

***REGULAR ANDOVER CITY COUNCIL MEETING – JULY 31, 2023
MINUTES***

The Regular Bi-Monthly Meeting of the Andover City Council was called to order by Acting Mayor Jamie Barthel, July 31, 2023, 7:00 p.m., at the Andover City Hall, 1685 Crosstown Boulevard NW, Andover, Minnesota.

Councilmembers present: Jamie Barthel, Ted Butler, Rick Engelhardt, and Randy Nelson

Councilmember absent: Mayor Sheri Bukkila

Also present: City Administrator, Jim Dickinson
 Community Development Director, Joe Janish
 Director of Public Works/City Engineer, David Berkowitz
 City Attorney, Scott Baumgartner
 Associate Planner, Jake Griffiths

PLEDGE OF ALLEGIANCE

RESIDENT FORUM

Merl Prochniak, 2941 141st Avenue NW, came forward and shared that he heard there is a contaminated well off Crooked Lake Boulevard. He added there are scheduled meetings for Red Oaks and Crooked Lake and noted he is concerned with what is going on with testing of water in Andover. He suggested looking at this sooner rather than later as residents are drinking this contaminated water. He stated the City needs to do better to protect the residents and this needs to be addressed. He added the priorities in the City may need to be reevaluated and he would give up his road repair to ensure other residents have safe drinking water.

Mr. Dickinson explained a meeting is being coordinated with the Red Oaks neighborhood. He noted the mitigation area will be getting improvements in the extension of city water. He stated the meeting will be to discuss this process and next steps. He shared that in the neighborhood off Crooked Lake, East Brook Terrace, contaminants were found in private wells. He stated MPCA, Department of Health, and the EPA are doing a systematic testing of wells in this area and a targeted mailing will be going out to the area being tested. He added they are also pushing the MPCA and the EPA to do further testing throughout the community.

Councilmember Nelson added there is also testing being done west of Crooked Lake Boulevard. Mr. Dickinson noted they are testing and starting to expand beyond the original area. He stated

this information is rather fluid and the meeting concerns the area east of Crooked Lake Boulevard.

Councilmember Nelson asked if all of the residents in this area were notified by a letter. Mr. Dickinson said yes and stated there is also information online. He added these meetings will be at City Hall and also on Zoom.

AGENDA APPROVAL

Motion by Butler, Seconded by Nelson, to approve the Agenda as presented. Motion carried unanimously.

APPROVAL OF MINUTES

*July 18, 2023, Regular Meeting
July 18, 2023, Workshop Meeting*

Motion by Nelson, Seconded by Engelhardt, to approve the July 18, 2023, Regular meeting and Workshop meeting minutes as presented. Motion carried unanimously.

CONSENT ITEMS

- Item 2 Approve Payment of Claims
- Item 3 Approve JPA with Anoka County/22-37/Round Lake Blvd. NW Reconstruction
- Item 4 Approve Amended Fee Schedule (See Ordinance 555)

Motion by Nelson, Seconded by Butler, to approve of the Consent Agenda as read. Motion carried unanimously.

CONSIDER INTERIM USE PERMIT (IUP) AMENDMENT - 16045 NIGHTINGALE ST. NW; PID# 15-32-24-42-0006 - ANDOVER CHRISTIAN CHURCH (APPLICANTS)

Andover Christian Church is requesting an extension of the timeframe to 18 months to remove subordinate classroom structures on their property. The current permit expires on August 31, 2023.

Mr. Griffiths reviewed the staff report and request from Andover Christian Church to delay the removal of their temporary classrooms. He noted the applicant is working with their congregation to secure financing to move plans forward for these improvements. He noted the Planning and Zoning Commission recommended approval of this IUP.

Councilmember Nelson stated he is excited that they could be finishing this process in 18 months as this process originally started in 1998.

Acting Mayor Barthel asked if they just have one of these units on their property. Mr. Griffiths stated it is just one large structure.

Acting Mayor Barthel asked if the applicant would like to come forward to speak.

Bill Barber, a representative from Andover Christian Church, came forward and shared that the church has received the bids for the project and financing has been secured. He noted they will have a contract with Kinghorn Construction and the plans will be presented to the City for permits to get the project started. He added they are hopeful that this will not take the whole 18 months.

Councilmember Engelhardt asked if this is a mobile structure and if it will be demolished or just moved elsewhere. Mr. Barber stated this is a mobile unit and he is not sure if it will be reused.

Mr. Dickinson noted the contractor that the Church is working with has worked within the City and is familiar with the City requirements.

Councilmember Butler added he is pleased to see this being brought back as an 18-month extension rather than another 5 years.

Acting Mayor Barthel explained he is not a fan of these types of structures as they do not have the best safety measures and they can be an eyesore. He noted he does not normally support extensions of these types of structures; however, with it being 18 months he can support it. He shared his appreciation for the 18 month timeline.

Motion by Nelson, Seconded by Engelhardt, to approve Resolution No. R053-23 granting an Interim Use Permit for extending the time for the removal of a subordinate classroom structure on the property located at 16045 Nightingale Street NW. Motion carried unanimously.

***CONSIDER VARIANCE REQUEST - 14358 BUTTERNUT ST NW; PID# 25-32-24-41-0073
- JOSEPH & KAITLIN SULLIVAN (APPLICANTS)***

The applicants are requesting a variance from the rear yard setback requirements established within City Code for an addition to their home. The addition would be for a screened in porch.

Mr. Griffiths reviewed the staff report concerning a variance request for a home add-on. He noted the applicant is requesting a 27-foot setback. He added this home was constructed farther back than a normal front yard setback. He stated the Planning and Zoning Commission recommends denial of the application, based on variance criteria #2, stating that the applicant would have the ability to redesign the project in a way that would meet the City Code and would not require a variance.

Councilmember Nelson asked if the Planning and Zoning Commission denied this because it can be reconfigured to fall within the City Code. Mr. Griffiths said yes and that the variance would be for 3 feet. He added there are other options that would meet City Code. He explained the house is 39 feet from the rear property line and the rear yard setback in 30 feet.

Acting Mayor Barthel asked the applicants to come forward.

Joseph Sullivan, 14385 Butternut Street NW, the applicant, came forward and shared that criteria #2 was heavily discussed at the Planning and Zoning Commission meeting. He stated this criteria is vague as the circumstance was not created by the applicant. He noted when the house was built, it was setback farther than usual because of the grading of the driveway. He shared that he understands that they could reconfigure the porch but it is a 10% difference and they are hoping to have the variance granted. He added the contractor also recommends this for the structural integrity.

Councilmember Butler noted he understands that the 3 extra feet makes a significant difference for the use of the structure. He asked for more information on what the extra 3 feet does for the structural integrity. Mr. Sullivan stated the contractor was unable to attend the meeting this evening. He stated from a 9-foot perspective, making the structure more rectangular it ties into the house in a different manner than the 12-foot structure would. He noted there would also be options with the 9-foot deck to have a freestanding structure on top of the deck that would not be tied into the house and would not be as structurally sound. He stated they are looking into a 9-foot porch rather than the requested 12 foot, but it would change the use of their porch and how it ties into their home.

Mr. Sullivan explained they have spoken to their neighbors and none of the neighbors are opposed to this structure, and they have received signatures and email support for the approval.

Councilmember Butler asked if they wanted to build a free standing structure, like a gazebo, beyond the setback they would be able to do so. Mr. Griffiths stated if the property owner wants to build an accessory structure rather than an addition, there is a different setback requirement.

Councilmember Butler asked about criteria #2 that the Planning and Zoning Commission focused on as their reason for recommending denial. He noted it is hard to understand how the circumstances were created by the landowner, not the developer. Mr. Griffiths explained the Planning and Zoning Commission's discussion hinged on the latter part of the criteria that the circumstance is unique to the property and was not created by the landowner. He stated in this situation, the property owner can currently meet the City Code if they modify the design of their project. He added the argument was that the applicant is creating the need for the variance by wanting to build the porch in a way that does not meet City Code.

Councilmember Nelson shared that situations like this are very difficult and the reason for the Planning and Zoning Commission is to look at these types of items and make recommendations for the Council. He noted the Council has to take the Planning and Zoning Commission recommendation into account.

Councilmember Engelhardt asked if the difference in the setback is due to flooding and water control. Mr. Griffiths stated this is a standard rear yard setback for this zoning district.

Acting Mayor Barthel shared that he watched the Planning and Zoning Commission meeting. He stated the discussion at the meeting was great and he feels horrible for the property owners that their driveway was moved by the builder. He explained because of this decision, the property now has constraints. He reiterated something that a Planning and Zoning Commissioner said during the meeting, that just because the current neighbors do not have a problem with it, that does not mean that the next neighbors will feel the same way. He explained this could create a domino effect of requests if the City allows this. He noted since the design can be modified to fit within the easement it is hard for the Council to approve their request. He stated he is not in support of the variance.

Councilmember Butler concurred with a lot of what Acting Mayor Barthel shared. He noted the variance process exists for a reason, to allow for reasonable uses under certain criteria. He reviewed the criteria and shared that he sees this as a reasonable request for a variance and meets the criteria. He noted that he supports the variance.

Acting Mayor Barthel reviewed criteria #2 and shared that the Planning and Zoning Commission had issues because of the driveway and the driveway being approved by the homeowners. He noted because the homeowners approved of the driveway, the circumstance was created by them.

Mr. Baumgartner stated the Council should talk this out to see if any one member would be able to be swayed one way or another. He noted this cannot be approved or denied based on a tied vote. He noted if they cannot reach a decision, they would need to postpone this matter until there is a five-person Council to break the tie. Mr. Dickinson added they could also choose to table this to a future meeting.

Councilmember Butler shared that part of what he looks at is that these restrictions are in place for the benefit of the community and they are to guide reasonable use of property that somewhat restrict property rights for the people that own the property. He noted the variance process is in place to determine what are reasonable exceptions to these rules. He stated he does not view this as setting a precedent, rather just a situation for a variance due to the unique situation of the property. He said he sees this as allowing the property owner to make a reasonable enhancement to their property. He added that denying this seems as though the Council is being more rule bound than they are required to be in these situations.

Councilmember Nelson emphasized the property owner could modify their design to be within the variance, which he believes was the main reason for the Planning and Zoning Commission's recommendation. Acting Mayor Barthel agreed.

Councilmember Engelhardt shared that the reason he is supporting the variance is because they have the process in place to make reasonable accommodations for projects like this. He noted the driveway is a non-issue for anything moving forward. He added the applicant is making reasonable accommodations to try to make this right and it is not a catastrophic effect to the property. He stated the applicants have taken aesthetics and their neighbors into account.

Acting Mayor Barthel shared that he understands the opinions of Councilmembers Butler and

Engelhardt. He stated after listening to the Planning and Zoning Commission meeting, since this can be modified to fit, they have to hold steadfast to the variance. He noted this will need to be tabled to the next meeting since it is a split vote.

Motion by Butler, Seconded by Nelson, to lay this item on the table for future consideration. Motion carried unanimously.

CONSIDER ORDINANCE - PROHIBIT USE OF CANNABIS IN PUBLIC

During the 2023 legislative session, a new law was passed that legalized adult-use cannabis in Minnesota beginning August 1, 2023.

Mr. Dickinson reviewed the staff report concerning prohibiting the use of cannabis in public places.

Councilmember Butler stated there was a lot of confusing discussion in the past around intoxicating and non-intoxicating THC when it was previously discussed. He asked if they will run into similar issues and confusion with the language in this ordinance. Mr. Baumgartner explained that the new law for the State is 155 pages long and this is all addressed in the law. He noted some modifications and clarifications were made to the THC law to clear it up. He stated the City has to make modifications to their own ordinance because of the law change. He added they will not have the same issue with this language as with the THC language as they have done a better job of identifying and describing low potency edibles. He stated the primary reason for this ordinance is to address smoking in public. He noted this will likely be educational for the first few months.

Councilmember Butler stated he supports the ordinance; however, he is aware that there can be unintended consequences to the definitions that are put into these ordinances. Mr. Baumgartner stated there are going to be some unintended consequences in a 155-page document that was passed. He noted this should be figured out as situations arise. He stated this allows those who want to partake in adult-use cannabis to do so and allow those who choose not to partake to be forced into a situation of having to be around someone who chooses to partake.

Mr. Dickinson shared that they have been waiting on guidance from the State and the League of Minnesota Cities on this and they have not yet received it. He noted this item is of imminent importance and there will be other similar items that will be coming forward.

Mr. Baumgartner shared that something that stuck out to him in the law is that every city must have a minimum of one licensed retailer per population of 12,500 residents. He noted there is also a criteria in the law that states that cities may prohibit the retailer within a certain distance from different places. He stated it is possible that the prohibited areas could not leave a single area in a city where a retailer could be, which was not addressed in the law. He added there is also no penalty provision in the law for anyone who uses cannabis under the age of 21.

Councilmember Butler asked if this will be coming back to the Council. Mr. Baumgartner said yes

and explained that the Council will have to discuss zoning, locations, and other items. He added that licenses will not be issued until January 1, 2025. He noted the State is still putting together a cannabis oversight commission which will govern all licensing provisions.

Mr. Dickinson noted the first discussion of these changes will need to go through the Planning and Zoning Commission and will take time.

Acting Mayor Barthel stated he has heard people say that alcohol is allowed in public but not cannabis. He asked if alcohol is allowed in public places in Andover. Mr. Dickinson said no.

Acting Mayor Barthel stated this matches the City's alcohol policy.

Mr. Baumgartner added the League of Minnesota Cities has encouraged people to look at cannabis like it is alcohol as the restrictions are very similar.

Mr. Dickinson noted the statute allows for temporary provisions just as it does for alcohol.

Councilmember Engelhardt asked about the controls and compliance between having this ordinance in place and the legalization of August 1st. Mr. Baumgartner stated it will go into effect seven days after publication. He stated if this passed, he would reach out to the Sheriff's Office and give them a copy of the ordinance and also get the ordinance added to the Code Enforcement. He noted he would ask the Sheriff's Office to use the first few weeks and months of this as an educational component.

Motion by Nelson, Seconded by Butler, to adopt Ordinance No. 556, adopting Title 5, Chapter 12 use of cannabis in public. Motion carried unanimously.

ADMINISTRATOR'S REPORT

City Staff updated the Council on the administration and city department activities, legislative updates, updates on development/CIP projects, and meeting reminders/community events.

(Administrative Staff Report) Mr. Dickinson reviewed the Administrative Staff report, highlighting that the City is working with the MPCA, EPA, and the Minnesota Department of Health to coordinate meetings for the water issues that were discussed earlier in the evening. He noted many different departments have been helping work on this. He stated the budget and CIP planning are in full force. He added they are working on some land negotiations. He shared that he participated in the Metro Cities' policy development and participated in policy development for metro agencies as well as revenue and taxation. He noted he has also sat on the Regional Planning Advisory Committee with the Met Council and hopes to get some other surrounding cities to participate in this in the future. He added he has also been spending lots of time on the new cannabis laws. He noted there are 39 new homes in the City. He shared that building has slowed residentially but commercial is still going strong.

(Public Works/Engineering Department Report) Mr. Berkowitz reviewed the Public Works and Engineering report highlighting construction updates in regard to 16.5 miles of roads being done this year. He shared that they are nearly 80% complete with this road work. He noted the reclamation project was started in mid-May and every road is now paved with at least the base course of bituminous. He reviewed the mill and overlay projects and noted they have all been milled and paved. He noted Oak Bluff is in progress. He stated the engineering technicians have been working long days six days a week to get all of this done. He thanked these individuals for putting in the long hours to get the work done. He added they are currently redoing the parking lot at Sunshine Park. He stated they have not yet started the parking lot at Fire Station #2. He gave updates on the developments including the Fields at Winslow Cove, highlighting there will be a roundabout on Prairie Road and there will be a full closure, tentatively starting August 14th and will last 8-10 weeks. He stated more information will be on the City's website and it will be updated weekly.

(Community Development Department Report) Mr. Griffiths reviewed the Community Development Report highlighting residential development and the Legacy at Petersen Farms project which will be coming forward to the Council in the coming months. He noted there is a backlog of projects that they are trying to get started.

Councilmember Nelson asked about the Woodland Estates project. Mr. Berkowitz explained they went away from chip seal coating as it prematurely deteriorates. He stated they are trying reclamation on this project. He noted this product rejuvenates the pavement and prevents the oxidation of it. He shared that the south metro area has had good luck with this product.

MAYOR/COUNCIL INPUT

Councilmember Nelson emphasized that the City is implementing plan A for the Red Oaks neighborhood and now they are going to be implementing plan B for East Brook Terrace. He noted it is critical to have a strategic plan for the future. He noted they have asked the MPCA, the EPA, and the Minnesota Department of Health where the contaminants are coming from, and they have not gotten an answer. He encouraged residents to attend the upcoming meeting virtually to get involved with this. He stated City Staff is doing all that they can and working as quickly as possible on this.

Mr. Dickinson noted this is in relation to private wells that are seeing the impacts. He stated this does not affect the City's water system, as the City tests regularly and meets all health standards.

Acting Mayor Barthel stated tomorrow night is the Night to Unite in Andover and encouraged residents to attend a party for the event.

RECESS

Acting Mayor Barthel recessed the regular City Council meeting at 8:18 p.m. to a Closed Session of the City Council to discuss union negotiations.

RECONVENE

The City Council reconvened at 8:29 p.m.

ADJOURNMENT

Motion by Butler, Seconded by Nelson, to adjourn. Motion carried unanimously. The meeting adjourned at 8:29 p.m.

Respectfully submitted,

Ava Rokosz, Recording Secretary

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