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**WAYZATA CITY COUNCIL
MEETING MINUTES
June 15, 2021**

AGENDA ITEM 1. Call to Order.

Mayor Mouton called the meeting to order at 7:00 p.m. Pursuant to Minnesota Statute Sec. 13D.015 and because of the COVID-19 pandemic, the City Council Meeting was being held remotely by electronic means using the audio and video conferencing platform, Zoom. Mayor Mouton shared the multiple options for members of the public to submit comments or questions.

AGENDA ITEM 2. Pledge of Allegiance.

AGENDA ITEM 3. Roll Call.

Council Members present: Buchanan, Iverson, MacDonald, and Plechash. Also present: City Manager Dahl, Community Development Director Goellner, Assistant Planner Kieser, Public Works Director/City Engineer Kelly, and City Attorney Schelzel.

AGENDA ITEM 4. Approve Agenda.

Mr. Buchanan made a motion, seconded by Mr. Plechash, to approve the agenda, as presented. Upon roll call vote, the motion carried 5/0.

AGENDA ITEM 5. Public Forum.

There were no comments.

AGENDA ITEM 6. New Agenda Items.

None.

AGENDA ITEM 7. Consent Agenda.

Mayor Mouton read the items on the consent agenda and asked if any Council member wished to pull an item for further discussion.

Ms. Iverson wished to go on record stating she voted against Item 7.g. She felt like there was still more work to do. Mayor Mouton asked if she wanted to pull the item to have a separate vote. Ms. Iverson said that was not necessary.

Mr. Buchanan, referencing Item 7.e., welcomed the new student participant. He said the student member had been a welcome addition to the committee.

Mayor Mouton asked for a motion to approve the Consent Agenda as presented. Mr. Buchanan made a motion, seconded by Mr. Plechash, to approve the consent agenda:

- a. Approval of Check Register
- b. Approval of Municipal Licenses
- c. Receipt of Building Activity Report
- d. Receipt of Police Activity Report
- e. Acceptance of Resignation of Energy and Environment Student Committee Member Alessandra Bajetti and Adopting Resolution 23-2021 to Appoint the New Student Member Lily Nothom

- 1 f. Approval of Engagement Letter and Authorization to Execute Professional Services
2 Agreement with Baker Tilly to Conduct a Long-Range Fire Department Study
3 g. Adoption of Second Reading of Ordinance 806 Amending City Code Chapter 909
4 (Design Standards)
5 h. Approval of Lease for Beach Concession Operation with McCormick Hospitality
6 Group, LLC
7 i. Approval of Professional Services Agreement with Van Meter Williams Pollack for
8 On Call Support for Wayzata Design Standards
9 Upon roll call vote, the motion carried 5/0.

10
11 **AGENDA ITEM 8. New Business.**

12 **a. Consider Adoption of Resolution 18-2021 Denying a Planned Unit**
13 **Development Amendment and Variance for the Rice Street Townhomes at 520,**
14 **524, 530, and 534 Rice Street East**

15 Mr. Dahl explained that a Planned Unit Development for a three-building townhome on
16 Rice Street was approved back in 2006. He noted that only one of the three planned
17 buildings were built, and much of the property has been vacant for 16 years. A
18 development application was required for this new request because the developer is
19 proposing to amend the plans for buildings two and three. Mr. Dahl noted that there was
20 a key difference with this application from a typical application. Construction had already
21 commenced on building two because the City prematurely and erroneously granted a
22 building permit. He said he believed the mistake was made in good faith. He added that
23 staff was working hard to follow City code and provide the Council with the best
24 information, so that they could make the best decision possible.

25 Ms. Goellner presented the development application for completion of the Rice
26 Street Townhomes PUD development that was submitted by the property owner and
27 applicant, Pillar Homes Partner, Inc. Ms. Goellner discussed the surrounding
28 neighborhood zoning, background of the original project, the 2006 PUD plans, existing
29 conditions on the site, and the highlights of the new development application.

30 Mr. Kieser talked about the details of the applicant's proposal, comparison with a
31 previous 2021 application submitted but withdrawn by the applicant, the front yard setback,
32 height staggering, building height, building foot print, and additional changes with the
33 proposal.

34 Ms. Goellner shared public comments the City had received, the Planning
35 Commission's report and recommendation, and the Council action being requested.

36 At the conclusion of staff's presentation, Mayor Mouton opened the floor for
37 questions from Council Members for staff.

38 Ms. Iverson said the square footage on the plans from Landschute was different
39 than what was in the application. Mr. Kieser, referencing page 182 of the meeting packet,
40 talked about the square footage. Ms. Iverson asked if the survey was completed in March
41 of 2021. Mr. Kieser said that was correct, but there had been some updates and
42 amendments.

43 Mr. Buchanan noted there were two sets of plans. He asked how they differed and
44 how the Council should handle that. Mr. Schelzel said the PUD plans approved by Council
45 and attached to the development agreement were the ones the City had been working with,
46 and were filed with the property records. He said the plans that were developed

1 subsequently to the original approval had not been located in City records. He
2 recommended that Council focus on the plans outlined in the staff report. Mr. Buchanan
3 said there was mention of a letter of credit and performance bond. He was curious to know
4 what happened to the bond. Mr. Schelzel said that was before his time, but it likely would
5 have been returned some time ago.

6 There being no further questions for staff, Mayor Mouton invited the applicant to
7 speak. K.C. Chermak, Owner Pillar Homes, talked about the application and noted the
8 hard work by staff, history of the property, research, and timeline. He asked if his
9 representative could speak.

10 Peter Coyle, of Larkin Hoffman law firm and attorney for the applicant, echoed the
11 diligence of staff. He said Pillar should not be penalized for a bad record within the City
12 or mistakes by staff.

13 Mayor Mouton asked Mr. Coyle if he wanted to expand upon the application or the
14 recommendation from the Planning Commission. She said the rest was not germane to the
15 application being considered. Mr. Coyle said he respectfully disagreed. He said the
16 recommended denial from the Planning Commission put a mule-million-dollar investment
17 at risk. Mr. Coyle said they were trying to rectify errors made by the City. He said he
18 thought the Council accepting the recommendation from the Planning Commission would
19 be a colossal travesty, and he was taking pains to lay a record. He reiterated that Mr.
20 Chermak and staff have worked diligently to complete the project. Mr. Coyle talked more
21 about the application. He discussed the proposed building height, staggering, and setbacks.
22 He said all of the approvals needed could be accomplished with an amendment to the
23 Planned Unit Development, but staff also required a variance. He talked about the practical
24 difficulties standard, and said he thought the standard had been satisfied.

25 At the conclusion of applicant's remarks, Mayor Mouton opened the floor to
26 questions from the Council for the applicant. Ms. Iverson referenced an email in the record
27 dated April 8th with the previous developer. She said she was curious why the current
28 developer did not go with the original Planned Unit Development plans. Mr. Chermak said
29 he was required to use the plans that were filed with the City and the County, and the other
30 plans were never filed. He said the plans that were filed are not complete and do not match
31 the plat that was filed. Ms. Iverson asked staff if the allegation that the plans were not
32 complete was true. Mayor Mouton suggested focusing on the application and
33 recommendation from the Planning Commission.

34 Mr. Buchanan asked if building one was compliant with the current Planned Unit
35 Development agreement. Mr. Kieser said it was difficult to confirm without an as built
36 survey. Mr. Buchanan asked if the building height was within the City's zoning code
37 standards for that district. Mr. Kieser said the applicant was asking for an amendment from
38 the 2005 plans. Mr. Buchanan asked if the location of the stormwater sceptor was a valid
39 reason for moving building two. Mr. Schelzel recommended directing the question to the
40 applicant, noting that the applicant had the burden to prove it had valid reasons. He added
41 that it was appropriate for Mr. Kelly to comment on factual questions. Mr. Buchanan
42 clarified his question. He said if building two was placed at the 6.5-foot setback, would it
43 impede the ability to access the sceptor. Mr. Kelly said the 6.5-foot setback would not have
44 an impact on the stormwater structures as constructed for building two. Mr. Buchanan
45 asked the applicant what was causing the difference in height between the Planned Unit
46 Development and the current plans. Mr. Chermak said that height was based on average

1 grade around the perimeter. He said he was under the average data; the problem was
2 incomplete data. Mr. Buchanan asked about the elevator. Mr. Kieser said the plans
3 designated an elevator; however, there was a condition in the Development Agreement that
4 did not allow elevators to go to the rooftop.

5 Mr. Plechash asked if there was a requirement that the second builder used the same
6 plans as the first builder if he complied with the Planned Unit Development. Ms. Goellner
7 said it depended on the development agreement. She said typically there was a plan set
8 associated with what the developer agreed to build, and it would guide future work. Mr.
9 Schelzel said the developer also has to amend the development agreement in this case
10 because the construction deadline for the PUD had expired. He also noted that the language
11 in the agreement talked about amendments needed for changes, and that is where this
12 application was currently in the process.

13 Mr. Buchanan said if the stormwater sceptor forced buildings two and three to be
14 moved forward, then how could building three now go back to 6.5 feet. Mr. Chermak said
15 building two did not need to be moved because of the sceptor. The stormwater sceptor was
16 larger than indicated on previous plans. The storm culvert was not included in past
17 documents. Mr. Chermak said you could not build on top of pipes. Mr. Kelly said the
18 application had been amended since it was first presented to the Planning Commission.
19 The plan for lot six showed a building that met the front yard setback, but had been
20 modified in length to accommodate the stormwater sceptor.

21 Mr. Plechash asked about the 2.5-foot setback for building two. Mr. Chermak
22 displayed the plans for building two. He talked about the lot lines and setback. He said
23 based on feedback from the neighbors they pulled back building three. Mr. Plechash asked
24 if they could have kept the 6.5-foot setback if they shortened the building. Mr. Chermak
25 said that was a possible solution, but was not proposed by staff.

26 Ms. MacDonald said the majority of her questions had been answered. She asked
27 about the timeline for the stormwater sceptor. Mr. Chermak said it was discovered during
28 the permitting process somewhere between June and July. Ms. MacDonald thought there
29 was a contradiction in the timeline. Mr. Chermak said a new survey was done to reanalyze
30 the hard cover. Mr. Kieser said the survey in the packet had a first revision date of
31 November 5, 2020.

32 Ms. Iverson said it had been stated that the survey was completed in March, 2021,
33 but this was after construction began on building two. Mr. Kieser said revisions had been
34 completed since the date in November. He noted that work had been done in March, April,
35 and May.

36 There being no further questions for the applicant, Mayor Mouton opened the floor
37 for public comment.

38 Nicole Dunham, 530 Rice Street E, said it was an unfortunate set of events that
39 brought her before the Council. She hoped the Council could focus on finding a win win
40 resolution. She said she had purchased her home in the new building, and was surprised
41 to find the permit revoked. She thought the two issues were setbacks and building height.
42 She said they did meet City code, but did not meet the plans for this Planned Unit
43 Development. She noted her two biggest concerns were access to the rooftop for
44 wheelchairs, and window shape.

45 John Adams, 544 Rice Street E, said he was the previous developer. He said the
46 storm sewer installed in 2006 was supervised by Mr. Kelly. He said unit six had to be

1 made smaller to accommodate the storm sewer. He thought the only reason the building
2 was moved forward was to make unit six larger. He talked about the elevator.

3 Tom Vanderheyden, 105 Walker Avenue N, said he recognized all of the emotion
4 around this application. But he said he was frustrated about the amount of weight that was
5 being placed on the building that was already there. He said the request was for a variance
6 to the Planned Unit Development, and the two issues should not be convoluted. He asked
7 the Council to set aside the fact the existing structure was there, and to focus on the variance
8 request.

9 Tony Straszewski, 527 Rice Street E, thanked the Mayor for allowing public
10 comment. He explained he wished to address the developer's attorney's comments. He
11 said he was unsure how the City could say it did not have the working drawings because
12 they were what the original developer used to get the permit. He said the plans existed,
13 they were incorporated in the development agreement by reference and recorded with
14 Hennepin County. He talked about the two major issues including building height and
15 setback. He thought what was fair was the agreement negotiated between Mr. Adams and
16 the neighbors fifteen years ago.

17 There being no one from the public wishing to comment further, Mayor Mouton
18 turned the discussion back to the Council.

19 Mr. Kieser noted that the revision dates for the survey discussed earlier were on
20 page 124 of the materials. He said the date signed by the surveyor was November 24,
21 2020.

22 Mr. Plechash said there were three different perspectives. The first was process.
23 He said the building should be ignored. He did not think it was justified from a process
24 standpoint. There was also an engineering perspective. The building was moved forward
25 to accommodate the stormwater sceptor when instead it could have been shortened. Lastly,
26 there was a design perspective. He said he understood why they would suggest that the
27 buildings be staggered, but he thought it made more sense for the buildings to be lined up.
28 He said he supported the Planning Commission's recommendation.

29 Mr. Buchanan said it was a complicated and difficult application. No one could
30 agree which plans should be considered, and mistakes had been made which hindered a
31 fair outcome. He said it was hard to ignore the fact that building two had been framed. He
32 said the good news was that the City knew what it would look like if it was approved. The
33 bad news was that it was a very costly error if the application was denied. He also said
34 there was a tsunami of criticism from the neighboring community. He emphasized that
35 staff should be treated with respect and civility. He said he did not have issues with the
36 architectural changes, but did struggle with the setback. He thought they had not made a
37 good case for practical difficulties to justify the variance requested.

38 Ms. Iverson stated she appreciated all of the hard work from staff, the developers,
39 and the neighbors. She said she was supposed to look at the application as if the building
40 did not exist. She read a comment in the record from a member of the public. She said she
41 thought the variances requested were significant and did not meet the requirements for a
42 variance. She said she was concerned with the precedent that could be set, and was in favor
43 of the recommendation of denial.

44 Ms. MacDonald also talked about staff, their hard work, and the respect they
45 deserved. She said the three reasons stated for practical difficulties were missing plans,
46 errored plans, and the stormwater sceptor. The plans materialized and the stormwater

1 scepter did not seem to be an issue. She said she was in favor the recommendation for
2 denial.

3 Mayor Mouton said the Council had heard a lot of different perspectives. But she
4 agreed that the application did warrant a Planned Unit Development amendment. She also
5 reiterated that some of the comments received by the City went too far. She thanked the
6 Planning Commission for their hard work, and said the Council took their
7 recommendations very seriously. She agreed with their findings of fact in their report, and
8 was in support of their recommendation for denial.

9 Mayor Mouton asked for a motion on the draft resolution. Ms. Iverson made a
10 motion, seconded by Mr. Plechash, to Adopt Resolution No. 18-2021, as presented,
11 Denying PUD Amendment and Variance at 520, 524, 530, and 534 Rice Street E. Upon
12 roll call vote, the motion carried 5/0.

13
14 **AGENDA ITEM 9. City Manager's Report and Discussion Items.**

15 **a. Upcoming Events/Announcements**

16 Mr. Dahl recognized the Public Works Department under Mr. Kelly's leadership. The
17 Department had done a great job keeping the town looking good during the heat wave.

18 Mr. Dahl said next Tuesday, June 22nd the Chamber of Commerce was holding an
19 appreciation event at Klapprich Park at 4:00 p.m. Following that was the annual Police
20 verse Fire softball game at 6:00 p.m. The proceeds went to the Wayzata Crime Prevention
21 Coalition. Also, on Thursday at 6:00 p.m. was the Racially Restricted Covenants Part 2.
22 Last, as a reminder the Council was planning to go back to in person meetings on July 20,
23 2021.

24
25 **b. Council Member Updates/Announcements**

26 None.

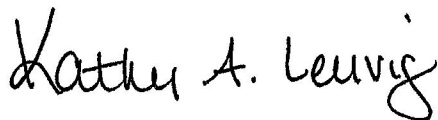
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28 **AGENDA ITEM 10. Public Forum Continued (if necessary).**

29 There were no comments.

30
31 **AGENDA ITEM 11. Adjournment.**

32 There being no further business, Mayor Mouton asked for a motion to adjourn. Mr.
33 Plechash made a motion, seconded by Ms. MacDonald to adjourn. Mayor Mouton
34 adjourned the meeting at 9:43 p.m.

35
36 Respectfully submitted,

37


38
39
40 Kathy Leervig
41 City Clerk

42
43 Drafted by Sarah Peterson
44 *TimeSaver Off Site Secretarial, Inc.*