

**MINUTES OF MEETING  
DELLWOOD CITY COUNCIL  
JULY 10, 2018**

The regular monthly meeting of the Council of the City of Dellwood was held at City Hall, 111 Wildwood Road, Willernie, MN on July 10, 2018, at the City Hall Offices located at 111 Wildwood Road, Willernie, MN.

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

Councilpersons – Jim Cuff, Edwin McCarthy, Mike McGill and Scott St. Martin; also present were City Clerk Joanne Frane, City Attorney Richard Copeland, Treasurer Brady Ramsay, City Engineer Cara Geheren, City Planner Nate Sparks; and also the persons shown on the Sign-In Sheet attached to these Minutes.

Mayor Nuffort asked if anyone was present for public comment and no one came forward.

Mayor Nuffort asked for approval of the Agenda. He noted that item number 7, license renewal of Seven Vines Winery was removed from the Agenda. Upon Motion by Cuff, second by McCarthy, the Agenda for the meeting was unanimously approved with item number 7 removed.

The Minutes of the June 12, 2018 Council meeting were reviewed. Upon Motion by McCarthy, seconded by Cuff, the Minutes of the June 12, 2018 Council meeting were approved as submitted.

**Item 1: Conservation Easement**

This item was the proposed Conservation Easement for the City owned land at the northeast corner of Apple Orchard Road and LaCosta Drive. June Mathiowitz of Washington County and Vanessa Parry of Minnesota Land Trust, St. Paul, were present to address the Council as to why the City should consider placing its land into the Minnesota Land Trust Program under a permanent conservation easement for the purpose of preserving and protecting natural habitat. They distributed an informational handout. The Council Members agreed to consider this proposal. The land involved consists of approximately 5 acres which is currently designated as open wildlife area by the City. Ms. Parry stated that they are working with adjacent property owner (Mennells) who are considering putting 5 acres of their land into the Land Trust. She stated that the City land on its own would not be considered, it would have to be combined with the Mennell property. Currently there has been no easement signed by the Mennells.

**Item 2: 2018 Street Improvements**

Cara Geheren stated that survey work is being done on Peninsula Road. The streets in Meadow Ridge Estates and Peninsula Road are top priority for work to be done. The underlayment in Meadow Ridge was found to be Class 2 aggregate installed when the road was first constructed. It is not worth recycling, which makes the current improvements more expensive. Bids submitted are due to be opened on July 17<sup>th</sup> at 11:00 a.m. She recommended that the City Council hold a Special Meeting to reconsider the street projects in the event the low bid is in excess of what the City has budgeted for. This meeting could be held on or about July 24<sup>th</sup>.

Jim Cuff moved to accept a low bid if it is within 5% over the cost estimate of \$825,000. The reason for this is that the City may be getting higher bids due to contractors being behind in work and a significant rise in gasoline prices. If the low bid exceeds the above limit, the Council will hold a Special Meeting on or about July 24<sup>th</sup> to reconsider the 2018 Street Improvement Plan. McCarthy seconded the motion and the Council unanimously approved the motion.

**Item 3: 17 Peninsula Road Land Use Request**

This is the continuation of the Land Use Request by Tony and Sara Yocum for Variances needed to complete the development of their lot at 17 Peninsula Road. Legally described as Tracts A & B, Registered Land Survey Number 23, and Lot 2, Dwinnell's Peninsula Addition Number 1.

Nate Sparks revised his Memorandum dated July 6, 2018. He stated that the applicant now proposes a stormwater retention feature in the front yard and no longer proposes using permeable pavers. The Staff recommendation has not changed.

Cara Geheren commented regarding the proposed Water Management Plan submitted by Yocums. She suggested that the Council may consider requiring pervious pavers to the auto court area or another similar mitigation measure together with the proposed Water Management Plan. The Management Plan does not reduce the total impervious surfaces but does serve to treat the surface water resulting in improved water quality. The plan achieves the bare minimum and it is recommended to do more than the minimum in this situation.

St. Martin stated that he was disappointed that no solution has been offered to eliminate the deck/walkway on the west side which would require a Variance from the side-yard setback.

Chris Johnson, Attorney for Yocums, stated that the focus of the Council could be on whether the proposal is reasonable and not whether something else could be done.

Mayor Nuffort had questions about whether the basin included in the Stormwater Management Plan needs to be deeper in order to avoid freezing in the winter months.

Joe Crowley stated that construction will be such that freezing will not be a problem. The Development Agreement could address this issue.

McGill stated that he had a problem understanding why the property is "unique" and why the need for Variances has not been caused by the property owners. The need for Variances appears to be driven by the size of the house they propose to build rather than anything to do with the property itself. A home of some kind could be built on the property without the need for any Variances. He was having a problem with finding practical difficulties.

Sparks said that in the materials supplied by the DNR it states that personal design preferences are not practical difficulties. The applicant could easily conform to the ordinance and there is nothing unique about this situation. Wanting an autocourt and an outdoor kitchen does not constitute practical difficulties. The Council is not obligated to approve this variance.

Copeland stated that the fact alone that a home could be built without the need for a Variance is probably not a sufficient reason for denying the request. In the applicable Statute the Legislature could have provided that the fact that a parcel of land could be developed without a Variance would preclude the City from considering any Variance. Copeland believes that the statutory language implies that the City may consider a Variance in light of all other factors to be considered by the City. Court decisions seem to confirm that the City has great discretion in considering Variance requests and that the bottom line is whether the land can be developed in a reasonable manner, will not alter the essential character of the neighborhood, and will not create a threat to the public health or safety. He mentioned that the City's technical staff, the Sewer Inspector and City Engineer had given opinions that the proposed use would not tend to endanger the public health or safety with the proper conditions attached.

Cara Geheren stated that the proposed Water Management Plan would divert storm water about one-half to the basin and one-half to the lake. The water runoff to the lake would be less than that which presently exists.

McGill stated that it appears that the proposed septic system is reasonable and workable with a proper Operating Agreement. The impervious surface issue appears to be resolved through the Water Management Plan coupled with the use of pervious pavers. The land lying across the road to the north has to stay intact with the main parcel and cannot be developed or separated from the main parcel. St. Martin noted that window wells and the fireplace which project from the main structure should not be counted in determining the setback line. The home could be shifted a couple feet and the need for a sideline Variance would disappear.

Copeland reviewed the comments of the City Planner in his July 5<sup>th</sup> Memorandum, and noted the findings and recommendations of the Planning Commission.

The Council took in to consideration the Ordinance provision Section 152.1F (32) which states:

Where the request involves an "Area" Variance (examples: minimum lot size, required lot line setbacks, building height, density, etc.) the landowner must demonstrate that the request is in harmony with the general purposes and intent of this Ordinance and that strict enforcement of this Ordinance will cause practical difficulties or particular hardship to the landowner. Economic considerations alone may not justify the granting of a Variance.

The Council considered Ordinance Section 152.10(f):

In evaluating all Variances, zoning and building permit applications, or conditional use requests, the City shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setbacks, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation designed actions.

The Council considered Ordinance Section 152.11 F(5) which states:

Where the variance is sought from the strict adherence to lot area, width and yard requirements, the Council may give consideration to the fact that the lot or parcel in question will meet all of the requirements of the Sewer Ordinance upon receipt of a report from the City Sewer Inspector and recommendation of the Planning Commission.

The Council also determined that the granting of the Variances would not:

- 1) Increase congestion in the public street.
- 2) Increase the danger or spread of fire;
- 3) Endanger the public health, safety or general welfare.
- 4) Unreasonably diminish or impair established property values within the neighborhood, or
- 5) In any way be contrary to the intent of the Ordinance and the Comprehensive Plan of the City.

The Council considered all of the various items of correspondence received by the City relative to this matter, including staff reports, submissions made by the Applicants or on their behalf, and statements made at the Council meetings.

Cuff moved to approve the Application for Variances for the following reasons and upon the following conditions:

That a Variance be granted to the Applicants at 17 Peninsula Road to allow Applicants to demolish the existing house on Tract B, RLS No. 23, and to build a new home on Tract B which lies south of Peninsula Road, according to the Plans and Specifications on file with the City, for the following reasons:

- 1) The Lot in question is a non-conforming lot having less than the required one-acre minimum lot size. The applicable Statute provides that a non-conforming lot of record may be allowed as a building site without Variances from lot size requirements if all structures and the septic system setbacks can be met, a Type 1 Sewage Treatment System can be installed, and the impervious surface coverage does not exceed 25% of the lot.  
Applicants state that they are not able to meet those standards and therefore are in need of a Variance.
- 2) The City Sewer Inspector has reviewed the design of the Type IV System to be used in lieu of a Type 1 System. He has stated that a Type IV System is appropriate for this property and the size of the proposed home. He feels that the Type IV System, if properly monitored under an Operating Agreement with the City, will adequately handle the sewage from the home. The septic system will be located on the property lying North of Peninsula Road, being Tract A, RLS No. 23 and Lot 2, Dwinnell's Peninsula Addition No. 1.
- 3) Impervious Surfaces on Tract B are currently about 30%. The Applicants propose to reduce the existing impervious surfaces to less than 30%, but more than 25%. They propose to create a Stormwater Management Plan with an infiltration basin to be monitored under a Maintenance Agreement with the City. The City Engineer has reviewed the Stormwater Management Plan and concluded that the proposed Plan together with the use of pervious pavers in the "auto court" area shown on the Site Plan, would adequately handle stormwater run-off and would not likely result in surface waters being diverted onto neighboring properties or public streets. The Water Management Plan will not reduce the amount of impervious surfaces but will improve the water quality of the run-off. A Variance from the 25% maximum impervious surface requirement is reasonable. Impervious surface coverage on Tract B shall not exceed 29% of the Lot.
- 4) The City Ordinance states that the City may relax the strict application of rules regarding minimum lot size and setbacks upon receipt of a written report of the City Sewer inspector that the proposed plans will not result in a threat to the public health or safety.

The request here is for a 3.5-foot Variance from the west side lot line, to accommodate a deck/access structure. There is at present an encroachment of the existing structure into the west side-yard setback of about 5 feet. The granting of a Variance of 3.5 feet is reasonable and will not change the essential character of the neighborhood or pose a threat to the public health, safety or welfare.

Neighbors on the property lying to the west of the Yocum property have voiced no objection to the side-yard Variance and have stated their support for the development in general. Other neighbors have given their support for the development, but with concerns over the possible run-off of stormwater onto their properties or on to the street.

- 5) There does not appear to be a need for a Variance from the required structure setback from the OHWM of White Bear Lake, which is 75 feet. The proposed setback is 67 feet, but the structure will be in line with the adjacent homes on either side of Yocum's lot. Improvements on the Yocum lot will not result in obstruction of view by the adjacent properties. The setback from the lake is in keeping with the Ordinance and Statewide Standards for Management of Shoreland Areas.
- 6) The property in question is unique in the sense that Tract B, RLS No. 23, was approved by the City prior to the current Zoning requirement of one-acre minimum lot size. The Tract B is .67 acre on which the home will be constructed. However, there is additional land situated across Peninsula Road which is owned by the Applicants being Tract A RLS No. 23 and Lot 2, Dwinnell's Peninsula Addition No. 1. This land will be used for location of the septic system. Together with the lot and the land lying north of Peninsula Road comprise more than one-acre in size. Although technically not contiguous, the lots in total provide sufficient land to justify the granting of a Variance. Although the Applicants may have purchased the property with the knowledge of applicable regulations regarding lot area, setbacks, sewer regulations and non-conforming lots, that alone would not preclude them from seeking Variances which would allow them a reasonable use of their land.
- 7) The City Planning Commission held a public hearing on this request and recommended approval with several conditions to be imposed to protect adjacent properties, the lake, and the public health, welfare and safety in general. The property owners have agreed to honor those conditions.

For the foregoing reasons, the Council finds that there are practical difficulties in complying with the strict requirements of the Ordinances and State Regulations and that granting of the Variances will not alter the essential character of the area.

The Variances to be granted are:

- 1) To allow a side-yard setback of 26.5 feet from the westerly property line of Tract B, RLS No. 23.

- 2) To allow construction on a non-conforming lot having less than one-acre in area, being the Tract B which lies southerly of Peninsula Road.
- 3) To allow for installation of a Type IV Septic Treatment System located on the portion of the Applicant's property lying northerly of Peninsula Road.
- 4) To allow for a setback on Tract B from the OHWM of White Bear Lake which is less than 75 feet but on a line which matches the average setback of the homes on either side of the Applicant's property.
- 5) To allow for impervious surfaces in excess of 25% on condition that a Stormwater Management Plan be approved by the City Engineer including the creation of a filtration basin and the use of pervious pavers in the auto court area. Impervious surfaces shall not exceed 29% on Tract B.

All Variances are subject to the following conditions:

1. Construction shall generally adhere to the engineering plans dated June 22, 2018, architectural plans dated June 7, 2018, and the site plan dated June 18, 2018, except as may be modified herein.
2. The deck/walkway on the easterly side of the house shall not encroach more than 3.5 feet into the side yard setback.
3. All construction on Tract B shall meet the front yard setback and the side yard setbacks except as provided herein.
4. The setbacks from the OHWM of White Bear Lake shall conform to the provisions in Ordinance Number 152.05-A.
5. Drainage and Utility Easements shall be placed alongside the North, East, and West property lines of Tract B, subject to the review and approval of the City Engineer.
6. A Drainage and Utility Easement shall be placed upon the property lying North of Peninsula Road.
7. No above-ground structure shall be constructed or placed on the property lying north of Peninsula Road.
8. Landscaping shall be provided along the Easterly property line of Tract B adjacent to the lower level storage.
9. A document shall be recorded in the Office of the Washington County Recorder prohibiting the sale or transfer of the property on the north side of the road separately from Tract B.
10. The Applicant shall enter into a maintenance agreement regarding the storm water facilities subject to the review and approval of the City Engineer.
11. The design and exterior doors of the lower level storage area shall be such as to prevent its use as a garage for the storage of motor vehicles. Such area is to be used for the storage of household equipment and supplies, recreational equipment, pool equipment and other household items.
12. Receipt of written opinion of the City Engineer stating the fill material and raising of the elevation of the existing grade of the lot will not result in the change of existing surface drainage patterns which may tend to adversely affect adjoining properties on White Bear Lake.
13. Receipt of a report from the City Engineer approving the size and location of retaining walls on the property.
14. Receipt of a report from the City Sewer Inspector stating that in his opinion, the use of a Type IV septic system is suitable for this property and that in the event of failure of the system in the future a suitable replacement system can be installed on the same site.

15. Receipt of an Operating Agreement providing for the on-going monitoring and maintenance of the Type IV system under such terms as may be required by the City Sewer Inspector subject to review and approval of the City Attorney.
16. A right-of-way use license or such other documents as may be appropriate to allow for a 3-inch pipe to be placed under Peninsula Road for the purpose of conveying sewage from the home to the septic system North of Peninsula Road subject to the review and approval of the City Engineer and City Attorney.
17. All fees and costs incurred by the City regarding the review of this request and implementation of this approval shall be reimbursed by the Applicant.
18. The applicant shall receive a building permit within one year of this approval or it is null and void.
19. Applicant shall forthwith cause a certified copy of the Resolution approving Variances to be recorded and filed in the offices of the Washington County Recorder and Washington County Registrar of Titles.

McGill seconded the motion.

There was no further discussion except that St. Martin stated that he believed the home could be situated on the property without the need for the side-yard variance.

Mayor Nuffort called for a vote:

Cuff, McCarthy, McGill and Nuffort voted in favor of the motion.

St. Martin voted: no. Motion passed.

**Item 4: Cable Commission Request to Extend its Franchise Agreement with the City:**

The Extension Agreement applies to all Cities who are parties to the Ramsey/Washington Cable Franchise Agreement. The purpose is to extend the current franchise term to 3/31/19, to allow for continued informal negotiations between Comcast and the Cable Commission. The current Agreement expires on November 1, 2018. Upon motion by St. Martin, second by McCarthy, the Council resolved unanimously to approve the Extension Agreement, and to authorize the Mayor to sign the Agreement on behalf of the City.

**Item 5: Washington County Conservation District Contract**

This is an Agreement between the County District and members of the 2019-2021 East Metro Resource Education Program. Members include Watershed District and Cities within Washington County. The term of the Agreement is January 1, 2019 through December 31, 2021.

Upon Motion by McGill, second by McCarthy, the Council unanimously approved the Agreement and authorized Mayor Nuffort to sign it on behalf of the City.

**Item 6: Arbitrage Compliance**

This Agreement is between Dellwood and Ehlers and Associates to provide arbitrage monitoring services to ensure compliance with IRS regulations in connection with the City's Street Reconstruction Plan Bonds, Series 2018A. On motion by Cuff, second by St. Martin, the Council members voted unanimously to approve the Compliance Agreement and to authorize Brady Ramsay to sign it on behalf of the City.

**Item 7: Temporary Gambling Permit Vadnais Heights Economic Development Corp.**

This is a request for a one-day Permit to conduct a raffle at Dellwood Country Club on October 7, 2018. The Application was reviewed and found to be in good order. Upon motion by St. Martin, second by McGill, the Council unanimously approved issuance of the temporary Permit with no waiting period.

**Item 8: Deputy Treasurer / City Treasurer**

Brady Ramsay is asking approval of his appointment of Brian Beich as Deputy Treasurer to act in his absence. Upon motion by Nuffort, second by St. Martin, the appointment of Brian Beich as Deputy City Treasurer was unanimously approved.

**Claims and Receipts List** was presented and reviewed for June 2018. Upon Motion by Cuff, second by McCarthy, the Claims and Receipts List for the month of June 2018 was unanimously approved, as submitted.

**Reports of Commissioners.**

**Cuff** reported that Meadow Ridge street signs are being installed. Ken Johnson is doing bush clearing on Meadow Lane and Peninsula Road.

**McGill** reported 5 remodel permits.

**City Treasurer Brady Ramsay** reported a bank balance of \$481,163.00 in the General Fund before payment of June claims.

There being no further business, the meeting was adjourned at 8:10 p.m

Respectfully submitted,

Joanne Frane  
Dellwood City Clerk / Administrator