Motion by Roy to waive the second reading of Ordinance 249. Second by Quam. Motion carried 5-0.

E. 1st Reading: Ord 251 Amending Chapter 11 Regarding City Forester, Hazard Trees, Variance Standards for Impervious Surface Regulations and Mailing Lists

Councilmember Fletcher suggested that the ordinance be modified to change Section 1: *"Greenwood ordinance code section 1140 is amended to ~~move delete~~ 1140.85 Diseased Trees subdivisions 10 and 11 and to add new section 1140.79 and amend to read as follows:"* Kind said that since this was a new section, the subdivision numbers in will not have the strikethroughs shown in the draft ordinance.

Motion by Quam to approve Ordinance 251 as amended. Second by Roy. Motion carried 5-0.

Motion by Cook to waive the second reading of Ordinance 251. Second by Roy. Motion carried 5-0.

F. Discuss: Variance Practical Difficulty Standards

Motion by Quam to continue the discussion of variance practical difficulty standards to the February City Council meeting. Second by Cook. Motion carried 5-0.

7. UNFINISHED BUSINESS

A. None

8. NEW BUSINESS

A. Discuss: Drafts of Drainage & Utility Easement Agreements

Motion by Fletcher to direct Councilman Cook to work with the City Attorney to revise the proposed Drainage & Utility Easement Agreement documents. Second by Quam. Motion carried 5-0.

B. Consider: Res 04-16 Approving Sale of the Southshore Center to Shorewood

Motion by Cook to adopt resolution 04-16 approving the sale of the Southshore Center to Shorewood. Second by Quam. Motion carried 5-0.

C. Consider: Res 01-16 Setting City Dates for 2016

Motion by Roy to approve resolution 01-16 to set key dates for 2016. Second by Quam. Motion carried 5-0.

D. Consider: Res 02-16 2016 City Appointments & Assignments

Motion by Roy to approve resolution 02-16 to desingate appointments and assignments for 2016. Second by Quam. Motion carried 5-0.

9. OTHER BUSINESS

A. None

10. COUNCIL REPORTS

A. Cook: Planning Commission, Parks, Sewer Study, St. Alban's Bay Bridge

B. Fletcher: Lake Minnetonka Communications Commission, Fire

C. Kind: Police, Administration, Mayors' Meetings, Website

D. Quam: Roads & Sewers, Minnetonka Community Education

E. Roy: Lake Minnetonka Conservation District, St. Alban's Bay Lake Improvement District

No council action was taken.

11. ADJOURNMENT

Motion by Roy to adjourn the meeting at 9:35pm. Second by Cook. Motion passed 5-0.

This document is intended to meet statutory requirements for city council meeting minutes. A video recording was made of the meeting, which provides a verbatim account of what transpired. The video recording is available for viewing on LMCC TV channel 8 for 1 month, at www.lmcc-tv.org for 1 year, and on DVD at the city office (permanent archive).