

MOUND CITY COUNCIL MINUTES
March 26, 2019

The City Council of the City of Mound, Hennepin County, Minnesota, met in regular session on Tuesday, March 26, 2019 at 7:00 p.m. in the council chambers of the Centennial Building.

Members present: Mayor Ray Salazar, Council Member Jeff Bergquist, Sherrie Pugh, Phil Velsor and Paula Larson

Members absent: None

Others present: City Manager Eric Hoversten, Director of Finance & Admin Services Catherine Pausche, Community Development Director Sarah Smith, Mary McCauley, Mike Hulzebos, Nancy Christianson, Tom Christianson, Mike Hulzebos, Maureen Michalski, Ray Hanson, Greg Metz, Declan Metz, Eric Peterson, Trevor Martinez

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 Councilmember or citizen so requests, in which event it will be removed from the Consent Agenda and considered in normal sequence.

1. Open meeting

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

2. Pledge of Allegiance

3. Approve agenda, with any amendments

MOTION made by Bergquist, seconded by Velsor, to approve the agenda. All voted in favor. Motion carried.

4. Consent agenda

MOTION made by Velsor, seconded by Pugh, to approve the consent agenda. Upon roll call vote, all voted in favor. Motion carried.

A. Approve payment of claims \$427,677.49

B. Approve Special Meeting Workshop at 6:00 PM, Tuesday May 7 for
Emergency Preparedness Training and Emergency Operations Center exercise

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

Greg Metz, 5718 Elm Road, said he came to thank the City Council for their decision to not renegotiate the terms of the Purchase and Development Agreement with Mound Harbor LLC.

6. Mary McCauley and Michael Hulzebos, 6370 Bay Ridge Road, requesting discussion on a summary abatement notice and invoice

Mary McCauley, 6370 Bayridge Road, read a statement stating she has lived in Mound since 2017 and this is the first time presenting an issue to the City Council. McCauley questioned the timeline provided by the City Manager, specifically the statement that there was a break in the

line. McCauley said Widmere Construction's first scoop exposed the buried clean-out. McCauley said Widmere's invoice does not describe the events the City Manager described on the timeline because McCauley says it did not happen. After a meeting with Widmere, McCauley sent an email asking questions and requesting more information with the intent to get a second professional opinion. McCauley said she had requested a map of the sewer line which she did not receive until preparing for this meeting. McCauley said the City can not set standards for their residents if they do not uphold them themselves. McCauley said the City was aware of the problem for many months and that the McCauley was not made aware of the issue until mid-December. McCauley said there was no way to know their line was so far away from their house or to question neighboring properties construction projects. McCauley said if there was a raw sewage back-up, it would back-up into their bedroom and they were very concerned. McCauley said the City has no right to make financial decisions on private property and she said they were not given a reasonable time period to respond. McCauley said the repair was excessive and caused damaged to multiple properties. McCauley said if this action wasn't taken, RotoRooter would have been sufficient. McCauley said she got the bill in March, months after the repair, and was given 7 days to request this hearing, which felt very tight and intimidating and designed to discourage her from responding. McCauley said a simple Google search gave her information on clean-outs from which she summarized. McCauley said Widmere did a single dig and did not return to the site saying "I have real problems to deal with." McCauley said if she is responsible, her name needs to be on the city held easement. McCauley said more time should have been given and the sewer line map should have been provided in order for her to be able to detect where the line was. McCauley said on December 14th Hoversten walked the lot with the owners and apologized for the tone of his original letter but that after the meeting with Widmere, the tone changed. McCauley said she does not blame the neighbors who built, but rather blames the City during the planning process for not identifying the buried cleanout.

Mike Hulzebos, 6370 Bay Ridge Road, said they question the chosen action, the tight timeline and the cost. McCauley said the City refused to tell them who scoped it, when they scoped it and whether other clean-outs exist. McCauley said Widmere said they install cleanouts every 80 feet and this appears to be 200 feet and does not reside on her property. McCauley and Hulzebos asked the City to admit a mistake and that they overreached. McCauley walked through the pictures provided in the packet to show the depth of the Widmere dig and the distance from the house to the buried cleanout. McCauley said they have no access to the easement. McCauley showed aerial pictures from Google maps of the property before the lot split and new builds and during construction that shows the clean-out before it was buried, which is why they feel it was the failure of the planning/inspection process.

The Mayor asked the City Manager why the location of the cleanout was not known. Hoversten said the City's as-builts did not show a connection to anything and it was a slow process using camera equipment to try to determine where the line was coming from, and eliminating the possibilities of abandoned septic tanks, etc. Hoversten said it was not until they did the dye tests in the homes that they were able to determine the source. Hoversten said he can't

explain why the sewer service was built as it was until you walk back through the multiple subdivisions and some of the legacy private infrastructure that is not in the as-builts.

Hulzebos asked who is responsible for knowing the location of the cleanout. McCauley asked when was the first complaint made as the timeline provided by Staff seems to benefit the City. Hoversten said the City was aware in mid-Summer and that it took that long to diagnose. McCauley asked why they were not given more time to rectify the situation. McCauley restated her concern that she has no right to access the cleanout and now there is significant damage and that the Widmere invoice does not support what the City Manager said happened.

Mayor asked where the damage was coming from in the pipe. McCauley said there was no damage in the pipe and that it was just at the cleanout.

Velsor asked when the new house inspection took place, he assumes the clay pipe would have been sticking out. Ray Hanson, Public Works Superintendent, said his crew does the inspection but there would have been no inkling a line was there. Hanson said McCauley can access the drainage and utility easement to repair her private property. McCauley asked how they can be responsible for damage caused by other's actions.

Salazar asked how deep the clean out pipe was below grade. Hulzebos said 1 – 2 feet. Hanson showed a photo of a root ball sticking out of their line from November 21, 2018 causing a complete blockage at the intersection of the main sewer line. Hoversten said the camera was unable to travel up the private line because of the blockage, so excavation at what appeared to be the damaged area was necessary. Hoversten said once the clean out was found, the city had the excavator dig around it and it was determined there was no second connection and the standpipe was stacked on top of it. Hoversten said a mechanical roter device was used at this point but did not work, so they tried the city hydromatic jetter which cleared some, but additional work had to be done farther up the pipe where additional blockages were found. Hoversten said there are many "I wish we would have knowns" come into play as more discovery occurs. Hanson said the mechanical roter could not clear this and RotoRooter would not have been able to either because their equipment does not have enough pressure to blow blockages out of the line.

Velsor asked where the other homes connect to the sewer. Hanson said their neighbors have a lift pump that flows to Bartlett and another neighbor goes to Bayridge Road, but noted that sewer line does not go all the way to the cul-de-sac. Hanson said the as-builts only showed the original house's connection.

Velsor said he struggles with holding the resident responsible knowing the extent/length of the sewer line.

Larson asked if the City was notified in June why it took until December to take action. Larson asked if it was considered a health hazard in June and Hanson said they did not know it was sewage at the time.

McCauley asked how the original complainant described the problem? McCauley said it was dishonest to say it did not smell. McCauley asked why if the scope was on November 21st, they were not notified until November 28th via a door tag, noting the City employee did not even bother to knock. McCauley said she called immediately and made an appointment with Ray Hanson on December 4th. McCauley said with more time and information, she could have come up with alternatives.

Velsor asked if they got any sewer back-up in their home. McCauley said no but that they are significantly up-hill and there are only three people living there. McCauley questioned the time the City took vs. extending the same courtesy for the resident.

Velsor asked when the new construction was completed. McCauley said summer of 2018.

Salazar said there is a resolution on Page 608 and asked for comments or discussion from the City Council. Salazar said the bill is for approximately \$4600.

Larson said she is disturbed that if this was a public nuisance that it took so long to diagnose, noting there was never a back-up in the home. Larson asked what the duty of the City is to know these things when there is new construction. Hoversten said it is not standard for the City to do all the research but rather to rely on the professional survey for the subdivision, which was done in 2015 and 2016. Hoversten noted that the building permit drawings of the site plan do not show the line either.

Pugh said she did a site visit because she was confused. Pugh understands it was a public nuisance, but she recognizes there were many unusual circumstances with the location and all the unknowns and feels there should be public education/handbook and the knowledge gained should be documented. Hoversten said he fully endorses pre-sale sewer inspections to protect the homeowners, but that the City is not in a position to perform the service.

Bergquist asked how could they have known if the clean-out was buried during construction or that it even existed. Hoversten said the City does not know when and how it got buried or damaged since its original construction in 1970.

David Anderson, Kennedy and Graven, summarized the summary abatement process in response to the comments made about the condensed timeline. Anderson said the City is allowed to abate it immediately due to the public safety and that the time given was more than required. Anderson said ultimately the homeowner is responsible and that they would have had to have done something anyway. Anderson said if it is a non-emergency, the resident is given 10 days. Anderson said he notes this to demonstrate Staff did not act unreasonably.

Velsor said he understands that the homeowner is responsible for the private line, but asked if it is reasonable to make them responsible for the portion under the City street. Velsor said he felt it should end at the curb. Hoversten said the owners are responsible and that in new home

construction they have to have a street open permit and the city collects a \$5K escrow for one year to ensure no damage to the public street. Hoversten cautioned careful consideration of delineating public and private proportions for level of service and liability purposes.

Pugh asked if this area has been improved and Hoversten said the majority of sewer rehab has been in pipe lining, not excavating. Hoversten said there has been limited televising in this area and no manhole rehab.

Tom Christianson, 6365 Bayridge Road, said they have been there 23 years and when Bayridge Road was torn up 10 years ago, Tom remembers pipes coming up from the other side of the street. At that time, they were asked whether they wanted water and sewer service run to their vacant lot. Tom Christianson said he does not feel the blame should be with McCauley or Hulzebos, but rather the new home-owner, developer or landscaper. Tom Christianson said there are old Oak and Cottonwood trees in that area and more filming should be done as there have been back-ups in the area. Nancy Christianson, 6365 Bayridge Road, said why would the previous owner not have been asked if they wanted a new line. Tom Christianson said during the construction really large equipment was used and at least 4 large Oak trees were removed.

Salazar said there is room for regret that no one knew about the location of the lines and that there was no as-built from 1970. Salazar said the resident was not aware of the line or any damage to it and that it was buried 1 to 2 feet.

- A. City Attorney requesting action on a resolution regarding the nuisance abatement action at 6375 Bayridge Road

MOTION by Salazar, seconded by Velsor to direct staff to create a list of written findings of fact as to why the City will not assess the owners of 6370 Bayridge Road for the cost of the repair. Pugh asked for clarification on whether the resolution should state whether the owners have access to the easement area and City Attorney Anderson said he feels that has been established and not needed. All voted in favor. Motion carried.

Hoversten said this is the process the city provides for when residents are not satisfied and he apologized for the approach the city took under these unique circumstances, recognizing this was not a pleasant situation for them. Hoversten noted the challenge of balancing the interests of the city and individual property owners, including neighboring properties.

McCauley thanked Hoversten and the entire Council.

Mayor Salazar paused the meeting to allow for a change of the media at 8:43 pm.

7. Planning Commission Review

- A. Review/discussion of concept/sketch plan - Commerce Place Shopping Center (apartments/commercial) at 2200-2238 Commerce Boulevard

(Planning Case No. 19-01)
Owner: Schafer Richardson

Rita Trapp, City Planner, provided an overview of the concept sketch plan and noted the owners are present as well. Trapp said this is a 3.2 acre site surrounding Wells Fargo Bank, which they do not own and is not part of the parcel. The proposed project is to keep the north portion of the building and replacing the rest with a 104 unit multi-family apartment complex. Trapp said the intent of tonight is just to provide an overview to give the opportunity for input and discussion and no action is required.

Trapp said the proposal to convert to high-density residential from commercial is consistent with the 2030 Comprehensive Plan and that, as a destination district, rezoning is required. Trapp showed the proposed unit types and rents, a site design sketch, and elevations. Trapp showed the proposed parking (262) and the estimate of required parking (346 of which 103 should be enclosed). Trapp said the pedestrian district parking requirements, such as where the Lost Lake Villas are located are less than the destination district, even though they are both residential and in close proximity. Trapp said building height max is 50 feet and that the proposed peak roof was in response to neighborhood concerns which increased the mid-height to 57 feet. Trapp discussed access points and the feedback provided by Hennepin County which is to improve safety and mobility on Shoreline Drive, the applicant should be encouraged to close some accesses. Trapp said a challenge is there is a current shared parking agreement with the bank that requires equal and similar access as currently exists so options are limited. Trapp said a portion of Fern Lane is proposed to be vacated which makes sense as they own property on both sides. The Fire Chief weighed in on closing access points and raised concerns that if it is a four story building, circulation is important. Trapp noted there are different set-backs and screening requirements for parking. Trapp summarized the anticipated land use action requests including rezoning, text amendment, major subdivision, preliminary plat, vacation of Fern Lane, CUP for PUD and variances. Trapp reiterated the intention of PUD is to provide flexibility but that necessitates all of these actions.

Trapp said the Planning Commission noted concerns about the parking historical standard being units and not bedrooms, and had additional discussion regarding policies on boat storage/boat parking, access points and improving aesthetics. Trapp noted the original intent for the area was to develop along Shoreline Drive and not just have parking to make more of a pedestrian feel.

Salazar asked what the concerns are about limiting access points and Trapp said because they are required to maintain them per the shared parking agreement. Hoversten said the County wants to eliminate, 'ideally', all access points on Shoreline. Hoversten said he has a follow-up meeting to challenge the county to think how to engineer traffic safety vs eliminate access which will impact business. Hoversten said CR 15 and 110 has a higher incident count, but he does not think it involves these access points. Pugh said she feels there should be conversation about Church Street and Belmont Street as the right hand turn is easy but the left hand turn is not and that it does not feel safe or pedestrian friendly. Pugh said she lives in that area and in high rush times it is difficult. Hoversten said that is about designing traffic flow. Pugh said she likes right-turn only in and right-turn only out. Hoversten said the question is how much the additional units will impact the existing traffic issues and Pugh said she felt they will.

Velsor asked to confirm Shaffer Richardson does not own Wells Fargo and Trapp said yes. Velsor asked if the max height is for the mid-point and Trapp said yes, the max midpoint is 50

feet and the project calls for 57 feet. Bergquist asked about the pitch. Hoversten said the parking deck may balance the feel of the height and that the additional height is somewhat a trade-off to retain the commercial portion based on community feedback. Bergquist asked to clarify the parking required was using the basic formula and Trapp said yes.

Maureen Michalski, Vice President of Development for Shaffer Richardson, and Trevor Martinez, Project Manager addressed the Council. Michalski summarized Shaffer Richardson's holdings. Martinez highlighted the existing conditions of the site, including that it was originally built in 1986, Shaffer Richardson acquired it 15 years ago, and that it is 2/3rds vacant. Martinez noted behavior shifts in consumer trends in on-line, multiple efforts/redevelopment plans presented in past. Martinez covered site plan and limitations caused by public utilities easements. Martinez said Shaffer Richardson has had multiple conversations with Wells Fargo and they have no desire to change their business model/relocate, etc. Michalski said Steven Scott will be the property manager and they manage over 10K units across the city. Michalski said the product is higher-end and showed interior finishes and amenities as well as stated the exterior will be fiber cement, the commercial will get a face lift and the parking lot will be resurfaced. Michalski showed a proposed timeline. Michalski said they assume bedrooms drive parking demand vs basing it on units and their standard is 1.1 -1.15 stalls/bedroom and they are proposing 1.46 per bedroom.

Velsor said he would like to see a rendering at the street level as you come down Shoreline from the intersection and from the east. Velsor asked if there is any way to move the building slightly north to push it back from Shoreline. Michalski said there is currently a 20 foot proposed setback between the residential and commercial and since there are residential units on the 1st floor, fire code requires that distance. Martinez noted there is a greater slope on the north end and the grade is needed for the underground parking access.

Bergquist asked if they are saying more people support more business. Michalski said yes, that rooftops are a key indicator of capacity to support businesses. Bergquist asked to confirm Anytime Fitness will remain in the north building and Michalski said yes. Bergquist asked if they considered building commercial on the bottom and Michalski said yes but the existing rents are very low and it is still vacant and adding higher rents to support new construction seems daunting. Bergquist said he would like to see the building height number come down. Velsor asked the reason for the height. Martinez said they were trying to mirror the architecture of the newly constructed villas and some slope is needed. Bergquist said there are reasons for the rules and the purpose of the meeting was to give feedback. Pugh asked what kind of tenants they foresee in the second level of Anytime. Michalski said it was a medical office and is most likely to house a medical office in the future. Pugh asked the disposition of the other tenants and Martinez said they will be offered space in this or other properties. Pugh asked about the amenities and what the depth of the balconies are as she would want to be sure they are functional and not just for outside storage. Michalski said generally 5 feet to allow for table and chairs. Martinez said the rental agreement will regulate uses and that there will be a community room and game room on the 1st floor, with resident storage space throughout the building, as well as inside areas for bike parking and pet grooming. Martinez said there is some flexibility in the site plan to allow for exterior amenities.

Bergquist asked where the bank parking is and Martinez said the entirety of the western parking lot. Bergquist asked if there could be a double decker parking structure on the northwest portion. Pugh said parking on the street is unattractive. Martinez said as the owners they would not make a proposal that would cause it to be under-parked.

Salazar asked for a summary of the previous TIF district and Pausche said the district decertified in 2010 and that the city did not “pay for commercial development.” Pausche said the city amount of property tax is frozen for the life of the TIF district in exchange for the increase in the tax base when the TIF district decertifies. Pausche said the proposed project will increase the tax base from its current valuation for the properties. Michalski said she estimates the new taxes will be four times the current levels, or \$250K. Michalski said the property was doing well until clinic left in 2007 and Thrifty / Walgreens left and there was no activity due to the recession between 2008 – 2013. Michalski said they continued to market on commercial websites, received calls and engaged in conversation with potential tenants in 2016/2017 but the proposed rents could not fund the improvements -- best case was break-even, but more likely would have been a negative investment for Shaffer Richardson. Michalski said the only interest was in 3K square feet, which would leave 9K square feet vacant. Michalski said Shaffer Richardson owns other strip centers throughout the region and noted Mound traffic count is around 11K a day and Eagan/Burnsville properties have 30K – 50K per day and even those properties have vacancies as the mom and pops can't compete with on-line. Michalski noted even big box anchor tenants are going out of business, like Toys 'R Us in Ridgedale. Salazar said that explains why the proposed shift from commercial to residential and he, too, would like to see the visual from the street level.

Larson asked Trapp and Smith whether an environmental impact statement would be required. Smith said she thought it would be under the threshold. Larson asked if Met Council projection for 2040 population was 9600. Trapp said the 2016 estimate was 9371. Hoversten said this would close about half of the gap. Trapp said the way the projections work is to estimate the growth in the 7 county metropolitan region. Trapp said it is not a number we have to meet but just use it to guide land use decisions. Larson said her point is that she is not sure the community needs more housing and whether projects are the chicken or the egg. Trapp said rooftops drive commercial and Mound has commercial vacancies. Trapp said Mound is predominately single family residential and this is a new product that does not exist. Larson asked about the original proposal. Michalski said they originally proposed 98 units/3 story with no commercial but based on community feedback, shifted the layout to keep Anytime Fitness. Larson said she did not recall the concern about the design at the original neighborhood meeting, and Velsor said the group did not want the urban feel/flat roof. Velsor said he says this is a compromise to keep the retail but maintain the units so additional height is required. Larson said she agrees the site desperately needs something done but that this is forcing a round peg in a square hole and that height and parking variances concern her and that this is going to complicate the traffic issues at the curve, including those caused by the multiple access points and the trail. Larson said her primary concerns are height and traffic so fewer units may be needed. Larson said Wayzata only has two story buildings on main road with Presbyterian Homes elsewhere. Michalski said regarding traffic counts, the fully leased commercial property would generate constant in and out vs. residential which is typically once in am and once in pm. Maureen said the economics of building less units does not work. Martinez said one Shoreline Drive access was reduced to one way which makes room for larger vehicles.

Larson asked for other four story buildings in Mound and Pugh noted Grandview Apartments, Village by the Bay condos. Pugh said it won't look four stories from Commerce, but agreed that parking and transportation is both a city and county problem. Pugh noted Mound marketplace used to be high school, so bringing in more capacity will complicate. Larson said she feels they need to work within ordinances and not request variances.

- B. Board of Adjustment and Appeals Hearing - Consideration of lawful, non-conforming allowance by Staff for short term home rental at 1786 Shorewood Lane (*Planning Case No. 19-02*)

Requested Action:

Adopt Resolution Affirming the Community Development Director's Determination of the Lawful, Non-Conforming Allowance for Short Term Home Rental for Property at 1786 Shorewood Lane and Denying Appellant's Appeal

Smith said the client was not present and requested to table the action.

MOTION by Pugh, second by Larson, to table the hearing to the next regular meeting on Tuesday, April 9, 2019 at 7:00 pm. All voted in favor. Motion carried.

8. Information/Miscellaneous

- A. Comments/reports from Council members/City Manager:

Hoversten highlighted the following dates:

April 16 workshop – Department Head Annual Reports and Capital Plan

May 7 workshop – Emergency Management Training for elected officials

April 11 WeCAN Community Breakfast

May 11 Clean-up day at/with City of Minnetrista

- B. Reports: Liquor Store – February 2019

Orono Police – 1Q2019 Reports

- C. Minutes: Parks & Open Space Commission – January 10, 2019

- D. Correspondence: WeCAN's 2018 Annual Report

9. Adjourn

MOTION made by Pugh, seconded by Velsor, to adjourn at 10:25 p.m. All voted in favor. Motion carried.

Mayor Raymond J. Salazar

Attest: Catherine Pausche, Clerk