

MOUND CITY COUNCIL MINUTES
February 9, 2016

The City Council of the City of Mound, Hennepin County, Minnesota, met in regular session on Tuesday, February 9, 2016, at 7:00 p.m. in the council chambers of the Centennial Building.

Members present: Mayor Mark Wegscheid, Council Members Heidi Gesch, Ray Salazar, Jennifer Peterson and Kelli Gillispie

Members absent: none

Others present: City Manager and Public Works Director Eric Hoversten, Community Development Director Sarah Smith, Administrative Assistant Mary Mackres, City Attorney Melissa Manderschied, Field Officer Stewart Simon, Consultant Planner Rita Trapp, Director of Finance and Administration Catherine Pausche, Katie Morford, Ryan Simatic, Michael Kurtz, Carson Meritt, Lisa Meritt, Michael Kukis, Troy Koopman, Penny Ehlers, Kurt Ehlers, Ken Nash, Justin Rock, Laura Mattioli, Robert Mattioli, Valerie Mattioli, Tom Lavoie, Alex Teplitski, Alexandra Teplitski

Consent agenda: All items listed under the Consent Agenda are considered to be routine in nature by the Council. There will be no separate discussion on these items unless a Council Member or citizen so requests, in which event it will be removed from the Consent Agenda and considered in normal sequence.

1. Open meeting

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

2. Pledge of Allegiance

3. Approve agenda

Hoversten presented replacement pages for agenda item 8: pages 314 - 318, 318.1 and 318.2. These pages represent the complete letter to the City from the representation of Justin Rock in the matter of the Board of Adjustment and Appeals.

MOTION by Salazar, seconded by Gillispie, to approve the agenda. All voted in favor. Motion carried.

4. Consent agenda

Salazar requested the removal of item 4D.

MOTION by Salazar, seconded by Gillispie, to approve the consent agenda, as amended. Upon roll call vote, all voted in favor. Motion carried.

A. Approve payment of claims in the amount of \$1,308,305.83

B. Approve Pay Request No. 7 from Geislinger & Sons, Inc., in the amount of \$59,842.07 for the 2015 Street, Utility and Retaining Wall Improvements - Grandview Boulevard and Tuxedo Boulevard, City Project Nos. PW-15-02 and PW-15-01

C. RESOLUTION NO. 16-17: RESOLUTION AMENDING AND RESTATING RESOLUTION 15-138 AND ORDERING IMPROVEMENT AND PREPARATION OF

PLANS FOR 2016 STREET, UTILITY AND RETAINING WALL IMPROVEMENT PROJECT - TUXEDO BOULEVARD, PHASE II, CITY PROJECT NO. PW-16-02

D. REMOVED

4D. Salazar requested removal of item 4D to express his opposition to the resolution.

MOTION by Gillispie, seconded by Peterson, to approve the following resolution. The following voted in favor: Wegscheid, Gillispie, and Peterson. The following voted against: Salazar and Gesch. The following abstained: none. Motion carried.

RESOLUTION NO. 16-18: RESOLUTION APPROVING VARIANCE FOR 1732 CANARY LANE, PLANNING CASE NO. 15-23.

5. Comments and suggestions from citizens present on any item not on the agenda.

Michael Kurtz and Carson Meritt, students from Grandview Middle School, stated that they will be competing in the community problem solving fair on April 9, 2016 where students are required to identify a real-life problem and offer a real solution to help solve the problem. Kurtz and Meritt chose teen homelessness and stated that there are over 4,000 teens in Minnesota who are homeless and that most kids know very little about homelessness. In order to raise awareness about teen homelessness, Kurtz and Meritt will be sleeping in a car in the parking lot at Grandview Middle School for one week to raise money for the Open Hands Foundation which operates a teen homeless shelter in Chanhassen. Kurtz and Meritt are asking the city council to help them by passing a resolution proclaiming April as teenage homelessness awareness month in Mound in order to give support and encouragement to the homeless teens in our district. Kurtz and Meritt will use the proclamation in their competition portfolio as part of the statewide and international competition.

Mayor Wegscheid directed Kurtz and Meritt to send their prepared resolution to staff and directed staff to include the resolution on the next City Council agenda.

6. Discussion and action to approve resolution approving liquor licenses for Surfside Bar & Grill, LLC, for a Class III restaurant at 2544 Commerce Boulevard

Catherine Pausche, Director of Finance and Administrative Services, presented a resolution approving the liquor licenses for Surfside Bar & Grill and stated that three local residents have formed an LLC for this business. Pausche noted background checks have been conducted according to Chapter 6 of the City Code and that the Orono Police Chief has recommended approval of the licenses due to clear background checks and the evidence of financial viability.

Ken Nash, one of the partners, spoke to the Council stating that he is excited to become part of the Mound business community and that he feels the restaurant is a resource that is really needed in the city. Nash stated they will remodel the building so the appearance will really change dramatically from the outside and noted that the partners have great plans for the inside as well. Nash stated that he owns a restaurant and bar in Rochester, MN and his partners have been in the business most of their lives. Nash stated they have great ideas for the menu and there will be great food and that they hope to open in mid-April.

MOTION by Salazar, seconded by Gillispie, to approve resolution. All voted in favor. Motion carried.

RESOLUTION NO. 16-19: RESOLUTION APPROVING LIQUOR LICENSES FOR SURFSIDE BAR & GRILL, LLC, FOR A CLASS III RESTAURANT AT 2544 COMMERCE BOULEVARD

7. Community Development Director Sarah Smith requesting discussion/action on conditional use permit violation(s) at 4831 Shoreline Drive (Main Street Auto)

Gillispie recused herself due to a potential conflict of interest.

Smith addressed the Council for consideration and action on Conditional Use Permit (CUP) violations for Main Street Auto, noting the owners of the property were to bring the property into compliance prior to tonight's meeting. Smith stated that effective January 31, 2016, the property is compliant with the number of vehicles allowed in the CUP. Smith says that the property was field inspected and the business had vehicles up on hoists noting that this is normal and customary for the inspection of vehicles for sale.

Smith mentioned a resolution to effectively reinstate the CUP and ending the stay for a six month period subject to conditions, including the property remaining in compliance with the current CUP. Smith said if further violations occur and/or the conditions are not met, the Council could revoke the CUP again.

Smith stated that staff has received an application from the business requesting an amendment to the CUP. Staff recommends Council taking action on the resolution which rescinds the revocation.

Alexander Teplitski, owner of Main Street Auto, 4831 Shoreline, said he doesn't understand what it means to have 20 vehicles "for sale" or "display."

Mayor Wegscheid said that inspection means someone from the City looks at the property to make sure it meets the CUP requirements.

Teplitski says no one can come on his property without his permission to inspect. Teplitski said the State makes appointments with him to come and inspect the business and then he is issued a certificate. Teplitski says he believes he is abiding by the City regulations and added that he never broke the law. Teplitski showed a picture to the Mayor asking what the photo means. Teplitski said he thinks the pictures are from Google maps and that the picture changes every three weeks and that he never makes trouble. Teplitski says he has a lot of customers who like his business and that they sold 18 cars to children of Mound residents in recent months. He stated he has no problems with any of his customers. Teplitski says he has three people in his family working with him and his employees lost money because his business was closed for two weeks. Teplitski stated this business is his life and that there are five workers at the business every day. Teplitski has a pick-up truck and a snow plow for his business on the site.

Teplitski stated he started working with the City in 2009 and showed a plan from an architect with space on the lot for 20 cars. He stated there is not enough area to have 20 cars on the lot. He stated one photo showed 40 cars, some of which were employee vehicles.

Teplitski thinks he is a hostage and he never broke anything and he complied when he got instructions from the City to move boats and semi trucks off of the lot. He stated that the last time there were issues everything was dismissed. Teplitski noted that he is disabled and questioned why he can't put his own motorcycle and boat on his own lot.

Mayor Wegscheid stated that when Teplitski bought the property the CUP that is currently in place follows the property. The CUP was written with previous owners and reflects their needs. A few years ago, there was a difference in interpretation of the CUP. Wegscheid stated that recently things have slipped back to what they were. He stated that the current owners are using the property differently than what the previous owners intended it for. Wegscheid said that Teplitski was told to bring the property back into compliance. The Mayor stated that the Teplitskis' can amend the CUP to match their needs, within reason. The Mayor acknowledged that issues identified were corrected but noted there is a process that has to take place. The Mayor added the current CUP which goes with the property doesn't match what the Teplitskis' want to do with the property.

Teplitski said he never broke any city regulation and he never had more than 20 cars for display. Mayor Wegscheid says that when the CUP was written it was for the owner at the time. Wegscheid acknowledges that the CUP needs to be amended to suit their needs.

Teplitski wants to have minor mechanical fixes allowed per the CUP since the maintenance shop has been around since 1962 and does not see why that is a problem.

Mayor Wegscheid says that staff is in process of working with Teplitski on amending the CUP.

MOTION by Salazar, seconded by Gesch, to approve resolution. The following voted in favor: Wegscheid, Salazar, Gesch, and Peterson. The following voted against: none. The following abstained: Gillispie. Motion carried.

RESOLUTION NO. 16-20: RESOLUTION EXTENDING THE STAY OF REVOCATION OF THE CONDITIONAL USE PERMIT FOR PROPERTY AT 4831 SHORELINE DRIVE FOR OPEN LOT SALES AND DISPLAY OF VEHICLES

8. Board of Adjustment and Appeals Hearing regarding Justin Rock's appeal of the Community Development Director's orientation determination for property at 4730 Galway Road

Mayor Wegscheid explained the process and order of events for the appeal process.

Sarah Smith stated that this request is an appeals request, or an appeal to the board of appeals, Chapter 129.32 of the City Code, which allows a party to seek a decision from the Council on an interpretation of the zoning map or interpretation of the zoning code made by an officer or a staff member or other appropriate personnel of the City. Smith stated this request for appeal is related to the orientation of the property at 4730 Galway Road and specifically what is deemed to be the front of the property. Smith added the City Code designates the City Council as the Board of Adjustment and Appeals and sets forth the process for which the reviews take place. Smith stated the appeal was heard by the Planning Commission on January 5, 2016, and that Staff's conclusions are also included as part of the record. Smith stated that the Planning Commission had two votes on the

orientation of the front of the house, one making the east side and one making the west side of the property to be front of lot, and both of those motions failed. Smith stated the Planning Commission packet and minutes were included in the Council packet. Smith added that the staff report concluded the south side of the lot be the front based on the lot's orientation to Galway Road.

Ryan Simatic, 500 E. Grant St., Minneapolis, attorney representing Justin Rock, stated the reason he is representing his client is due to a professional disagreement about the orientation of the property. Simatic questioned the Planning Director's determination that the south side is the front of the property and said that he and Justin Rock argue the front of the property could be either the east or west side and noted that this dispute is taking place due to 4730 Galway Road being a unique property. Simatic said if this property was on improved rights of way (ROW) there would be no debate as the front would be where the access comes in off an improved ROW. Simatic said if this were a corner lot, the shorter of two sides would be the front. Simatic stated Galway Rd is unimproved and the east side is Excelsior Road which is unimproved ROW and that the proper front needs to be determined based on factors that are particular to this property.

Simatic stated that the Planning Commission voted to affirm that the south side is the front and noted that if the City Council concurs, it should have substantive factual reasons to do so. Simatic stated that if a citizen submits a Plat that conforms to the zoning code but is denied by the City, it would be considered an arbitrary decision. Likewise, if the proposed use is legal under the zoning code and the proposed use otherwise conforms to CUP, then denying the use permit is considered arbitrary. Mr. Simatic said he believes the orientation of the property at 4730 Galway falls under the same standards.

Simatic says the orientation of property should not be disputed. The code directs the Planner to consider two factors in what is the front: first, the building plans as proposed, and second, the surrounding properties. Simatic noted the front door is on the west side of the proposed plans, therefore, the west side should be the front. Simatic stated surrounding properties have the rear of their houses facing Lake Minnetonka, noting the house to the north is unique as it originally encompassed the lot at 4730 Galway before it was subdivided. Simatic stated the Planning Commission determination has to consider the safety and health of Mound residents and the orientation of this property has no detrimental effect to the property to the north since those owners are the ones that sold off the property. Simatic said that determining that the east or west side of property is the front will not set a precedent that other owners will apply to change the orientation of their property.

Simatic further stated that the City Code allows for a determination of what is a practical front yard and noted this property abutts Lake Minnetonka to the west and considering the west side as the front should be considered practical. Simatic stated the City has lot depth standards and the typical orientation would be that east or west is the front of this lot and would conform to normal setbacks, whereas setting the south side as the front would allow for only a small developable area and the house on this lot would look like a boxcar.

Simatic says that one factor that the Planner keyed in on is the lot access point but that he does not think this should be considered at all because the property does not have a typical access. Instead, he feels the determination should be what is the practical front yard. Simatic stated the front yard access is coming off of Shannon Lane as much as it is coming off of Galway Rd. and that it is completely arbitrary to pick one over the other. Simatic says that the Planner also has keyed in on the idea that orientation should be determined by what

is consistent with traditional residential development. Simatic stated that every lake front home in the area is oriented to the lake and that the City has accommodated similarly unique lot layouts as Galway to have the rear of property face the lake with the proper orientation as either the east or west side. Simatic stated the facts are supporting what Mr. Rock is requesting.

Justin Rock, 4730 Galway Rd., addressed the Council and said he sent in a building permit request with the front of the property facing west and added that this concern has been going on for some time and noted that he would like to start building.

Smith stated in regards to orientation about the front lot line the definition for front is set forth in zoning ordinance and it is where you have frontage and where there are two sides of a property facing a improved road it is the smaller of the two sides of the lot which becomes the front. Smith added it is the responsibility of the Community Development Director to apply the front as what is practical. Smith stated the east side of the lot is not open and accessible for driveways and that no properties along that elevation of Excelsior are provided driveways from onto that right of way as unimproved Excelsior is functioning as commons. Smith added the west side cannot be the front side because it doesn't abut a public street and the northerly termination of Shannon Lane does not extend to the property, noting the only road that is in an East-West direction is Galway. The way to access the property is from the ROW within Galway Rd. which means the south facing Galway is the front of the property. Smith noted that the two properties mentioned by Simatic had some similarities but noted the road is improved in front of the Kildare property and the home on Dorchester has an improved road in front of it, whereas Galway has a public easement within a private roadway.

Smith mentioned that in the building permit that was submitted by Mr. Rock, if the east or west were deemed to be the front, it would comply with zoning in all regards, but in that case the setbacks would be compromised because Galway Rd setback exceeds the 15 feet standard and the appropriate setback for a road in a side or rear capacity is 10 feet, not six feet. The setback along Galway would then be 10 feet, and the north setback would be six feet. In regards to the vacation request the setback would be different. Smith says that based on the orientation of the lot, Staff believes the south side is front.

Gesch asked about the plan showing the front door facing west and if that makes the front the west. Smith stated that the variance approved in 2014 granted a setback reduction to allow a certain portion of the house be within six feet of the front property line as long as it was less than 20% of total length.

City Attorney Melissa Manderschied added that the variance was granted only if front of lot is deemed to be Galway.

City Manager Eric Hoversten says that there is a physical difficulty in accessing the property from Excelsior Road.

Rock said that driveway is coming in from west. As this is a corner lot, the shortest side is deemed to be the front and he is looking to utilize the full width of the lot, which is 70 feet. He stated he is looking to maximize the view of the water.

Peterson asked why this threw up red flags. Smith says that per the City Code the west can't be the front because Shannon Lane does not extend through to the north and noted that the driveway has always been on Galway Rd.

Hoversten says that there are a number of houses on Three Points where the improved roads terminate before they fall to the water and those lots are all oriented similar to this, with the long side of their lots as the front.

Laura Mattioli, Maple Grove, says a lot has been brought up about Excelsior not being a road and stated the lot at 4730 then should not have been deemed buildable as it doesn't have any improved road frontage. Mattioli says they have spent 1 ½ years trying to make this lot work for them and questioned why the City can't change the orientation assuming the City should want a home that is most conforming.

Rock stated he does not know why this was deemed a buildable lot. He has other options that neighbors won't like to build 2 ½ stories up. He stated he intends to stay here and raise a family in Mound and the decision to make the south the front of the property is restrictive.

Salazar said that Rock knew about the restrictions before closing on the property. Rock was provided the information prior to closing. Salazar says that Rock knew what the rules were before the purchase. Salazar stated that now that Rock closed on the property he wants the City to change the rules. Salazar further stated that in 2014 it was determined which side was going to be front and that orientation and setback requirements were shown to him going in.

Mayor Wegscheid stated that this is an appeal process noting the case is not new and there was nothing new brought forward today.

Simatic asked if the orientation was brought up to the Council and Mayor. Mayor Wegscheid said that yes, all of this was discussed several times.

Smith stated the variance granted was based on materials provided at that time.

Peterson asked why does the City would want to make the south side the front? Smith stated there are no driveways on the east side of any of the properties from Carlow Road southward and offering the west side as the front doesn't get close to the definition of what is front because it doesn't touch a public road. Shannon Lane does not extend through and the west is not eligible as the front under the City Code. Driveway access isn't a factor but noted there are no driveways abutting Excelsior Lane.

Mayor Wegscheid stated that everyone has an opinion and now is the time to make a decision. The Mayor reiterated the reason for the discussion is an appeals process.

MOTION by Wegscheid, seconded by Salazar, to direct staff to prepare an order that upholds the Community Development Director's orientation for reasons stated within the packet outlining the basis for that decision. All voted in favor. Motion carried.

9. Information/Miscellaneous

- A. Comments/reports from Council Members
- B. Reports: Harbor Wine & Spirits - Jan 2016

Bolton & Menk, Inc. YTD as of 12/31/15

C. Minutes:

D. Correspondence:

Hoversten noted the following highlights to the calendar:

- Met Council open house is on March 15
- February 23 HRA meeting begins at 6:00pm instead of the typical 6:55 pm
- City departmental reports will take place on April 19
- February 25 is the Volunteer Recognition dinner at Gillespie Center

10. Adjourn

MOTION by Gesch, seconded by Salazar, to adjourn at 8:46 p.m. All voted in favor.
Motion carried.

Mayor Mark Wegscheid

Attest: Catherine Pausche, Clerk