

**CITY OF ISANTI
PLANNING COMMISSION
MEETING MINUTES
FEBRUARY 14, 2012**

1. Meeting Opening.

A. Call to Order.

Stevens called the meeting to order at 7:00 p.m.

B. Pledge of Allegiance.

Everyone rose for the pledge of allegiance.

C. Roll Call.

Members Present: David Englund, Sue Larson, Cindy Lind-Livingston, Ross Lorinser, Christopher McDonald, Michael Streiff III, and Sean Stevens.

Members Absent: None.

Staff Present: Lisa Wilson, Planning and Parks Director and Clark Joslin, City Attorney.

D. Agenda Modifications.

Wilson stated there were no modifications to the Agenda.

2. Oath of Office for new Planning Commission Member

Wilson stated that the City Council had approved a new member to the Commission, Mr. Chris McDonald. Wilson welcomed him to the Planning Commission. Wilson stated that Mr. McDonald would need to rise and recite the Oath of Office that had been provided before him.

McDonald recited the Oath of Office.

Wilson stated that Mr. McDonald would need to sign the sheet and return that to her after the meeting.

3. Approval of Minutes from January 10, 2012 Planning Commission Meeting.

Stevens requested a motion regarding the minutes.

Streiff stated that on page 2, under the appointments to the Business/Industrial Sub-Committee, the names of those chosen were not included.

Wilson stated that she would make the correction.

Motion by Lorinser, second by Larson to approve the January 10, 2012 Planning Commission Meeting Minutes. Motion was unanimously approved.

4. Public Hearings.

A. Request from Father Jose Edayaidiyil, on behalf of St. Elizabeth Seton Catholic Church, for Site Plan and Building Appearance Approval to construct an addition on to the existing structure located on the property at 207 Whiskey Road NW.

Stevens opened the public hearing at 7:03 p.m.

Wilson presented the staff memo. Wilson read through the conditions and comments that were provided by City staff regarding the request.

Stevens requested that the petitioner approach the podium.

Father Jose, St. Elizabeth Catholic Church; and Tim Sullivan, RDC Architects approached the podium.

Father Jose stated that the parking item had been addressed on a revised plan. Father Jose stated that the revised drawings show how the additional spaces would be accommodated.

Mr. Sullivan distributed the revised plans to City staff and the Planning Commission members.

Stevens questioned if the petitioner had any comments or concerns with the conditions that had been placed upon the approval. Stevens questioned if there was anything in those conditions that would appear to be problematic.

Sullivan stated that the parking issue can be adequately addressed and is not a big issue. Sullivan did question the drainage and water management plan; and who should be doing that study.

Wilson stated that the City Engineer had requested these plans, as there is too much water already draining into the Whiskey Road drainage ditch. Wilson stated that the plans should be prepared by a licensed professional that has knowledge in this area.

Sullivan stated that answered his question.

Stevens stated that they have had the opportunity to work on bell or chime system complaints in the past. Stevens questioned what and how often the bells would play.

Father Jose stated that they would be used prior to the liturgy celebrations, nothing more has been identified at this time.

Stevens questioned if it was a computerized system or an actual bell.

Father Jose stated that it would be an actual bell.

Lorinser stated that the group had dealt with this and Faith Lutheran Church, and there is nothing to prevent churches from having a bell, as it is a freedom of speech deal.

Father Jose stated that they had a bell in the old church; but upon moving to the new church, the bell was not added. Father Jose stated that they did not have the bell tower constructed initially. Father Jose stated that they have had to do things in phases.

Stevens stated that there are performance standards for volume and frequency that are addressed in the Ordinance. Stevens stated that some of the neighbors may have something to say, particularly if it is done more frequently. Stevens questioned if there were other thoughts or questions on this item.

Stevens closed the public hearing at 7:13 p.m.

Motion by Larson, second by Englund to recommend approval of the site plan and building appearance review request to construct an addition on to the existing structure located on the property at 207 Whiskey Road NW with staff conditions based upon the Findings of Fact as presented. Motion was approved, 6 – 0, with Streiff abstaining.

Stevens stated that this item would appear before the City Council on Tuesday of next week. Stevens stated that if they could be present at that meeting as well to answer questions that would be appreciated.

Wilson stated that she would send out the Agenda and the staff memo prior to next weeks' meeting.

5. Other Business.

A. Townsedge Road- Potential Residential Development.

Wilson presented the staff memo.

Lorinser questioned if this gentleman has contact with the property owner.

Wilson stated that City staff has been trying to get into contact with him. Wilson stated that everything we try, we seem to run into a road block.

Stevens questioned what kind of precedent we are setting. Stevens stated that the lots would meet all of the zoning requirements, except for the lot depth.

Wilson stated that the requirement for a variance has changed.

Lorinser stated that the hardship rule has changed. Lorinser questioned, under the old rules, what would have constituted a hardship.

Wilson stated that the topography of a site in combination with lot shape. Wilson stated that there has to be something about the site that makes it almost impossible to meet the zoning requirements. Wilson stated that it could not be brought on by the property himself/herself.

Lorinser questioned if two properties that are surrounded by land owned by someone different could qualify.

Wilson stated that these two parcels are completely surrounded by a third party. Wilson stated that for this individual, trying to gain additional land to the south to achieve the lot depth; could be very difficult.

Stevens questioned the status of the property to the west. Stevens questioned if it was blighted.

Wilson stated that the Building Official has determined that the building on the property is hazardous. Wilson stated that the item will be heading to Council for declaration of the building as a hazardous structure and to see if the City should authorize abatement.

Stevens questioned if this would happen prior to this gentleman's purchase of the property.

Lorinser stated that over the past month or so, the City has been trying to contact the property owner, as the building is considered dangerous. Lorinser stated that the Council will be reviewing to see if it should be abated. Lorinser stated that he just questions whether or not reviewing this item is a bit pre-mature given that no one can get in contact with the property owner to purchase it.

Stevens stated that he would be supportive of the merger. Stevens stated that he would like to make Mr. Taggart aware of the issues facing the property. Stevens stated that on first blush, if we made him aware of the limitations that he may have in terms of what he can do on the property, it is a good opportunity to take care of two things at once.

Larson stated that she did not have a problem with the proposal. Larson stated that she just hopes that he does not have a lot of clean-up there.

Stevens questioned if there were potential hazardous waste issues.

Larson stated that there is no telling what is on the property.

Steiff stated that you can see that there are burner fuel oil tanks in the back of the property. Streiff stated that he hopes Mr. Taggart knows what he may be getting.

Larson stated that it would be to the City's benefit to have the property cleaned-up.

Streiff questioned if the property was going to tax forfeiture.

Joslin stated that it has a few years that are in arrears, but it is not within the next year or so. Joslin stated that the City will be considering abating a hazardous building to eliminate the potential hazards to residents. Joslin stated that there are steps that the City needs to follow and statutory rules that must be met for such an abatement. Joslin stated that the Council would need to authorize that abatement; and they will be reviewing that at their next meeting. Joslin stated that the property owner would need to be notified within reasonable time; and the Council would need to determine what is reasonable. Joslin outlined the process for the abatement.

Joslin stated that there are three buildings on the property, but only one is considered to be hazardous.

McDonald questioned if the City knows there are hazardous materials on the site.

Joslin stated that he was not sure. Joslin stated that at this time this has not been the focus of the Building Official's review. Joslin stated that he is not in a position to say, and would only be speculating that there are hazardous materials. Joslin stated that it is not beyond the realm of possibility that there may be some hazardous materials on site.

Stevens questioned how much liberty the City has in speaking with Mr. Taggart regarding the tax implications of this property.

Joslin stated that would be a public record. Joslin stated that the speculation of hazardous materials, he would not be comfortable with discussing that item. Joslin stated that Mr. Taggart should do his due diligence prior to purchasing the property. Joslin stated that the City does not

know what is out there and that is beyond the scope of what the Building Official is looking at, at this time.

Streiff questioned if the City has considered completing a Phase 1 before it is taken back.

Joslin stated that the City will not be taking it back. Joslin stated that the City could condemn the property through eminent domain and take the property. Joslin stated that if the City were to acquire the property, he would recommend doing so. Joslin stated that given the discussion, he would be very hesitant about taking title to the property.

Stevens questioned if anyone else had questions or comments. Stevens questioned if the Planning Commission was in favor of the proposal.

Lorinser stated that he felt it was reasonable. Lorinser stated that it would be more than difficult to acquire additional land to meet the lot depth requirements.

Planning Commission members agreed.

B. Amendment to Ordinance No. 445, Section 8 Industrial Districts, Article 1 "I-1" Industrial Park District, Subdivision 4 Interim Uses.

Wilson presented the staff memo. Wilson stated that if the Planning Commission is comfortable with the proposed language, City staff would request that the Planning Commission call for a public hearing on the item.

Stevens questioned if there were scenarios in which that type of set-up would be desirable. Stevens stated that there could be potential situations in which a firehouse style building with residential over business may be beneficial.

Lorinser stated that we have that in the downtown, but he did not feel it would be necessary in the industrial district.

Stevens questioned if a business like Ever Cat needed to have someone there 24 hours a day and it was essential to the business, would we want that.

Lorinser stated that they should then hire 24-hour staff. Lorinser stated that they would then have the security. Lorinser stated that if someone is sleeping there, they are not doing security.

Motion by Lorinser, second by Larson to call for a public hearing for the March 12th Planning Commission meeting, to Amend Ordinance No. 445, Section 8 Industrial Districts, Article "I-1" Industrial Park District, Subdivision 4 Interim Uses. Motion was unanimously approved.

C. Amendment to Ordinance No. 445, Section 21 Administration and Enforcement, Article 2 Conditional Use Permits, Subdivision 7 Expiration.

Wilson presented the staff memo. Wilson stated that City staff had referred this item to Mr. Joslin for further review. Wilson stated that she would defer to Mr. Joslin at this time, so he can present his findings on this item.

Joslin stated that Mrs. Wilson had requested that he look into this item prior to the meeting. Joslin stated that we are dealing with a gray area. Joslin stated that the League does not feel we

should include the provision that is being proposed, i.e. that if the conditional use permit has not been used for over a year, then it would expire. Joslin stated that he looked at the information that the League had provided regarding this item, which included a statement provided by the Attorney General based upon an inquiry from the City of Ham Lake, as to whether they could have such a provision that CUP's be reviewed on a year to year basis. Joslin stated that the Attorney General had stated no; and it clearly states in Statute that a CUP creates a property right. Joslin stated that it then runs with the land and does not expire; and is subject only to revocation if there is failure to comply with the provisions of the approval.

Joslin stated that he also received a court case from 2009, which was the Upper Minnetonka Yacht Club versus the City of Shorewood. Joslin stated that in this case, there was argument over a CUP issued to the boat club in 1969. Joslin stated that they were allowed up to 30 slips for boats to dock during the docking season. Joslin stated that it was amended in 1978; to remove the buoys. Joslin stated that twenty years after that, the City decided that the original intent was that the slips be for sail boats and not power boats; and the City attempted to amend the CUP to include sail boats only. Joslin stated that the yacht club filed suit; and the court found that the City cannot unilaterally change the conditions of an approval or revoke those conditions, as it is a property right that runs with the land. Joslin stated that it cannot be changed without authorization from both parties.

Joslin stated that he did review the case that Mrs. Wilson had found, which was decided after the 1982 statute was implemented, and shortly after the concept of an Interim Use Permit statute (1989). Joslin stated that the case was decided in 1989, a couple of months after the enactment of the new statute. Joslin stated that the case stands for the argument that the CUP may expire, if the CUP ceases to exist and the conditions were no longer being met on the property. Joslin stated that if we were to just use this case, it would appear that the City has grounds to include the language. Joslin stated that it gets muddy because the League is aware of that case, but they believe that the Attorney General's position and the Minnetonka case both indicate that no CUP can expire. Joslin stated that there are several Cities that have this language; and he is sure that there are lots more that have this language in their ordinance. Joslin stated that he is sure the League is not happy, as at some point there will be litigation over this item.

Joslin stated that there is better than a 50/50 chance for litigation to occur based upon that language; and ultimately the court would find that also. Joslin stated that he can see the argument on both sides. Joslin stated that if we adopt and attempt to enforce it, we may be the test case or some other city may be the test case. Joslin stated that until that happens; we are not going to know the status of the law.

Stevens questioned if each of the examples provided has the language that would allow them to expire.

Joslin stated that would appear to be the case. Joslin questioned if Mrs. Wilson had used language from one of the communities.

Wilson stated that she had.

Joslin stated that in the 1989 case for Minneapolis, the City had that exact language at the time the case had gone to court. Joslin stated that he felt the City would be on safer ground if there was a due process procedure in the ordinance, subject to review and revocation. Joslin stated

that would muddy the waters too. Joslin stated that he had discussed with the League Attorney on legal non-conforming uses and CUPs. Joslin provided information regarding this discussion. Joslin stated that if we have something listed as a Conditional Use, and change the zoning ordinance, removing the use as a conditional use; then if the use discontinues for a year, it would be non-conforming and would need to cease. Joslin stated that the League does support this view.

Joslin stated that we do not want to get the City into litigation, if we can avoid it. Joslin stated that DAC would appear to be on-board with ending CUPs if they are not being used for more than a year.

Stevens stated that he is inclined to agree. Stevens stated that the City attaches the use to the property and cites special circumstances to the property. Stevens stated that if that use goes away, then the rights to be able to perform that action should have consequences that may allow the use to go away.

Joslin stated that the Interim Use Permit comes into play here. Joslin stated that this is clearly authorized by the enabling statute. Joslin stated that until 1989 that option was not available. Joslin stated that the question is now coming into play, as to how we handle some of these older CUPs that are not longer being used or established on the property. Joslin stated that Mrs. Wilson pointed out in the memo, even if we adopt this; we could only apply the provision moving forward. Joslin stated that the provision would not be able to be used on CUPs granted previously to the Ordinance amendment.

Stevens stated that he agreed it should not be retroactive, but is convinced that this should be reviewed further. Stevens stated that the language is a bit in advance. Stevens stated that the process would need to be reviewed and included in the text.

Joslin stated that he would be more comfortable with a due process review and hearing. Joslin stated that the rub would come if a property owner would come forward and contest the revocation. Joslin stated that this would put the City on the spot to make a decision, as to whether to grant that or to implement the Ordinance. Joslin stated that the City will end up having to set some precedence on how to apply the ordinance and ensure that it is being applied fairly.

Stevens questioned if there were other comments or questions from the members.

Lorinser questioned why, if there are so many rules on CUPs, does the City not get rid of them and just have IUPs.

Joslin stated that you could go that route. Joslin questioned what Mrs. Wilson's thoughts were on that question.

Stevens stated that the distinction that the County uses is to attach to the property or attach to the person. Stevens stated that there have been some projects where their CUP is time limited. Stevens stated that there are some circumstances in which they violate their own ordinance or policy.

Lorinser stated that the City has stated that too, but there seems to be some gray area. Lorinser stated that if we make a CUP in one district, then we have to continue to give to each business that is the same a CUP too.

Joslin stated that there are certain uses that you feel are compatible with the zoning district, but you want to add additional conditions to control adverse affects to other properties. Joslin stated that there are some uses that you do not want to consider as permitted because if they are not bound by additional conditions they could become problems for health, safety, and general welfare. Joslin stated that mining or gravel mining is always listed as a conditional or interim use because of noise, traffic, dust, etc. Joslin stated that those sort of things might be applicable to a property or a class of properties in a zone. Joslin stated that City staff could look into this item further to see if there is a benefit to having both within the Ordinance.

Lorinser stated that where he gets confused is that there are all these rights to a CUP then if we give a CUP to one business and another comes in, we have to give that CUP.

Joslin stated that we specify in our Ordinance what the conditions are that must be met. Joslin stated that there may be other conditions that may be necessary that may be looked at on a property by property basis. Joslin stated that in general if all the criteria are met based upon the Ordinance then we have to issue it. Joslin stated that we then have the authority to impose additional conditions, providing they are not arbitrary and the City has a legitimate basis for adding those conditions. Joslin stated that the condition has to be reasonable based upon the facts that have been provided.

Stevens questioned if City staff had enough information.

Wilson stated that City staff would review the language and do a little more research based upon the discussion.

Stevens stated that they could call for a hearing.

Wilson questioned if they wanted to call for the hearing at this point or did they want City staff to review the language and come back at the next meeting.

McDonald questioned if there was urgency with getting the item approved.

Wilson stated that she did not believe so.

Joslin questioned if DAC had expressed any urgency.

Lorinser stated that at DAC it was a passing discussion for City staff to review. Lorinser stated that the legal stuff had not been looked into or presented at that time.

Joslin stated that as long as there was no urgency, the best practice would be to put a little more thought and time into the amendment. Joslin stated that the City should work to put together something that we are all a little more comfortable with moving forward. Joslin stated that the League is definitely not comfortable with the language that we are proposing at this time.

6. Discussion Items.

A. Review of Conflict of Interest Policy.

Joslin, City Attorney, reviewed the amendments to the City of Isanti Conflict of Interest Policy as well as covered information contained within documentation provided by the League of Minnesota Cities.

7. Other Communications.

A. None.

8. Adjournment

Motion by Englund, second by Larson to adjourn the February 14th, 2012 meeting of the Planning Commission. Motion was unanimously approved.

The meeting adjourned at 8:05 p.m.

Dated at Isanti, Minnesota this 13th day of March 2012.

Respectfully submitted,

Lisa M. Wilson, AICP
Planning and Parks Director