

WOODLAND
CITY COUNCIL MINUTES
Monday, October 8, 2007
7:00 P.M.

CALL TO ORDER

Mayor Stark called the meeting to order at 7:00 P.M.

ROLL CALL

Present: Mayor Jean Stark; Councilmembers Jim Doak, Mark Evenstad and Michael Jilek

Absent: Councilmember Tom Newberry

Staff: City Attorney Joel Jamnik, City Zoning Coordinator Gus Karpas, Police Chief
Cory Johnson and Clerk Shelley Souers,

Guests: None

CONSENT AGENDA

A. Minutes September 10, 2007

B. Snow Plowing Bid for 2007/2008 – Tim Lovett-Cornerstone

Councilmember Doak moved approval of the consent agenda and approved the items contained within it. Councilmember Evenstad seconded the motion. Motion carried 4-0.

PUBLIC HEARING

A. Zoning Ordinance No. 9-11, amending Sections 900.12(1)(d) and 900.20(b) of the zoning ordinance to amend language pertaining to inconsistencies in setback requirements for driveways and creating additional language establishing specific setbacks for driveways.

Mayor Stark opened the public hearing at 7:02 P.M. to consider an amendment to the zoning ordinance, section 900.12 clarifying driveway restrictions and driveway setbacks.

Zoning Coordinator Karpas reported that the zoning ordinance has conflicting language regarding driveway setbacks. Section 900.12 of the general zoning restrictions, exempts driveways from the structure setbacks, while Section 900.20, created as part of the Shoreland Management restrictions, requires driveways to comply with structure setbacks when feasible. Zoning Coordinator Karpas stated that he believes the intent of the language was to prohibit driveways located in the lake or bluff setbacks. They were to be allowed only if no alternative location exists. Zoning Coordinator Karpas recommended that the ordinance be amended to remove the conflicting language and establish a setback standard for driveways. Based on review of 14 area community ordinances regarding driveway restrictions and standards, Zoning Coordinator Karpas recommended that a five foot setback be established for driveways. Driveway placement in the lake setback or bluff setback would only be permitted with a variance. In addition, driveways could not be placed in platted utility easements.

Zoning Coordinator Karpas stated that his recommendation was based on the observation that driveways do not create a massing effect and impervious cover restrictions will limit hardcover. Also considered were the findings of surrounding community standards regarding driveway setbacks.

Councilmember Evenstad asked if all driveways in existence would be grandfathered.

Zoning Coordinator Karpas noted that existing driveways are permitted to continue in their current locations, however, any alteration to the driveway's location would need to comply with the setback.

Councilmember Evenstad confirmed that routine maintenance and resurfacing of an existing driveway is permissible in a nonconforming location.

Zoning Coordinator Karpas noted that the driveway setback (5 feet) would apply to a driveway location that is expanded or if a new driveway is created.

City Attorney Jamnik noted that there are two provisions in the ordinance. One provision does not have a setback requirement for driveways; the other provision has a 30 foot setback incorporated by reference. City Attorney Jamnik stated that he believes that latter reference was adopted in error because the intent was to deal with the shoreland regulations. The State Shoreline Regulations, prompted the City to adopt the particular standards. There are specific setbacks from the lake (OHWL) but no side or front yard setbacks. It is clear from the history and location of the provision that it was not intended to have non-waterfront parking areas and driveways covered by the setback requirements; however, there is an ambiguity in the language. It is the staff's recommendation to eliminate the ambiguity and potential conflict by changing the ordinance.

City Attorney Jamnik noted that some cities allow a joint driveway location with a zero lot line if both property owners agree to it. Council can explore this option and create a future amendment to allow this option by permit instead of a variance. Around lakeshore properties, it is not uncommon to have joint driveways created along the property line to serve multiple properties. If Council wants to consider this option, they may want to create conditions for a joint-maintenance agreement to go along with any ordinance language. Specific language addressing joint-maintenance helps with future conveyance of property because many financial institutions want a cross-easement agreement and joint-maintenance agreement prior to approval of a property sale. If the Council adopts the proposed ordinance tonight, it can still approve variances for joint driveways. It would also provide the opportunity to say that one of the terms and conditions of a joint driveway is to have cross access easements recorded and a maintenance agreement recorded that will insulate the City and property owner in the future.

Councilmember Doak asked what impact the proposed driveway setback would have on the Groveland Homeowners Association.

Zoning Coordinator Karpas noted that an exception to the proposed driveway setback could be created for property located within the Groveland Homeowners Association. As it is written, any driveway encroaching into the setback would require variance approval.

City Attorney Jamnik suggested, in regard to property in the Groveland Homeowners Association, the best course of action may be to have a five foot setback requirement and deal

with the rule through a variance procedure. Drainage is along the property lines, for the most part, and a surfaced area along the property line may impinge upon the drainage patterns

Mayor Stark asked whether a definition of driveway and parking area should be created.

Zoning Coordinator Karpas stated that he did not draft language to define driveway or parking area. Parking areas cannot be in the lake setback, however, would be permitted up to five feet of the property line. In reviewing other municipal rules, staff found no specific definition for either a residential driveway or parking area.

Councilmember Doak noted that a parking area may be directly adjacent to a driveway as a separate space. There is no clear definition of the difference.

City Attorney Jamnik stated that he has seen language addressing parking areas with regard to recreational vehicles, boats and trailers, requiring that they be located on a hard improved surface. If Council chooses to clarify this further it can be addressed in a later amendment.

Mayor Stark closed the public hearing at 7:13 P.M.

Councilmember Evenstad moved to approve Ordinance No. 9-11, amending Sections 900.12(b) and 900.20(b,) as presented. Councilmember Jilek seconded the motion. Motion carried 4-0.

Councilmember Doak moved to amend the motion to waive the second reading of Ordinance No. 9-11. Councilmember Evenstad seconded the amendment. Motion carried 4-0.

B. Resolution No. 16-07, Approving Certification of Delinquent Water & Sewer Charges to Hennepin County.

Mayor Stark opened the public hearing at 7:13 P.M. to review a report containing delinquent utility accounts and to consider certification of any delinquent utilities to the property taxes.

Clerk Souers noted that all property owners with delinquent utility accounts have been sent a letter regarding the deadline for payment and notice of certification to the property taxes.

Mayor Stark Closed the public hearing at 7:17 P.M.

Councilmember Jilek moved to approve Resolution No. 16-07, assessing penalties and certifying delinquent utilities to Hennepin County for placement on the property taxes. Councilmember Doak seconded the motion. Motion carried 4-0.

NEW BUSINESS

A. Hardship Criteria Overview – City Attorney Jamnik

Mayor Stark stated that the Council has asked City Attorney Jamnik to provide clarification of the State Statute's hardship criteria.

City Attorney Jamnik noted that he has been helping with government training services by giving training seminars on land use. The one topic that generates the most discussion and debate is the issue of variances. The laws have been refined to give directions on standards of reasonable use, unique circumstances and character of the locality.

The variance law is constantly evolving through both community and judicial interpretation. In general the courts have supported City action on variances where the City's action was considered reasonable, rational, and well supported by the findings and related evidence. The judge will not second guess elected officials' decisions when they are well supported.

All cities deal with the same three statutory standards that apply to variance requests; 1) is the use a reasonable use; 2) is the request due to unique circumstance not of the making of the property owner; and 3) is it in character, if granted, with the the neighborhood.

Many cities have difficulty with the standards and have adopted an additional set of standards in their ordinance to help guide their decisions. Courts have stated that regardless of how many additional standards there are in the City Code, the courts will look to see that a City has applied the three statutory standards and all three standards have to be met. In Minnesota, the courts have required that the City have a comprehensive record for the basis of the decision via a finding of facts and reasons for the action.

The City must create a clear record explaining the reasons and rationale of the facts of a particular application to the statutory criteria. The staff prepares a report and the Council's job is to review it and state where they agree or disagree. That information is tied together with findings that are amended to reflect the decision of the Council. If the Council does not have disagreement with the staff report, the motion should be based on the record and the staff recommendation with the terms and conditions as indicated in the staff report. This connects the action with the rationale. If the decision is contrary to the staff report or the reasons for the actions significantly depart from the staff report, he would recommend that Council approve the action, but direct staff to prepare written findings consistent with the Council's discussion and bring those findings back to a following meeting to be approved.

City Attorney Jamnik noted that the standards are vague and open to an interpretation of reasonable use. The City best course of action is to create an adequate record when applying the standards in action on variance requests.

If processing many variances, the council may reconsider the standards. Lakeshore communities and older communities with changing housing patterns and standards have more challenges. The City needs to create a proper record in approving or denying requests. Decisions will be sustained if the record is accurate.

In answer to Councilmember Doak's question regarding court review versus a trial, Attorney Jamnik noted that a judge will determine the completeness of the record and if there is insufficient evidence, will waive the review and call a trial to determine the outcome. If the record is incomplete or there was a defective hearing at the time of the variance review, the court judge will order another hearing.

Attorney Jamnik stated that all documents submitted on behalf of a request are part of the official record.

Councilmember Doak asked for clarification of the criteria considered when reviewing how a request fits with the character of the community.

Attorney Jamnik noted that a City's historic development patterns are relevant in determining requests. For example where 80% of community is built with less than a 30 foot side yard and the Council changes the setback to 30 feet, 80% of the community becomes nonconforming. This type of change can cause more variance requests and the Council may have a difficult time establishing that the character of the community is altered by a setback of less than 30 feet.

Councilmember Doak noted that the character aspect of the community cannot be wishful. The character aspect relates to what the City already looks like, what already exists, not a vision of what we may want.

City Attorney Jamnik noted that in situations with extensive new development, it can be more reasonable, for an owner to reach a generalized community vision because they are dealing with a blank canvas. When dealing with an existing structure addition or remodel, it may be more difficult to point to character aspects of surrounding property.

Councilmember Doak asked about the interpretation of reasonableness and when it impacts neighbors.

City Attorney Jamnik stated that the issue of reasonable use does not mean that a property owner must show the land cannot be put to any reasonable use without the variance. The court says the hardship standard requires showing that a property owner would like to use their property in a reasonable manner, but is prohibited by ordinance.

City Attorney Jamnik noted that if the character of the community is consistent with redevelopment and values support redevelopment, the Council must decide how much is reasonable versus excessive. Cities are looking at the area of surrounding homes to help determine what constitutes a reasonable expansion. Cities must figure out their community standard.

City Attorney Jamnik stated that the rules cannot restrict the free conveyance of property, whereby someone purchasing property that is restricted by uses are no less entitled to a variance than someone who has been living on the property for 30 years. The length of ownership is taken out of consideration and circumstances of owner are not considered. Council must focus on the unique circumstances of the property, regardless of who is making application. The history of ownership is irrelevant to any decision.

Councilmember Evenstad asked about fairness for requests to remodel structures that are nonconforming with regard to setback versus new construction. The nonconforming house would essentially get a bonus.

City Attorney Jamnik noted that Council will have to consider all criteria and it is possible that some intrusion may be necessary to redevelop the lot.

Councilmember Evenstad noted that allowing 50% of a nonconforming structure to remain in order to maintain the current nonconforming encroachment could result in a greater overall encroachment than redevelopment of the property.

Zoning Coordinator Karpas stated that Council will need to determine if what is being proposed is reasonable and in character with the neighborhood.

Council thanked the City Attorney for his overview and information.

B. Resolution No. 17-07, Revising Resolution No. 3-93, Designated Parking Zones

Mayor Stark stated that Resolution No. 17-07, amends the 1993 resolution defining designated parking locations along several City streets. Several changes were needed to clearly define the parking areas in Woodland. Recently, a concern was expressed regarding parking along private property on Gale Road. Councilmember Doak met with the resident to discuss possible options to continue the use of the parking area on the private property.

Councilmember Doak reported that the resident will continue to allow parking on their private property along Gale Road, provided they are notified in advance of parking requests and that only passenger vehicles are permitted to park.

Councilmember Jilek moved to approve Resolution No. 17-07, revising Resolution No. 3-93, temporary on-street parking by permit in designated zones. Councilmember Evenstad seconded the motion. Motion carried 4-0.

C. Improvements in the road right-of-way adjacent to 2755 Maplewood Circle West

Zoning Coordinator Karpas reported that he received a request from a landscape designer representing the homeowners at 2755 Maplewood Circle West, to create a private parking space adjacent to the paved roadbed and in the City's road right-of-way. The area they request to landscape is approximately 10 feet x 50 feet along the public right-of-way. The plan would create additional parking for the resident and reduce the erosion along the right-of-way.

Zoning Coordinator Karpas noted that the City Ordinance prohibits private use of public space. Also, there may be a safety issue by allowing parking along this portion of the roadway. Staff will contact the homeowner regarding these issues.

Councilmember Evenstad confirmed that there are some erosion issues along that portion of the roadway.

Councilmember Doak suggested that the public works department place larger rocks along the area of erosion.

MAYOR'S REPORT

A. November Council Meeting

Mayor Stark reported that the November Council meeting will be held on Tuesday, November 13, due to the Veteran's Day holiday on Monday.

Mayor Stark reported that the School Board Election will be held on November 6, 2007. Woodland residents will vote at the Groveland Elementary School on Minnetonka Boulevard.

COUNCIL REPORTS

A. Public Safety & Finance

Police Chief Johnson reported that, according to the electronic traffic counter data, the traffic on Breezy Point Road is not decreasing. There is an average of 1300 vehicles per day traveling through Woodland; however, there was a 77 % reduction in excessive traffic speeds. Chief Johnson believes this is in direct relation to the police officers' presence during peak traffic times and issuing tickets. The officers will continue to monitor traffic along Breezy Point Road.

B. Roads & Signs

Councilmember Doak stated that he is working with the neighbors along Shavers Lake regarding issues that arose from weed removal from Shavers Lake.

C. Web Site & Deer Management

Councilmember Jilek noted that the annual application has been submitted and trapping will start in November.

D. Ordinances

Councilmember Doak noted that the City Staff is working with a resident who recently removed a large number of trees and the plans to replant trees.

TREASURER'S REPORT

Councilmember Doak moved approval of the Treasurer's Report as submitted.

Councilmember Jilek seconded the motion. Motion carried 4-0.

ACCOUNTS PAYABLE

Councilmember Doak moved approval of the Accounts Payable as submitted.

Councilmember Evenstad seconded the motion. Motion carried 4-0.

ADJOURNMENT

Council unanimously moved to adjourn the regular meeting at 8:47 P.M.

Respectfully submitted,
Shelley Souers