

**MINUTES OF MEETING
DELLWOOD CITY COUNCIL
OCTOBER 11, 2016**

The regular monthly meeting of the Council of the City of Dellwood was held at City Hall, 111 Wildwood Road, Willernie, MN on October 11, 2016.

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

PRESENT: Mayor Nuffort, Councilpersons James Cuff, Frank Pazlar, Scott St. Martin and Edwin McCarthy; City Clerk Joanne Frane, City Attorney Richard Copeland, and City Planner Nate Sparks.

ABSENT: Treasurer Mike McGill.

ALSO PRESENT: The persons listed on the attached sign-in sheet. There were no persons present for public comment.

Mayor Nuffort asked for approval of the Agenda and noted that Item No. 5, Sign Ordinance, was removed from the Agenda. Mr. Copeland stated that he had sent a copy of the proposed Ordinance to the Attorney for the St. Paul Area Association of Realtors and was awaiting his comments. Upon Motion by Cuff, second by McCarthy, the Council unanimously approved the Agenda, with Item No. 5 removed, for this meeting.

SEPTEMBER MINUTES: Mayor Nuffort called for the approval of the September Council Minutes. Upon Motion by Pazlar, second by McCarthy, the September 13, 2016 Council Minutes were unanimously approved as submitted.

NOVEMBER COUNCIL MEETING: Mayor Nuffort noted that the next regular meeting of the City Council falls on Tuesday, November 8, 2016, which is general election day. Upon Motion by Pazlar, second by Cuff, the November Council Meeting date was unanimously approved to be held on Monday November 7, 2016 at 5:30 p.m.

UPDATED APPOINTMENT LIST: Mayor Nuffort called for approval of the updated Appointment List. He noted that Frank Pazlar was now handling the duties of Building and Septic Commissioner, and that Scott St. Martin was now acting as Safety Commissioner. Mayor Nuffort noted that the official bank is still the same bank as before with the Bank's name having been changed to Midwest One Bank. Upon Motion by McCarthy, second by Cuff, the Mayor's Appointment List for 2016 was unanimously approved.

LAND USE REQUEST OF 98 DELLWOOD AVENUE: Gayle Brown, property owner, and Matt Burton of Southview Design Company were present. Councilman McCarthy recused himself from participation and obtained from participation in this matter as a Council Member because he has a direct interest in the outcome, being the owner, with his brother, of the property adjacent to the Brown property. He noted that he did intend to oppose the Variance requested.

Mr. Copeland noted the nature of the request and the findings and recommendations of the Planning Commission after public hearing held on October 4, 2016.

Nate Sparks discussed the issues set forth in his letter to the City dated October 6, 2016 (copy attached to these Minutes).

Matt Burton addressed the Council and explained the need for a Variance from the side-yard setback of 30 feet as required by the Zoning Ordinance. They intend to build a detached garage along the northwesterly property line and propose to place it six (6) feet from the line. He stated this is the best location on the property. Moving the building to another location to satisfy the setback requirements of the Ordinance would block the entry to the house, adversely affect the "curb appeal" of the main house, require realignment of septic sewer lines and would result in considerable additional cost to the owner. He noted that the final design of the garage would match the design of the main home "pretty much" as shown on the concept drawings given to the City. He stated that impervious surfaces "as built" would not exceed 30% of the entire lot. The need for the garage is to store vehicles, boat and equipment. He described the wetlands located on the property and the nature of the drainage facilities which would be installed to handle surface water and prevent drainage onto the McCarthy property. He stated that it may be possible to locate the garage elsewhere on the lot but that would involve much additional work including retaining walls and at much greater cost.

Nate Sparks stated that he has looked at the topography of this lot and would have to see any proposal to build on another part of the lot to determine any impact on the existing drainage patterns.

Mr. McCarthy addressed the Council and stated that the Variance requested is too extreme; this lot is not suited for any more buildings, this is a new structure, not an addition to an existing structure; allowing a Variance in this case would set a dangerous precedent with regard to future Variance requests; there is no hardship demonstrated here; the only need for a Variance is driven by too many vehicles and equipment; other alternatives should be explored; placement of the garage only 6 feet from the line is unreasonable.

Mr. St. Martin asked if there is difficulty in placing the garage on the other side of the property where no Variance would be needed. He does not think enough effort has been made to consider moving the structure, even though it may require moving septic system lines. Mrs. Brown stated rerouting the septic lines would probably require a lift station. The surface water now pools on their lot, percolates down toward the Jensen property, and then to White Bear Lake.

McCarthy noted that drainage facilities could be installed at the alternate site. Mr. Burton stated that this would be more costly.

Pazlar stated that he is troubled with a Variance of such a large extent; he feels that there are other options available. St. Martin stated he agreed with Pazlar; that he feels the garage could be located in a manner and location which would not require such a large deviation from the side-yard requirements of the Ordinance.

St. Martin asked if pavers were considered for the driveway. Burton stated they were considered but would drive the cost up considerably. Also, additional retaining walls would be needed. Mayor Nuffort believes that relocation of the garage would adversely affect the aesthetics of the lot by blocking the appearance of the home. Cuff stated that the Council has learned from experience that granting Variances should be avoided wherever possible.

At this point, St. Martin moved to approve the recommendation of the Planning Commission as shown on the revised plan and with the five conditions set forth in the City Planner's Report. Copeland advised the Council of the factors which the Minnesota Supreme Court has stated must be considered in

determining whether practical difficulties have been shown which justify a Variance. These were also noted in his previous letter to the City. Mayor Nuffort seconded the Motion.

St. Martin called for a roll-call vote, and Mayor Nuffort polled each Council Member individually. St. Martin voted to deny the Motion; Cuff voted to deny the Motion; Mayor Nuffort voted to approve the Motion; Pazlar voted to deny the Motion. The Motion failed.

Mr. Burton stated that he would try to come up with an alternative proposal to be submitted later. The Council Members were in favor of having him come back to the Council with any further request without having the matter being sent back to the Planning Commission.

11 APPLE ORCHARD COURT VARIANCE REQUEST: Mr. Copeland explained that a Variance is needed to allow the property owner to construct a ground-mounted solar energy system. The City Ordinance allows roof-mounted systems only.

Mr. Sparks discussed the planning issues as outlined in his written report to the City (copy attached). He stated that the roof on the main house is not able to handle a roof-mounted system.

Erin Moffit, the property owner, explained the project. The roof on his home is not suitable to accommodate a solar energy system. Such a system would be visible from the street and neighboring properties. A ground-mounted system at a location in his rear yard would not be visible, and the layout is ideal. The height of the structure would be ten (10) feet. He has obtained letters of approval from his neighbors.

Cuff stated he agreed with the proposal and feels that it sends a great message for energy conservation, and dependence on fossil fuels.

Copeland noted that the factors to be considered by the Council as stated by the Minnesota Supreme Court and that in addition, the State Legislature has indicated its preference for solar energy systems by defining adequate access to sunlight as a practical difficulty in considering Variances for such systems. McCarthy stated that he thinks the Applicant has done a good job and believes that a Variance is reasonable.

Mr. Brian Allen of All Energy Sales, the contractor on the project explained the structure and its components.

Pazlar asked if it might interfere with other electronics in the area and Brian stated that it would not. Pazlar asked if a connection to a solar garden is an alternative. Nate Sparks stated that he had talked with a representative from a solar garden company. Sparks believes a standalone system in the proposed location is a reasonable use of the property. Pazlar stated that he also feels the request is reasonable and that there are probably other instances where a ground-mounted system may be more reasonable than a roof-mounted system and that he would like to revisit the City Ordinance for the purpose of considering stand alone systems under proper circumstances. He is in favor of a Variance in regard to 11 Apple Orchard Court.

Mayor Nuffort asked about the fixed panels and their safety. Brian Allen stated that all installations are regulated by the National Electric Code as well as the State and City Building Codes. A Building Permit is required. There are two certified inspectors who must approve the installation. The panels do not get hot, much as a car window exposed to sunlight.

St. Martin and McCarthy asked about the size and why does it need to be 50' by 11' in area. Mr. Allen said the size of the system is designed according to the energy needs of the family and the relative size of the home.

There was a discussion about the abandonment of the system and removal of the structure and component parts, above and below ground. Sparks stated that the City of Delano has an Ordinance with language which may address that issue.

Copeland stated that for this request, such conditions should be included in the Permit to be issued by the city, if a Variance is approved.

Cuff moved to approve a Variance to allow for a ground-mounted solar energy system at 11 Apple Orchard Court. St. Martin asked for an Amendment to the Motion to specify the size as being 50'x11' not to exceed 10 feet in height and to include abandonment and removal conditions in the Permit to be issued by the City. The Applicant agreed to the Amendments. Pazlar seconded the Motion, and it was approved unanimously.

CLAIMS AND RECEIPTS LIST FOR SEPTEMBER 2016: The Claims and Receipts List for the month of September 2016 was reviewed and discussed. Upon Motion by Pazlar, second by St. Martin, the Claims and Receipts List for September 2016 was approved unanimously.

REPORTS OF COMMISSIONERS:

St. Martin commented on several items shown in the Sheriff's report for September.

Cuff reported that seal coating in Pine Tree Hills has been completed.

Pazlar reported 6 Building Permits and 2 Plumbing Permits.

Pazlar commented on the unhealthy and unkempt condition of the City office space. He pointed out the mice and ant traps located throughout the building as well as the need to clean up and repair the office space.

Mayor Nuffort noted a meeting to be held at the Mahtomedi School District Offices on Friday October 14th to discuss local school issues and events.

Cuff said he has looked at the property at 11 LaCosta Drive and asked what could be done about it. Copeland stated that he had contact with U.S. Bank Code Enforcement two weeks ago and was told that they were addressing the problems described in his previous letters. He will again contact them to determine exactly when this property will be remedied. Cuff also had visited 10 Tamarisk and found that nothing had been done to secure the pool area. Copeland said that he would again contact the owners and if nothing is done immediately he will see that the pool gate is locked.

There being no further business, the meeting was adjourned at 7:23 p.m.

Respectfully submitted,

Joanne Frane
Dellwood City Clerk / Administrator