

**MINUTES OF MEETING
DELLWOOD CITY COUNCIL
MAY 9, 2017**

The regular monthly meeting of the Council of the City of Dellwood was held at City Hall, 111 Wildwood Road, Willernie, MN on May 9, 2017.

PRESENT: Mayor Nuffort, Councilpersons - James Cuff, Frank Pazlar, Ed McCarthy and Scott St. Martin; also present were City Clerk Joanne Frane, City Attorney Richard Copeland, Treasurer Mike McGill and City Planner Nate Sparks, City Engineer Cara Geheren, and also the persons shown on the Sign-In Sheet attached to these Minutes.

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

Mayor Nuffort asked for public comment. There were no persons who came forth.

Mayor Nuffort called for approval of the Agenda for this meeting. Upon Motion by Cuff, second by Pazlar, the Agenda was approved unanimously.

The Minutes of the April 11, 2017 Council meeting were reviewed. Upon Motion by Pazlar, second by Cuff, the Minutes of the April 11, 2017 Council meeting were approved unanimously as submitted.

2017 STREET IMPROVEMENTS: City Engineer Cara Geheren discussed the memorandum she had submitted to the City dated May 3, 2017. A copy of which is attached to these Minutes. She noted that the Street Improvement Program has been updated as shown on the exhibits attached to her memorandum, after completing her road tour of the City's streets on April 26, 2017. Certain changes to the previously approved Street Improvement Program have been recommended based upon the present condition of the various Streets. These recommended changes are outlined in her memorandum.

Cuff noted that these proposals will be considered further. The 2013 bonding projects will be completed before any work is commenced with regard to future improvements to be done under a proposed bonding in 2018, so there will be no overlap of these projects.

Pazlar asked if the City had received complaints regarding pot holes and other road issues. Cuff stated that the residents in the Meadow Ridge area have made complaints. Cara Geheren stated that this Street is in the worst shape of all and needs to be addressed. Further patching will probably fail because the subgrade will not adequately support the traffic volume. Dellwood Glen is not quite that bad, but is close. Apple Orchard Road is holding up nicely, and seal coat scheduled in 2018 can be delayed to year 2019. The T.A. Schifsky and Sons Company has submitted a proposal for patching and leveling with larger patching areas and some overlays in the Meadow Ridge neighborhood, which is included in Cara Geheren's report. The cost for this work is not to exceed \$9500. Cuff moved to accept the Schifsky proposal and this Motion was seconded by Pazlar and was approved by unanimous vote.

Ron Peltier asked if Echo Street was in compliance with street standards in particular the terminus at the north end. Does it have a suitable turn-around area for emergency vehicles? Copeland and Pazlar stated that this issue had been discussed by the Council in the past. Copeland stated that he would review his files on Echo Street and report to the City.

SEVEN VINES WINERY, INTERIM USE PERMIT: The next item on the Agenda was the Application by Seven Vines Winery for an Amended Interim Use Permit (IUP). This matter had been before the Planning Commission and the City Council previously and at the April 11, 2017, Council meeting. The matter was continued to the May 9, 2017 meeting for the purpose of obtaining further information. A Special Workshop of the Council was held on April 17, 2017, at which the attorneys representing the Winery were present as was the immediate neighbor Roger Appeldorn.

City Planner Nate Sparks discussed his memorandum dated May 5, 2017, which had been provided to the Council earlier. He noted that recent changes to the Winery's request had been made by the Applicant on Monday, May 8th.

McCarthy inquired as to why the City needs to address an Amended IUP while the original IUP is in effect. Copeland stated that the fact that an IUP is currently in effect does not preclude the Winery from asking for changes to the IUP for good cause. Such a request must be addressed by the City in the same manner as an original land use request unless the Applicant has agreed otherwise. The City has authority to approve, deny, or impose qualifications upon the request, but that the Council must make findings of fact upon which the decision is made. Land use decisions are subject to review upon appeal by the Courts. The Appellate Court makes its decision based upon the record which basically includes the Minutes of the proceedings before the Planning Commission and the Council. The Court will review the record to determine whether the City's decision had a reasonable factual basis and was not arbitrary or capricious, or based upon speculation. Copeland stated that the Council would need specific evidence related to the application not meeting the criteria. No such evidence has been brought forth to this point meaning the Council may be compelled to approve the request. Mr. Copeland stated he endorses the provisions of the Amended IUP as presented to the Council by Seven Vines on May 8, 2017 as the best possible solution that is able to be negotiated.

Mr. Ron Peltier addressed the Council and explained the history of the Winery and the reasons for his need for an Amendment to the existing IUP. The business cannot be successfully run through sales of wine at wine tasting events only. Service of food on a limited basis is a normal adjunct of farm wineries in Minnesota, and is also a safety factor. He stated that administrative rules and statutes relating to farm wineries had changed with regard to enforcement of food preparation and service by farm wineries. When he started out on the endeavor, he was a new-comer to the business and not familiar with the operation of a farm winery. He is learning as he goes forward. His winery will be a boutique winery and will not be a "restaurant". The lower level of the winery building is devoted solely to the production and storage of wine. His aim is to produce 5000 cases of wine per year. He is allowed under the existing IUP to hold special events at which food may be catered in, liquor may be served, and music can be played. There is no limitation in the original IUP as to how many special events can be held in a year. These special events would consist of weddings, corporate outings and similar events such as those which are now being hosted by the Golf Club and the Apple Orchard. He is asking that his winery be treated equally. Tents are regularly allowed on those locations as needed to accommodate outside activities, for the comfort and safety of customers. Service of food, in connection with such events is common to farm wineries, and encouraged. When State regulation of farm wineries was transferred to the Department of Agriculture, enforcement procedures were elevated regarding food preparation and service, including the nature of the equipment being used for such purposes. He stated that he has, and will continue to abide by all rules and regulations applicable to his business. He only wants to be treated as an equal to the other businesses serving food and hosting parties. Service of a limited food menu on a regular basis is important to the success of the winery. It cannot be successful with only cheese and

crackers and appetizers. The Winery will continue to be a farm winery as defined under Minnesota Law and will not be a restaurant.

Mr. Peltier stated that he is agreeable to providing reasonable proof of that fact by way of an annual Affidavit from an accountant supported by financial data which shows that sales of wine and wine products are its principal business as opposed to sales of food. He is asking that sales of food products at special events not be included in the calculations because those events are not "restaurant" type sales. City Treasurer Mike McGill stated that the categories of sales require specific definition for this type of information to be useful to the Council.

Several people present offered their comments to the Council. Amy Magon stated she was an attorney appearing on behalf of Roger Appeldorn. She stated that a person's property rights are not absolute but must be exercised in a manner which is not offensive to others or detrimental to other property owners. She stated that she has reviewed the City's public nuisance laws and that the conduct of 36 special events per year in a rural residential area is not in keeping with those regulations. The winery will obviously become an event center rather than a winery. She asked how is the City going to regulate 300 people in attendance at a special event, with regard to noise and traffic? How is the City going to regulate sales of food and sales of wine? She stated that 36 special events are far too many. The lighting standards set forth in the proposed permit are not satisfactory. Outside lighting and headlights from vehicles parking at the winery will constitute a nuisance for the Appeldorn property as well as diminish market value. Pazlar noted that problems had been experienced with regard to lighting at Dellwood Country Club. Complaints were received from neighbors and motorists. These initial concerns were addressed by the Club, changes were made and no complaints were received thereafter. He asked how the proposed lighting at the winery compared to the lighting which is now present at Dellwood Country Club. Nate Sparks responded that the lighting as proposed complies with the standards set forth in the City Ordinance.

Brian Rudd stated that his house is next to the Winery property and that he is high up and looks directly at the Winery property. He stated that screening by way of trees is needed and that Mr. Peltier has agreed to provide reasonable screening.

Ms. Magon stated that the hours of operation are too liberal and need to be further defined. She asked about pollution including use of pesticides and runoff. Mayor Nuffort stated that Rice Creek Watershed District has jurisdiction over such matters and will address any concerns.

Copeland stated that the City does not have an extensive Code Enforcement Staff and relies on complaints and input from its residents. If a complaint is received, the City will follow up on it and take appropriate action.

Mr. Appeldorn's daughter Carol Miller and Laurie Sampair were present and spoke on behalf of their parents who were unable to attend this meeting. They indicated that their parents were alright with a farm winery next door, but that it has gone from a winery to an event center to a restaurant. It has exploded from its original concept. It will have a significant impact upon their parent's property value due to the lighting and noise.

Mary Godfrey, also a neighbor, stated that she and her husband were initially excited about the prospect of a farm winery in the neighborhood, but that the project has morphed in to something else. She has concerns about the noise levels. She commented on the Wedding Barn in the City of Grant,

where there is a cut-off time for outside activities and music is confined to indoors. Mayor Nuffort pointed out that the Wedding Barn is in Grant, not in Dellwood, although they use the name Dellwood Wedding Barn.

Ms. Godfrey asked about access to the winery from Hadley Avenue. Mr. Peltier stated that there is a gate at that point, and access was originally used for some equipment during the planting and construction stages. That gate will not be used as an access for the public for any purposes.

Keith MacKenzie raised questions about the original IUP having been violated by reason of the fact that the building was originally permitted to be 4000 square feet or so, but that the Winery went ahead and built a building of 16000 square feet. Pazlar stated that the original permit allowed for a building of 10,000 square feet, but did not specify whether that referred to the footprint or to the total square footage including both levels. The footprint of the building as now constructed is 8000 square feet. City Planner Nate Sparks stated that the Noise Ordinance allows amplified music to be played until 10:00 p.m. The Winery cannot exceed the noise decibel limitations set forth in the rules. Ms. Magon stated that she had a copy of Administrative Rules, Chapter 7030 pertaining to noise levels. St. Martin asked if the City can be more restrictive than the State rules. Copeland stated that it may depend on whether or not the State regulations were intended to pre-empt all local laws on this subject and to have a uniform standard throughout the State of Minnesota. Ordinarily, local regulations can be more strict than State regulations on the same subject. Ms. Magon stated that the City Ordinance No. 92.53 allows the City to require a noise impact statement in certain cases, and that the City should do so in this instance.

Brian Beich of 15 Overlook Road in Pine Tree Hills stated that Dellwood Country Club holds special events with outside activities and amplified music. He noted that he is not aware of any issues or complaints there and that the police are not being called with regard to activities there. The Winery should have equal treatment until such time as actual problems may arise.

Mr. Ruud stated that the alternative development of the Winery property could be eight or more residential properties and that he believes the Winery to be the best scenario.

Ron Peltier stated that the Winery will comply with all of the rules. He wants to be treated like everybody else. He claimed that the statements of concern expressed by the neighbors are based on conjecture.

Mr. Mackenzie stated that he suspects the commercial kitchen had already been constructed in place before any request was made to the City.

Pazlar stated the Council has asked for information concerning the ratio of sales of wine compared to sales of food, and that the Council has experienced difficulty and delay in getting such information. He asked Mr. Peltier if he intends to exclude sales of food at special events from the calculations and Mr. Peltier stated yes he does, because such sales at a special event are not related to the issue of whether the Winery is, in fact, a restaurant. Mr. Peltier agreed that his accountant's report would include information about what is included or excluded from food sales figures.

Mr. Peltier stated that the use of tents or sun covers, such as umbrellas, should not be considered to be a special event within the meaning of the IUP. They are simply for the comfort of the customers. Cuff asked about the hours of operation, why 7:00 a.m.? and what is meant by the term "limited menu".

Mr. Peltier replied that the hours of operation for farm wineries by Minnesota Statute are 7:00 a.m. to 12:00 p.m. He intends to offer some food items which are “paired” with wine.

St. Martin asked how does the latest version of the proposed IUP compare to the version which was considered by the Planning Commission in February? Sparks stated their recommended conditions of approval remain incorporated into the draft IUP document. St. Martin feels there was miscommunication between Council Members, Planning Commission Members, and City Staff. The original IUP did not impose limits on special events. The kitchen issue arose later and the City could not control what was placed within the building.

Pazlar stated that the City wants the Winery to succeed and that he would be willing to accept an Amended IUP containing conditions which will honor and preserve the integrity of the City’s Ordinances, and with provisions to monitor those conditions. Approval by the City Sewer Inspector Brian Humpal of an alternate septic system location was mentioned as a condition.

St. Martin asked if the lighting would be shut down after and before operating hours. Mr. Peltier stated that it would be.

Pazlar asked about the lighting and noise standards. Mr. Sparks stated that the neighbors asked that the standards of the Dark Skies Association be required. The draft IUP requires full cutoff lighting which complies with these standards. The proposed Amended IUP requires the Winery to adhere to all applicable laws, rules and regulations pertaining to noise levels, including MPCA standards. These levels can be measured by a noise meter.

Sparks stated the legal description in the original IUP identifies only the easterly half of the property lying north of Highway 96 as being zoned Farm Winery District. All of the property needs to be re-zoned as Farm Winery District because the Winery building is situated at least in part on the westerly half of the property.

A condition of the granting of an Amended IUP must also contain an agreement that the Winery will not request any further changes to the Amended IUP during its effective term, which ends five (5) years from the date of issuance of the original IUP.

It was noted that the Planning Commission recommended approval of the Amended IUP under certain conditions. A copy of the Planning Commission’s recommendations is attached to these Minutes as a part of the permanent record of this Council meeting.

The Applicant has agreed, and the Amended IUP requires, that the Winery will cooperate with the Washington County Sheriff’s Office recommendations regarding action to be taken to control any traffic concerns on Highway 96.

The Applicant is required to comply with the City’s Noise and Nuisance Ordinances as well as the State Standards, and the requirements of the Amended IUP. At this time, the Council finds that a Noise Impact Statement is not required.

Pazlar moved to grant approval of an Amended Interim Use Permit containing the terms proposed in the latest Amended Interim Use Permit submitted by the Winery, with the changes and inclusions stated above including an annual report with sales information, overnight lighting restrictions, expanding the

legal description, and no further amendments during the remainder of the permit term. Copeland and Sparks are to work with the Winery's attorney in completing a formal interim use permit agreement encompassing the foregoing terms which is suitable for recording in the County Property Records. The Amended Interim Use Permit will take effect as of this date, May 9, 2017. Cuff seconded the Motion. Mayor Nuffort asked for a vote and all five Council Members voted in favor of the Motion.

34 DELLWOOD AVENUE MINOR SUBDIVISION REQUEST: The next item of business was the Application by Barbara Erickson for a minor subdivision of her property at 34 Dellwood Avenue with variances, which had been reviewed and recommended for approval by the Planning Commission at their May meeting. City Planner Nate Sparks discussed his memorandum concerning this request. A Copy of which is attached to these Minutes. The proposal requires a variance from the minimum amount of suitable soils on the property. The applicant would also like to keep a non-conforming carriage house on the property and use it for a temporary dwelling.

Doug Johnson, the Builder of the homes proposed to be constructed on the resultant lots appeared on behalf of Ms. Erickson. He discussed the proposed site plan showing the dimensions of the entire property and the proposed subdivision lines. The site plans showed the proposed location of a house to be constructed on one of the lots if the minor subdivision is approved, as requiring a Variance from the required side yard setback.

Council Members were not in favor of a subdivision which may require a Variance for a structure location. The Planning Commission did not hold a hearing on the structural variance. Mr. Johnson agreed that he would design a house which could be situated on the lot without the need for a Variance. Also, he will attempt to get approval from MNDOT for an access point on Highway 244 somewhat centered on the property so as to allow driveway access for each resultant lot. Doing so would eliminate the need for additional easement rights over the existing driveway which serves two other properties as well as 34 Dellwood Avenue. Copeland will review the existing driveway easements to determine what changes, if any, need to be made.

Pazlar stated that the application appeared to be incomplete with so many issues left to be resolved. The Council Members were in agreement that the existing carriage house could remain in place subject to the conditions recommended by the Planning Commission at its May 2, 2017 meeting. Upon Motion by St. Martin, second by McCarthy, the Council voted unanimously to table this matter to the June 13, 2017 Council meeting to allow for the applicant to revise the plan to meet setbacks and to resolve the issues related to access. Johnson stated he would withdraw the additional variance.

APPLICATION FOR MINOR SUBDIVISION – 96 MANY LEVELS ROAD: City Planner Nate Sparks stated that this matter was considered in the past by the Planning Commission and determined to be incomplete due to lack of specific information requested by the Council.

City Sewer Inspector Brian Humpal did not approve the proposed design and location of the required septic system on each proposed lot. The Applicant asked that the matter be continued to the March Planning Commission meeting to allow her to supply the additional information. Nothing further was submitted prior to the March Planning Commission meeting date and therefore no meeting was held at that time. The matter was continued to the April Planning Commission meeting. Nothing further was submitted to the City prior to that meeting. The Planning Commission recommended that the Council deny the Application for a minor subdivision.

Nate Sparks stated that he personally attempted to speak with the Applicant prior to the Council meeting and left a message for him to be contacted. No response was received by Mr. Sparks. Upon Motion by St. Martin, second by Pazlar, the Application submitted by Marilee Goodell for a minor subdivision of her property at 96 Many Levels Road was unanimously denied.

TEMPORARY LIQUOR LICENSE – WHITE BEAR LAKE FUNDRAISER: This Application was submitted by the Rotary Club of White Bear Lake seeking a Temporary License to serve liquor at the Pine Tree Apple Orchard on September 9, 2017. The Application was deemed to be in order. Upon Motion by Pazlar, second by St. Martin, the Council resolved unanimously to approve a Temporary Liquor License to Rotary Club of White Bear Lake for an event to be held at the Pine Tree Apple Orchard on Saturday September 9, 2017.

CLAIMS AND RECEIPTS LIST FOR FEBRUARY 2017:

The Claims and Receipts List for the month of April 2017 was reviewed and discussed. Upon Motion by Cuff, second by McCarthy, the Claims and Receipts List for April 2017 was unanimously approved as submitted.

REPORTS OF COMMISSIONERS:

Pazlar reported 3 new building permits being one pool and two re-roofs.

Cuff noted that he will tour the City next week with the City Arborist. He noted that the Frost property has been cleaned up but that construction activities are on-going. The Clerk was asked to check on the Permit to determine if it is still in effect.

Mike McGill reported a balance of \$368,396.00 in the bank after payment of April bills.

There being no further business, the meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Joanne Frane
Dellwood City Clerk / Administrator