

**MINUTES OF MEETING  
DELLWOOD CITY COUNCIL  
JANUARY 13, 2015**

The meeting of the Dellwood City Council was held on Tuesday, January 13, 2015 at 5:30 p.m. at the Willernie City Hall.

**PRESENT:** Mayor Nuffort, Council Members James Cuff, Ed McCarthy, Scott St. Martin, Frank Pazlar, City Attorney Richard Copeland, and Treasurer Mike McGill and City Clerk Joanne Frane.

**ALSO PRESENT:** Shown on the attached Sign-In sheet.

Mayor Nuffort called the meeting to order at 5:30 p.m.

Mayor Nuffort asked for public comment. Beverly Driscoll stated that she was a member of the League of Women Voters and was observing the Council meeting and will submit a report to the League. There was no other person who wished to give public comment.

Attorney Copeland administered the Oath of Office to Mayor Nuffort and Councilpersons Cuff and McCarthy.

Mayor Nuffort called for approval of the Agenda. Pazlar noted the addition of Agenda Item No. 7 being the Summary of the Treasurer's Duties and Responsibilities. Upon Motion by Cuff, second by Pazlar, the Agenda was unanimously approved as submitted with the addition of Item No. 7.

**MINUTES:**

Mayor Nuffort called for approval of the December 2014 Council Meeting Minutes. Upon Motion by Pazlar, second by McCarthy, the December 9, 2014 Council Minutes were unanimously approved.

**SEVEN VINES WINERY:**

The first item on the Agenda was the Interim Use Permit for Seven Vines Winery, continued from the December Council meeting. It was noted that Attorney Brad Cashman had sent an email containing the Winery's proposals, which was received by the City on January 12<sup>th</sup>. The Council stated they need more time than that to review and consider the proposed permit. Mr. Copeland stated that he and Mr. Cashman had talked about the proposal but due to Mr. Copeland's absence from work for a few days following his knee surgery on January 5<sup>th</sup>, and the abundant submissions by various parties concerning the Variance request at 146 Dellwood Avenue, he had not had time to adequately address the Winery's proposals.

Pazlar moved to table the matter to the February Council meeting. Janee Katz spoke in opposition stating that she feels the matter keeps being continued constantly and that the Winery does not know what the City is looking for. She stated that the proposed Permit is patterned after the Interim Use Permit issued to Dellwood Country Club and that the Winery should be treated in a similar manner.

St. Martin remarked that the scope of the operation has appeared to change to being more of an "event center". Janee Katz stated that was not the case at all. St. Martin explained that the City is looking for a more detailed plan especially with regard to parking issues, shuttles, special events, anticipated number of persons who may attend special events at any one time, liquor and food service, and the like.

McCarthy noted that the Golf Clubs in Dellwood are not considered to be commercial enterprises as and utilized solely by members and the guests of members. He feels that the scope of the Winery proposal is growing larger and that the Council's vision early on was on a smaller scale. He feels the City needs to

have more control of the operation in some respects. Nuffort noted that some special events may require advance notice to other agencies such as the Sheriff's Office, State Gambling Board, Liquor Commissioner, etc. The City is not attempting to micro-manage the business.

Cuff asked what the time table is for start of construction. Janee Katz stated that has not been determined, probably this coming Fall.

St. Martin moved to continue the matter to the February Council meeting. In the meantime, Attorney Copeland and the Winery's attorney are to continue efforts to prepare a proposed Permit and to provide a copy to Councilpersons for their review prior to the February Council meeting. Said Motion was duly seconded and the Council resolved unanimously to consider the matter at the February 10, 2015 Council meeting.

**146 DELLWOOD AVENUE:**

The next item on the Agenda was the Variance requests at 146 Dellwood Avenue. This is a continuation from the December 2014 Council meeting.

Attorney Paul Rogosheske spoke on behalf of the Applicants. He stated 5 Variances are applied for but that 2 of them may be non-controversial, being the building height and the septic system. Mr. Rogosheske explained that since the last meeting efforts have been made to downsize the square footage and height of the buildings and the setbacks on 3 sides. There is no need for a Variance from the West, or lakeside, setback. He stated that the square footage of the house has been reduced to 5150 square feet and the size of the garage has been reduced to 1055 square feet. The impervious surfaces will be under 25%, which makes the home fit for the lot. He stated that the lot is unique in the sense that it was designed to place a home on the upper portion of the lot and that views of the lake from the Durant and Cardozo properties are not impeded. He presented an aerial photograph of the area showing the Durant, Cardozo, and Applicant's properties and the relative location of the existing homes. He stated that the Applicants have met the practical difficulties standard. He stated that if the setbacks required by the Ordinance were strictly applied, there would be no reasonable space in which a proper home could be built. He stated that the proposed home is consistent with the development which has occurred in the lakeshore areas of the City, and that every effort had been made to accommodate the concerns of the neighbors.

Mr. Cuff stated that it appeared that the impervious surface calculations did not include the sidewalks. The Builder, Doug Johnson, stated that all impervious surfaces including the sidewalks, buildings, driveways, will be at or less than 25% of the lot coverage.

Rogosheske stated that a Stormwater Management Plan has been prepared and submitted which shows that all surface water will flow toward the lake and will not impact adjacent properties.

Mr. Galena, attorney for Durants, on behalf of Dan and Mary Durant, presented a written statement of facts and laws dated January 13, 2015 with attached exhibits in opposition to the granting of the Variance. Galena stated that there are no definite and final calculations shown on the site plan which show impervious surface coverage being 25% or less.

McCarthy asked if there are any drainage pipes or facilities present. Doug Johnson stated no.

Attorney Mark Vyvyan spoke in opposition to the Variance on behalf of his clients the Cardozos. He stated that the Applicants have the burden to prove that the thresholds for granting a Variance have been met. The standards are set forth in the applicable Minnesota Statutes, Chapter 462. There is a three-pronged test: that the Applicant's must show that there are practical difficulties which prevent the Applicants from complying with the Ordinance; that the practical difficulties have not been created by the

property owners and that there is a uniqueness about the property which creates the practical difficulties, as compared to other similarly sized lots in the City. He stated that granting the Variances would alter the essential character of the neighborhood by reducing the open space between homes. He stated that the State Statute prevails over the City Ordinance where Variances are sought. He also stated that the impervious surfaces amount to over 27% which is a violation of State law. Mr. Vyvyan presented handouts which included an analysis of lakeshore properties in Dellwood lying within a certain distance from the Applicant's property, showing lot size, setbacks, etc. Copies of the handouts are attached to these Minutes. He stated that the practical difficulties test has not been met; that DNR jurisdiction over this shoreland area has been ignored, in particular the 25% hard cover limit. He stated that his clients have not received a copy of the Stormwater Management Plan. The size of the garage is objectionable being a structure 51 feet in length, and two stories high. Open space is the goal of the Ordinance and this is not in keeping with the Ordinance. Elimination of the breezeway would free up valuable space and allow for a greater setback distance from the Cardozo property. He stated that the plight of the Applicants is driven by what the Applicant's want and not because the property is unique.

Ross Cardozo stated that no sidewalks have been shown in the calculations for impervious surfaces. Doug Johnson again stated that all hard surfaces will be at 25% or less, and that no Variance is needed for that.

Jennifer Sorenson and Molly Shodeen were present on behalf of Minnesota DNR. Their concerns mostly deal with impervious surface coverage. The City may allow a credit for pervious driveway pavers if installed and maintained properly. DNR needs to see the exact calculations in detail on the site plan in order to determine if, in fact, a Variance is needed. If so, then the City can accept pervious pavers in the driveway as a form of mitigation for exceeding the 25% limitation. However, they must be installed and maintained properly to prevent them from becoming impervious. Doug Johnson said that there will be no need for pavers or for mitigation because all hard cover surfaces will not exceed 25% and no Variance is needed. Jennifer Sorenson stated that exact calculations need to be provided and approved by DNR. She also stated that the Erosion Control Plan submitted by the Applicants is not the same as a Stormwater Management Plan. What the DNR wants is an "after construction" drainage pattern. Also, DNR does not want surface waters to drain directly into the lake. Some filtration is needed such as a rain garden near the shoreline.

Dick Galena stated that the impervious surface figure does not control the setback issues. These are completely different matters. Setbacks are governed by the Ordinance. He stated that the house and garage as proposed are not appropriate for this lot. Durants have made several suggestions as to how the setback from the Durant property could be improved, and that the Durants are willing to compromise within reason.

Mr. Cuff asked if there is a deviation from the Ordinance requirements with which the Durant's could agree. Galena stated that would depend in part on the location of the home with regard to the lakeside setback. If the home were no more than 2 feet forward toward the lake, then the side-yard setback could be less. He stated that the critical part is the line of the house to the West, which appears to be 22 feet closer to the lake than the existing home.

St. Martin asked, assuming a house not more than 2 feet closer to the lake, what sort of setback would be agreeable to Durants? Galena consulted with his client and stated 18 feet would be acceptable. Cuff asked Mr. Vyvyan about the practical difficulties issue. Mr. Vyvyan stated that the big issue for his clients is the garage. If it were one story that would be a step forward.

Pazlar asked if the practical difficulties standard is black and white, or can the Council have some discretion.

Copeland explained what Minnesota Courts have said about practical difficulties. He stated that the Minnesota Supreme Court in the Stadsvold case identified the various factors which a City should consider in assessing whether the practical difficulties standard had been met. He read from a letter which he had provided to the Mayor. A copy of that letter is attached to these Minutes. He stated that Minnesota Courts have regularly held that City Councils have "broad discretion" in considering Variance requests and that the Council's decision will not be overturned unless it is shown to be arbitrary and capricious. The Council's decision should take in to consideration the factors set forth in his letter as well as the general welfare of the City as a whole.

Ken Kohler stated that the 10 foot Variance to which he agreed earlier applies to the garage only, not anything else. He said he would not have agreed to the 10 feet if he had known at the time that the garage was to be two stories and accommodate 4.5 cars or boat.

Mayor Nuffort stated that the Applicants need to be transparent in their submissions and that the DNR may have different methods to determine impervious surfaces. The City needs to have more information showing precisely how those surfaces were calculated and that data must be shown on the final site plans. Councilman McCarthy agreed.

At that point, Cuff made a Motion to approve the Variances in a manner which would allow a 25% Variance on all sides. Mr. Johnson stated that would leave only an 18 foot wide strip on which a house could be placed. There was no second to Mr. Cuff's Motion and the Motion died.

At that point there was a period of extended discussion among the parties present and the Councilmembers.

After that, St. Martin made a Motion which he believed would be reasonably fair to all parties and would not create a substantial detriment to the neighboring properties. He considers the Applicant's property to be unique due to its non-conforming size and lot line configurations. He remarked that the existing house and garage have setbacks which are less than those required by the Ordinance. The setback on the north side is now only 5.4 feet, and the setback on the south side is now about 15 feet. He believed his proposal would be in keeping with the spirit and intent of the Ordinance and Comprehensive Plan of the City and would be comparable to the existing development in the shoreland district. He stated that the Applicant's intended use of the property is reasonable and that Variances are required to do so.

Taking in to consideration all of the factors noted by Mr. Copeland, all of the presentations and submissions made on behalf of the respective interested parties, the recommendations of the Planning Commission, and the factors set forth in the Shoreland Ordinance at 152.11, Subd. J, Mr. St. Martin moved that Variances be granted to 146 Dellwood Avenue as follows:

- 1) That a Variance be granted on the North side of 14 feet, which will result in a setback from the North property line of 16 feet.
- 2) That a Variance be granted on the South side of 13 feet 4.5 inches which will result in a setback from the South property line of 16 feet 7.5 inches.
- 3) That a Variance be granted on the East side of 10 feet for the garage only.
- 4) That a Variance be granted to allow the height of the home to be not more than 29.85 feet as measured according to the method prescribed in the Ordinance.
- 5) That a Variance be granted to allow installation of a Type IV Septic System in compliance with all recommendations of the City Sewer Inspector.

That granting of the Variances is subject to and contingent upon the following conditions:

- a) The height of the garage shall not exceed 20 feet as measured from grade level to the highest point on the roof.
- b) That the total area of impervious surfaces shall not exceed 25% of the lot area, and that the Builder shall supply exact detailed calculations showing how the percentage of impervious surfaces was determined, and that those calculations be submitted to Minnesota DNR for review and approval before any Building Permit may be granted by the City.
- c) A proper Stormwater Management Plan shall be submitted to the City and to the DNR for its review and comment. The Plan shall take in to consideration the DNR's recommendations for filtration of surface water directed toward White Bear Lake.
- d) That in all respects, the construction shall comply with the Plans and Specifications filed with the City and as modified by the Variances and conditions stated above.

Said Motion was seconded by Mr. McCarthy.

Mayor Nuffort asked for any further discussion and there was none, except that Mr. Vyvyan asked that the record reflect that his clients, Cardozos, do not agree with the proposed Motion.

Mayor Nuffort called for a vote and the Council resolved unanimously to approve the Motion as stated.

The Council recognized the fact that the Applicants may file their Application for a Building Permit at this time, based on the terms of the foregoing resolution. Issuance of the Permit may be delayed pending receipt and approval of the items set forth in the resolution.

**SEPTIC UPDATE:**

The next item of business was the septic update from Brian Humpal regarding the system found to be in need of repair. Mr. Humpal stated that the owner is awaiting the parts needed to complete the repairs, and Mr. Humpal has notified the owner of the date by which repairs are to be completed.

**PLANNING COMMISSION APPOINTMENTS:**

Upon motion by Pazlar, second by Cuff, the Council unanimously approved the appointment of Bill Glumack, Eileen Biagini and Roger Vadnais as Planning Commissioners for a four year term.

**2015 APPOINTMENTS:**

Mayor Nuffort presented the list of proposed appointments for the year 2015. He has added the name of Daniel Raboin as Assessor to replace Frank Langer who has withdrawn as Assessor.

Mr. Copeland has prepared a proposed Contract for Mr. Raboin, which the Council has approved submitted to Mr. Raboin's approval. Mr. Copeland will submit this Contract to Mr. Raboin for signing and then send it to Mayor Nuffort for signing on behalf of the City. The terms of the Contract shall include a requirement of liability insurance with limits of one million dollars and compensation not to exceed \$7500 annually.

Upon Motion duly made and seconded, the Appointment List was approved unanimously with the addition of Daniel Raboin as Assessor.

**OMBUDSMAN:**

Mayor Nuffort introduced Mr. Mike Laub who has graciously volunteered to work with the City in the capacity as Ombudsman. Mayor Nuffort presented a sheet setting forth the customary duties of an Ombudsman. Mr. Laub stated that he will review those and be in contract with the Mayor. He stated that he does not want to be in the role as a "cop" but is willing to be of service to the City the best he can.

**TREASURER POSITION:**

Councilman Pazlar presented the Council with a list of “Accountabilities and Responsibilities” along with requirements for the City Treasurer position. Upon motion by St. Martin, second by McCarthy, the list (attached to these minutes) was unanimously approved.

**CLAIMS AND RECEIPTS LIST:**

The next item on the Agenda was the Receipts and Claims List for December 2014. Upon Motion by Cuff, second by McCarthy, the December 2014 Claims and Receipts List was unanimously approved as submitted.

**REPORTS OF COMMISSIONERS:**

St. Martin report 5 new Permits including a new home at 31 Spyglass Road and a new home at 91 Dellwood Avenue.

Cuff reported that the new home at 10 Overlook Drive is progressing nicely.

Pazlar commented on several items in the Sheriff’s Report for December 2014.

McGill reported \$358,722.00 in the bank. He noted that the bond payments are coming due totaling approximately \$169,500.00.

The meeting was adjourned at 9:50 p.m.

Respectfully submitted,

Joanne Frane  
City Clerk/Administrator