

MANTORVILLE CITY COUNCIL MEETING MINUTES
MONDAY, FEBRUARY 8, 2016
6:30 PM

1. **Call to Order** – Mayor Bradford called the meeting to order at 6:30 pm.

Members Present: Chuck Bradford, Henry Blair, Don Hofstad, and Sherry Roth

Others Present: Mark and Ann Torkelson, Karen Steele, Dan Trapp, Gary Bromley, Mark and Nancy Schmidt, Mike Marti, Guy Kohlenhofer, City Attorney Scott Riggs, Scott Larsen and Cami Reber.

2. **Pledge of Allegiance** - Done

3. **Additions/Deletions to Agenda** - None

4. **Consent Agenda** – Motion made by Member Hofstad, second by Member Blair to approve the consent agenda as follows:

- a) City Council Meeting Minute's January 25, 2016
- b) Warrant List February 8, 2016
- c) Dodge County Board of Commissioner's Meeting Agenda February 9, 2016
- d) January Sheriff's Department Call Report for Mantorville
- e) 2016 Notice of LBAE Meeting Monday May 2, 2016 6:30 – 7:00 pm
- f) Annual Prosecution Report

Motion passed unanimously.

5. **Public Concerns** - none

6. **Public Hearing** - none

7. **Old Business/New Business**

- a) **Tabled Variance Request Mark and Ann Torkelson**

Motion made by Member Hofstad, second by Member Roth to remove from the table the previously tabled variance request. Motion passed unanimously.

Mayor Bradford asked the City Attorney, Scott Riggs, if there is any new information that has come up. Scott responded that no new information has come in at this time. Both a denial and approval resolutions have been put together. Both could require some modifications based on what is discussed tonight. He has had conversations with both Cami and a couple Council Members regarding what is a solution or not here. Typically these types of situations are best handled when you find some middle ground that works for everybody. He doesn't feel that we have gotten there yet as a Council or the applicant; doesn't think we are going to please everybody here based on the testimony that has been received. The Council has all the avenues before them, Council can table it again, but a decision really needs to be made next week. If it is tabled, Council needs to request an extension from the applicants. You have the options of approving the application or denying it or tabling it and requesting something else, and come back to a modified form which is the middle ground which is hugely a better solution. Courts like that when the Councils try to work with the applicants and the residents. Mayor Bradford offered to take any additional comments from the audience. He asked Council Members for their input.

Member Hofstad – any decision that is made here this evening is nothing personal. This has been a hard thing for everyone involved. He noted the last meeting in which Jay Kruger, building official for the City, made statements as far as the code's, that the variance had

nothing to do with the codes that were on the table, he explained that and the attorney talked as well about the different building codes. What he is looking at here is the hardship, that our resources have pointed out this really isn't the case here. He doesn't feel that it has to do with the building code. Also feels it is a personal preference, this is his opinion. He doesn't see, in his opinion, how the variance can pass with what has been granted and what has been shown here. He understands they would like to have a bigger building, the problem that he sees is the zoning that we have there. Even though it was a farm field, even though it was corn, the City had it zoned for certain aspects and it was never changed even though for years there was a field there. May need to look at the local zoning and see if there is something we can do different. But at this point in time and by what we have been shown here, from what he has read and all of the information, and the countless emails and what not, doesn't feel in his opinion, that even with a taller roof to look nicer, feels it is personal preference as far as he is concerned and we need to look at not allowing it.

Member Blair – the personal preference thing has been thrown around a lot of times previously. And after the last meeting it was about that. Part of that goes to, every variance is based on the desires of the applicant. That's why they made the effort to put in the variance request. Ultimately it is always based on the starting point of what they are requesting. The issue he has with the statement of the building code specifically and the original variance request; how much do we want as a Council to make it so difficult for anybody to apply for a variance and get a variance such to the point that they have to have full building design nailed down to every bit and piece. What are we getting to if someone has to spend \$10,000 or more to build a building to show how it's going to fit before we approve something. We have not done that in the past; we've used sketch drawings and such, is that what we are moving to for the future; are they willing to spend a small fortune on every little bit of design before you even put in this variance request to find out if you want to spend a larger portion on it to do it. Its concerning to him if that's where we are going but does being flawed in the wording you choose filling out the variance request automatically make it be denied? He thinks that's one of the hold ups here, the building code statement used in there. Being held so tightly to that. He thinks the idea behind that was, he is assuming, deeper than that. A statement made is that the design keeps changing. Clearly back in 2014 there was information that they wanted a taller building than what was granted at that time. If we are holding so solidly to the variance request as its stated there isn't even room for middle ground, there is no room for changing anything. The whole point of a variance request is that it is a starting point to work through stuff. It goes through its committee and council. Does it need to come out exactly perfect, or do we flat out reject that, will we require a new variance application every time it goes back, or can it be modified through the committee step, or reasonable stuff with the Council. Doesn't necessarily think the council wants to have to do it as a whole every time, through every bit and piece, that's the reason for doing it through the committee portion. So, if we aren't going to be willing to work with the applicant on the details then there's no point in ever accepting variance requests because none of them are going to be perfect enough to pass. I fear the process being so inefficient that it can't ever work out for anybody and I'm afraid that's the path we are headed down based on what was said in the variance request specifically. I know what the applicants wanted back in 2014 and they were unintentionally limited to the details at that point, things didn't go necessarily right at that time, I don't think the application went entirely right this time as far as the wording on it and that's what we are stuck on, and that's where this is going awry; unnecessarily cumbersome.

Member Roth - talked about the City Comprehensive Plan and was surprised to find that 50% of Mantorville property is vacant; 50% is undeveloped and she would like to see more developed. The residential growth section pointed out that it's likely that our vacant land should be guided for residential growth consistent with past practice. Our past practice has been to permit a variety of buildings. Kyles Lawn Service has a 25' building and that's in the heart of the City. Member Blair pointed out that building is not for Kyles Lawn Service but

for the resident that owns it. As she looks at past practices, that is one that came to mind. Are we using this property in a reasonable manner? She has been driving that road and commented on her visual of a hobby farm, large horse arena, couple of homes with nice large barns, few more homes, large corn field, more homes, a building off to the left with a cupola on it for a similar use as being requested. To her the design of this building is similar if not nicer than what we currently have in that area. These are things she has taken in to account. When we look at use of space and green space its well over what we define as meeting of green space. Unless something like this comes along as a use for this property, it is likely to remain a corn field and it's a unique opportunity to see this property to become developed and we are going to see a better use of tax payer dollars. It adds to our tax base. And those are things she took into consideration. Also what she read in the comprehensive plan is that those properties that are close to the river are not likely to be developed due to the layout of the land, issues with the water. They had to go through some issues with the marsh and whatnot, and they bought enough of that area, that is not likely to be used for other things except a corn field, hay field, things of that sort. So to her we see an improvement and enhancement so to speak by having a new building and new home so doesn't see it as being inconsistent with that area it's the edge of town surround by cornfields, mixed use residential and buildings.

Mayor Bradford – each request is to be looked at on its own merits; Council can also consider any other previous considerations made on a property as an integral part of the property because those agreements have been granted but in his mind put the city in a difficult position. City needs to look at this new variance on its own merits and consider if there is a hardship that currently exists on land that would justify granting the variance. Either a good position or a bad position. The position they are in right now is that the applicants have submitted documentation that does show that there is something that they can do with the property that would meet their needs. They have also made the argument that the flat or very reduced slope line of that roof has an aesthetic value different than what the aesthetic value with the cupola and dormers would be. When he looks at what is being asked this time, try's to visualize what is being requested; 2 additional feet above or nearly double what our ordinance allows? Even if being asked to double it, does it seem like a reasonable use of the land? You can look at the topography of that land, and say that a building of that size on that slope is less intrusive than a 25' building on a flat piece of topography. Goes back to what is the process of a variance. What does the applicant need to show to justify a variance and what is the best position for the City to be in as the principal position as well as a policy decision. Each property is unique and each situation should be looked at on its own merits and situation. He was previously in favor of the original motion because he shares Member Blairs concern with property rights. How far down the road do we want to go to justify a big brother approach on saying no to the individual citizen that you can't do what you want with your private property. You go down that road as far as you can until the individual property owners rights around that existing property, then by acceptance of that variance you are now saying to those property owners that they can't do what they want to do with their property. His rationale in both these votes is consistent. And he does not feel at this time that granting the variance is in the City's or community's best interest.

City Attorney Scott Riggs explained the voting process. If you do a motion on an approval resolution and it failed, and there are reasons, which you've already stated for denying, that would be the end of the vote and the applicant can reapply immediately and you can start from that point. If you were to do a vote on a denial resolution and that were to fail for a 2-2 vote, you arguably still have a pending application sitting in front of you that could potentially be adopted by the 60 days which would be 2 weeks from tonight. That's not the way to approve public policy and most city's try to avoid that. If no action is taken it is in essence approved. An approval of a variance sets a high standard. You have to make a finding that there is something unique there that requires that this be a variance of some sort. Variances are a last resort. In a perfect world, it's the middle ground. That's what wins

out at the end of the day in most of these cases, if you can come to some understanding, the reality of what might work. The Mayor reviewed what the Council can do.

Member Blair asked about the possibility of some middle ground. Scott stated it becomes a modified application at 23', 24', or some other number. You have a pending application and the only way you get to that middle ground is working with the applicant. Voting on the denial resolution and having a 2-2 vote you still have a pending application. Voting on the approval resolution and having a 2-2 vote, statute says if there is stated reasons by those that are voting against it, it acts as a denial and allows them to immediately apply again. An outright denial means they have to wait 6 months to reapply. There are built in provisions in state statute to not allow continued denial applications from coming forth which is why he says it is much better to work on that middle ground and try to get to some agreement that everybody can live with and its easier to show that it's a sustainable decision that the Council came to and the courts will look at that.

The applicants, Mark and Ann Torkelson were asked if they would be interested in submitting a written request for a 30 day extension. Ann Torkelson replied they want a peaceful resolution that they can work through with the Council.

Mayor Bradford requested to take a break at 7:07pm - recess until 7:15.

Ann Torkelson spoke that they would like to offer the Council an extension until March 14, 2016, for a decision on the variance application. Motion made by Member Roth, second by Member Blair to accept the extension offer being extended to us by the Torkelson. Member Blair added a friendly amendment to add until March 14. Additional direction that the planning commission take the front on this and bring back the recommendation of the applicants and the legal counsel to full council. Motion passed unanimously.

Motion made by Member Blair, second by Member Roth to table the variance request. Motion passed unanimously.

b) Guy Kohlenhofer – 2016 County Rd. 12 Project

Guy Kohlenhofer, Dodge County Engineer, approached the Council to give an update on the County Road 12 project and to get approval from the City, as required by the State. The County 12 project consists of a full reclamation of the road from County 9 to Highway 57 and a partial reconstruction from the Wallin's property to Highway 57 intersection. Planning includes the addition of a little pavement on the south side for better parking but a need to ban parking on the north side. They are looking at routing pedestrians down the snow mobile trail during construction. The trail will remain in the same place. The project is due to start in the May time frame and the intention is to be done by Marigold Days.

c) RESOLUTION 2016-03 A RESOLUTION RELATING TO PARKING RESTRICTIONS ALONG COUNTY STATE AID HIGHWAY NO. 12

Motion made by Member Blair, second by Member Roth to approve RESOLUTION 2016-03 A RESOLUTION RELATING TO PARKING RESTRICTIONS ALONG COUNTY STATE AID HIGHWAY NO. 12 as presented. Motion passed unanimously.

8. TBD

- a) Public Works Report** – Scott Larsen gave updates on the following items: Flow Meter, Jefferson Lift Station, Goat Island clean up, South side of bridge clean up, and the bridge lights. The (International) Tractor needs repairs at an estimated cost of \$800. He had Randy Eipers look at it and there is a pump that needs to be repaired/replaced. He is going to submit an estimate with labor and parts. Guy reminded us that inter agency cooperation is available if the City is ever in need of equipment. He also passed on that the Wallin's are interested in hooking up to City sewer and water.

- b) **City Clerk Report** – Cami updated the Council that the City Prosecutor, David Jacobsen, will be at the next meeting. His report is in the packet. Also think about the Spring Retreat dates and what you would like for discussion.
- c) **Consultant Report** – none
- d) **Committee Report**
- Fire Department – Member Hofstad gave an update on the annual meeting that was held on Saturday night, 1 member retired and received a plaques, 15 fire calls in 2015 and 75 first responder calls. Doug Wunderlich will be retiring as of March 1. He also gave an update on training meeting date changes.
 - Park Board – Member Blair gave an update that officer elections were delayed due to lack of attendance, discuss park budget, Mantor field usage, and possibly have some interested new members.
- e) **Council Member Report** - none
- f) **Mayor Report** – Mayor Bradford reported that he attended the Mayor Reception in St. Paul. Unofficial vibe is that the Infrastructure Projects are still on the table and recommends we reach out to our local representatives so they know this has our attention and look favorably on their vote on it. Reminder on clearing of Fire Hydrants to all residents to help out in case of emergency. Park Board and the EDA are looking for committee members. Update on the EDA and the Stage coach days event. Looking for more volunteers.

9. **Executive Session** - none

10. **Adjourn** – Motion made by Member Blair, second by Member Hofstad to adjourn the meeting at 7:42 pm. Motion passed unanimously.