

CITY OF HERMANTOWN
CITY COUNCIL MEETING
July 7, 2008
6:34 p.m.

Pledge of Allegiance

ROLL CALL: Councilors Boucher, Koski, Tafs, Thielen, Mayor MacDonald;
Lynn Lander, City Administrator; Steve Overom, City Attorney;
Mike Anderson, Chief of Police; Dean Sharpe, City Superintendent

ABSENT: Debbie Lund, City Clerk

VISITORS: 21

MINUTES

Motion made by Councilor Koski, seconded by Councilor Thielen to approve the June 16, 2008 City Council Continuation Minutes. Motion carried.

PUBLIC DISCUSSION SUMMARY

R.C. Boheim, South St. Louis Soil & Water Conservation District – I informed you in 2007 that the Soil & Water Conservation District Board of Supervisors selected the City of Hermantown as an outstanding conservationist for 2007. Among several different reasons were the adoption of the Comprehensive Wetland Management Plan and the accompanying ordinance, strong participation in the regional stormwater protection team and also the hiring of an Environmental Resource Specialist. I would like to ask John Klaers to come forward to accept the plaque. Congratulations.

Mayor MacDonald stated the City of Hermantown appreciates the award. I know a lot of hard work has been done and we appreciate all the hard work John and the staff have put in on that.

Michael & Susan Fuchs, 4864 Adrian Lane – Thank you for allowing us to come today, I appreciate the City Council opening it up for us. We live on Adrian Lane and there is new construction beginning behind where we live and one of the things that they need is emergency access to that development. One of the things that we are concerned about is if they are developing something they should have had a plan in place before it was developed, not that they have to put commercial access into our residential area. What we had hoped for was the Mall Drive would have been opened up for them for emergency access or else to Highway 53. We are in favor of doing those two extensions for them.

Susan Fuchs – I agree with my husband that I disagree with commercial access through a residential neighborhood. I appreciate and understand that there needs to be additional emergency access into that commercial development, but like my husband I think the

commercial developer should have had that plan in place and needs to appropriately pony up the money or however it is supposed to be handled and do it right the first time. I would also appreciate or would like to know if there is going to be an appropriate buffer between our residential neighborhood and that commercial development of 100 feet.

Councilor Boucher – The master plan that was submitted to the City does have a 100 foot buffer planned and I don't believe it comes very close to Adrian Lane, the closest I believe it comes is Terrace Circle.

Sandy Carlson, 4858 Terrace Circle – We very much appreciate the issues that you have before us and the time that you are taking to listen to us. John and I are very firmly of the opinion that a builder has a right to do on his property what he wants to do, we firmly support that, but we also support the fact that if it effects other people then that is where the issues are going to lie. I understand the need for the emergency road situation as well, I believe, my personal belief is that if you open a road, a road is a road, is a road. I think once you open that road it is an emergency road, construction road, it is then a business road of family road to every body else. I think that having that number of people go through our quiet Terrace Circle of which we have 12 homes on there, the part that there could be 60 units driving through there, just the simple math formula could increase the traffic on our road exponentially and I think that affects my property value, the safety of the families, the animals, everybody that is around there. I believe there are several other viable alternatives, other than going through any of the residential neighborhoods.

John Carlson, 4858 Terrace Circle – I will also echo what my wife said as well. We are quite concerned that the entire structure of the neighborhood would change; we would go from a residential area into a commercial area. I think that Terrace is a very poor decision for a safety access given the fact that there are two 90-degree corners and those roads are covered in ice nine months out of the year. I think there are other alternatives for a safety access that would be a little more direct.

Eric Hansen, 4182 Ridge Circle – I use Terrace Circle to get to my house and I want to say on behalf of my wife and I that we object to any temporary or permanent emergency access from commercial property to a residential property. I want to thank Mr. Carlson for putting in a 100-foot buffer in the master plat. We believe that Terrace and Woodridge are not safe for additional traffic, there are no curbs, streetlights, and sidewalks and there are two right angle corners. I believe Mall Drive is a good choice and I believe that should be bumped up in priority to push that through.

James Bendas, 4866 Woodridge Drive – I think these people have really banded together to bring forth their opinion of this project. I think the Council really has to take a look at what the people want, versus one individual and what they want as far as profits. I think the Council also has to look at the cost of this project on the taxpayers of Hermantown. Have you done the analysis to determine what additional cost it is going to be on this community by building these additional apartments? Have you looked at the price of putting in water, the burden on the schools, the police force and the fire department?

These are all costs that is not on the developer, they are on the taxpayer and I feel that as a taxpayer I do not wish to subsidize another business. The other issue I have is has anyone looked at the density requirements of the state and the amount of land that is required, has that been looked at? I would take a close look at that if I were on this Council because it may very well be in violation. Has the EPA been involved in this project is it in compliance?

John Klaers, City Planner/Zoning Director – The wetland issue has been addressed Mr. Carlson has plenty of opportunity to avoid wetlands and to create wetlands that need to be lost to the project. To the best of my knowledge the only density at stake here is the City of Hermantown's own zoning code? The city allows multiple family residential dwelling at a maximum of six units per acre in a residential zone. There are no EPA or MPCA requirements that would not be met.

David Rollin, 4833 Adrian Lane – The Timber Ridge property touches on my property even though we are on Adrian not on Terrace. I just wanted to reiterate a couple of points, one is I have a kid who is biking around that neighborhood and so there are small kids and medium kids that I think our concern for emergency vehicle access and I know the extension of Mall Drive to Hwy 53 was thought about so I just encourage that sort of direction.

Kristen Olson, 4840 Terrace Circle – I am here to speak on behalf of myself as well as my husband Eric. The last time a Timber Ridge property was proposed for development there was an attempt to access Terrace Circle at that time that proposed development would have at least tripled vehicle traffic on Terrace, that is why it was opposed by residents. The City Council at that time wisely determined that the neighborhood ought to come first in terms of day-to-day safety of our streets. Nothing has changed in this regard except the potential traffic that could in some way access our street has gone way up. Terrace Circle, a residential street is not a good option for any kind of access to a commercial development. The answer from the city now should be as it was then the neighborhood comes first. Making exceptions to long-standing city policy to benefit one developer does not represent prudent governance. Please see to it that any plan forwarded regarding this development does not include the use of Terrace Circle as an access point, emergency or otherwise. I do have a petition signed by the neighbors and I would like to present this to you.

Cindy Hedstrom, 4186 W. Pond Drive – We are very concerned about the safety of our neighborhood and would ask that you would not allow any time of access temporary or emergency from a commercial property into a residential neighborhood. We believe that the developer is the one who should be bearing the expense and the responsibility of finding a proper second entrance to his development. This should not be done at the expense of a residential neighborhood.

Scott McEachern, 4188 W. Pond Drive – I had the opportunity to talk with Mr. Klaers and also to review the letter of June 10th providing the status of the Timber Ridge Townhouse expansion. From what I saw there the consultant had completed a very thorough review of the project and specifically the traffic modeling that was needed for the vicinity of the proposed project and from what I saw there, there were five alternatives for access and egress. I wasn't able to attend the meeting of the Planning & Zoning Board to see the outcome of that discussion but I think that what I saw there in the letter we received from Mr. Klaers was that the best alternative is the extension of Mall Drive through to Home Furniture west of Westberg Road. I support that finding I think it is something that was thoroughly reviewed and does provide the best alternative. Additionally, I do understand that there is the need for emergency entrance to Timber Ridge that need currently does not exist and therefore I don't see the need because of the increase in the number of dwellings there I am not sure where the sudden need comes for that second means of emergency access. If it is deemed to be an issue that an emergency entrance is required I do support that if the access is number 1. gated, 2. locked, and 3. be only accessible by the police or the fire department. If you do set something up then the access is only wide enough to allow an emergency vehicle through and not two-way traffic. Once the extension from Home Furniture west to Westberg Drive is completed that emergency access road be removed. I think the most important aspects of this is are the public safety, the secondary means of access is important to the new development and also the safety and wellbeing of the children and the people in the neighborhood.

Bill Burns, Attorney for Timber Ridge – I have represented Timber Ridge since its inception and have been involved in many discussions over the years with the City of Hermantown. Steve Carlson and I had a discussion early today and my purpose here is just to make sure this is in context with terms of how the latest part of this evolved in terms of this road and to try to set a couple of things straight here. First of all, with all due deference to the people who have spoken, people who live in apartments are not second class citizens and they are not living in a commercial development. They are living in a residential neighborhood and Timber Ridge is as residential as the adjacent neighborhood. The Carlson's have accepted that there would be a buffer and even though the law is very clear that a public street does not belong to the residents that live on it and its not a private street. The idea of this very limited use secondary access with a gate on it that would only be involved in the event of an emergency and only if the other road was blocked came from your administration as a result of their study. That is not some idea that the Carlson's dreamed up so they could infringe on the adjacent residential neighborhood. The type of use that is made of those, I think statistics show us is very limited and it's unlikely that this gate will ever be taken down in the sense of driven through which is one of the options which you have with it, or unlocked because it is very unlikely that the road is ever going to be totally blocked for any reason. I know that there was some concern about who had an opportunity to speak at a meeting which was run not by us but by someone else but I would point out that there was a public hearing process here and secondly so the record is clear it is our position that the time to act on this matter was concluded at the time of the Planning Commission and I am not comfortable that there really is an appeal possible here due to the Minnesota State Law. We'd be happy to

answer any questions but I thought it was appropriate that we make the record clear in terms of the distinction between a commercial development and a residential the public streets belong to the public and the very limited use that was proposed for this gated road.

Further discussion was held between the residents and Council with regard to the Planning & Zoning Commission meeting. The City Attorney stated no state or city rules were broken.

Councilor Thielen stated I can only speak for myself, not for Council. What happened that night I find a travesty and I am embarrassed for myself and for the city as to what happened. It is not how I feel city government should be conducted. It is a democracy after all and people should feel they have a right to give their input and the fact that there was a full room there that night of people wanting to give their input and the fact that that whole room was led to believe that it was not their turn. I'm aghast I don't know what else to say and I won't say anymore on the issue.

Steve Overom, City Attorney said the first conclusion is that this matter had to have been put on the agenda for you tonight. There was two letters that came to you and under the ordinance it is your right then to proceed in whatever fashion you desire including holding a public hearing. What our recommendation or suggestion to you would be to take the input from all parties that have been received tonight and have us, staff, police department and fire department have an opportunity to look at the issues and come back to you in a couple of weeks with some suggestions as to how to deal with that and to have a definitive answer for your legal questions. A development agreement is still needed in which we can address some of the issues.

Lori Johnson, 4862 Terrace Circle – I spent the last couple of days going through the Hermantown zoning regulations and Chapter 8, which is Commercial Industrial Development Permits, and specifically under Section 820 Governing Criteria. One of my questions is where do you go from this chapter into writing these conditions, is it the developer and Mr. Klaers that make these conditions?

Councilor Thielen stated John and the developer discuss it first then it goes to Planning & Zoning Commission and then to the City Council for final approval.

I don't understand why with technology it is so hard to post agendas and minutes it should be within 48 hours.

Councilor Boucher stated that the agenda was not available on our web site for this meeting and the Planning & Zoning Meeting and that is due to the fact that our city finance director who ran the web site has resigned and he hasn't been replaced. Right now we don't have the immediate technological ability to keep that updated.

I just got a copy of the Planning & Zoning Meeting and under public safety in regard to connecting to Terrace Circle it says there could be a gated emergency entrance at the end

of Terrace Circle connected by a driveway into the development. This access would be entitled for emergency situations only and does not have to become a permanent road connection. The development may also be subject to access problems during the time Maple Grove Road is being reconstructed in 2009 and 2010 this connection might be needed during short periods during the reconstruction project if Mall Drive is not extended. So what was said earlier that it is just going to be used as an emergency access, this contradicts it and that's the problem I've seen over the years. One person says one thing yet another thing is done. As a final I was just going to remind, not only is this council elected from members of the community but also is our Zoning Director an annual renewable contract and I guess if people aren't going to listen to the residents of this city then maybe it's time for a change.

Dennis Hamsher, 4880 Terrace Circle – I would like to take issue with the attorney for the developers I find that pretty offensive to insinuate that we might consider people that live in other areas second-class citizens. Throughout this whole process, which has been very problematic, I have never once heard anybody contest to the public safety. So it is not a question of first or second class citizens what it is, is a legitimate fear of protecting our neighborhood. What I would like to propose is that this not be accepted with that condition number 8 that is in there that, that road goes through.

COUNCIL MEMBERS REPORT

Councilor Boucher – We do have openings on the Planning & Zoning Commission if anyone would like to be involved in city government

Councilor Koski – No report

Councilor Tafs – No report

Councilor Thielen – What upsets me here is not what Mr. Carlson wishes to do at all, I believe he has a right to develop his property as he sees fit and frankly noting the location of this temporary emergency access I could live with it if it is done right and the conditions are appropriate. But what makes me mad about this whole situation is how it has transpired I am flabbergasted; I don't know how else to put it. The process we followed is what really got me going.

Mayor MacDonald – No report

CITY ADMINISTRATOR REPORT

Lynn Lander, City Administrator – No report

DEPARTMENT HEAD REPORTS

Debbie Lund, City Clerk – Absent

Michael Anderson, Chief of Police – No report

Dean Sharpe, City Superintendent – No report

COMMUNICATIONS

Communications 2008-227 through and including 2008-277 were read and placed on file.

Communication 2008-227 from John Klaers, City Planner/Zoning Director to Residents of Woodridge Drive & Terrace Circle regarding Status of Timber Ridge Townhome Expansion Project

Communication 2008-230 from John Klaers, City Planner/Zoning Director to Chairman Archambeau & Planning Commissioners regarding CIDP Application of Timber Ridge LLC for Construction of Four Six Unit Apartment Buildings

Communication 2008-231 from John Klaers, City Planner/Zoning Director to Chairman Archambeau & Planning Commissioners regarding Proposed Amendments to the Zoning Code – Industrial Park

Communication 2008-240 from Scott McEachern, 4188 West Pond Drive to John Klaers regarding Timber Ridge Expansion Project

Communication 2008-251 from US Department of Education to David Drozd, Navy BRAC Program Management regarding US Navy Reserve Center. The US Department of Education has approved the NRRI application to take over the old Naval Reserve.

Communication 2008-254 from Michael Anderson, Chief of Police to Lynn Lander, City Administrator regarding Wal-Mart Donation. Lynn stated it is very rare for the city to receive donations so I would like to thank Wal-Mart for their grant donation of \$700 for the Hermantown canine unit program.

Communication 2008-268 from Mark Lindquist, St. Louis County Planning & Development to Mayor Keith MacDonald regarding Comprehensive Local Management Act

Communication 2008-269 from Kristen & Eric Olson, 4840 Terrace Circle to City Council Members regarding Petition to Appeal Planning & Zoning Decision on Timber Ridge Expansion

Communication 2008-270 from Eric Hansen, 4182 Ridge Circle to City Council Members regarding Timber Ridge Townhome Development

Communication 2008-276 from Erika Johnson, Planning & Zoning Coordinator to Mayor & City Council regarding Proposed Amendment to the Zoning Code – Industrial Park

NEW BUSINESS

Motion made by Councilor Thielen, seconded by Councilor Tafs to refer the Timber Ridge Project to staff for further study and discussion and make recommendation to the City Council. Roll Call: Councilors Boucher, Koski, Tafs, Thielen, Mayor MacDonald, aye. Motion carried.

Councilor Thielen stated I would like to reiterate something that was said in public comment and I remember this very clearly even though it is not in the meeting minutes, but there was a statement made by Mr. Klaers that it was the policy of the City of Hermantown not to extend a road from a residential development into a commercial development that was said back in 2001. I just want it for the record that I heard Mr. Klaers say that.

ACCOUNTS PAYABLE

Vouchers 39439 through and including 396232 in the amount of \$426,447.98 were read.

Motion made by Councilor Thielen, seconded by Councilor Koski to approve general city warrants in the amount of \$426,447.98. Roll Call: Councilors Boucher, Koski, Tafs, Thielen, Mayor MacDonald, aye. Motion carried.

ORDINANCES

2008-05 An Ordinance Amending Section 535.02.11 By Adding A Definition Of Industrial Park

The Second Reading was held on Ordinance 2008-05, An Ordinance Amending Section 535.02.11 By Adding A Definition Of Industrial Park.

Motion made by Councilor Tafs, seconded by Councilor Boucher to adopt Ordinance 2008-05, An Ordinance Amending Section 535.02.11 By Adding A Definition Of Industrial Park. Roll Call: Councilors Boucher, Koski, Tafs, Thielen, Mayor MacDonald, aye. Motion carried.

2008-07 An Ordinance Amending The Fee Schedule For Licenses, Permits, And Fees Which Was Adopted In Ordinance No. 2008-06 And Added To The Hermantown Code Of Ordinances

The First Reading was held on Ordinance 2008-07, An Ordinance Amending The Fee Schedule For Licenses, Permits, And Fees Which Was Adopted In Ordinance No. 2008-06 And Added To The Hermantown Code Of Ordinances.

2008-08 An Ordinance Amending Section 410.03 Of The Hermantown City Code (Pawnbrokers)

The First Reading was held on Ordinance 2008-08, An Ordinance Amending Section 410.03 Of The Hermantown City Code (Pawnbrokers).

2008-09 An Ordinance Amending Section 430.04 And 430.11 Of The Hermantown City Code (Alcoholic Beverages)

The First Reading was held on Ordinance 2008-09, An Ordinance Amending Section 430.04 And 430.11 Of The Hermantown City Code (Alcoholic Beverages).

RESOLUTIONS

2008-62 Resolution Proclaiming July 17th Through July 20th As Hermantown Summerfest XXXVII

Motion made by Councilor Tafs, seconded by Councilor Koski to adopt Resolution 2008-62, Resolution Proclaiming July 17th Through July 20th As Hermantown Summerfest XXXVII. Roll Call: Councilors Boucher, Koski, Tafs, Thielen, Mayor MacDonald, aye. Motion carried.

2008-63 Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver Memorandum Of Understanding With The Federal Bureau Of Prisons, Federal Prison Camp Duluth, Minnesota, St. Louis County Sheriff's Department, Duluth Police Department And Hermantown Police Department

Motion made by Councilor Tafs, seconded by Councilor Koski to adopt Resolution 2008-63, Resolution Authorizing And Directing The Mayor And City Clerk To Execute And Deliver Memorandum Of Understanding With The Federal Bureau Of Prisons, Federal Prison Camp Duluth, Minnesota, St. Louis County Sheriff's Department, Duluth Police Department And Hermantown Police Department. Roll Call: Councilors Boucher, Koski, Tafs, Thielen, Mayor MacDonald, aye. Motion carried.

2008-64 Resolution Authorizing Tony Eugene McNeill To Peddle Within The City Of Hermantown And Imposing Conditions Thereon

Motion made by Councilor Thielen, seconded by Councilor Tafs to table Resolution 2008-64, Resolution Authorizing Tony Eugene McNeill To Peddle Within The City Of Hermantown And Imposing Conditions Thereon for two (2) weeks. Roll Call: Councilors Koski, Tafs, Thielen, Mayor MacDonald, aye. Councilor Boucher, nay. Motion carried.

CITY ATTORNEY

Steve Overom, City Attorney – The award the City received from RC Boheim, it wasn't that many years ago where they were threatening to remove the jurisdiction of the city over its wetlands. It is an incredible, remarkable turn.

You have had issues before where you wanted to get more information on a topic you do have the legal ability to put a moratorium on the issuance of additional permits for a period of up to one year while you study a topic. So with the big picture issues with regard to the Peddler/Solicitor and your desire to find out what the law is now, you could adopt a moratorium on issuing any additional peddlers and solicitor's licenses. Moratorium ordinances go into effect immediately. There is case law on where moratoriums have been effective with regard to applications that are presently pending.

A preview of items that will be coming before you in a couple of weeks are Lynn has negotiated the purchase agreement for wetland credits for the soccer fields; Lauri Walters has developed a set of application forms for the Stormwater Ordinance and there might be additional acquisition for the right-of-way for Loberg Drive.

Mayor MacDonald announced the schedule of meetings for July.

Motion made by Councilor Koski, seconded by Councilor Thielen to recess meeting at 8:18 pm to the closed meeting to discuss a grievance filed by a city employee. Motion carried.

Clerk

ATTEST:

Mayor