

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, JUNE 26, 2023 - 6:00 P.M. - 8150 BARBARA AVENUE**

1. CALL TO ORDER:

The City Council of Inver Grove Heights met in regular session on Monday, June 26, 2023, in person. Mayor Dietrich called the meeting to order at 6:00 p.m. The Pledge of Allegiance was recited.

2. ROLL CALL:

Present In-Person: Mayor Dietrich; Council Members: Murphy, Gliva, T’Kach, Scales; City Administrator Wilson, City Attorney McCauley Nason, City Clerk Kiernan, Community Development Director Rand, Public Works Director Connolly, City Engineer Merchlewicz, Police Chief Chiodo, Associate Planner Botten, City Planner Hunting, Communications Manager Looze, Technology Manager Gade, Fire Chief Thill, Parks and Recreation Director Lares

3. PRESENTATIONS:

4. CONSENT AGENDA:

A. Minutes of the June 5, 2023 City Council Work Session

B. Minutes of the June 12, 2023 City Council Meeting

C. Approval of Disbursements **Resolution 2023-142**

D. Personnel Actions

E. Resolutions 2023-143 & 2023-144 Accepting Contract Work, Approving Final Change Order and Payment, and Closing City Project No. 2021-11 - Trunk Storm Extension for Landlocked Basin JP-1 (M/I Homes)

F. Resolution 2023-145 Adding VMC, LLC to the City's Professional Engineering Services Consulting Pool

G. Resolution 2023-146 Amending 2023 City Fee Schedule

H. Exempt Gambling Permit for IGH Best Foundation

I. Compliance Agreement with the MN Department of Health for City Project No. 2023-03 - Water Treatment Plant Rehabilitation Improvements **Resolution 2023-147**

J. Contract with Excel AV Group for Council Chambers Audio Video Replacement

K. Resolution 2023-148 Accepting Donation for Use of Boat Slip

L. Resolution 2023-149 Accepting Updated Joint Powers Agreement with Dakota County Electronic Crimes Task Force

Councilmember Murphy requested pulling Agenda Item 4I.

Motion by Scales, second by Gliva, to approve the Consent Agenda with exception to Agenda Item 4I.

Ayes: 5

Nays: 0 Motion carried.

Agenda Item 4I. Compliance Agreement with the MN Department of Health for City Project No. 2023-03 - Water Treatment Plant Rehabilitation Improvements. Resolution 2023-147

Councilmember Murphy questioned if there has been a response from the Minnesota Department of Health regarding the difference in measurements from the city's independent laboratory measurements of the water level and the Minnesota Department of Health's readings.

Public Works Director Brian Connolly addressed the question stating the Department of Health's testing values have been consistently higher for radium than the independent lab tests taken by the city. The Department of Health has not offered any explanation for this other than there is variability in testing, which is normal, and that the variability seen here has been higher and outside of their typical realm. That has also been noted by them for several other communities. As the Department of Health takes tests, the city takes companion tests which are sent to an independent lab certified by the Department of Health. Once the results are received by the city, they are shared with the Department of Health. There have been 2-3 companion samples sent in for comparison. This has not been enough for the Department of Health to give any feedback. Nothing has officially/unofficially been received by the Department of Health regarding why those differences continue to exist in the testing results.

Councilmember Murphy asked if the companion tests have been consistently higher or lower.

Public Works Director Connolly replied they have been consistently lower, which is good. The Department of Health is aware there is a discrepancy as this has not been the only community that has exhibited it. No explanation has been provided to the public that indicates what the reasoning may be or what they are doing to continue to further their exploration of it.

Motion by Murphy, second by T'Kach, to approve Agenda Item 4I. Compliance Agreement with the MN Department of Health for City Project No. 2023-03 - Water Treatment Plant Rehabilitation Improvements. Resolution 2023-147

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC HEARING:

6. REGULAR BUSINESS:

A. Rental Housing Licenses

Community Development Director Heather Rand presented applications for 2 rental housing units. Staff in community development and the police department have reviewed them, found them to be in order, and recommend approval. They are in order of rental address, property owner, and property manager:

1470 Upper 55th St E., AA Alta Vista, Inc., Roseville, MN; Paul Nelson, New Richmond, WI
8799 Branson Dr., Carl Brust Midlothian, TX; Andrew Kern, Woodbury, MN

Motion by T'Kach, second by Scales, to approve the rental housing licenses as presented.

Ayes: 5

Nays: 0 Motion carried.

B. Third Reading of Ordinance Amending City Code Related to Alcoholic Beverages in City Parks and Resolution Approving Summary Publication. Resolution 2023-150

Parks and Recreation Director Adam Lares presented the Third Reading of an Ordinance Amending City Code Related to Alcoholic Beverages in City Parks:

South Valley and Rock Island Swing Bridge Park:

Removed:

- 3.2 malt liquor language
- 150 feet from the park shelter

Added:

- Rock Island Swing Bridge Park Shelter
- 16% alcohol by volume

- Original container
- Single serve
- No more than 16 ounces per serving
- Must be with an event sponsored permit/applicant at both locations
- Consumption must be contained to the shelter area

Rich Valley Athletic Complex:

Removed:

- 3.2 malt liquor language
- Removal of the word "park"

Added:

- Must be in conjunction with an event/permit in which the sponsor would have to obtain a permit from the city for any event and be responsible for possessing and identifying who is able to consume the alcoholic beverage.
- 16% alcohol by volume
- Original container
- Single serve
- No more than 16 ounces
- Event sponsor is required to identify guest age and who is eligible to consume alcohol
- Contained to the Athletic Complex and the parking lot
- Alcoholic beverages will not be allowed at any youth-focused events or tournaments

A new section of the Ordinance was added:

- Sell
- Must obtain one of the following:
 - On-sale liquor intoxicating liquor license
 - Temporary on-sale 3.2 liquor license
 - One-day consumption
- Can be sold in non-glass or plastic cups; not required to be in original containers
- Alcoholic beverages will not be allowed at any youth-focused events or tournaments

Requested Action:

- Council is asked to consider a third reading and final adoption of the proposed ordinance amendment
- If the ordinance is adopted, Council is asked to approve the summary publication resolution

Recommendations:

- On May 10, 2023, the Parks and Recreation Advisory Commission approved by unanimous vote, to send the recommendation before the City Council.
- Staff recommends approval of the third reading of the proposed ordinance and final adoption.

Motion by Scales, second by Gliva, to approve the Third Reading of Ordinance Amending City Code Related to Alcoholic Beverages in City Parks and Resolution 2023-150 Approving Summary Publication.

Ayes: 5

Nays: 0 Motion carried.

C. Consider Variances for Minimum Lot Width and Accessory Structure, 6938 Booth Avenue. Resolutions 2023-151 & 2023-152

City Planner Allan Hunting discussed two variances; one is for lot width, the second for an accessory structure on a lot. The property is located at 6938 Booth Avenue. 70th is on the south, Blaine is on the west. Booth Avenue is a private road. Background:

- Property owner owns two lots, a west and east lot.
- The east lot is smaller and does not have any frontage on any type of road.
- One parcel contains the house. The other parcel contains a shed, no house.
- Proposing to adjust the lot line to keep two lots but change the configuration to a north and south lot.
- The south lot would have frontage on the private road but needs a variance as it does not meet the 85-foot lot width. It does meet the 70% standard.
- There is a shed in the southeast corner of the property. Code requires there to be a house on the property before having a shed.
- Unsure when the shed was constructed.
- Council would need to address the variance to allow the shed to remain on the property before a house would eventually be constructed.
- Granting the lot width variance allows reasonable use of the parcel that is restricted due to lot size and lack of road frontage.
- Shed already exists on the property. The variance needs to be addressed to shift the line and create the smaller width.

Action Requested:

- Council is asked to take action on two variances:
 - To allow a lot with narrow lot frontage
 - To allow a shed on a lot prior to having a principal structure
- The Planning Commission approved and recommended approval of the lot width variance but did not find a practical difficulty with the shed and recommended denial.
- If the Council wishes to deny the shed variance, rationale could be used that the applicant failed to establish there are practical difficulties in complying with zoning, the plight of the landowner is not due to circumstances unique to the property, and variances not in keeping with the spirit and intent of the zoning ordinance.
- If denying the shed, the timeline for removal could be tied to the lot width variance.
 - If the lot width variance is approved, the applicant would still have to apply for an administrative lot boundary adjustment which is approved by staff.
 - A condition could be that it is not approved by staff until the shed is removed.
 - Another option could be to set a specific number of days or a date.

Brett Phares, 6938 Booth, stated the shed has been there for 25 years. It is illegal as it stands now as it is on a separate piece of property without a house on it. He keeps his mowing equipment inside the shed. He would get rid of it if he had to but would like to keep his equipment in it until he sells the lot, then he would move it. He mentioned this was not their fault, it was not disclosed to them that there were two lots when they bought the house. He was unsure why it was surveyed the way it was; it would have to be part of the city who did it. He asked for leeway and that it be grandfathered in until the parcel is sold. The shed has been there for 25 years and has not been an issue until this. He said he does not understand why they cannot be a little more forgiving on that.

Councilmember T’Kach asked for more information on the survey being an issue with the city, or the city doing the survey.

Mr. Phares replied that his wife did some checking and was told that some lots were surveyed that way. They were mistakes and were not supposed to happen that way. When he purchased the house, they were never told they were purchasing two separate pieces of property.

Councilmember T’Kach commented that the title company likely messed up.

Mr. Phares agreed. He said they found out when they paid their first taxes.

Mayor Dietrich said she could see how this could be a unique situation as it does not require a permit. Whoever put it on there, she could see where a resident would not know that anyone needs to be notified since there was no permit required. She asked what the sequence of violations would be for having the shed.

City Planner Hunting replied someone would call the department stating there appears to be a shed illegally on a lot without a house. The Code Enforcement Officer would investigate and pursue the action of notifying them that the shed would have to be moved because it is violating a section of the Code being that it does not have a principal structure. He agreed the shed has been there for a long time. The city has always reacted to complaints and has not gone out and done its own investigation. The shed would have been there for several years, and nobody would have known about it.

Mayor Dietrich asked what the first violation would be and if they would be cited and have a certain number of days to remove it or if there would be a monetary penalty.

City Planner Hunting replied a letter is sent to the landowner that they are in violation. They would be given a certain number of days to remove. Code Enforcement would work with the applicant to work out the number of days.

Mayor Dietrich asked if there has been a complaint about the shed.

City Planner Hunting replied not to his knowledge. This came to staff's attention as they went through the request.

Mayor Dietrich mentioned she drove out there today and did not see the shed from the road.

Councilmember Murphy asked what the city's involvement was in surveying the land and if it was done by the county or the city.

City Planner Hunting responded the city would not have been surveying any of the land. It would have been done by landowners who created the lots. Staff cannot find when these were created, there is no record. The city did not have any involvement in creating these lots.

Councilmember Murphy commented that the county must have known as the resident found out when the tax bill arrived.

City Planner Hunting replied the county must have known with regards to the tax statements.

Councilmember Murphy said he was trying to think of the practical difficulty. He asked who dropped the ball on this if it was the title company.

City Planner Hunting replied he was not sure. He was not sure why that was not disclosed in the original sale.

Councilmember Murphy asked if it was possible to tie the shed removal to the administrative approval of a potential change in the lot line. He asked if it was possible to put a condition on the sale of the lot that the shed must be removed.

City Attorney Bridget McCauley Nason replied as a condition of approval of the first variance with the lot creation smaller than mandatory minimum lot size, the Council could add a condition that prior to finalization of the administrative lot line adjustment process, the shed needs to be removed. An alternative condition could be prior to conveyance of the newly created lot to any third party, the shed would need to be removed.

Councilmember Murphy asked the applicant if that helps and if the goal was to sell the lot.

Mr. Phares replied it does help; the goal is to sell the lot. He mentioned the shed was \$4,000. He would move or get rid of it. He questioned if a property buyer would want to buy the property and the shed. That would not be able to happen because it would not be legal. He said he was satisfied to be able to keep the shed until he sells the parcel.

Councilmember T'Kach asked if there were immediate plans to put the lot on the market.

Mr. Phares replied yes, he still has some steps to go through with the county, it could be a while.

Councilmember T’Kach asked if there was any sense in putting a two- or three-year stipulation on it or that it at least has to go on the market.

Mr. Phares replied it will go on the market; he does not need the land.

Mayor Dietrich asked if a time limit was needed.

City Attorney McCauley Nason replied there does not need to be. A specific timeframe could be placed or make the shed removal based upon when administrative approval is approved or prior to conveyance to a third party. The variance approval resolution indicates the variance shall become void 2 years after its granted unless the use is made. If the Council approves the variance for lot width, it starts a clock of 2 years for the applicant to go through and finalize the process with city and the county for the lot line adjustment.

Motion by T’Kach to approve the variance for lot width per the staff report recommendation.

City Attorney Nason stated there were two separate variance applications and two separate resolutions. The first relates to lot width. The question is if the Council wanted to add, as a condition of approval of the lot width variance resolution, a requirement that the shed be removed before a date certain, the conveyance to a third party, or completion of the administrative lot line position. There is a second resolution related to the shed removal itself. There is a request on the table to keep the shed, notwithstanding the fact that it would be on a new lot that does not have a primary structure. The Council must act on both applications.

Motion by T’Kach to allow the variance for lot width with a contingency date certain for two years.

Councilmember Gliva asked if they were not putting in removal.

City Attorney McCauley Nason replied that she believed the motion was to require removal within two years from the date of approval of this variance. Condition 3 would be that the shed on that lot be removed within two years from the date of adoption of this resolution.

Councilmember Scales asked Councilmember T’Kach if she would consider changing the shed removal on conveyance of the property to another person.

Councilmember T’Kach replied that would be fine. It forces the conveyance, the owner to remove it. She said she was thinking if the new owner were to build a house quickly, they could keep the shed without having to knock it down. For example, if Mr. Phares sells it within three months and someone buys it and starts construction on a house, they would have a year or more to build the house without having to remove the shed.

Councilmember Scales asked if that would stay with the current owner or if it would go to the new owner with the timeline.

City Attorney McCauley Nason responded if the lot is split as proposed, the shed would be on the new lot to be developed by a third-party purchaser. What the purchaser and seller does relating to the shed is up to them except that Council has the ability to require its removal at any reasonable date as a condition of approval of the lot width variance.

Councilmember T’Kach said otherwise they are just wasting a shed unless it would sit there vacant for the next five years and go into disrepair.

Councilmember Murphy asked if there was already two years built into the agreement.

City Attorney McCauley Nason responded there are two years built into the agreement as they need to complete the lot split within two years or else the approval becomes void. They do not

have to sell it within two years, they would have to split the lot within two years. It is possible they could complete the lot split and not sell it within the timeframe anticipated.

Councilmember Gliva questioned if the shed would stay if nobody purchased the second lot, if no stipulation was put on it.

City Attorney McCauley Nason replied as soon as they split the lot, the shed is not allowed under the code because it is an accessory structure on a lot without a primary structure. It would not become any more legal than it is today once completing the lot split. The question is if wanting to allow an amount of time for removal of the shed and if wanting to include that condition as a condition of the variance approval.

Councilmember Murphy said he thought they were allowing the resident to keep the shed until it's conveyed to a third party.

City Attorney McCauley Nason replied this was different. There could be a second for that motion. If there is not a second on the motion, the motion would die. A different motion could be made with a different condition.

Motion by Murphy, second by Scales, to allow rearranging the lots, keeping the shed until it is conveyed to a third party, and staff's administrative approval for property located at 6938 Booth Avenue. Resolution 2023-151

Councilmember T'Kach asked if the motion on the table was once the lot is conveyed the shed has to be removed from the property by the new owner. They may remove the shed, build a home, and put another shed up.

City Attorney McCauley Nason clarified that the motion and second was to approve the resolution in the packet approving the lot width variance with a third condition that the shed must be removed prior to the sale of the lot to a third party.

Ayes: 4

Nays: 1 (T'Kach) Motion carried.

City Attorney McCauley Nason stated there is a resolution of denial of the variance request for the shed to be kept on the property. There is language for the resolution in the Council packets on Page 140. There is a blank for where practical difficulty or uniqueness was not found. She stated that City Planner Hunting indicated some language in his presentation that the Council could adopt regarding why there was not a real practical difficulty to allow the variance.

Motion by Scales, second by Dietrich, to deny the variance based on the wording used by City Planner Hunting for property located at 6938 Booth Avenue. Resolution 2023-152

Ayes: 5

Nays: 0 Motion carried.

D. Consider Request for a Variance from Accessory Structure Size Limitations, 5850 Asher Avenue. Resolution 2023-153

Associate Planner Heather Botten discussed property located at the end of Asher Avenue. It is a dead-end road zoned R-1B, single family residential district. The School District owns property to the north and east, there are single family homes to the west and south of this lot.

Action Requested:

- A variance to allow a 1,365 square foot detached accessory building whereas 1,000 square feet is the maximum size allowed.
- The maximum square footage is the maximum size allowed in all R-1 districts and all urban lots.

This is an after the fact request. The structure has already been built without a permit. It is located behind the existing home, is in compliance with exterior building material requirements and setbacks.

- Property may be considered unique because the house does not have an attached garage. Based on the layout of the house and lot size, it is not conducive to add on an attached garage.
- Code does not allow for flexibility for properties that do not have an attached garage to allow them to have a larger detached building or to have more than one detached accessory building.
 - Must follow the same requirements that a different lot would have if they have an attached garage. Those properties could also have a detached structure.
- In this case, they are allowed the one structure of up to 1,000 square feet maximum.

City Council has reviewed the size of accessory structures over the years. The size allowance was changed for structures in larger lots and rural areas. Size allowance has not been changed for the urban district; this is to control massing and size of the structures.

- Staff recommends denial of the variance request based on the following findings:
 - Approval could set a precedent for other large accessory structure size requests.
 - Denying does not preclude the applicant from reasonable use of the property. Can still have the 1,000 square foot maximum size.
 - Staff believes the facts presented do not satisfy the variance criteria and the size could be considered a convenience to the applicant and not a practical difficulty.

The Planning Commission reviewed this request on June 6th, 2023 at their public hearing. They also recommend denial based on the lack of a practical difficulty.

There are two resolutions included denial and approval. If approving, the Council would need to state a practical difficulty. There are also three conditions listed that would need to be incorporated.

Mayor Dietrich referenced a house to the south with a large accessory building and asked what their practical difficulty was.

Associate Planner Botten replied that was approved in 2004 with reasons stated by the Council for practical difficulty being a hardship on the lot, lot configuration, open space abutting it from the school, size request was a small request, and location of the garage exceeds setbacks for what a detached structure would be for a 1,000 square foot structure.

Councilmember Scales requested the size of the structure.

Associate Planner Botten replied inside measurements were 1,088. There is also an attached garage. She said in the applicant's narrative, he may reference having more square footage than what he has but that includes the attached structure along with the detached structure.

Mayor Dietrich asked if the school abuts this property.

Associate Planner Botten replied yes

Mayor Dietrich questioned if that could be a practical difficulty, if it goes into the lot configuration.

Associate Planner Botten replied it is unique. There are not a lot of properties that have school districts on two sides. It is up to the Council if it is a practical difficulty.

She replied about the size and how it was limited with the layout stating the house was built in the late 70's. There was a tuck under garage that was converted into living space prior to the current resident owning it. With the way the property is laid out, there is no room to add on an attached garage to either side of the house.

Councilmember Gliva asked how they got to a point of having the garage built and in existence.

Associate Planner Botten replied the applicant can address that question.

Councilmember Murphy asked about the practical difficulty being an open field.

Associate Planner Botten replied the approval to the south in 2004 references the open space from the school. There are greater setbacks between where the school is located compared to this one. The Council thought that to be uniqueness at that time. In 2004 they looked at a hardship versus a practical difficulty. It was different language in the variance criteria. That was an item listed they thought was unique.

- Mayor Dietrich asked the City Attorney if that would meet requirements for a practical difficulty. City Attorney McCauley Nason replied the language of the statute changed between 2004 and today. The statute in 2004 referenced a hardship situation and did not use the words practical difficulty. The standard today is that uniqueness is one factor. Practical difficulty is what the Council would have to find. If the property is proposed to be used in a reasonable manner that is not permitted by the zoning ordinance, the variance, if granted, will not alter the essential character of the locality. The plight of the landowner is due to circumstances unique to the property, not caused by the landowner themselves. For example, this landowner did not do the conversion of the structure to take the garage and turn it into living space. That is now something that cannot be added onto with the garage. Those are criteria the Council would have to look at to determine if there is a practical difficulty. She does not see the fact that it backs up to a school as being relevant in this determination of whether or not there is a practical difficulty that would justify a deviation from the zoning ordinance for the detached structure.
- Mayor Dietrich asked if there were any characteristics that would meet the practical difficulty in 2023. City Attorney McCauley Nason replied the Council could find it to be a reasonable use of the property that is not permitted by the zoning ordinance, it will not alter the essential character of the locality. Circumstances unique to the property not created by the landowner include the renovations done to the house that prohibit the ability to add on a garage so the only thing that could be done is to build a separate garage. Council could look at those factors for a practical difficulty. The size is a different question.

Councilmember Murphy questioned if a practical difficulty could be created by a previous owner. City Attorney McCauley Nason replied yes, the statute says the unique circumstances of the property cannot be created by the landowner. You cannot make your own problem. Buying the property and the problem already existing is different than doing something to the property.

Councilmember T'Kach asked if this owner built the building.

Associate Planner Botten replied yes. This owner did not fill in the once tucked under garage. Councilmember T'Kach questioned if the issue was the 1,000 feet versus 1,300 feet, not whether or not there is a structure at all. She asked if the applicant would need to take 300 feet off the structure if the Council did not approve this request.

Associate Planner Botten replied yes, the applicant would have to figure out how to get 300 feet off the existing structure or take it down and start over. The total would be 365 square feet. Ryan Rechtzigel, 5850 Asher Avenue, stated when he bought the house it was horrendous. It was moldy, the ceiling was falling down, had cedar shakes, the garage was rotten. He bought the house because he was young and did not know what he was getting himself into. Now two years later, he has learned a lot along the way. He found someone named Jeff R. and hired him to build the garage. The concrete work and garage were done. He explored every option he could to attach a garage to his house, the options were not feasible, so he decided to go with a detached structure. He said he spoke with his neighbor abutting to the south regarding his structure and was told it was 1,152 square feet. He said he wanted to be able to park his truck, his fiancée's car, a couple of other cars, and tools. The only way to do it was to build it behind the house. He understands it's bigger than it should have been, he should have done his due diligence. He said he is in a bad position and would like to work with the city on this. It cost a lot of money to build. He was unsure of how to remove frost footings and was unable to financially do it at this time. He would need a timeframe to determine finances.

Councilmember Scales asked if permits were pulled on all the work done on the house.

Mr. Rechtzigel replied that Jeff came in and squared off the kitchen. Two months later he built the garage. Nothing moved much from the inside of the home. He has an electrical permit for the house, he did not have a permit for the kitchen. He said he has put a lot of money above the cost of the house. It has been a learning lesson; it is his first home. If needing to move the building smaller he would figure it out but needed time.

Councilmember Scales asked if he planned, at any time, to attach a garage to the house.

Mr. Rechtzigel replied there is no way to do it. Attaching something to the back of the house would cover up the windows in the bedrooms and bathrooms. From an aerial view, the building looks larger than it is, it has larger overhangs.

Councilmember Scales mentioned that Mr. Rechtzigel has taken the punishment from the Planning Commission and likely some from the Council for the after the fact variance. He appreciated the way he has handled this.

Mr. Rechtzigel responded that he wants to work with the city. If he has to do something, he asked to grant him some time to do it.

Councilmember Scales said Mr. Rechtzigel has a couple of neighbors in his corner. He received phone calls from them. The neighbors like what he has done to the house. He said he has driven by to see the home; he has done a beautiful job with it.

Councilmember Murphy referenced a building in the back.

Mr. Rechtzigel replied when he bought the house, he tore the garage down because it was in poor condition and would have fallen down. It was dangerous. The structure is gone. It was temporary to store materials while building. The area where the building was has been graded. He was planning on having grass soon, but the weather has been difficult, so he had topsoil brought in. He said he took the time to clean out both sides of the school's fence. There was buckthorn, he got rid of old debris left by the previous owner.

Councilmember Murphy said he was looking for a way to help. He asked about the individual who built the garage and if they had knowledge of construction.

Mr. Rechtzigel replied Luke Steenberg and Steve Johnson came to the house and asked about it. He said he thought there was a permit for it, and they ended up talking. He was asked to open the garage door. He said he was told it looked like whoever built it knew what they were doing. It has frost footings, is 12 inch on center, has 2x6 studs, and 24 inch on center trusses. It is not insulated but has a hot roof. The entire ceiling of the garage has 7 inches of spray foam. If needing to size the garage down, he would have to figure out how to cut that back.

Councilmember Scales asked if a permit was pulled for the insulation.

Mr. Rechtzigel replied no. It was the same guy whose brother owned a spray foam rig and wanted to spray the ceiling.

Councilmember Scales mentioned he does not like penalizing people who do not have attached garages. You can build very large, attached garages without needing anything other than a permit. He does not like that they limit the size of buildings. Someone who has a 3-car attached garage can also have a 1,000 square foot structure. He said he does not like after the fact things. He appreciated the honesty the applicant has had with the discussion. He said he would be willing to move forward with the hardship being the lot width; it is not possible to build an attached garage.

Councilmember Murphy said if a resident can build as large of an attached garage, there are other rules that need to be followed such as impervious surface.

Mayor Dietrich said she does not like an after the fact and setting a precedent. She asked if there was any monetary violation or something in place that could be enacted.

Associate Planner Botten replied the applicant still needs a permit. A double fee could be done for the permit for an after the fact request. It would not be for the variance but for the building.

Mayor Dietrich said that seemed reasonable.

Councilmember Murphy asked what the fee was.

Associate Planner Botten replied it is based on valuation of the building. She was unsure what the fee was offhand.

Mayor Dietrich stated the request is to consider a variance to allow 1,365 square feet whereas 1,000 square feet is the maximum allowed. It is a 60-day deadline, a 3/5 vote.

Motion by Scales to approve a variance to allow 1,365 square feet whereas 1,000 square feet is the maximum allowed with a 60-day deadline.

Councilmember Scales said the precedence side could be addressed by making the practical difficulty the width of the lot, the inability to build an attached garage. He felt it relieves some of the pressure they are feeling about setting a precedent. It is specific to this lot based on this project.

Mayor Dietrich asked Councilmember Scales if he would entertain what was said about the permit fee being doubled.

Councilmember Scales said he has no issue with that suggestion.

Motion by Scales, second by Dietrich, to approve a variance to allow 1,365 square feet whereas 1,000 square feet is the maximum allowed for property located at 5850 Asher Avenue. It is a 60-day deadline with the lot width being the practical difficulty. The permit fee would be doubled. Resolution 2023-153

Councilmember Murphy questioned if they were worried about other residents with a tuck under garage that remodel the garage and then build something bigger. He believes they need to protect the city and residents from these types of things. He said he is having a hard time with this.

Councilmember Scales said he did not believe that would be possible because the landowner would have created their own issue. If a landowner filled in their tuck under or made their garage living space, they would be unable to do this because it would have been created by the landowner.

City Attorney McCauley Nason said if creating their own practical difficulty then you would not qualify for a variance. The difference here is that it is not just the structure, it is the size of the structure. The size is something else for the Council to consider.

Councilmember Murphy said the next owner of the home did not create the practical difficulty so they could build something bigger.

City Attorney McCauley Nason replied it was a matter of interpretation of landowner. The statute says landowner. It does not state current or prior. As far as who created the practical difficulty, it would be if they created the problem themselves. If selling the home, the next landowner would have to prove that they did not create the uniqueness to the land that is creating the need for the variance.

Councilmember T'Kach stated the need to look at redoing these ordinances. She said there is a full work plan for the year, but they have received several of these type of requests in the last two months.

Ayes: 5

Nays: 0 Motion carried.

E. Consider a Comprehensive Plan Amendment for the Southeast Corner of Buckley Way and Buckley Circle. Resolution 2023-154

City Planner Allan Hunting presented a comprehensive plan request for property located at Buckley Way and Buckley Circle. The property is located west of Cahill Avenue, south of 65th Street, currently guided mixed use. It is a mix of residential and commercial type uses. The request is to change it to medium residential, 8-12 units per acre. The thought is to do a 10-unit townhome development, two 5-unit buildings on either side of an access road that would go out onto Buckley Circle. The property is .92 acres. In the 2040 Comprehensive Plan, the large area of 65th and Cahill Avenue was reguided to a mixed use in anticipation of future redevelopment of a PUD with walkability and city center features. It is something that would take time to occur, likely several years.

Background: Rationale For:

- Currently has mixed density housing to the south and southwest. The area is guided MDR.
- Separated from Cahill. Is not a prime area for commercial.
- Because some of the lots have an old landfill with contamination, could have limitations if a commercial operator was trying to get a loan. May have difficulty or extra costs involved.

Rationale Against:

- Property is zoned B-3. Council has been reluctant to want to change commercially guided/zoned property to residential use in hopes of retaining for potential future commercial.
- Cahill/65th Street area is anticipated to develop into a mix of residential/commercial. This piece is smaller and will not develop into some type of mix. Changing to residential takes away the opportunity for future commercial development.

Action Requested:

- Take action on the Comprehensive Plan Amendment regarding the change from mixed use to medium density.
- Two resolutions are included in the Council packets. One to approve, one to deny.
- Planning Commission recommended approval 5/0. They felt this made sense to change since there is some residential in the area.
- If the comprehensive plan amendment is approved, the applicant would need to come back for rezoning, platting, and a conditional use permit. There will be a review of site plan details and further public notice at that time.

At this time, the Council would only be addressing if it makes sense to change from a mix of commercial/residential to straight residential.

Councilmember T'Kach said if approved for a recommended land use change, she questioned if it does not change until the site plan. She asked what happens when going through site planning, the market goes south, nothing gets built, and this goes back up for sale. She asked if the comprehensive plan change would be stuck with this after the site plan approval.

City Planner Hunting responded yes. It is conditioned upon the comprehensive plan approval of a rezoning and preliminary plat. In this case it would be a CUP site plan. The Council could approve but there is no guarantee that a development would occur. The developer could do final approval and for whatever reason, choose not to do the project. The record will have changed and there would be a recorded approved plan in place. There would be limitations on the conditional use permit that would have to be used within two years of approval. It would become effective if Council approves the zoning and a site plan. If not, it falls back to the mixed-use designation and there will have been no change to the Comprehensive Plan. Someone else would have to come in and reapply for the same application.

Councilmember T'Kach asked where things would be at if the applicant gets site approval but does not build in the two-year time frame.

City Planner Hunting replied the code allows the applicant to apply for an extension. If they do not, the CUP lapses and is no longer valid. The rezoning and plat would still be in place, the conditional use permit (site plan approval) would become null and void. Someone would have to reapply for the same thing or start over.

Ilya Zubarev, 17218 Finch Path, Farmington, provided the following via presentation:

- Vacant since 1971.
- Current landowner has been trying to sell it for over 20 years.
- Priced below market value for that time.
 - There is another piece of land for sale .96 acres, zoned the same way, going for \$85,000.
- MLS shows 7 years of recent history:
 - 32 status changes. Means a change every 2.5 months over the last 7 years.

He said the obvious question is why the land has not been purchased or developed on for so long. He displayed an aerial photograph from 1966. An adjacent area was the Rubbish Ranch Dump Site in the 1950's and 1960's. It included some section of the property. After the dump site closed, any property associated with it was marked in the U.S. Environmental Protection archives as a possible "brownfield," meaning it could potentially be contaminated with something that may or may not be hazardous. He displayed an aerial photograph from 1974 stating the Rubbish Ranch closed in 1971 when landfill regulations came around. He said a business would typically use an SBA Loan (Small Business Association); they have favorable loan terms, can get up to \$5 million dollars, and guarantee up to 85% of that loan. A conventional loan goes up to approximately \$720,000. The difficult part is that the SBA has specific regulations about environmental restrictions and brownfields. They will not finance anything listed in the EPA as a brownfield. No business would be able to buy the land. He displayed a photo from 2005 depicting where core drills were sampled. Waste was found in many locations. He said their property was not tested at that time. The property has been left on the EPA registry because there is a higher likelihood that it is contaminated.

The county did more testing such as 25 deep core drills, surface soil testing, and vapor testing. Everything came out safe and clean with results below what is set by the Minnesota Pollution Control Agency. SBA lenders still will not touch it, it is still considered high risk. He said he was unsure why and did some checking. He found that the SBA lender is still on the hook for anything wrong with the land. The government guarantee is more for things covered by a business going under. The lender still does not want to fund it, it would take an SBA appeal process. With COVID and businesses going under, it creates an unnecessary burden for the landowner.

He said they are not the landowners; they have a purchase agreement that is contingent on this passing. The current landowner is still paying taxes. The business guidance does not work in this area due to the unfortunate history of the land. The area has businesses and residential townhomes around it. This would not be out of character for the area.

He shared that they are trying to build their own little neighborhood where they would live next door to their loved ones, family, and friends. They do not qualify for SBA lending, everything would be on their own names, they would be living on the property. The initial build consists of the first three units for his wife and himself, his mother and stepfather, the third would be his brother. The plan is to expand in phases over the next several years and have more family and friends living there. They do not plan to sell the units, they plan to keep them, want to live in them.

He said at the Planning Commission meeting, a person named Jacob was concerned about the façade, how it was facing Buckley Way, and would be more of a backyard type of look. He said he flipped it around to have the more aesthetic façade facing that way. He likes green energy and wanted to do carbon zero and net energy use zero plan, that is why the roofs are monopitched facing south. Carbon zero means they do not want to use any natural gas or fuels on the property, everything would be electric. The entire roof would be covered by solar shingles to try to get all energy from the sun to run

the place. He said there were two people at the Planning Commission meeting who lived in the townhomes nearby that were concerned about their view. He said he would have a berm on the property. From 30 feet away a person would see a 17-foot visible façade. The people were also concerned about it looking like the rest of the neighborhood. He would use the same type of exterior; they are not married to any type of exterior design.

He discussed the following foreseeable questions and concerns:

- Is there a housing need. He said he was quoting Community Development Director Heather Rand who stated that Dakota County did a study recently where they called for over 900 more units. There was a housing development with 152 units that filled up almost immediately. There seems to be a need.
- Why not build higher density. To build something bigger, an SBA loan is needed. He is not interested in apartments.
- Why here. He said they have looked elsewhere. This land has been a diamond in the rough to them. Others were far too big, too expensive.
- Parking. There would be four parking spaces per unit. The current plan has 8 more communal parking spaces.
- Concerns about renting. He said they hope to always have friends and family but that may not always be realistic. They would go through a reasonable vetting process to find renters to move in. If surrounding neighbors have concerns or an issue with a renter, he would be the first unit and would handle it personally.
- The comprehensive plan should not be changed. He quoted the Planning Commission's Chair, Liz Niemioja, stating the Comprehensive Plan is a living breathing document, it changes regularly.

He stated they would like the comprehensive plan to be changed to allow them to build their dream here.

Councilmember Murphy asked how they would build two and then stop, build two more and then stop. He asked what that would look like to the community.

Mr. Zubarev replied they would start with the first three, then add two to it, and then do more on the other side. It is a financial necessity; they can only get so much of a loan. It would be to build, wait a couple of years, build, wait a couple of years. Structurally, he just determined the layout along with an architect. The exterior of one of the interior homes would have a fire rated wall; they are still working to determine how to do this.

Councilmember Murphy asked if the exterior wall would be finished with the appearance to change.

Mr. Zubarev replied yes. Finished it would be insulated with siding to match the rest of the building. They are planning it to be able to take the siding and insulation wrap off. There would be another wall that goes right against it.

Councilmember T'Kach asked what the impervious surface was and if there was too much parking on site.

City Planner Hunting replied he did not know the numbers off hand. It would have to comply with impervious surface standards.

Mr. Zubarev replied the impervious surface for R-3B is 40%. He has already removed a couple of parking spaces to meet the restriction.

Councilmember Gliva asked if there was a timeline from start to completion.

Mr. Zubarev replied assuming this passes today, they would be sure they would be buying the land. He has civil engineers lined up to survey, which could be 2-3 weeks. He would come back before the Council for permits and platting which would take 60-90 days. They estimate to break ground in October assuming the Met Council does not take 90 days. He expects about

two years between the finish of one and the start of the next. He expects three phases and would be done in six years.

Councilmember T'Kach asked if these would all be rentals. She asked if his unit would be owner occupied as a separate entity or if his would also be a rental.

Mr. Zubarev replied in a legal sense it would be a self-rental, they would be living in one of the units. The others would be rented out to family and friends. They do not want to have them sold off to others in the event others would sell. They were hoping to hold onto all of them indefinitely.

City Clerk Rebecca Kiernan stated there were two letters to be included into the public record. The first is from Katie Gerten and family, which owns Gertens Farm Market. The second is from Elizabeth Marschall, 6640 Buckley Circle.

Motion by T'Kach, second by Gliva, to add the two items of correspondence into the record as stated.

Ayes: 5

Nays: 0 Motion carried.

Pastor Isaac K., 137 Edison, stated he has known the couple for a very long time. If there was anyone that could actually get things accomplished, it would be Ilya and Natasha. They are focused and driven. He knows they are a tight knit family. He said he does development on the North Shore; this makes a lot of sense. The area has been sitting there for a long time, it looks like a great place to have townhomes. It is not where he would put a business. He commented this would build a good community because they serve their community well. This takes a piece of land and makes it useful. Rog B., 28 Cutler Street, St. Paul, Minnesota, stated he believes Ilya and Natasha would be a great addition to any community. He has lived with both for three years. They are both very driven, focused, and are very good at planning things. He commented that the land is underused, this would be a chance to make good use of it. He said he would be interested in moving into this property.

Councilmember Murphy said he does not like giving up any land currently zoned for business development. He understands the comprehensive plan is a living breathing document, he does not believe that it needs to change as much as it does. He said this plan makes a lot of sense; it fits well into the area. He said he believes there are other business locations that would be developed sooner than this might be if the Council does not change the Comprehensive Plan. He said he is in favor of the comprehensive plan change.

Councilmember Scales said he agrees a little. When a lot of the development was done on Cahill in the 80's, that lot was for sale. It has been sitting for sale for more like 40 years. There were a lot of people that had a lot of ideas for the land that fell apart. He said he has given up the idea of commercial or business showing up there. If it has not happened in 40 years, it was not happening now. He said he fully supports the request and thinks it would be a great addition to the neighborhood.

Councilmember Gliva said a comprehensive plan change, given where this is located, would fit due to the density. Her biggest concern is that the project would sit for a period of time, not completed, or something happens, and they would have something partially sitting there. She does not want that to not fit into the neighborhood and be a detriment to those around. She appreciates the fact they can change the comprehensive plan. She does not believe a business would come in. Her concern is with doing three, getting funding or assuming funding, and starting up again with another three or five.

Councilmember T’Kach said she struggles with the same concerns. A certain amount of infrastructure has to go in to make a project work such as curb, gutter, sewer, and water. She likes the idea of having something on this piece of property but there could be an incomplete project. She was concerned with having residential there. She said there are a lot of long-time renters in the city, this group would like to be long time renters. She indicated other properties nearby, when someone comes in with another development, she asked if it would be a “not in their backyard.” She said she was trying to think of what the longer-term repercussions would be. A part of her thinks it could end up being just three rental units. She asked if staff knew of what type of infrastructure would be typical in this situation.

Councilmember Scales said the city has had a lot of developments that have started and not finished with the original developer. It is a chance taken with every developer/redevelopment. He said he is not saying that would happen here. He felt it was unfair to put that onto this development when every development has that possibility. The land for this has been sitting since at least 1971.

Councilmember Gliva stated this was not a large development coming in. This is someone who would have to be dependent on funding. It will be a six-year process or longer.

Councilmember T’Kach said she liked the idea of getting this property developed, she is not against it. She is concerned about the whole process and the infrastructure. She asked if they would be market rate apartments or less than market rate.

Mr. Zubarev replied his plan would be to bring in a rental company that does a market assessment on what it would be worth. He addressed the concern about the phases stating the first three units would be the hardest part. There is the cost of buying the land and the infrastructure. The lender will not give them money unless they have it plotted out with costs. Once the first three are built, adding on would not be as expensive.

Mayor Dietrich asked if they were married to this particular project if this comprehensive plan goes through.

City Attorney McCauley Nason replied they are not. The comprehensive plan amendment as proposed would only become valid upon the Council approving final rezoning and development plans for the property. It is a conditional approval. If reguiding it to multifamily development, it limits the type of development that may go into the area.

Councilmember T’Kach asked how many units could be built on this property as medium density.

City Planner Hunting replied 11 would be the maximum based on lot square footage and code requirements. It cannot be more than 12 units per acre.

Motion by Murphy, second by Scales, to approve the Comprehensive Plan Amendment for the Southeast Corner of Buckley Way and Buckley Circle. Resolution 2023-154

Ayes: 4

Nays: 1 (Gliva) Motion carried.

F. Consider Resolution Authorizing Ordering of a New Fire Engine. Resolution 2023-155

Fire Chief Judy Thill stated in 2006 the department purchased Engine 33, the oldest engine in their fleet. All their trucks are on a recommended replacement schedule with engines listed to be replaced at 20 years. Engine 33 is scheduled to be replaced in 2026. In the past when engines were ordered, lead times were between 10-14 months to both design and build the truck. Due to many issues, the lead time for this engine is now set at 40-49 months. This places the engine to be delivered late 2026

or early 2027. Over the past several years with supply chain issues and inflation, fire truck costs have risen considerably. The new truck would be built to almost the same specifications as Engine 17, located at Station 1. A few modifications would be added based on things learned since building the first one. They would not be large modifications.

- Engine 17 was purchased in 2015 at a cost of \$549,850.
- In the most recent proposal, the almost identical truck was quoted at \$1,174,882.29.
- Since December there have already been two price increases to raise the cost by more than \$170,000.
 - Part of the large increase includes the manufacturer bidding out 2026 engine, which has new emission requirements.
 - More price increases are expected in 2023.

This manufacturer is not alone in these types of increases. All firetruck manufacturers have done the same. She referenced the Citygate report that recommended having one reserve or backup engine in the fleet. The fire department currently has three engines with one at each station. With all the computer-controlled equipment as well as the mechanical parts on the trucks, they can be in the shop for days and weeks. There have been times when more than one engine has been down at the same time. Their ladder and pumper tender trucks all have pumps on them so they can run as an engine in a pinch, but do not carry all the same equipment. They take off the equipment needed before it goes in for work and then put it on the ladder or tender. These were purchased as specialty vehicles and not meant to be run daily like an engine would. As a result, they have 25-30-year replacement schedules. If running those more often, they would have to bring up the replacement schedules and order them sooner.

Because of the three issues: long lead time, increasing costs, and the reserve engine recommended and needed, staff seeks Council approval to consider the resolution to order the replacement of Engine 33. When that arrives, they would turn Engine 33 into their reserve engine in the fleet. With the long lead time, Engine 33 would be 20-21 years old at the time the new truck would arrive.

To purchase new trucks, they go through the Houston-Galveston Area Council (H-Gac), which is the National Government Procurement process. H-Gac receives competitive bids from different truck manufacturers and sets the price for trucks and the options. The truck would be built by Pierce Manufacturing who has built previous trucks, and purchased through their dealer MacQueen Emergency, for \$1,174,882.29 using the H-Gac Cooperative.

She mentioned the fire department has already accumulated \$798,115 in the city's Central Equipment Fund and will continue to allocate \$44,340 per year for the next three years before the truck would be delivered. When getting a new truck, money is set aside to pay for it. In the past, they have been able to pay for the truck without any type of shortfall. Due to the heavy increases, they have come up short. Their shortfall is approximately \$243,750. Staff is proposing to pay for the gap using a portion of the one-time, \$1,560,000 public safety funds the city will be receiving from the State of Minnesota at the end of this year. The funds are a result of the legislative session that just ended. If ordering the truck soon they could lock in the price and prevent future increases that come along before receiving it. Staff recommends adoption of the resolution as proposed.

Mayor Dietrich thanked the Fire Chief for working with Finance Director Hove on this. She said she spoke with the Finance Director about this. She knows there are few companies that make these types of specialized equipment, there is no comparison shopping. She mentioned too many times she sees studies that are done and then shelved. She appreciated that the Fire Chief referenced the Citygate Fire Study and that they are still using their advice.

Councilmember Scales mentioned this is exactly what those public safety funds should be used for. He believes this to be a perfect example. He fully supports getting the new truck and ordering as soon as possible.

Motion by Scales, second by Gliva, to approve Resolution 2023-155 Authorizing the Ordering of a New Fire Engine.

Councilmember T'Kach asked if Fire Chief Thill would be using all discounts possible and if she anticipates any additional reduction in price.

Fire Chief Thill replied the only discount received is if prepaying. From discussion with the Finance Director regarding the current interest rates, it was determined that it would make more sense to pay it when received rather than prepaying.

Ayes: 5

Nays: 0 Motion carried.

G. Appointments to the Planning Commission and Environmental Advisory Commission

City Administrator Kris Wilson stated the City Council annually makes appointments to three Advisory Commissions:

1. Planning Commission
2. Environmental Advisory Commission
3. Parks and Recreation Advisory Commission

This process was just completed however, two Commission Members resigned mid-term. Resignations have been received from a member of the Planning Commission resulting in a vacancy for the remainder of the term, 2 years. The Environmental Advisory Commission also had a midterm resignation with 1-year left on the term. Candidates that were interviewed in May are still available options for the Council. Additional candidates applied and were interviewed earlier today.

City Clerk Kiernan passed out ballots to the Council for the one position on the Planning Commission.

Councilmember T'Kach asked if a motion could be made in regard to the Planning Commission to take the last person appointed in May, Aida Schaefer, and move her to the two-year term that is left and fill tonight's remaining term. She said there were a lot of candidates last time, Ms. Schaefer rose to the top to get appointed, she would like to see that moved into the longer term of 2 years.

Mayor Dietrich asked if that has been discussed with Ms. Schaefer.

City Administrator Wilson replied it has not been discussed with Ms. Schaefer. She said prior to tonight's meeting she was contacted by Councilmember T'Kach regarding this. There is no barrier if that was the Council's preference.

Councilmember T'Kach said she has not reached out to Ms. Schaefer. Since she applied for a three-year term originally, she guessed she would still be available for a three-year term even though it would be a two-year term.

Councilmember Scales asked if the time length would be 1.5 years.

City Administrator Wilson replied it would be close to 2 years. Terms start June 1st. It would be 1 year 11 months as they would be on the Commission before July 1st.

Mayor Dietrich said she does not feel comfortable with changing the terms without approval.

Councilmember Gliva mentioned if someone would have reached out to Ms. Schaefer to find out if she would have been ok with it.

Councilmember Murphy said they have not spoken with the individual or advertised it. He was a little uncomfortable with it.

Councilmember T’Kach said she would not make the motion if there was no support. She believes it is the right thing to do. She said it was unfortunate that she did not think of it sooner.

The Commission would cast their votes with one seat to be filled.

City Administrator Wilson displayed the results after the first round of voting:

- Four candidates were selected.
- Three candidates received one vote (Paul Mandell, Connor Gosell, Pattie MiKulski). One individual received two votes (Trisha Presley).

When working with a larger number of seats to fill they typically eliminate the candidates receiving the least number of votes and recast. In this case, it would result in only one candidate carrying on. She suggested striking the individuals who did not receive any votes and cast a second round of votes.

City Clerk Kiernan passed around a second ballot for voting.

City Administrator Wilson displayed the results from the second round of voting:

- Two candidates were selected (Trisha Presley and Patti MiKulski).
- Trisha Presley received 3 votes; Patti MiKulski received 2 votes.

The Council can choose to strike the candidates not receiving a vote and vote again or proceed with a motion to appoint.

Motion by T’Kach to appoint for someone that wanted it as a first choice, versus a second choice.

Mayor Dietrich asked if the Council could vote on the two remaining.

City Administrator Wilson replied yes.

Mayor Dietrich asked what the Council’s thoughts were.

Councilmember Murphy said he was neutral but could do another round of voting. He understands the theory of first choice versus second choice.

Councilmember Scales mentioned he would be happy to vote again.

Mayor Dietrich said it would be thoroughly vetted. The Council would vote one last time.

Councilmember T’Kach withdrew her Motion.

City Clerk Kiernan passed around a third ballot for voting.

City Administrator Wilson stated the third round of voting remains unchanged from the second round.

Motion by T’Kach, second by Gliva, to appoint Trisha Presley for a two-year term on the Planning Commission.

Ayes: 5

Nays: 0 Motion carried.

City Administrator Wilson stated a similar balloting process will take place for the one vacancy on the Environmental Advisory Commission. This is for a 1-year term.

The results from the first round were displayed:

- Three candidates were selected.
- One candidate received three votes (Patti MiKulski), two candidates each received one vote (Dawn Gaetke, Laura Grevas).

It is the Council’s decision whether to ballot again or make a motion based on the fact that one candidate received three votes.

Mayor Dietrich requested striking those that did not receive votes and voting again.

City Clerk Kiernan passed around a second ballot for voting.

City Administrator Wilson displayed the results of the second round of voting:

- Patti MiKulski received four votes; Dawn Gaetke received one vote.

Motion by Gliva, second by Scales, to appoint Patti MiKulski for a 1-year term on the Environmental Advisory Commission.

Ayes: 5

Nays: 0 Motion carried.

Mayor Dietrich asked the City Clerk if she would be contacting all applicants tomorrow.

City Clerk Kiernan replied yes.

H. Continued Discussion of On-Sale Liquor Licenses for Exclusive Liquor Stores

City Administrator Wilson followed up from conversations had during the June Work Session regarding a local business having the ability to have a liquor license but did not fit into the categories in the city code. Under current City Code 4-1-4, B-1:

On-Sale Intoxicating Liquor License - May be issued to:

- Hotels that have an on-site restaurant, as defined in this chapter
- Clubs or congressionally chartered Veterans organizations with the approval of the Commissioner of Public Safety
- Theaters
- Restaurants
- Exclusive Liquor Stores
- Inver Wood Golf Course

State Statute 340A.412, Subd. 14 defines what an Exclusive Liquor Store is. They can only sell a specific list of items (there are 16):

1. Alcoholic beverages
2. Tobacco products
3. Ice
4. Soft drinks and a variety of ancillary products.

Research turned up a piece from the League of Minnesota Cities that states the Legislature has added Cannabis to the list of items that exclusive liquor stores may sell. Staff still has things to learn as they get closer to the effective dates of the new Cannabis laws in Minnesota. Cannabis would be the 17th item listed. They would also have to have a Cannabis retailers license from the State of Minnesota. Someone with an exclusive liquor store license could apply for one of those from the state.

Two additional notes from the Statute:

- An exclusive liquor store that has an on-sale, or a combination on-sale and off-sale license may sell food for on-premise consumption when authorized by the municipality issuing the license.
 - If issuing an on-sale license to an exclusive liquor store, need to decide whether they can serve.
 - Yes or no from the City Council would give the ability to sell packaged food as there needs to be a license from the Department of Health to be a restaurant.
 - If a restaurant, this type of liquor license would not be needed. Would be able to get a restaurant liquor license.
- An exclusive liquor store may offer live or recorded entertainment.

Follow-Up to Council questions:

- Can the Council be more restrictive than state law on what an exclusive liquor store may sell.
 - Yes. Any City Council in Minnesota can take the definition of an exclusive liquor store and cross through items on the list.
 - If wanting to determine that an exclusive liquor store in the city cannot sell a certain item, it can be crossed off the list.
 - Cannot be less restrictive. Cannot add things to the list. Cannot allow to sell something that is not on the list but can narrow the list for use in the city.
- Can require items on the list.
 - As it is printed in the State Statute, may sell any combination of the 16 items.
 - If wanting to require that food be sold where alcohol is being sold, might want to require that soft drinks or non-alcoholic beverages be offered alongside alcoholic beverages.
- If wanting either of the above mentioned, an Ordinance would be needed amending the code.

If an on-sale license is issued to an Exclusive Liquor Store:

- Must meet all licensing requirements including background checks for the owners and proof that they have the proper insurance.
- Subject to compliance checks the same as any other license holder.
- Exclusive Liquor Stores are not eligible for a Sunday on sale liquor license.

The business that has led staff to do this research would be able to sell Monday through Saturday, not on Sundays. This is a State Law.

Questions for the City Council:

1. Does the Council wish to put local requirements on the definition of an Exclusive Liquor Store.
 - a. There is room to adjust and customize to the city. The question is if the Council wants to.
 - b. Can remove items from the list of allowable merchandise.
 - c. Could mandate the sale of certain items on the list of allowable merchandise.
 - d. Cannot add to the list of allowable merchandise.
2. Is PerpleBunny Axe House "selling" axe throwing.
 - a. Need to make the finding that PerpleBunny Axe House is not selling axe throwing. Because you are not taking a tangible item away, it is a recreational/entertainment experience, not selling axe throwing. Similar to a bowling alley. State law allows bowling alleys to have liquor licenses.

Feedback from the Council was requested prior to the meeting tonight. Feedback received back was mixed. There did not appear to be a clear consensus that allowed staff to have an ordinance ready. More specific answers are needed to questions #1 and #2.

Mayor Dietrich asked if there could be a difference between a vape shop or physical tobacco. She was thinking of an establishment that has physically more square footage and areas for seating that sells tobacco in a physical form. She was also thinking of smaller vape shops that do not have seating. She was unsure what their capacity may be but are selling liquid in the vape.

City Attorney McCauley Nason replied her understanding when speaking with the contact at Alcohol and Gambling Enforcement:

- If the city wanted to only the sale of a certain subset of tobacco products, the city could say no tobacco products and issue a license but cannot sell tobacco products.
- Or could issue the license and say they must sell tobacco products.
- It is a cannot sell, must sell, or have limitations on the sale.
 - Could say they can sell certain types of tobacco products. If liquids are included within the definition of tobacco products, could say not those types of products.
 - Could sell the leaf or those products, but not the liquid form. All of that would have to be put into the code.

Councilmember Scales selected #2. He said he is comfortable saying its recreation and entertainment.

A majority of the Council agreed.

City Administrator Wilson mentioned it leaves the question if wanting to see an ordinance drafted that customizes the concept of an exclusive liquor store to Inver Grove Heights.

Mayor Dietrich asked if the information provided by the Council could be shared.

City Administrator Wilson shared:

- Two Councilmembers thought requiring food sales and prohibiting tobacco were preferred.
- One Councilmember was not inclined to require food sales and was silent on the issue of tobacco.
- Another Councilmember thought they should let the businesses decide what they were going to sell off the list and would not make modifications to the State Statute.

Mayor Dietrich asked if there was a State Statute prohibiting people that would now be able to sell alcohol under this that they can order food in such as Subway.

City Administrator Wilson replied there is no ordinance that states people would not be able to allow Door Dash to deliver to them at their site. Places that do not want that tend to be selling their own food. It was not uncommon for breweries without kitchens to have food trucks come.

Councilmember T'Kach mentioned sometimes places allow people to bring in a bottle of wine, there may be a corkage fee. She asked how that concept figures into the exclusive liquor store situation. She asked if it would be allowed.

City Administrator Wilson replied she has not done research on that. There is an axe throwing business in the state using that model.

Councilmember T'Kach said she was thinking of places that sell set ups and places that have on-sale liquor but could allow customers to bring in a special bottle of wine for a party.

City Administrator Wilson stated that the owner of PerpleBunny Axe House was in attendance and may know the answer. He has also done research.

Dustin Kerr, 4485 Cinnamon Ridge Trail, Eagan, stated there is only one place in Minnesota that allows people to bring in their own alcohol, United States Axe in St. Cloud. Most other places are full on bars or restaurants.

Councilmember T'Kach asked if the place in St. Cloud sold liquor.

Mr. Kerr replied they do not.

Councilmember T'Kach asked if someone had an exclusive liquor store license, if they could legally bring alcohol in.

Mr. Kerr replied most that have liquor on site are not allowed to bring in your own. Once selling liquor onsite, the owners become responsible, and there are other laws in place. Bringing in your own is more laid back.

Councilmember Gliva mentioned during a previous discussion Mr. Kerr had mentioned a food sale of Heggie's Pizza. She asked if having a simple oven would require a discussion with the Department of Health.

Mr. Kerr replied there needs to be a sink. Once it becomes unpackaged food, you have to have some type of restaurant license. Packaged food could be packages of chips or a sealed package sandwich, something he is not preparing on site.

Mayor Dietrich asked what he wanted to do regarding food and if he allowed Door Dash.

Mr. Kerr replied they currently allow people to bring in food as they are located next door to Jimmy John's. They were fine with this. For birthday parties, they allow people to bring their own food in or cater in. They are looking into food trucks for different events they have. He said with this, they may start offering chips, may offer prepackaged nachos. Longer term they are looking to get the restaurant as they look to remodel some of their space.

City Attorney McCauley Nason addressed Councilmember T'Kach's question stating it is a consumption and display permit. This permit authorizes someone to allow the consumption and display of alcoholic beverages. This is the concept of bringing your own wine and charging a corkage fee. This would be issued by the Commissioner of Public Safety and can only be issued to certain businesses such as restaurants, hotels, clubs, and bed and breakfasts. It would not be an option for this business.

Councilmember Scales asked what Mr. Kerr's thoughts were on limiting tobacco.

Mr. Kerr replied he has no intentions of selling tobacco. There is a vape store down the road.

People that currently smoke need to do so outside. He felt the same about Cannabis.

Councilmember T'Kach said she hoped the Council would not decide based on a particular business.

Councilmember Scales said his decision would be based on his feelings, not on a specific business.

Councilmember Murphy said he would not be in favor of limiting anything. There are other businesses in town that may want to apply for this. He said he is certain, without talking to this business, that they may want to apply for one of these licenses. If limiting certain things on the list, it could not happen.

Councilmember Scales asked what the age group was of people who come into the business.

Mr. Kerr replied ages 14 and over with an adult based on their insurance waiver.

Councilmember Scales said that is where he is uncomfortable with tobacco sales.

Mr. Kerr replied that most axe throwing places wristband people 21+. Everyone is carded when entering. This would be an additional thing they would keep track of. He said he has worked at axe throwing places previously, the axe masters were certified through the state through tips. They were trained as though they were bartenders to help recognize inebriation and safety. He would do the same thing for his staff if getting the liquor license.

Councilmember Gliva referenced question #2 stating she was unsure she would go to a vape shop or tobacco place; she asked if it would be considered recreation in order to sell alcohol at the same time. She questioned if they were trying to stay recreation.

City Administrator Wilson replied there is a smoke free indoor air act in Minnesota. If choosing to sell tobacco, it could not be used on site in the building. There is one business in Inver Grove Heights that operates as a sampling shop for tobacco products. They have an exception that they can sell and smoke on site. Other businesses such as axe throwing, or a haunted house do not have the ability to smoke indoors.

Councilmember Scales mentioned that he struggles with the exposure to children. For example, walking into a place such as a bounce house and seeing bottles of alcohol for sale.

City Administrator Wilson replied there are teenagers at bowling alleys and golf courses, both places have the ability to sell.

Councilmember Murphy asked if a cigar shop was considered sampling.

The response was yes.

Mayor Dietrich said that was a different demographic from vaping. She would hate to see them excluded from this opportunity.

Councilmember T'Kach questioned who she would hate to see excluded.

City Administrator Wilson replied a sampling business. If that was the case, they would probably do nothing and leave the definition of exclusive liquor store as it stands.

City Attorney McCauley Nason stated under the tobacco ordinance, the city allows sampling, but only of tobacco and tobacco related devices, only at a tobacco products shop that sells premium cigars. Those can only allow the sampling of premium cigars and pipe tobacco. It is not allowed to sell alcoholic beverages. If the intent is to allow the exclusive liquor store to sell tobacco products, this section of the code would have to be changed as well. Right now, the two would conflict.

City Administrator Wilson said if wanting to sell tobacco but did not want the consumption going on, they could leave the two alone. A sampling business would not be able to get a liquor license.

City Attorney McCauley Nason replied a sampling business cannot sell alcoholic beverages under the current language. If wanting to change and allow the sampling of products at a retail establishment that has a liquor license as an exclusive liquor store, they would have to change this section of the code.

Councilmember T'Kach said she would like to strike tobacco products from the list.

City Administrator Wilson questioned if there were additional Councilmembers that wanted an Ordinance drafted to strike tobacco. She asked if the Council wanted any local requirements on the definition of an exclusive liquor store. If there is a majority, staff could draft a first reading of the ordinance. Staff and the City Attorney would work on one and bring it back before the Council.

Councilmember Scales said he was concerned about other businesses they might be limiting by doing it. He said he was less likely to vote for no tobacco products because of the consequences to other businesses.

Councilmember T'Kach said with any other business she could say no tobacco. She said there were many access points for tobacco, she does not think they need to have it in the exclusive liquor store ordinance.

Councilmember Gliva asked if this would need to be discussed surrounding Cannabis.

City Administrator Wilson replied that she believes so. She was unsure there would be the ability to remove it from the list. There seemed to be a strong sentiment that the state was looking for consistency; they were hesitant to give much local control.

Councilmember Murphy asked if the Council moved to strike tobacco from the list if they would lose the avenue to change the ordinance to allow a sampling shop to get an exclusive liquor license.

City Attorney McCauley Nason responded that was correct.

Councilmember Murphy said he would not support. He believes in less government, not more. He believes the list is just fine.

Councilmember Gliva said she is usually less government. She was unsure that the Council was getting the spirit of what they were trying to do here. It is already not allowed in tobacco stores.

City Attorney McCauley Nason agreed that it is not allowed in a tobacco sampling shop.

Councilmember Gliva commented that nothing would be changed.

City Administrator Wilson replied that was correct. If directing staff to leave the liquor licensing statutes alone, they could expect the local business in attendance to come back at a meeting seeking an exclusive on sale liquor license. It is already in the code, no one has ever applied for one. If doing nothing ordinance wise, the Council could grant an exclusive on sale liquor license to the business at hand and the existing sampling shops would still be ineligible under current

city code. If a business that allowed sampling of tobacco wanted to have one of these licenses, they would have an additional ask before the Council.

City Administrator Wilson said a decision does not need to be made tonight. There is nothing barring the local business from turning in an application for an exclusive on sale liquor license tomorrow. Staff will not draft any changes to the exclusive liquor store definition. They would stick with the state statute definition for now. Council could revisit in the future if it becomes an issue or concern.

7. PUBLIC COMMENT:

Jill Weber, 6863 Arkansas Avenue, said she has sent emails but wanted to come in front of the Council. She mentioned she is a neighbor of a short-term rental. The one they are next to hosts up to 30 people at a time. She requests the Council move forward with a 30-day minimum rental ordinance. The property next to them regularly hosts weddings, bachelor parties, corporate retreats. It is being used as a resort type business. Business and residential is not mixing. There are children in the area with cycles of 24-30 people in and out of the home consistently. They have had drunken trespassing, loud vulgar retreats, late night parties, and not a lot of respect for the neighborhoods.

Mayor Dietrich asked if there has been any success calling law enforcement with some of the violations. Ms. Weber replied yes.

Councilmember T'Kach asked what size the house was with bedrooms. Ms. Weber replied there are four to five bedrooms.

Councilmember Scales asked if the Council could receive information if there have been a lot of calls to that house in regard to code, police, and fire.

City Administrator Wilson replied yes, staff would follow up on police calls. Staff is working on finding out what other cities are doing on this topic.

Councilmember Scales mentioned if there is a problem the city should deal with it.

City Administrator Wilson replied there is currently no mechanism to deal with it other than to send the police and charge them with crimes that there is evidence of. Short term rentals do not currently have rental licenses in the city. There is no information to pull.

8. MAYOR AND COUNCIL COMMENTS:

Councilmember Murphy said he appreciated the public comment. He said he was wondering where things stood with short term rentals. He questioned if the Council would have a decision to make by the end of the summer.

City Administrator responded yes.

Councilmember Murphy shared that the developer is finishing up in the neighborhood he lives in. He said there could still be money in escrow/deposit that is given when signing off on the development. He asked if someone comes through to make sure things are the way they should be before signing off. He was hopeful those would be fixed before giving them their money back.

City Administrator Wilson replied she would check. She said some of the escrows are tied to successful installation of the water system. She would need look at the specific development contract to find out what performance standards the escrow is being held for.

Councilmember Murphy asked if city taxpayers would end up fixing, for example, the light pole if the developer did not.

City Administrator Wilson replied the point of escrow is, so the city does not end up financially on the hook for those specific things.

Mayor Dietrich reminded everyone of a retail recruitment open house being held tomorrow night from 4:00-6:00 at the VMCC Community Room #1. They would like to hear from everyone about what types of businesses people would like to see in the city.

City Administrator Wilson stated due to the 4th of July holiday, the City Council Work Session will take place on Monday, July 17th.

9. ADJOURN:

Motion by Gliva, second by Scales, to adjourn the meeting at 9:08 p.m.

Ayes: 5

Nays: 0 Motion carried.

Minutes prepared by Recording Secretary Sheri Yourczek