

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

**WAYZATA CITY COUNCIL
MEETING MINUTES
August 4, 2020**

AGENDA ITEM 1. Call to Order.

Mayor Willcox 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 Willcox 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, Koch, McCarthy, and Plechash. Also present: City Manager Dahl, Public Works Director/City Engineer Kelly, Assistant Planner Kieser, Interim Community Development Director Zweber, and City Attorney Schelzel.

AGENDA ITEM 4. Approve Agenda.

Mayor Willcox noted there was a last-minute change to Item 8.a. Mr. Dahl added that there was not a substantial change to the agenda. Additional information had been added to the packet for Item 8.a.

Mr. Koch made a motion, seconded by Mr. Buchanan, 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 Willcox read the items on the consent agenda and asked if any Council member wished to pull an item for further discussion. Hearing no such request, he asked for a motion to approve the Consent Agenda as presented. Mrs. McCarthy made a motion, seconded by Mr. Koch, to approve the consent agenda:

- a. Approval of City Council Workshop and Regular Meeting Minutes of July 21, 2020
- b. Approval of Check Register
- c. Approval of Professional Services Contract with Lockridge, Grindal, and Nauen, PLLP
- d. Approval of Amended Agreement for Historic Building Consulting Services by New History for the Section Foreman House

Upon roll call vote, the motion carried 5/0.

AGENDA ITEM 8. New Business.

1 **a. Consider Approval of Development Agreement for Melvin's Office Building**
2 **at 235 and 239 Lake Street East**

3 Mr. Dahl said a lot of people had been involved in this development that stemmed from
4 the establishment of a Tax-Increment Financing District over three years ago. The District
5 was established to focus on the removal of blight, the creation of public parking, and the
6 development of buildings that would complement the community in that area.

7 Mr. Zweber presented the development application including donation agreement
8 and parking declaration from Melvin's Office Building. He said the project had seen a
9 number of reviews. Mr. Zweber discussed parking covenants, plans, and action steps.

10 Mayor Willcox said he needed clarification on the alternative. He asked if it was
11 another area like proof of parking. Mr. Zweber said it would need to be located within
12 250-feet of the northeast corner of the proposed building. If over the course of the life of
13 the building the parking needed to be modified, the alternative parking parcel would allow
14 those adjustments. Mr. Dahl added it allowed more flexibility in location if times and
15 conditions changed.

16 Mayor Willcox said he could not remember the City ever agreeing to 99 years and
17 asked why the City would agree to such a long commitment. Mr. Dahl said the situation
18 was unique because the applicant was donating property to the City to accommodate a
19 significant portion of the parking. Mr. Hughes had indicated the 99 years was needed to
20 secure financing. He said staff had wrestled with this issue; however, the alternative
21 parking parcel gave the City more flexibility. Mr. Schelzel explained it was an
22 extraordinary ask by the applicant that staff had very seriously pondered, but it was driven
23 by their need for finance. He said staff had a level of comfort with the language provided
24 Council was comfortable with the commitment.

25 Mrs. McCarthy asked if the application required 73 spots based on use during the
26 day. Mr. Dahl said yes. Mrs. McCarthy asked if the applicant would be able to
27 accommodate their own parking without the land donation. Mr. Dahl said no. Mrs.
28 McCarthy asked if it was fair to say that a combination of the Tax-Increment Financing
29 District, land donation, other donations, the City's investment, etc. was benefiting the
30 applicant because the size of the building would not allow for parking. Mr. Dahl agreed it
31 was benefiting the applicant, but said it was benefiting all parties and also meeting the
32 City's goals. Mrs. McCarthy asked if there was any option for a reduced period of time.
33 Mr. Dahl said staff had tried to reduce it; however, the applicant could speak to why he
34 believed the 99 years was necessary. Mr. Schelzel added that according to the applicant's
35 counsel 99 years was absolutely necessary for the financing of the project. Mayor Willcox
36 asked about the accuracy of that demand. Mr. Schelzel said yes, staff had done the due
37 diligence. The applicant had provided a letter from a well-respected appraiser and a title
38 company that substantiated the claim for this type of development at this location. He said
39 another project could likely be built where the 99 years was not necessary; however, for
40 this particular use the lender had told the developer it was needed and the City had every
41 reason to believe that was accurate.

42 Mrs. McCarthy asked if a different owner with a different use came before the
43 Council in 50 years, would the agreement run with the land. Mr. Schelzel said all
44 development agreements run with the land. But in that scenario, the City would be in a
45 position to say it needed an amended and restated agreement. He also added that one
46 revision provided today said the City could revisit the agreement in 35 years and perhaps

1 make an adjustment at that point. He also discussed another tool the City had, imminent
2 domain. He said this was an extraordinary ask and staff only felt comfortable bringing it
3 to the Council because it was a set of extraordinary circumstances.

4 Mayor Willcox asked about precedence for future development requests. Mr.
5 Schelzel thought it would not set a precedent that bound the City unduly. He said it was a
6 coordinated, planned development of the west end of a Tax-Increment Financing district
7 where the goals of the developer aligned with the goals of the City. Moreover, the City
8 was receiving land for free so another developer would at a minimum need to gift land.

9 Mayor Willcox asked Council Member Koch for his thoughts because of his
10 background as a banker. Mr. Koch said he agreed from a lending stand point. The parking
11 issue could significantly impact the market value of the building. He added that lenders
12 were going to 30-year amortization on a property like this and started getting nervous about
13 the value of the building at the maturity of the loan. He agreed that the situation was unique
14 because the applicant was donating land as well as paying a Fee-in-Lieu-of-Parking. Mr.
15 Koch was also comfortable because of the opportunity to take another look in 35 years.

16 Mayor Willcox asked if the applicant wanted to speak. Mr. Dahl said the applicant
17 intended to be there, but was not currently present. Mayor Willcox asked for the Council's
18 comments and thoughts.

19 Mr. Plechash agreed the donated land made the application unique and
20 accomplished some of the City's goals.

21 Mrs. McCarthy said the length of time was considerable, but thought it was
22 warranted due to the public benefit. She added that she was pleased with the 35-year
23 review.

24 Mr. Buchanan said he very concerned with the 99 years at first, but appreciated the
25 perspective. He was supportive of this unusual request.

26 Mr. Koch said he was supportive.

27 Mayor Willcox agreed that he was concerned over the 99 years and setting a
28 precedent, but he thought it was a good swap of opportunity. He thanked City Manager
29 Dahl for his ingenuity and work. He said without it, the City would still have a blighted
30 area. Mr. Dahl thanked Mayor Willcox for the praise, but said he was only as good as his
31 staff.

32 Mr. Schelzel asked to suggest new wording for the motion as follows, "to approve
33 the Development Agreement, including the Donation Agreement and Parking Declaration
34 with the amendments presented by staff tonight at the August 4, 2020 Council meeting and
35 with the inclusion of dates, exhibits, and referenced project information; and with a
36 modification of Section 20.R. to make the force majeure clause reciprocal." He added that
37 as a side note there were approvals pending with the Minnehaha Creek Watershed District
38 that needed to happen for the City to build the parking.

39 Mr. Dahl said Mr. Pat Hughes was unable to log back into the meeting, but
40 appreciated the consideration.

41 Mayor Willcox asked for a motion on the application. Mr. Buchanan made a
42 motion, seconded by Mr. Plechash, to approve the Development Agreement, including the
43 Donation Agreement and Parking Declaration with the amendments presented by staff
44 tonight at the August 4, 2020 Council meeting and with the inclusion of dates, exhibits,
45 and referenced project information; and with a modification of Section 20.R. to make the

1 force majeure clause reciprocal, between the City of Wayzata and Melvin's 235, LLC
2 subject to approval of the City Attorney. Upon roll call vote, the motion carried 5/0.

3
4 **b. Consider Adoption of Resolution 34-2020 Approving an Impervious Surface**
5 **Variance at 128 Broadway Avenue North**

6 Mr. Kieser presented the development application from Chamberlain Capital LLC for an
7 impervious surface variance at 128 Broadway Avenue No. The variance request is to
8 construct a new detached garage in the read of the property and to reconfigure the driveway
9 to the garage. He discussed the surrounding neighborhood zoning; the 2040
10 Comprehensive Plan land use; background; the 2017 impervious surface variance approval
11 for 38%; the 2018 building permit plan; the proposed survey; renderings; the Planning
12 Commission discussion and recommended approval on a 5/2 vote; proposed stormwater
13 management system; and questions to consider and action steps.

14 Mrs. McCarthy asked what the percolating system reduced the percentage to. Mr.
15 Kieser said it mitigated around 30% of the impervious surface which made the unmitigated
16 surface 19.6%. Mrs. McCarthy asked if the new numbers even required a variance. Mr.
17 Kieser said yes, because the total impervious surface regardless of mitigation was 49.6%.

18 Mrs. McCarthy asked if there was any plan to connect the other downspouts to the
19 system. Mr. Kieser said yes, during the building review as many downspouts as possible
20 would be connected to the underground system. Mrs. McCarthy thanked the applicant and
21 staff for looking at alternative solutions.

22 Mr. Buchanan asked if Assistant Planner Kieser had seen the system used
23 anywhere. Mr. Kieser said no, but the City Engineer had positive reviews and was
24 confident it would work better than a rain garden. Mr. Buchanan asked about the
25 maintenance. Mr. Kieser said there was not much maintenance. The system stored water
26 and over time the water filtrated down. Mr. Buchanan asked if the applicant was planning
27 on using the stored water to irrigate. Mr. Kieser was unsure, but thought it could be used
28 that way.

29 Mr. Plechash said the Planning Commission debate was fascinating. He was also
30 surprised there was no credit given beforehand for permeable pavers, rain gardens, etc. in
31 order to grant variances. Mr. Buchanan asked for further clarification on the 30%
32 impervious surface. Mr. Kieser explained the percentages again. Mr. Plechash thought the
33 percentages were wrong, but was intrigued with the new system. He hoped the applicant
34 would leave in the rain garden and thought they had been creative and accommodating.

35 Mr. Koch said all of his questions had been answered. He thought the Planning
36 Commission did a good job of finding another solution. He liked the new system and
37 thought the driveway made sense.

38 Mayor Willcox asked if there was an aesthetic component to the impervious surface
39 variance. Mr. Kieser said yes, there were two components including stormwater run off
40 and aesthetics. He said the applicant was under the lot coverage though. Mayor Willcox
41 said it was small, difficult property, but he was still nervous about the amount of buildings,
42 driveway, and the new system.

43 Mr. Kelly asked if he could clarify a couple of points. He said the applicant was
44 proposing hard cover of 49.6%. The normal hard cover was around 30% so they were
45 treating the remaining 19.6%. He said the Watershed District required the first inch of rain
46 storm be captured, the applicant was proposing to capture the first two inches. He said the

1 front gutters were planned to be directed to the back of the house and then back of the home
2 and garage would be sent to the new system. He said the City had not seen this exact
3 system, but had seen similar infiltration devices installed at some commercial properties.
4 He said the area was sandy and thought it would work quite well. He agreed that the
5 applicant should also keep the rain garden.

6 Mayor Willcox asked about the difficulty of moving the garage closer to the home
7 in order to remove some of the driveway. Mr. Kelly said there were a couple of options
8 where the garage could be located, but all would still be over the impervious surface
9 requirements. He said the applicant was proposing a great stormwater treatment plan and
10 if they did not maintain it, the City would at the applicant's cost.

11 Mrs. McCarthy thought the turn around area was very important because backing
12 out over the sidewalk was a safety issue.

13 Mr. Paul Cameron, applicant, appreciated the Planning Commission and the
14 Council's consideration. He said it was a very complex problem. The intent was to
15 mitigate down to 30%. He also said in reference to the winter concerns that the system
16 was below the 42" frost line. He was excited about this new system and continuing to work
17 with the City's Engineering Department.

18 Mayor Willcox asked for a motion on the draft resolution. Mrs. McCarthy made a
19 motion, seconded by Mr. Buchanan, to Adopt Resolution No. 34-2020, Approving
20 Variance for Impervious Surface Coverage for New Residence at 128 Broadway Avenue
21 N. Upon roll call vote, the motion carried 5/0.

22
23 **c. Consider Adoption of Resolution 35-2020 Approving a Lakeshore Setback**
24 **Variance at 578 Harrington Road**

25 Mr. Kieser presented the application for approval of a lakeshore setback variance to
26 construct a new single-family residence at 578 Harrington Road. He discussed the
27 surrounding neighborhood zoning; the 2040 Comprehensive Plan land use; background;
28 existing and proposed site plans; lakeshore setback variance request; renderings; Planning
29 Commission discussion and recommended approval on a 7/0 vote; and questions for
30 consideration and action steps.

31 Mayor Willcox asked why both parties did not just agree to get rid of the no build
32 clause. Mr. Kieser said the no build clause and the driveway easement were playing in
33 tandem with each other. He said what he understood of the conversations between the two
34 parties was that there was some leeway for moving the driveway, but no leeway on the no
35 build clause.

36 Mr. Koch asked where the house was sitting when the Council approved this
37 initially. Mr. Kieser identified the location on the map. Mr. Koch asked how this did not
38 come up originally. Mr. Kieser said this came up through more research looking into the
39 title.

40 Matthew Hemsley, applicant, said he had discussed moving the driveway to the
41 north with the neighbor. A retaining wall would be needed to do so and ultimately the
42 complexity of the engineering process and conversations with the neighbor dictated that he
43 look at an alternative approach.

44 Mr. Plechash said he was familiar with the property. He said the setback variance
45 made perfect sense to him because the lot was out on a point along the shoreline of the lake
46 and had steep topography.

1 Mayor Willcox asked for a motion on the draft resolution. Mr. Plechash made a
2 motion, seconded by Mrs. McCarthy, to Adopt Resolution No. 35-2020, Approving
3 Lakeshore Setback Variance at 578 Harrington Road. Upon roll call vote, the motion
4 carried 5/0.

5
6 **AGENDA ITEM 10. City Manager's Report and Discussion Items.**

7 **a. Upcoming Events/Announcements**

8 Mr. Dahl provided a brief update on Panoway Phase One construction and the public
9 restroom facility. He said it was on schedule to be complete by the cancelled James J. Hill
10 event weekend.

11 Mayor Willcox said some different sources in the community were saying the City
12 was behind schedule. Mr. Dahl confirmed that some portions were being schedule for
13 things that have come up during constructions. Some portions were on target. He said that
14 construction should be caught up and back on track over the next couple of weeks.

15 Mr. Dahl talked about the public restroom and the reasons for the planned location.
16 He showed a rendering of the final product.

17
18 **b. Council Member Updates/Announcements**

19 Mayor Willcox asked if there would be a Pull It Day event this year. Mr. Dahl said he had
20 not heard, but would look into it and get back to the Council.

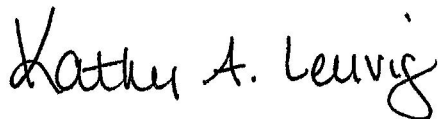
21
22 **AGENDA ITEM 11. Public Forum Continued (if necessary).**

23 There were no comments.

24
25 **AGENDA ITEM 12. Adjournment.**

26 There being no further business, Mayor Willcox asked for a motion to adjourn. Mrs.
27 McCarthy made a motion, seconded by Mr. Buchanan to adjourn. Upon roll call vote,
28 Mayor Willcox adjourned the meeting at 8:49 p.m.

29
30 Respectfully submitted,

31


32
33
34 Kathy Leervig
35 City Clerk

36
37 Drafted by Sarah Peterson
38 *TimeSaver Off Site Secretarial, Inc.*