

**CALL TO ORDER:** Chairman Werneiwski called the meeting to order at 7:00 p.m.

**PRESENT:** Chairman Bob Werneiwski, Commissioners Barbarajean Brandt, Kent Carlson, Scott Hemink, Walter Linder and John McGary

**ABSENT:** Pete Onstad

**OTHERS PRESENT:** Council Liaison Josh Hackney and Zoning Coordinator Gus Karpas

**MINUTES OF February 15, 2011**

Motion by Commissioner Carlson, seconded by Commissioner Werneiwski, to approve the minutes of February 15, 2011 as presented. Motion carried 5-0-1. Commissioner Linder abstained.

**OLD BUSINESS**

**Ordinance Amendment** – Discuss Liquor Ordinance.

Zoning Coordinator Karpas noted this was tabled at the last meeting and that since then, the city has received correspondence from the Minnetonka Yacht Club asking that the new ordinance give them the ability to apply for an intoxicating liquor license. He said the problem with that request is the draft ordinance limits the issuance of licenses to commercially zoned properties and the Yacht Club is zoned residential. He said he's also concerned about permitting such licenses in residential districts because it would open the door for entities like the Cottagewood Store to apply for such licenses.

Commissioner Linder questioned the need for an intoxicating liquor license for the Yacht Club, since they already have a set-up license. Chairman Werneiwski surmised it would be an additional revenue source. Commissioner Brandt said it sounded like they only wanted the opportunity to apply and questioned a discrepancy between Hennepin County's designation of the property as commercial versus the city's zoning of it as residential.

Commissioner Hemink stated the Yacht Club, regardless of their zoning, still qualified for a one day permit and asked how many they would be permitted to obtain. Zoning Coordinator Karpas said the proposed ordinance would allow twelve licenses during a calendar year. Hemink noted that would also apply to the Cottagewood Store.

Commissioner Linder said he was concerned that the Yacht Club was asking for an exception to what they currently doing. Commissioner Carlson said that some Yacht Clubs, not necessary the Minnetonka Yacht Club, get around liquor ordinances by selling tickets to events that then serve alcohol at no charge.

Commissioner Brandt said the Cottagewood Store sells tickets, but does not include alcohol in their events. Commission Carlson said those that typically participate in their events are families from the neighborhood.

Commissioner Brandt asked about charter boats that serve liquor and how they are regulated. Commissioner Carlson said the Lake Minnetonka Conservation District has authority to issue liquor licenses to charter boats.

Commissioner Linder feels something should be done to accommodate the Yacht Club's needs with minimal exceptions. Chairman Werneiwski said he originally thought the ordinance could include a "club" provision, using the definition of club from the State Statutes. He thought by expanding the time provision included in the Statute to make it difficult for a group of people to all of a sudden claim they were a club, thus qualifying for a license.

Commissioner Brandt asked how a club differed from an Association or Foundation. Chairman Werneiwski read the State Statute definition of club. Council Liaison Hackney commented that the definition could be applied to the Cottagewood Store.

The Planning Commission discussed a number of options on how to address the Yacht Clubs request without creating unintended consequences. Zoning Coordinator Karpas reminded the Commission that some properties would automatically be eliminated for issues like lack of parking when the zoning ordinance is amended as part of this process.

Commissioner McGary asked if the number of one day permits could be expanded to meet the Yacht Club's needs. Council Liaison Hackney said the State Statute limits the number of one day permits to twelve a calendar year. Commissioner Brandt suggested the ordinance could include a provision for seasonal licenses.

Chairman Werneiwski asked what the concern was about the Cottagewood Store having the ability to serve intoxicating liquor. Commissioner Brandt said the store has been a hot button issue in the neighborhood for a number of years.

Zoning Coordinator Karpas said he would speak with the Commodore to see exactly what their needs are and discuss if they have any ideas how they could fit into the ordinance.

The Planning Commission discussed the proposed ordinance provisions. Council Liaison Hackney noted a potential error in the wine license requirements noting that the State Statute requires a minimum of twenty-five chairs whereas the proposed ordinance only requires ten.

Section 470.04. Commissioner Linder suggested the term "intoxicating" be placed in front of the word liquor in the first line. Zoning Coordinator Karpas said he would review the entire ordinance and add that term elsewhere where needed.

Section 470.04(h). Commissioner Hemink questioned the phrasing "or other business of a similar nature." Zoning Coordinator Karpas said it was a catch all phrase, but he could clarify what it meant by adding after the word nature "which required the issuance of an intoxicating liquor license." The Commission agreed to the proposed wording.

Section 470.04(2). Commissioner Carlson said the provision should apply to everyone and that the exception for wine licenses selling less than \$10,000 should be stricken. The Commission agreed.

Section 470.05(2). Commissioner Hemink asked if the renewal fee for applications be set at the state maximum to cover the city's cost for background checks. Commissioner Carlson said if the fee was too high, it could drive away smaller businesses. Zoning Coordinator Karpas said he would talk with the Police Chief to see what the anticipated expense would be.

Section 470.06(1). Commissioner Hemink suggested the phrase "Original Investigation Fee" be changed to "Initial Investigation Fee." The Commission agreed to the change.

Section 470.08(1). It was suggested that the inclusion of the actual amount of the fee be removed and changed to a reference to the fee schedule located elsewhere in the ordinance. Commissioner Linder suggested the phrase "Preliminary Investigation" be changed to "Initial Investigation." The Commission agreed.

Section 470.08(2). Commissioner Hemink suggested removing the last line of the paragraph. The Commission agreed.

Section 470.08(3). Commissioner Hemink suggested the last sentence be changed to reflect a change in controlling interest of a corporate interest rather than the transfer of stock in the corporation. He feels this would be impossible to regulate, especially with larger corporations. Commissioner Brandt noted this would be the same if the makeup of club's membership changed. The Commission agreed to the change.

Section 470.09(1). Commissioner Hemink suggested the term "proprietor" in the second line of the paragraph be changed to "applicant" to be consistent with our definitions. The Commissioners supported the change.

Section 470.09(2). Commissioner Carlson asked if the five year period of ineligibility due to violation of any law in regard to intoxication liquor was the maximum permitted by the state or could the city be more restrictive. Zoning Coordinator Karpas said he would review the statutes.

Section 470.10(1). Zoning Coordinator Karpas suggested expanding the provision to include the phrase "or city zoning ordinances" in reference to businesses ineligible for licenses.

Section 470.10(3). Zoning Coordinator Karpas suggested the sentence be expanded to include the phrase "per the zoning ordinance" in reference to parking requirements.

Section 470.11(2). The Commission discussed the insurance requirements. Commissioner McGary asked if the city should be included as additionally covered. Commissioner Linder noted the amount required by the statute is low and the city should require a higher amount. Zoning Coordinator Karpas said he would discuss this issue with Councilmember Kask to see what changes we may want to make.

Section 470.11(4). The Commission agreed to remove the first sentence, thus setting hours of sale for the entire week and not having a separate requirement for Sundays. The Commission discussed hours of operation.

Commissioner Linder said he thought the whole purpose of the proposed ordinance was to allow restaurants the ability to offer intoxicating liquor with meals, and not create a situation where a bar could be established. Commissioner Hemink agreed, stating he didn't feel a

closing hour of 10:30 or 11 would be out of line. Commissioner Carlson said he has heard the trend has been that people are eating later than before, which could warrant later hours. Hemink suggested the permitted hours be addressed in the zoning ordinance.

Chairman Werneiwski said he was concerned if the hours were too restrictive, it would put businesses in Deephaven at a competitive disadvantage. Commissioner Brandt said the food to liquor ratio could also dictate hours, whereas establishments selling liquor later may not be able to comply with the ratio requirement. She also noted that most commercial areas in the city directly abuts residential districts. Commissioner Linder said the ordinance could be drafted to dictate hours of sale based on the location of the applicant's property. Zoning Coordinator Karpas suggested that the hours be left to the discretion of the City Council.

Commissioner Brandt questioned whether the city had the manpower in the Police Department to handle enforcement.

The Commission agreed to permit hours of sale from 10 a.m. to 1 a.m.

Commissioner Hemink exited at 8:50 p.m.

Section 470.11(5). The Commission agreed to remove the entire provision regulating hours of sale on Sunday since they previously agreed not to separate weekdays from Sundays.

Section 470.11(10). The Commission discussed the need to amend the section so it included not only corporations but also to cover all non-natural person entities. They also asked the City Attorney review this section to see if the language was correct.

Section 470.12(1). The Commission agreed to remove this provision since it was redundant.

Section 470.13. The Commission agreed to change the word "shall" to "may" to allow for flexibility in the suspension and revocation process.

Zoning Coordinator Karpas said he would bring the ordinance back to the Commission for their review at the April meeting.

## **NEW BUSINESS**

**Discussion** – Discuss existing fence ordinance.

Commissioner Brandt said she brought this issue to the Planning Commission because there seems to be a lot of her neighbors upset about fencing in the city. She feels the city may want to take a look at the existing ordinance and potentially amend it to address the issues she's heard raised from some of her neighbors.

Commissioner Linder said he was not clear what the concerns were. Commissioner Brandt said one of the main concerns is the ability to locate a fence on a common property line. She questions whether that is reasonable regardless of the height of the fence. In addition, fences are allowed on common property lines between private property owners and city owned property.

Commissioner Linder said he didn't see that as a big issue. Commissioner Brandt said she was speaking on behalf of what she heard and noted what may not be an issue in Commissioner Linder's neighborhood, may be in Cottagewood.

Commissioner Linder said the city can't ban fences. Commissioner Brandt said she was just asking for the city to look at the issue from a different perspective. She said a fence was recently put up in Cottagewood that many neighbors feel has had a negative impact on their property values. She said there is also a financial burden on some property owners when a fence is placed on a common line to screen it from their view. Linder asked if Brandt wanted a more restrictive ordinance. Brandt said she feels the entire ordinance should be reviewed.

Chairman Werneiwski and Commissioner Carlson asked what Commissioner Brandt wanted to change. Brandt said a common property line belongs to both neighbors and not just the property owner putting up the fence. She feels the property owner being impacted by the fence should be protected and not forced to lose their own greenspace in an effort to screen them from a fence.

Commissioner Brandt reiterated that the request to look at the ordinance is not based on just one fence already erected, but rather she is looking to have the city look at the ordinance in general to address potential future fences and their impacts on adjacent property owners and neighborhoods. She said input should be taken from residents and the ordinance amended to address their concerns.

Commissioner Linder said he's not hearing from anyone concerned about the fence ordinance. He asked if there was a way for her to articulate the concerns. Commissioner Brandt said she's received a number of comments on fences as she is sure staff has too, though they may not all be documented.

Commissioner Carlson noted the city's ordinance is one of the most restrictive when compared to other cities. He recited some of the restrictions contained in the existing fence ordinance. Commissioner Brandt expressed concerns about how to bring this to the Council's attention so some action could be taken on the concerns from residents.

Zoning Coordinator Karpas said the Planning Commission can draft any ordinance for Council's consideration without direction from the Council. The problem is if a majority of the Commissioners don't support a change in a particular ordinance, it will never be drafted or sent to the Council. If that is the case, then someone, or a group need to address the Council during the Matters from the Floor portion of the meeting to put the issue on their radar. At that time, the Council could direct the Planning Commission to draft language for their consideration, regardless of the Commission's willingness to change the ordinance. Commissioner Brandt said there are a number of residents who don't want to be on record pointing out their neighbors.

Commissioner Brandt said another concern she's heard is about maintenance of existing fences and there's not provision in the ordinance which requires fences be in good repair. She listed a number of other complaints she has heard including the distance between a principle structure and a fence, fencing in a front yard, length of continuous fencing and fences on corner lots.

Other Commissioners asked if Commissioner Brandt had any specific changes in mind. Commissioner Brandt said she didn't at this time. Chairman Werneiwski asked Brandt to develop some potential regulations to address her neighbor's concerns and bring them back to the Commission in April.

## **LIAISON REPORT**

Council Liaison Hackney said the Council unanimously approved the Special Events Permit and proposed Slope Ordinance amendment. The Council also unanimously denied the proposed Special Use Permit for the Deephaven Education Center and the Variance/Special Use request of Deephaven Elementary to exceed the maximum permitted impervious surface area and to increase the grade greater than one foot for the proposed driveway intended to ease parking along Vinehill Road during drop off and pick up.

He said the Education Center will now have to wait six months before they could submit a new request for a monument sign.

Council Liaison Hackney said there was a lot of public input on the Deephaven Elementary request and it was ultimately determined that the applicant did not meet the criteria for granting a variance. He said there was also an implied consent by the School District that the Public Safety Committee endorsed the proposal, which was not true. He said in the future, the Committee will actually have a vote when recommending approval for a concept and that information will be available to the Commission at the time of application. He said a number of residents have decided to create a parking lot task force to develop ideas that could be presented to the School Board to address the current issues.

## **ADJOURNMENT**

Motion by Commissioner Werneiwski to adjourn the meeting. Commissioner Carlson seconded. The motion carried 5-0. The meeting adjourned at 10:20 p.m.

Respectfully submitted,  
Gus Karpas  
Zoning Coordinator