

**CITY OF SHOREVIEW
MINUTES
REGULAR CITY COUNCIL MEETING
May 7, 2012**

CALL TO ORDER

Mayor Martin called the regular meeting of the Shoreview City Council to order at 7:00 p.m. on May 7, 2012.

PLEDGE OF ALLEGIANCE

The meeting opened with the Pledge of Allegiance.

ROLL CALL

The following members were present: Mayor Martin; Councilmembers Huffman, Quigley, Wickstrom and Withhart.

APPROVAL OF AGENDA

Approval of the Midland Terrace/Lakeview PUD development will be considered at the May 21, 2012 Council meeting. New notices will be published and sent.

Mayor Martin requested a brief discussion of the schedule of Council meetings for June and July, 2012, during the *Special Order of Business* portion of the meeting.

MOTION: by Councilmember Wickstrom, seconded by Councilmember Quigley to approve the May 7, 2012 agenda as amended.

VOTE: Ayes - 5 Nays - 0

PROCLAMATIONS AND RECOGNITIONS

Jacci Krebsbach, Shoreview Historical Society, gratefully acknowledged to the City Council the complete restoration of the Guerin Gas Station. She presented a check in the amount of \$8,015. She noted that \$3015 of the amount was received from the Shoreview Community Foundation. She thanked the Council and staff for all of the support received. The Guerin Gas Station has been located next to the Lepak/Larson home.

Councilmember Withhart asked if pumps and other accessories will be added. Ms. Krebsbach stated that the plan is to make it as accurate as possible to how it looked when it was used. Mr. Schwerm stated that Texaco signs have been purchased. Pumps from that era can be as costly as the restoration, but there are replicas that can

be purchased for approximately \$2500 per pump. Also signage on the history of the station is being planned.

Mayor Martin expressed her appreciation to Jacci Krebsbach and the Historical Society for their commitment to this project and bringing to Shoreview residents a glimpse of Shoreview's past. Mr. Schwerm added his grateful appreciation to City Planner Kathleen Nordine for her excellent work with the Shoreview Historical Society on this project.

CITIZEN COMMENTS

There were none.

COUNCIL COMMENTS

Mayor Martin:

The Community Center has a membership special deal in effect at this time--30 days for \$30. The \$30/month provides full access to the Community Center.

Mayor Martin noted that there is tremendous traffic congestion in southern Shoreview during the peak traffic hours throughout Shoreview due to the I-694 reconstruction project between TH/10 and Victoria Street. The State is also widening the Lexington Avenue bridge over I-694 which has resulted in even worse conditions. The Lexington bridge project should be complete by the end of June.

Councilmember Wickstrom:

The Tour de Trails during the *Slice of Shoreview* has been moved to Sunday instead of Saturday in order to avoid conflict with the parade.

Applications for the Green Community Award are now being accepted. The application deadline is May 25, 2012. This award is to recognize properties using Best Management Practices for water quality, which includes anything from rain gardens to landscaping techniques that improve water quality. Winners will be selected in June, and information about the winners presented at the *Slice of Shoreview*.

Councilmember Withhart:

The Grass Lake open space area south of Gramsie Road is being restored as prairie by Ramsey County.

Councilmember Huffman:

Cleanup Day in Shoreview is Saturday, May 19, 2012 from 8 am to 3 pm. Drop off will be at the County Public Works site in Arden Hills. Items not picked up by trash haulers will be accepted.

Noted the grant being awarded to the City from the DNR for Emerald Ash Borer treatment.

On June 2, 2012, there will be a picnic celebrating all veterans and will include a band concert. Mayor Martin recently attended a Welcome Home Warrior event for the 407th battalion returning from Afghanistan, of which one member is a Shoreview soldier.

Councilmember Wickstrom added that the Ramsey County Suburban Beyond the Yellow Ribbon Organization will be recognized as an official Beyond the Yellow Ribbon organization on May 17, 2012, at the Saints game.

CONSENT AGENDA

Item No. 8, Approval of the EAB Grant Agreement, was pulled for brief discussion. Mr. Schwerm stated that the City was awarded a grant from the DNR for a one-half mile radius from the infestation site, which is in the Shamrock Park area. The money will be available for three years and used for removal of public trees and reforestation.

The City has negotiated a favorable rate with a contractor that all Shoreview residents can use to treat trees on their property. Anyone interested can call Environmental Officer Jessica Schaum at City Hall.

MOTION: by Councilmember Quigley , seconded by Councilmember Huffman to approve the Consent Agenda for May 7, 2012, and all relevant resolutions for all item Nos. 1 through 11:

1. April 9, 2012 City Council Workshop Meeting Minutes
2. April 16, 2012 City Council Meeting Minutes
3. Receipt of Committee/Commission Minutes:
 - Bikeways and Trails Committee, February 2, 2012
 - Economic Development Commission, February 21, 2012
 - Bikeways and Trails Committee, March 1, 2012
 - Environmental Quality Committee, March 26, 2012
 - Planning Commission, March 27, 2012
 - Human Rights Commission, March 28, 2012
 - Environmental Quality Committee, April 23, 2012
 - Bikeways and Trails Committee, April 5, 2012
4. Verified Claims in the Amount of \$807,467.18
5. Purchases
6. License Applications

7. Approval of 2012 Supplemental Water Patrol Contract-Ramsey County Sheriff
8. Approval of EAB Grant Agreement
9. Approve Recommendation to Join the Regional Indicators Initiative
10. Award of Quote - Waterslide Refurbishment
11. Award of Quote - Refurbish Banquet Chairs

VOTE: Ayes - 5 Nays - 0

PUBLIC HEARINGS

There were none.

GENERAL BUSINESS

APPROVAL OF ORDINANCE AMENDING TOBACCO REGULATIONS

Presentation by Assistant to City Manager Tessia Melvin

On September 7, 2010, the City Council approved tobacco regulation amendments to comply with the Tobacco Modernization Act, which included:

- Updating the definition of tobacco products
- Prohibiting the sale of unapproved nicotine devices to minors
- Requiring a license for sale of pipe and rolling paper
- Prohibiting selling of all tobacco products in open displays.

These amendments did not include addressing the issue of sampling that is currently an exception to the Minnesota Clean Indoor Air Act. On April 6, 2012, the City Council discussed regulations pertaining to the Minnesota Clean Indoor Air Act with regard to sampling of tobacco. The discussion resulted in staff being directed to draft amendments to the Tobacco Ordinance to remove exemptions for sampling and strengthen the City's definitions of tobacco products.

On April 23, 2012, staff hosted a meeting with licensed tobacco providers regarding proposed amendments to the City's ordinance. One person attended, David Behrs, who expressed concern about a potential self-serve ban in tobacco shops and about the potential "tobacco sampling" ban. In regard to sampling, he indicated to staff that he has taken measures to see that smoke does not affect other shops or tenants.

In 2007, Minnesota adopted the Freedom to Breathe Act to provide protection from second-hand smoke and allow local governments to adopt and enforce more stringent regulations. The City now proposes to prohibit sampling in all retail establishments including tobacco shops and would also prohibit hookah bars from entering the City. Staff is recommending adoption of Ordinance 892.

Mayor Martin opened this matter to public discussion.

Mr. John Leeper, 4024 Virginia Avenue, Shoreview, stated that he and his wife own Marianne's Kitchen. The building was advertised as No Smoking. It has been shown that secondary smoke inhalation is very unhealthy. About two or three months after opening, the tobacco shop opened, and sampling in this shop has been a problem from day one.

The smoke ventilates to the back of the building but blows around the building to come in the restaurant doors and even through the walls. People congregate in the tobacco shop and smoke and play cards. Customers have complained, and he worries for them and all who work there. He supports the ordinance and believes this is good protection for Shoreview.

The owner of Top Shelf Sports, a tenant on the upper level of the mall, states that he cannot leave his doors open for fresh air because of the smoke. While not opposed to a tobacco shop in the mall, he does not believe people should be allowed to smoke in the shop. Others in the mall are also impacted. He encouraged the Council to adopt the proposed ordinance.

Councilmember Huffman asked if the owner of the tobacco shop has been contacted. Mr. Leeper stated that he has talked to him. The owner states that putting up with smoke should be intolerable. Tenants will move ahead to address the issue with the owner of the building, if this ordinance is not adopted.

Mayor Martin noted a letter from Centennial Jeweler also indicating that their business is negatively impacted by smoke.

Mr. David Behrs, Vadnais Heights, owner of J.R. Fielding Company (the subject tobacco shop), stated that he has invited anyone in the building to contact him when there is a smell of smoke. He was unaware of the letter from Centennial Jeweler. Anyone can contact him so it can be determined how the smoke is traveling. He has foamed his walls between units and brought in an air exchanger that creates negative pressure and makes it physically impossible for any smoke to escape. The ventilation system is not shared. The ventilation system for the tobacco shop is free-standing only for his shop.

He does not sell cigarettes or any hookah bar product. He is in compliance with the Minneapolis ordinance regarding sampling. He is unable to account for smoking odor. There are many products that produce odors that may be mistaken for smoke. He has specifically sent out people to see if smoke can be detected in other parts of the building, and the result has always been negative.

Councilmember Wickstrom asked where the ventilation flows. **Mr. Behrs** answered that it is directed outside in the back. Councilmember Wickstrom stated that she can understand that the smoke can re-enter the building from the outside. **Mr. Behrs** stated that he is prepared to ventilate the smoke into a pipe outside that would run 15

feet, but Councilmember Wickstrom countered that 15 feet would not be enough. **Mr. Beahrs** stated that OSHA is the authority on permissible levels. The smoke from his store is 15 times below the established OSHA level.

Councilmember Huffman stated that he sees two issues, one issue of smoke permeating through the walls and a second issue of smoke re-entering the building once ventilated outside. He noted that the ordinance would allow sampling outside. If the smoke is coming in from outside, the ordinance is not addressing that issue. Mr. Schwerm agreed and stated that it is questionable whether smoke can actually be completely taken out of a building.

Mayor Martin stated that regardless of where the smoke is coming from, the source is the tobacco shop.

Mr. Leeper agreed that the smoke is ventilated out the back of the building about six feet high. His restaurant has an outdoor seating area on the east side of the building where the smoke is blown. A nonsmoker 50 or 60 feet away will smell the smoke.

Mr. Brook Krieger stated that he owns a store directly above the tobacco shop. Any problem he has was discussed with Mr. Beahrs who has been very responsive to take care of the issue. He has no issues and does not believe there is a problem with the ventilation that has been provided.

Ms. Debbie Grasley, 4705 Lorinda Drive, stated that she works for Stephens Art and Frame in the basement of this building. She smells smoke every day, and it is bad by 2:00 in the afternoon. She goes home everyday with a headache. If she were to talk to Mr. Beahrs about the issue, it would be every day.

Ms. Katie Engman, Ramsey Tobacco Coalition and the North Suburban Compliance Project, stated that other cities have prohibited sampling to insure that everyone is able to experience clean indoor air. The intent of the law was to allow sampling of a product to buy and take home. The purpose of a tobacco shop under state law is to purchase and smoke elsewhere. It is known that second-hand smoke is harmful and that ventilation does not work. Smoke travels into every crevice possible, which is what she believes the tenants in this building are experiencing.

Councilmember Wickstrom stated that her definition of a sample is a product not paid for. She asked how a sample can be fully smoked and purchased. **Ms. Engman** stated that the intent of the law is to be able to sample with intent to purchase. The state law does not fully define sampling, and that is being taken advantage of in some instances.

Councilmember Withhart expressed concern for other buildings that could experience this same problem. He would like to see the Council take action on this matter at this meeting.

Mr. Beahrs stated that it is not his intent to cause anyone headaches. He has done tests when smoking has been suspended for several days, and yet others say they smell smoke. If someone is having headaches, he would like to know about it so he can address the issue.

Councilmember Quigley stated that smoke shops are a collegial, social environment. There may be no dangerous level, but no ventilation system can remove all of the smoke. It is a legal product that brings a great deal of revenue. The only way to address the issue is to prohibit sampling. The only way sampling would work would be a free-standing building, which is not possible. There is not a clear answer to this situation. People eating who smell smoke get upset and makes for a difficult issue.

Mayor Martin stated that she would not support a stand-alone provision, which would then allow hookah bars.

Councilmember Withhart stated that the effect this shop is having is negative, and he believes under the City's charge for health, safety and well being, the Council must take this action.

MOTION: by Councilmember Withhart, seconded by Councilmember Wickstrom to adopt Ordinance No. 892 revising the City tobacco regulations and authorizing the publication of an ordinance summary.

Discussion:

Mayor Martin stated that Shoreview treasures and values health. It was the one of the first in the state to prevent tobacco sales to minors and prevent smoking on trails and in parks. If smoke bothers others, it is a problem.

Councilmember Quigley asked when the ordinance would be in effect. He expressed concern that tobacco is a legal product; the business is properly licensed and sampling allowed by the legislature. He would like to know how much time Mr. Beahrs would have to change his business. Mr. Schwerm stated that it would be in effect the day following publication, but that could be modified on approval of the Council.

ROLL CALL: Ayes: Huffman, Quigley, Wickstrom, Withhart, Martin
Nays: None

CONDITIONAL USE PERMIT - AUTOMOTIVE VENTURES GROUP, INC.
3854 LEXINGTON AVENUE

Presentation by City Planner Kathleen Nordine

The application is for the restriction of auto sales to be removed from this site for the reason that Automotive Ventures has experienced an increase of customers bringing cars in for repairs that they cannot pay. Customers are then glad to forfeit the car to the

station to be resold. The request is to be able to offer for sale not more than five vehicles at any one time. The average sold to date is approximately two per month. The cars offered for sale would be located in the existing parking lot adjacent to Lexington and I-694.

The property is zoned C-2, which allows auto sales as a conditional use. Any violation to the conditions of a conditional use permit can be the basis for revocation. The site has adequate parking to designate five stalls for auto sales. Staff believes that the limitation of number of vehicles for sale and the designated parking would mitigate the already intensive use of this site with car wash and fuel station. Also, the limited number of vehicles for sale would not impact traffic. Third-party sales would be prohibited. No additional signage, with the exception of vehicle window signs, would be permitted. The proposed use is consistent with the Comprehensive Plan being zoned commercial, as are adjacent properties. No additional improvements are required.

At the April 24, 2012 Planning Commission meeting, this application was recommended for approval on a 6 to 1 vote. Commissioners felt that the attached conditions to the conditional use permit and the limited nature of auto sales allowed would address most concerns. The Commission did discuss whether the ordinance should be amended to establish standards for any such use in other C-2 Commercial areas. There was also some concern about any negative impact to the new development investment on Red Fox Road.

Property owners within 350 feet were notified of the application, including properties located in Arden Hills. No comments were received. Staff is recommending approval with the conditions attached.

Councilmember Withhart stated that hard work has been done for upscale development in this area and he disagrees with staff's recommendation that this use would be compatible. Automotive sales have been occurring for a long time, which violates a previous negotiated use for that property. This use is not compatible with the upgrade of Target and the new development on Red Fox Road. While this station is a well run business, he believes forfeited cars can be sold somewhere else.

Mr. Mark McClain, Representative for Automotive Ventures Group, Inc., stated that they do not want to become a used car dealership. What they do want to do is include occasional sales in their business model. Sales will not be a detriment to the City. This application is a result of previous sales to make sure it is done in the right way. The first reason to make this request is that there are increasing customers with a costly repair that cannot be paid for. To be able to sell the car helps them recoup their losses. The second reason is for those with costly repairs on cars that have minimal worth. Owners cannot afford the repairs. If the station buys the car, it is a service to that owner who can put the money down on a newer, better car. The station can do the repair and resell the car.

It is important to find new ways to gain revenue. Costs are constantly going up and the business model needs to be continually modified. This will be a service to customers. There will be no searching out used cars to sell. Only two or three stalls will be used, but the reason for five stalls is to comply with state law to get a Minnesota license. The license makes for a smoother sales transaction for title, taxes and compliance with the No Lemon law. Traffic flow is important and addressed with the designated parking stalls. He does not see how there would be a negative impact to new businesses coming in.

Mayor Martin stated she is not so concerned about the Exxon Station but the impact to other C-2 zoned areas and establishing a precedent that would not work in other areas. The City has previously spent taxpayer dollars to acquire properties where service stations had become used car dealerships.

Steve Solomonson, Planning Commission Chair, stated that car sales are allowed in the C-2 District with a conditional use permit. The City Attorney's advice was that if this is not a desired land use, then the application should be put on hold and amendment of the ordinance considered. His no vote meant that he would prefer to revisit the code on this matter.

Councilmember Withhart stated that the one criteria he believes is not met is that this use is not compatible with any of the other businesses in the area.

Councilmember Huffman stated that he is pleased to see only five stalls allotted to this use and would hardly be noticed. Even though upscale development is occurring, the gas station is present and this use is not inconsistent. He appreciates the conditions attached that allow revocation with any violations.

Mr. McClain stated that while five stalls would be designated for car sales, he would be comfortable limiting the number of cars available for sale to two or three.

Mr. Jay Scott, Rogers, stated that he is one of the managers at the Exxon station. The most number of cars that have been offered for sale has been two.

Councilmember Quigley stated that every gas station has car sales as part of the business. He believes the way staff has limited sales buffers any expansion of this type of use.

Mayor Martin asked how the City addresses any precedent this would set. Ms. Nordine stated that this type of use is allowed in C2 as a conditional use. The general standards for a conditional use are compatibility and consistency with the Comprehensive Plan. Additional standards can be adopted but have not at this time, such as setbacks and signage.

Councilmember Withhart noted the 11 conditions to achieve a comfort level on the part of the Planning Commission to recommend approval. He does not have comfort in

looking at past history that the restrictions will be honored. The conditional use permit stays with the property forever and is not compatible with current development.

Councilmember Wickstrom stated that she would prefer to look at this issue citywide before allowing this at one location. She would like to see only two cars permitted for sale at a time.

MOTION: by Councilmember Quigley, seconded by Councilmember Huffman to adopt Resolution #12-33 approving the Conditional Use Permit for Automotive Ventures, Inc./Karen Properties, LLC allowing automobile sales on the property at 3854 Lexington Avenue. Resolution #12-33 consolidates the previous conditional use permits issued for this property. Said approval is subject to the following conditions:

- 1) This amendment permits automobile sales on the property provided the maximum number of vehicles for sale at any one time does not exceed 5.
- 2) Condition No. 4 in Conditional Use Permit 971-83-22 which states “no vehicles may be offered for sale on the property” is rescinded.
- 3) Condition No. 4 in Conditional Use Permit 99-18 is hereby modified as follows. The parking area shall be used for employee parking, the parking of customer vehicles currently being serviced and vehicle sales as conditioned with this permit. Exterior storage is not permitted on this property. All vehicles shall be licensed and operable. No vehicles, with the exception of those for sale, shall be stored on the site for more than 30 consecutive days.
- 4) Automobile vehicles for sale shall be limited to passenger vehicles only. The sale of commercial vehicles is prohibited.
- 5) Automobile vehicles for sale shall be displayed on the property in the parking areas as identified in the submitted site plan.
- 6) Additional signage advertising car sales is not permitted on the property, with the exception of window signage displayed in the vehicle being offered for sale. Said window signage shall not exceed 11” x 17” in area. The existing message center sign shall not be used to advertise vehicles for sale.
- 7) Third party sales are prohibited.
- 8) Vehicles offered for sale on this property shall include only those acquired by the service station operating on this property. These vehicles shall include only those forfeited or acquired from service station customers. Vehicles from other service stations, including those owned by the same operator, shall not be offered for sale on this property.
- 9) Records shall be made available at the City’s request documenting the acquisition and sale of vehicles. Said records shall include, but may not be limited to: reason for forfeiture, acquisition method, date of acquisition from the seller, and the date sold by the dealership,
- 10) The Permit holder must have a valid Minnesota motor vehicle license to sell cars on this property.
- 11) Permit holder shall reimburse the City for all costs incurred, including legal fees, in order to enforce the terms of this conditional use permit.

This approval is based on the following findings:

- 1) The use is in harmony with the general purposes and intent of the Development Ordinance.
- 2) The use is in harmony with the policies of the Comprehensive Guide Plan.
- 3) Certain conditions as detailed in the Development Ordinance exist.
- 4) The structure and/or land use conform to the Land Use Chapter of the Comprehensive Guide Plan and are compatible with the existing neighborhood.

Discussion:

Mayor Martin stated that she can support this application, but her concern remains regarding allowing this use on other sites.

City Attorney Filla stated that if there were another applicant tomorrow, the City would have 120 days to act on the request. How other sites are impacted will be a result of further City regulation regarding this use. Mr. Schwerm noted that the only other site that this use is currently allowed is across the street from the applicant. That property has a proposal for redevelopment and he anticipates that this use will no longer be relevant. Should another application be received, the City could adopt a moratorium until additional standards and limitations can be added to the ordinance.

Councilmember Withhart stated that the current business owner does a great job. However, this condition stays with the property forever, and compliance by future business owners is unknown.

Mayor Martin stated that the new normal is that times are tougher with cities needing to be more flexible. She believes there are enough conditions to limit this use, and this is a good location with enough space.

Councilmember Wickstrom suggested that for the future, the ordinance be changed to allow this use as a license and not under a Conditional Use Permit.

MOTION FOR AMENDMENT: by Councilmember Wickstrom, seconded by Councilmember Withhart to condition No. 6, that "Said window signage shall not exceed 11" x 17" area, and limited to two cars at any one time."

Councilmember Quigley stated that he would not consider that a friendly amendment.

VOTE ON AMENDMENT: Ayes: Wickstrom, Withhart, Martin
Nays: Quigley, Huffman

The amendment was adopted.

VOTE ON AMENDED MOTION: Ayes: Huffman, Quigley, Wickstrom, Martin
Nays: Withhart

Councilmember Withhart stated that he supported the amendment because he believes it is reasonable but still believes the use should not be allowed.

APPROVAL OF ORDINANCE AMENDING COUNCIL SALARIES

City Manager Schwerm explained that the Council policy regarding Council salaries is to make an adjustment every two years at the cost of living adjustment that was approved for staff. If Mayor and Council salaries fall 10% below the average, the adjustment would be higher. If 10% higher than the average, the adjustment would be lower. The adjustment this past year was 1 percent for staff, which will go into effect for the Mayor and Councilmembers after the next election.

Mayor Martin noted this as a good policy standard without becoming a political issue.

MOTION: by Councilmember Huffman, seconded by Councilmember Withhart to approve Ordinance No. 893 amending Mayor and Councilmember salaries, effective January 1, 2013.

ROLL CALL: Ayes: Withhart, Huffman, Quigley, Wickstrom, Martin
Nays: None

SPECIAL ORDER OF BUSINESS

Meeting Schedule

Mayor Martin indicated that she would be unable to attend the June 11, 2012 City Council workshop meeting. It was the consensus of the Council to go forward with the workshop meeting and bring any items of contention to another shorter workshop with Mayor Martin.

The full Council was invited to attend the Economic Development Authority meeting on May 14, 2012, at 5:30 p.m.

Mayor Martin asked Councilmembers to check calendars for availability for the July 2nd Council meeting.

ADJOURNMENT

MOTION: by Councilmember Huffman, seconded by Councilmember Withhart to adjourn the meeting at 9:10 p.m.

VOTE: Ayes - 5 Nays - 0

Mayor Martin declared the meeting adjourned.

THESE MINUTES APPROVED BY COUNCIL ON THE 21st DAY OF MAY 2012.

Terry C. Schwerm
City Manager