

Regular City Council Meeting  
City Council Chambers

March 15, 2011  
7:00 p.m.

Present: Acting Mayor – Hudson	Jeff Kennedy	Absent: Mayor	Joyce
Council members Tim Strauser	Gary Fritch	Council	member
City Administrator	Jeff Whiting		
City Attorney	Bruce Clymer		
City Clerk / Treasurer	Mike Bacon		
	Connie L. Dalrymple		

Press: *Gothenburg Times* - Beth Barrett

Also present: Shane Gruber, Larry Fiese, Jason Fiese, Steve Walker, Travis Mason, Stephanie Walker, Louis Bovitz, Mr. & Mrs. Forrest Johnson, Officer Ryan Randolph, Pastor Mark Borchardt

In the absence of Mayor Hudson, Council President Jeff Kennedy opened the meeting and public hearing at 7:00 p.m. Advance notice and a copy of the agenda were given to the Council and members of the press. City Council meetings are conducted in accordance with the Open Meetings Act, a copy of which is available for public inspection on the north wall of the Council Chambers.

The purpose of the public hearing was to consider a request from Jason Fiese for a special use permit to establish and maintain a ground floor residence at 612 9th Street, a C-1 district. Acting Mayor Kennedy asked those that wished to speak to approach the podium, state their name, and give brief comment.

According to the zoning and subdivision regulations, the C-1 district allows for dwelling spaces on the second floor, but not the main floor, of a building within the district. The few ground floor residences were in existence prior to the establishment of the current regulations. After fire destroyed a home on 11th Street the special permit process was established to allow the construction of a home on that lot in an area which was primarily residential. The criteria, as outlined in the subdivision regulations, for a special use permit was reviewed. During and after their meeting on March 8, Planning & Zoning Commission members were unclear as to their ability to impose conditions on a special use permit. They ultimately recommended approval of the application.

Jason Fiese told Council he has lived at the address for 10 - 15 years but decided to expand the area and installed an \$11,000 water source heat pump. Since commercial water is metered he had an \$800 utility bill but had not changed the use of the building. After the construction, the front half of the building is part of the residence; the back half is still his shop and stores his business tools and supplies. A residential allowance would help his utility rates. The primary living space is upstairs since he sold his lake home.

Council member Kennedy had also been contacted by P & Z members questioning their options and capabilities on such questions. He would like the Commission to revisit the issue.

P & Z member Louis Bovitz commented that the Commission had discussed several questions, such as the ability to attach conditional uses to the permit, for example at the time of sale of the property.

According to the Atty. Bacon, special use permits stay with the property unless the permitted use is abandoned for 1 year. The Commission and Council can attach conditions and limits, such as the length of time the permit is effective and ownership, but the conditions cannot be arbitrary for the purpose of avoiding something else, like utility rates. If conditions are attached, they should be recorded on the deed so any future title search would discover them.

Larry Fiese commented that the second floor living space was small and inconvenient, so Jason expanded and improved the lower level. The building is also on a dead end street and the changes have improved the view from the overpass. Jason would have no problem with a sunset clause. Larry also raised the issue of other businesses with residential spaces on the main floor.

Administrator Clymer replied that most of those spaces are no longer used as residences and when they were, they paid commercial utility rates. Jason also applied for, and received, \$3750 from the downtown revitalization project as *Do It All Drywall*. The business sign is no longer there and it has now become a utility issue since commercial water is metered.

Atty. Bacon told Council they could deny the special use permit, approve it, or approve it with conditions. If they deny, they can allow the process to go forward from the beginning if the applicant wishes.

Council member Fritch feels the purpose of committees is to assist the Council in their decision making. The Planning & Zoning Commission has questions and needs information to do their job and he does not favor a change from their recommendation. Therefore, Fritch moved and Whiting seconded, to deny the special use permit as requested by Jason Fiese and to waive the permit fees if Fiese chooses to reapply. Roll call vote: Yea - Kennedy, Whiting, Fritch. Nay - none. Absent and not voting - Strauser.

Whiting moved, Fritch seconded, approving the consent agenda that included:

- City Council minutes - March 1 & 8

- Treasurer's report - February

- Police Report - February

- Planning & Zoning Commission minutes - March 8

- Library Director's Report - Jan thru March 2011

Roll call vote: Yea - Kennedy, Fritch, Whiting. Nay - none. Absent and not voting - Strauser.

Fritch moved, Whiting seconded, allowing payment of claims against the City, \$161,787.38; Public Works Division \$448,035.96; and the payroll of \$31,819.49. Roll Call vote: Yea - Kennedy, Whiting, Fritch. Nay - none. Absent and not voting - Strauser.

Community Comments:

- There will be a retreat of county-wide governing bodies on March 26 in Lexington.
- The school is hosting a retreat of school, hospital, and City governing bodies on March 22 at 5:30 p.m.
- The City will have items on Brott's auction on March 26. Items include an old pick-up, utility box, plow blade, and a library printer.

No action was taken on the second reading of Ordinance 861 regarding liquor hours of sale. Since the full Council is not available, Mayor Hudson has asked that comments be taken and the ordinance be carried forward to third reading at the next meeting.

Comments:

Steve Walker, Walker's Steakhouse - Would like to see Saturday and Sunday hours changed to make availability fair since people can buy downtown earlier in the day on Sunday than he can sell.

Jewel Johnson, Resting Place Bed and Breakfast. - The Council is elected to represent the community and while she has no vendetta, she feels the current hours are sufficient. Extending hours puts lives at risk. Please reconsider the request.

Stephanie Walker, Walker's Steakhouse - Our main business is food, the bar is secondary, therefore we do not pull the 'bar crowd'. We just want to provide the service other communities offer or we won't be able to get large events such as regional pool tournaments. The golf course sells, downtown sells, why not us? We don't want to be open to 2 a.m., just to sell at noon the same as other businesses. We 'card' customers and have safety procedures in place.

Louis Bovitz - Perhaps a 2:00 p.m. start time would allow the church lunch crowd to disburse.

Mark Borchardt - Holds nothing personal against any restaurant or business owner but feels that increasing hours of sale now leads to increasing hours even more later. Referencing the community survey's numbers against expanded hours, he says it's easy to speak against something, making a recommendation is harder. Perhaps a solution would be to table the issue and take it to the public with options such as keeping hours the same, as proposed, or something different. He also offered Hiway Safety Commission statistics on alcohol related accidents.

Council member Whiting received a letter with 40 signatures against the extension. He talked to three of the signers and they were not aware that some businesses already can sell at noon or that part of the consideration is to consolidate licensing hours of sale. He feels the issue should be tabled until the full Council is present.

Whiting moved, Fritch seconded, to table the second reading of Ordinance 861 until the next meeting. Roll call vote: Yea - Kennedy, Fritch, Whiting. Nay - none. Absent and not voting - Strauser.

Kennedy moved, Whiting seconded, to pass and approve Resolution 2011-2 prohibiting parking on both sides of Platte River Dr for 370 feet west from Lake Avenue. Roll call vote: Yea - Fritch, Whiting, Kennedy. Nay - none. Absent and not voting - Strauser.

Fritch moved, Kennedy seconded, to purchase the used gator utility vehicle for \$8500, for the Parks Dep't. Purchase is allowed upon the approval of the Mayor if the unit meets or exceeds

City specifications. Roll call vote: Yea - Whiting, Kennedy, Fritch. Nay - none. Absent and not voting - Strauser.

Fritch moved, Kennedy seconded, to pass and approve Resolution 2011-3 authorizing sale, by sealed bid, of used copper and aluminum wire. Roll call vote: Yea - Whiting, Kennedy, Fritch. Nay - none. Absent and not voting - Strauser.

Two bids were received for televising sanitary sewer lines:

Midlands Contracting dba Johnson Service Co	\$36,509.50
Utilities Service Group	\$48,793.25

Funds were not budgeted for this project but there are funds available in the budget. This project will probably lead to more costs for repairs. If we were to pass this cost on to the customers, it would be approximately \$2 / month for one year. After brief discussion, it was the consensus of the Council to absorb this cost.

Kennedy moved, Whiting seconded, to award the bid to Johnson Services, \$36,509.50, to televise the sanitary sewer lines. Roll call vote: Yea - Fritch, Whiting, Kennedy. Nay - none. Absent and not voting - Strauser.

Atty. Bacon offered a proposed ordinance that would amend Gothenburg's current sexual predator residency law to align with amended state statutes.

Fritch moved, Kennedy seconded, to introduce Ordinance 862 amending the sexual predator residency requirements. Roll call vote: Yea - Whiting, Kennedy, Fritch. Nay - none. Absent and not voting - Strauser.

Fritch moved, Whiting seconded, to adjourn the meeting at 8:11 p.m. Roll call vote: Yea - Kennedy, Whiting, Fritch. Nay - none. Absent and not voting - Strauser. The next regular meeting will be April 5, 2011.

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Jeff Kennedy, Acting Mayor

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Connie L. Dalrymple, City Clerk