

***ANDOVER CITY COUNCIL WORKSHOP MEETING – JANUARY 23, 2018
MINUTES***

The Workshop Meeting of the Andover City Council was called to order by Mayor Julie Trude, January 23, 2018, 6:00 p.m., at the Andover City Hall, 1685 Crosstown Boulevard NW, Andover, Minnesota.

Councilmembers present: Mike Knight, Sheri Bukkila, Valerie Holthus and James Goodrich
Councilmember absent: None
Also present: City Administrator, Jim Dickinson
Public Works Director/City Engineer, David Berkowitz
Community Development Director, Joe Janish
Assistant Public Works Director, Todd Haas
Chief Building Official, Fred Patch
City Planner, Stephanie Hanson
City Attorney, Scott Baumgartner
Others

CITY CODE AMENDMENT DISCUSSION

a. Right-of-Way Management

Mr. Haas stated the current code is outdated and legislative changes has prompted staff to update the current code. The language proposed is consistent with the League of Minnesota Cities Model Ordinance.

Mr. Haas stated a Right-of-Way Ordinance is needed to regulate the public right-of-ways by providers of telecommunication services, public utility services and the like, in a fair, efficient, competitively neutral and substantially uniform manner. Due to legislative changes for small wireless facilities, language has been incorporated in the draft ordinance and follows the League of Minnesota Cities model.

Mr. Haas stated staff requests the City Council review and discuss the draft ordinance and provide direction to staff.

Mr. Haas reviewed the staff report with the Council.

Mayor Trude asked if this ordinance is what they are following in the new neighborhoods. Mr. Haas stated on the new developments the utilities are required to be joint trenched. Connexus Energy takes the lead and they work with the other utility companies. Each are still required to submit a permit and pay the necessary fees.

Mayor Trude asked if they all coordinate with the developer. Mr. Haas stated they coordinate with the developer and the City.

Mr. Berkowitz stated Mr. Haas has administered the program with the utility companies since the beginning and has done a great job. He stated he has a great relationship with the utility companies. He stated there have been some challenges, but Mr. Haas has created a great working relationship with the utility companies. He stated the ordinance before the Council is primarily the original ordinance and he felt it was due time to update the ordinance.

Mr. Berkowitz stated the small cell tower requirements that have come out have triggered an update of the ordinance. He stated there has also been a need for filling in gaps. Instead of cities putting a moratorium on the small cell towers the Legislature passed a requirement that they will be allowed so cities need to find a way of dealing with this process moving forward. Mr. Berkowitz stated these can be denied but it is harder to do that. The denial needs to be based on the health, safety and welfare reasons and then try to determine how something like this in a neighborhood would create those type of problems would be a challenge.

Mr. Berkowitz stated as of January 1, 2018, cities need to have something in place, so the companies can start pursuing the installation of these types of facilities within cities.

Mr. Berkowitz stated they anticipate many requests coming forward for placing antennas on light poles. Connexus Energy light poles are fiberglass and will not physically support something like that, so they would have to come in with a new steel light pole and make some modifications at each location.

Mayor Trude asked if they had to co-locate according to the City ordinances in place or the State law. Mr. Berkowitz stated they do not necessarily have to co-locate but that is something the City could require. Mayor Trude would like to have co-location otherwise there could be a lot of these along the road. Mr. Dickinson stated their current code does identify co-location for other towers.

Councilmember Bukkila thought if the City could get some sort of assurance of aesthetic quality she would prefer that. Mr. Berkowitz stated they will try to add some language for that.

Councilmember Holthus asked if the providers will still have to pay the City regular payments like they do now. Mr. Berkowitz stated if the tower or box is on City land they can charge a fee but most of the poles are owned by Connexus Energy, so they cannot charge if the antenna is on one of Connexus's poles. The City would collect for the installation through the right-of-way management ordinance.

There was discussion on the current right-of-way ordinance.

Mayor Trude asked if Mr. Baumgartner felt the City should get something on the books and work on changes later. Mr. Baumgartner felt if they do not have an ordinance then the City falls under the laws of the new Statute and under their purview, as to what is appropriate under the Statute. He felt it was better for the City to control their own destiny than to leave it up to the Statute. He agreed with Mr. Berkowitz to get it into place now and he thought there may be changes coming. This big push started because of the Super Bowl coming into town and a lot of the cell phone carriers expect to need more coverage downtown and is now moving a little further out of downtown. He thought that after the Super Bowl is gone things will die down.

The Council thought this should move forward. Mr. Berkowitz stated they will draft up an ordinance and bring it forward to the Council along with the suggested changes and place on the consent agenda.

b. Accessory Structures/Portable Storage Units

Mr. Janish stated after two variances had been granted recently by the Council, staff was provided direction on looking at increasing the square footage of allowable accessory structures. After the approved variance requests, staff was under the understanding, it was the City Council's desire to increase the square footage of allowed accessory structures within the City of Andover.

Mr. Janish stated staff recommends the City Council review and discuss if increasing the size of allowable accessory structures is appropriate, and if so should the size increase be based on lot size, and zoning classifications.

Mayor Trude reviewed some of the history of this item with the Council. The Council discussed an accessory structure going up in the City.

Mr. Dickinson stated if they have a significant number of variance requests that usually triggers looking at a code amendment. Over the course of ten years there have been only five variance requests related to accessory structures. Mr. Janish stated in 2011 there were two variances related to height and setbacks and not related to the actual size of the structure. Both of those variances were denied. He reviewed other variances throughout the years.

The Council discussed if the ordinance should be changed since there have not been a lot of variance requests.

Councilmember Goodrich leaned towards allowing people to do what they want to do with their property. He is leaning towards changing this because it is private property and he felt the owner should be able to do what they want on their property.

Councilmember Bukkila stated she understood what Councilmember Goodrich was saying and felt the larger properties would have the room to do this but she felt the

smaller properties would not have the room. In terms of profile and how it looks, some lots are the entire house and would not be able to have an accessory structure on it. She did not know if this change would cure any issues that are out there.

Councilmember Bukkila stated she would like to have a review of their accessory structures and the design they require. She has gotten complaints about why the requirements are so strict and if there are alternatives to the building materials that could make it cheaper for landowners particularly on larger lots. She thought if they were going to open up accessory structures they could look at the materials requirements as well.

Staff reviewed with the Council the different areas in the City where large accessory structures are permitted.

Councilmember Bukkila wondered if what they were doing made sense or were they being so restrictive that in order to afford anything they need to be on a high-end salary. She wondered if someone has the land with a \$200,000 split level home why are they restricted.

Mr. Patch asked if the concern was with the exterior looks because he thought newer materials that were not costly looked good. Councilmember Bukkila stated she did not know if there was something that would satisfy their curb appeal concern but not be so expensive.

Mr. Patch stated in terms of how the current ordinance works now the ordinance Andover has right now works well. It seems that the Council's primary concern is should they allow lots that are larger in all districts to have accessory structures. He thought that one of the things that should be done is a rewrite of the structure ordinance. He stated they need to straighten out the ordinance, so it makes sense and they can also look at what those material standards should be. Mr. Dickinson stated in that instance they would need to go by zoning district regulations because they would want different districts to allow different materials. Councilmember Goodrich thought that sounded logical.

Councilmember Bukkila asked if the City is trying to dictate the footprint of the structure and the type. Mayor Trude stated after the 2002 City bus tour there was a feeling of proportionality. There should be proportionality within a development. Councilmember Bukkila agreed but thought they already differed by the lot size requirements. She stated over the years the houses have gotten bigger on the same size lots and the scale is different than what it was years ago. She wondered if it mattered what the building is as long it does not exceed the twelve hundred requirement.

Councilmember Knight stated everyone has their own perspective on what looks nice. Councilmember Goodrich asked who gets to decide what looks good. He thought it should be up to the landowner to decide that to a certain extent. Mayor Trude thought

this started because of a perceived problem. She did not think they wanted to spend more time on this until staff can bring forward more information.

The majority of the City Council did not see a problem with the ordinance and did not think the ordinance should be rewritten.

Mayor Trude thought the architectural design part of the ordinance can be reviewed for possible changes. She did not hear support for changing the sizes within the districts in the City.

Mr. Patch thought the ordinance needed reorganization but keep the same standards and look at some alternative materials that could be used. Mr. Dickinson stated this would be brought back in February for further review.

c. Ultimate Fighting

Mr. Janish stated Tony Denucci with the American Wrestling Federation (AWF) approached city staff and expressed interest in setting up an event within the City of Andover either at an institution/public or commercial venue. Due to the current Ultimate Fighting Ordinance prohibiting “Ultimate Fighting” regardless of how named or described and defines “Ultimate Fighting” as any form of entertainment, where the primary practice involves individuals engaged in physical contact by striking an opponent with hands, feet or body, the event cannot occur within the City of Andover.

Mr. Janish stated staff recommends the City Council discuss the possibility of allowing this type of event to occur and if desired, staff will move forward with a potential code amendment through the regular code adoption process.

Mr. Janish stated if there is interest by the Council then staff will need to go back and try to determine what modifications need to be made and how they can distinguish between them.

Mayor Trude stated they all agreed that they did not want Ultimate Fighting in Andover, so she wondered if the Council wanted to see a rewrite done for this item.

Councilmember Knight stated he did not. Councilmember Holthus stated she might, if it can be used as a fundraiser. She did not want to say no to professional wrestling, but she did want to say no to ultimate fighting. Mayor Trude indicated she is not sure she wanted to see this in Andover. Councilmember Bukkila stated she did not have a problem with what would happen in the ring, she is more concerned with what was going to happen in the parking lot.

City Attorney Baumgartner asked how this can be written into an ordinance to make sense that professional wrestling is ok but ultimate fighting is not. He stated this will

need to be enforced and someone will need to monitor this. He wondered how they will differentiate one from the other. He stated the difficulty is going to be in identifying and delineating what is one versus the other and what the purpose is for. He stated if the Council is concerned with getting kids worked up and carrying on out in public he did not think there would be a difference if it is wrestling or ultimate fighting.

Councilmember Holthus stated she would not want this to be for profit, only for fundraising. Mayor Trude, Councilmembers Goodrich, Bukkila and Knight indicated they would not be in favor of this. Mr. Dickinson indicated they will relay the discussion back to Mr. Denucci.

d. Gambling

Mr. Dickinson stated the City Council is requested to discuss a proposed amendment to City Code 5-3 Gambling, by the Competition Cheer Spirit Booster Club.

Mr. Dickinson stated staff received a request from the Competition Cheer Spirit Booster Club Gambling Committee for an amendment to City Code 5-3 allowing an outside organization to conduct lawful gambling in the City. The City Council is requested to discuss the request to amend City Code 5-3 Gambling and provide direction to staff on how the Council would like to proceed.

Mayor Trude stated she did not want to allow outside organizations to conduct lawful gambling in the City or to have two organizations at one premise. The Council was in agreement.

e. Religious Land Use

Ms. Hanson stated the League of Minnesota Cities (LMC) released a memo on July 6, 2017 regarding The Religious Land Use and Institutional Persons Act (RLUIPA). The memo explains RLUIPA, in which, no governmental entity shall impose or implement a land use regulation in a manner that puts a substantial burden on religious exercise. In no ways shall a government entity impose stricter land use regulations than that of other non-religious assembly or institutions.

Ms. Hanson explained current language in the City Code limits religious institutions to the residential areas and Limited Business and Shopping Center Districts. Other places of assemblies such as restaurant and theatres are allowed within more of the cities' commercial districts. Staff recommends the City Council review LMC's memo, city code and discuss the possibility of modifications to ordinance related to religious institutions.

Mayor Trude stated when she read this, it talks about substantial burden and when she followed some of the things happening in other suburbs they were saying the use could

not go into the commercial district and the religious organization indicated there was nothing else available. They have a lot of land in Andover so when they say Residential Zoning District they are not making it very hard to find land and it is cheaper land. They have actively worked with churches. She stated they are not short of places the religious institutions could go so the burden is saying they want to have religious institutions in residential and she did not think the burden is there. She agreed that the language needs some change but was afraid of going to far to accommodate them.

Mr. Baumgartner stated in Anoka they had many concerns with the large church going in such as traffic and parking. He thought the thing to remember is they are not talking about freedom of religion. They are talking about a long-term land use and the Religious Land Use Act does not give them anymore rights than any other assembly. It does provide some safeguards in there so that a City cannot discriminate against a religious institution. He stated how this came about is cities were looking at a religious institution as being tax free or exempt from tax purposes and the cities are not recouping their tax base and are not necessarily providing a business. The Act doesn't necessarily give religious institutions anymore rights, it just says the cities cannot prohibit them in comparison to another assembly. The easiest way to look at this is what the League of Minnesota Cities said is that some ordinances now are pointing the broad definition of places of assembly to avoid that discrimination of Religious Institution assembly versus a lodge assembly or a club assembly. He thought what the Council needs to figure out is where in the City are they ok with an assembly regardless if it is religious or secular and where is an assembly not wanted in the City. As long as they are consistent they should be ok.

There was discussion between Council and the City Attorney regarding parking and traffic concerns.

Mr. Dickinson stated staff proposes handling this via a Conditional Use Permit (CUP) which allows them the ability to deal with the parking, traffic issues, deal with things that do not create a burden on the neighboring properties or find a way for them to work with the neighboring properties. A CUP gives the City the ability to be able to do some level of regulation.

Mayor Trude stated it used to be schools and churches were in neighborhoods and she understands churches are changing and becoming larger where they need larger spaces which is usually in industrial areas, but schools handle big events and some of the commercial areas cannot handle large assemblies. She wondered if some of the counties and cities that have dealt with this just look at the size of the gathering because there are the little home churches, and nobody cares if it is in a neighborhood.

Councilmember Holthus wondered if the home churches or start up churches that meet at schools are considered assemblies. Mr. Dickinson stated it is an assembly but is secondary to the primary use which is the school operations, which is what they regulate.

Mr. Baumgartner stated he is not as concerned with someone going to place a church somewhere, he is more concerned with a strip mall that has enough space, and someone wants to utilize the space as an assembly for religious purposes. Mr. Dickinson stated they would not want that to be necessarily permitted but would want to regulate that through a CUP permitting process so then the City would have the ability to address the peripheral issues. Mr. Baumgartner stated the permitting process would be applicable regardless if it is as religious affiliation or something else. The League wanted to make sure that the cities do not differentiate based upon what they do.

Mayor Trude stated if they do a temporary fix and then come back to look further at this she would like to match Religious Institutions with schools and clubs and lodges because they are all a membership or group gathering and not necessarily open up every area of the City, just pick a couple of areas that make sense. Councilmember Bukkila stated she was along the same lines with thinking but wanted staff to see if that will work.

Mr. Dickinson thought having some level of control is important particularly with the parking and the traffic aspect. Ms. Hanson wondered what is a substantial burden and how can they define that. When the code is looked at and places where they allow assemblies, they are allowed in commercial zoning districts and religious institutions are already allowed in a couple of the zoning districts so there are no favoritisms plus they are allowed in the residential districts as well. Mr. Dickinson stated they could get challenged based on the act if there is an allowable assembly within a particular zoning district and they don't allow the religious institution.

Mayor Trude thought the key to this is figuring out what an assembly is. Mr. Dickinson stated as he looked down the use list, where would they want to go strategically. Shopping Center, GB and Industrial the only thing that fits that criteria are restaurants with live entertainment or they have commercial/recreational outdoors which is conditional use in all districts.

Mayor Trude asked is legitimate government interest protecting your tax base when they do not have much commercial tax base and have a lot of residential tax base. Councilmember Holthus asked if there is any proportional requirement. Mr. Baumgartner stated there is not. He thought the main thing to keep in mind is whatever they do with one assembly they have to do the same with a religious assembly to keep it consistent unless they can show some compelling Government interest to deviate from that. He stated if they can find a definition that assembly fits whether it is religious or secular and if that definition would be applicable to both and the City is ok with that then staff has some place to go from there.

Mr. Dickinson recapped what the Council would like staff to look at and will bring back for further review.

RECESS & RECONVENE

The City Council recessed at 7:35 p.m. and reconvened at 7:40 p.m.

CITY CAMPUS MASTER PLAN UPDATE DISCUSSION

Mr. Berkowitz reviewed the Public Works Maintenance Facility general layout, elevation drawings, and building and flow layouts with the Council. The Council expressed a desire to see some movement of the cold storage building, discussed building colors and appropriate neighborhood screening.

Mr. Dickinson reviewed the potential Community Center expansion progress to date with the Council.

CROSTOWN BOULEVARD NW OVERLAY UPDATE/17-44

Mr. Berkowitz explained the City Council is requested to review the proposed overlay of Crosstown Boulevard and direct staff on the assessment process for this project.

Mr. Berkowitz reviewed with the Council intersection improvements and the parcels that would be assessed as a part of this project. He noted all the parcels along the corridor would get an assessment and there is one little passive park and to be consistent they would need to assess that park as well. He needed to know how the Council wants to deal with the Holasek parcel in regard to assessment because it has the potential for three R-1 Residential lots. In the past in the R-1 District there would be three assessments for the one piece.

Mr. Berkowitz stated what they have done in the past with parcels like this is they would assess them for one unit and deferred the remaining units with an appreciate/depreciation time frame so if the property is sold the assessment becomes due. If the property is developed and they request access, then the remaining assessments would be due. If there is no requested access onto Crosstown Boulevard the remaining assessment could fall off, per the assessment approval.

Mayor Trude thought with the sizes, it seemed fair to take a look at sizes because there are quite a few lots that are large. There is such a variety in sizes. Councilmember Bukkila thought there should be a three-lot minimum with no deferral because it will be developed at some time. She stated she would be willing to defer but they would need to depreciate it.

Mr. Dickinson explained how the appreciation/depreciation assessment would work.

Councilmember Goodrich thought consistency is key. They should be consistent with what has been done in the past. Mayor Trude stated she is concerned about some of the lots along there because some of them have a lot of lineal feet along the road and some have hardly any.

Mr. Berkowitz felt \$1,800 was very reasonable with all the traffic. Mayor Trude thought that

sounded fair and a good recommendation.

Mr. Berkowitz reviewed Council direction. He stated in the feasibility report they will identify an \$1,800 assessment per unit with the exception of the Holasek piece which will be three units; one assessed, two deferred. That deferral will be identified as paid off at the time of sale of property and hook up or access request for development. Those will be deferred with an appreciation/depreciation scale consistent with what was done on past projects.

2017 BUDGET PROGRESS REPORTS

Mr. Dickinson explained the City of Andover 2017 General Fund Budget contains total revenues of \$10,825,139 and total expenditures of \$11,735,219; a decrease in fund balance is planned.

Mr. Dickinson reviewed the 2017 Budget progress with the Council indicating that more revenues will recorded along with a few more expenses. The results are currently un-audited.

2017 CITY INVESTMENTS REVIEW

Mr. Dickinson reviewed the 2017 City Investments with the Council noting the cash balance is high as we prepare the adequate cash flow for the next debt service payment.

OTHER BUSINESS

There was no other business.

ADJOURNMENT

Motion by Goodrich, Seconded by Bukkila, to adjourn. Motion carried unanimously. The meeting adjourned at 8:40 p.m.

Respectfully Submitted,

Sue Osbeck, Recording Secretary
TimeSaver Off Site Secretarial, Inc.