

## **Greenwood City Council Worksession Minutes**

4:00 pm, Tuesday, November 12, 2013  
Deephaven City Hall ~ 20225 Cottagewood Avenue ~ Deephaven, MN 55331

### 1. Call to Order/Roll Call/Approval Agenda

Mayor Kind called the meeting to order at 4:02 pm.

Council members present: Kind, Cook (4:11), Fletcher and Roy

Others present: City Attorney Mark Kelly and City Clerk/Zoning Administrator Karpas

Fletcher moved to approve the agenda. Second by Roy. Motion carried 3-0.

### 2. Brief Overview

Mayor Kind said the topic of tonight's meeting was to discuss ordinance 222, which would amend the Greenwood Zoning Code to add Section 1123, R-1C Single-Family Residential District, adding related definitions to Chapter 12 and amending Section 1150.20 regarding Conditional Uses.

Kind gave a brief overview of what had transpired to this point in the process stating during a review of the R-1A Single-Family Residential District for adoption of ordinance 216 related to home occupations, the city council decided it was not appropriate to list "Theater" as a conditional use in the entire R-1A, so the council removed "Theater" from the list of conditional uses when that ordinance was approved. With the passage of the home occupations ordinance and removing the theater as a conditional use, the Old Log became a "legal nonconforming use." Which means the Old Log's structures could be maintained, but they cannot be expanded and they cannot apply for a conditional use permit (CUP) or a variance unless "Theater" is listed as a use in the zoning district where the Old Log resides.

Mayor Kind said it was never the city council's intention to take away the CUP option for the Old Log. The council directed the creation of ordinance 222 to establish an R-1C district with the same rules for the property that were in place when it was purchased. The proposed ordinance would also update the definition of "Theater" to reflect historic uses and includes "operational" items to the list of examples of conditions that may be imposed on a CUP if the new owners apply for a CUP, which they cannot do until the new ordinance is approved.

Kind noted the Old Log predates the city's ordinances, so a CUP may not have been issued to the property, or at least one has not been located in the city files. Change of ownership is not a trigger that requires a CUP application.

Mayor Kind believes there has been a misunderstanding that the city would be establishing the conditions in which it could operate with this ordinance. This ordinance is intended to reestablish the Old Log as a conditional use. She noted that the Old Log has grandfathered rights. Mayor Kind said it's her goal to ensure the Old Log has the flexibility to be a viable business while ensuring the residential character of the surrounding area remains.

Patty Loftus, 5165 Meadville Street, asked when the Old Log was removed as a conditional use from the R-1A. Mayor Kind said that was done in the Spring.

Jan Gray, 5170 Meadville Street, asked about grandfathering and the format of tonight's meeting. Mayor Kind said the meeting is being recorded and anyone is allowed to speak. She asked that comments and questions be direct to the Council. She said it is not necessary to

use the podium. She said she would need to leave the meeting by 5:30pm, and that Councilman Fletcher would lead the meeting if it is not adjourned by 5:30.

Julie Ekelund, 5135 Meadville Street, questioned what the legal definition was for grandfathering. City Attorney Kelly said the property has been permitted to operate as a dinner theater, which is the use it has always had. Ms. Ekelund asked about the periphery uses and if those uses have been fuzzy, what actually is grandfathered. Mr. Kelly said the city has not consistently policed the uses, but when the Old Log applies for a new conditional use permit, the uses would be set and any expansion or intensification of those uses would require an alteration of the conditional use permit.

Councilmember Fletcher noted there are some issues such as odors that cannot be grandfathered. Any issue that is considered a nuisance can be policed. City Attorney Kelly agreed stating there is no legal right to maintain something that is a hazard to the health, safety and public welfare.

### 3. When is the Old Log Required to Apply for a Conditional Use Permit?

Mayor Kind said Councilmember Cook drafted a document that was included in the packet that described what he felt was the existing conditions or uses on the property and what would constitute a change that would require a conditional use permit. Julie Ekelund asked where the information was obtained. Councilmember Cook said it was from his own personal perspective and what he has heard from other residents.

Greg Frankenfield, 5185 Meadville Street, owner of the Old Log Theater, said Tim Stolz, son of the previous owner was available to clarify anything if necessary.

Councilmember Cook outlined what he perceived the existing conditions of the Old Log were. He said it was one of the longest continuous running theaters in the US which had morning, matinee, and evening performances throughout the year with typical shows between the hours of 10am to 10pm. Cook said the Old Log also has hosted additional events such as outdoor and indoor concerts, business events, civic meetings, weddings / private gatherings, held both outdoors and indoors, and primary and general elections. He said most of these event ended before 11 pm, but some of the private gatherings, such as weddings may go later.

Councilmember Cook discussed what he believed to be the food service side of the business which includes service to theater patrons inside theater building, service to public inside theater building, box lunch meals consumed on grounds during special events, concessions served on grounds periodically for events such as corporate events, and the meal service was provided from 7 am to 10 pm. Cook said alcohol had dispensed at bar inside of theater building before and during performances, has been served during food service, has been served during periodic events. He said alcohol has been consumed both inside the theater building and on the grounds. He said alcohol service has been from 10 am to 12 midnight.

Cook noted that parking has been provided on-site for vehicles including busses for all of event attendees 95% of the time.

Councilmember Cook believes a change in any of the following would require a conditional use application; changes in the existing conditions previously mention, addition of any new buildings or structures, demolition of any existing structures, increase in the volume of any existing structure, an increase in code limited impervious surface, the addition of an outdoor patio dining area, any changes to the size and character of the wetlands, any change that would increase or change the characteristic of storm water runoff from the property, a change in the hours of operation, a change in parking, a change in signage or a change in the lighting on the site.

### 4. Discuss Old Log Neighbors' Concerns

Jan Gray said the neighborhood wants the Old Log to succeed but at the same time wants to maintain the residential character of the neighborhood. She said the neighborhood and the Old Log have lived compatibly for years.

Patty Loftus, 5165 Meadville Street, said she didn't recall alcohol being served so late. She cautions that the Council pays attention to detail when the ordinance is drafted and that potential impacts on the neighborhood be considered.

Kristi Conrad 21780 Fairview Street, said they chose to move to the area because of the character of the neighborhood, including the Old Log. Her concern is there is no mechanism to enforce the current ordinance and the proposed ordinance does nothing to change that.

City Attorney Kelly noted he saw a table submitted by the residents outlining a number of concerns which are actually penal codes. These are not the type of issues that would be regulated in a zoning ordinance since they are nuisance and would be policed as such.

Bob Newman, 5230 Meadville Street, said the neighborhood went through the process of identifying concerns but it has been done without seeing any type of plan from the Old Log Theater as to what their vision is. He said it may turn out the neighborhood is raising concerns that may not even be issues.

Mayor Kind said the initial issue of the Old Log was raised during the drafting of the Home Occupation ordinance. At that time the Old Log changed ownership and it appeared the timing was perfect to craft a new residential district to house the Old Log in the same way that an ordinance was crafted with the developer of the C2 district. When the C2 district was created, that developer had a plan. That is not the case with the Old Log. The ordinance change for the Old Log is not being done at the request of the Frankenfields. They did not have a plan last spring when the ordinance process began, and from what the city knows, they still don't have a plan.

Greg Frankenfield, said they only have ideas. The only way they can plan is if they have knowledge of what they are permitted to do. He said the week they bought the theater, the city changed the ordinance to make them a legal non-conforming use. Mr. Frankenfield said the theater was losing money, so running the theater as it was being run, is a bad idea. His plan is to bring more people in. He's starting to put a plan together and has already begun investing large amounts of money renovating the theater. He intends on keeping the property a theater with an attached restaurant. He would like to update and expand the kitchen, expand the menu, relocated the bar, and update the exterior. He would like to provide more choices to attract more people.

Marissa Frankenfield, said the intent is not to become a Maynard's which is too noisy. They would like to have a patio, but believe the mosquitos would limit the people (and noise) after sunset. Mr. Frankenfield said he understands his limitations and will design his plan to fit within the rules. He said he plans will be based on the zoning and his intentions are to share the plans with the neighborhood.

Kristi Conrad said the ordinance has no conditional use regulations. Julie Ekelund said she has reviewed the minutes and there seems to be a desire to set what the current use is as the starting point. She feels that whatever is put in place it recognizes the theater is for theater goers. The other uses shouldn't be grandfathered, especially during a year when the auxiliary uses may have been greater than usual. She feels the proposed definition of theater in the proposed ordinance is a re-creation of history, granting an expanded use of the theater, rather than what has traditionally existed.

Tim Stolz, said there have always been weddings on the site and his own wedding was conducted there 25 years ago. Bob Newman asked if the receptions were indoors. Mr. Stolz said the receptions typically have been indoors, but sometimes there have been outdoor reception activities such as croquet. He said that weddings have been part of the business plans all along as a means to augment the business during the slow summer months.

Julie Ekelund discussed the recent issues related to weddings and said she wouldn't have an issue with them if she didn't hear them. She feels they have been growing out of control recently. She's also concerned that this may happen with the restaurant side of the business and if it does, how does the city intend on controlling the use.

Bob Newman noted the issues change based on where your house is located around the Old Log property. He feels all of these must be touched on and addressed. The neighborhood understands the Old Log needs to be financially viable, but not at the expense of the neighborhood. Personally he would like to see hours of operation regulated and a restriction on outdoor alcohol consumption.

Julie Ekelund discussed the increased traffic on Covington Street. Mayor Kind noted that the Old Log has legal access to its property from Covington Street.

Remis Petis, 5205 Greenwood Circle, indicated he is the new Executive Chef for the Old Log. He agrees the neighborhood has valid concerns, but believes strongly enough in what the Frankenfield's are doing that he moved to the city to become part an active member of the community. He said he is a big part of the operation and will be there most times with the Frankenfields are not, so concerns can be brought directly to him. Councilmember Roy asked about cooking odors. Mr. Petis said his style of cooking uses less fire and smoke which reduces odor exhaust. Roy asked if there were any type of fans or filters that could be installed to ensure a reduction in odors. Mr. Frankenfield said he would look into that as part of his kitchen remodel.

Marissa Frankenfield discussed the wedding contracts noting that the Old Log staff polices the property at 10 pm to ensure noise is reduced and the property is expected to be vacated by midnight. Julie Ekelund felt that is the type of stuff that should be noted in the ordinance and included in a conditional use permit. Marissa Frankenfield stated that it was her understanding that there already is a noise ordinance in the city and that is what they are abiding by.

Ted Hanna, 4960 Meadville Street, said they need the ordinance to know what they can do on the site. He believes it all comes down to when is it too late to operate the business? His thought is all operations should end at 10 pm. He also believes there should be limitation on the number of people permitted on the property. As residents, there should be an expectation that events will end at a certain time. As for special events, such as weddings, the venue was selected because of the grounds, after dark that appeal is gone, so events should not go on much past dark.

Marilyn Thacker, 21915 Fairview Street, discussed her concerns about lighting on the property, more specifically, the parking lot lighting. She would like to see them turned off at night. Tim Stolz stated that he thought the lights along the road are the city's and may be on a light sensor. Jan Gray said the lights seem to correspond with nights there are plays. Mayor Kind asked staff to investigate to lighting to find out if the lights belong to the city.

Richard Spiegel, 5090 Meadville Street, said the city and neighborhood has to sit down and decide what is acceptable and unacceptable in a residential neighborhood, and it has to be very specific. Noise, traffic, alcohol, lights and hours of operation are all important factors that must be considered. Mayor Kind said that is the purpose of this meeting. The Council is seeking to gather input. She suggested that the city council hold a worksession at 6pm prior to the December 4 council meeting. At that time the city council can review a revision of the ordinance based on information learned at the November 12 worksession..The council agreed to schedule a 6pm worksession on December 4.

Councilmember Roy asked Tim Stolz if Councilman Cook's written representation, presented earlier to the Council, was an accurate representation of the activities that have consistently taken place at the Old Log. Mr. Stolz said it was.

Julie Ekelund commented about the truck deliveries and expressed concerns about increased deliveries if there is an expansion of the restaurant use. Greg Frankenfield said there is only one delivery. Even if there was an increase in the delivery size, there would still only be one delivery. He said the increase use of Covington Street was due to the resurfacing of his parking lot. Marissa Frankenfield said the staff was told not to use that road anymore.

Michelle Erickson, 5100 Covington Street, noted Covington Street is very narrow and in a state of disrepair. She said it also looks as though it was never completed resurfaced when it was last included as part of a street project. She expressed concern about the increased traffic and safety on Covington Street.

Mayor Kind left the meeting at 5:30 pm.

Mike Ojile, identified himself as the attorney for Greg and Marissa Frankenfield. He said the Old Log cannot be a successful business without being a good neighbor with the residential properties around them. He said the process will be delayed again due to the continuance of this ordinance.

Jan Gray expressed concern about the process, noting she felt that due process had not been followed and that the proposed ordinance did not conform to the Comprehensive Plan.

Zoning Administrator Karpas said due process was followed, public notice was placed in the paper, a public hearing was held and the Planning Commission and, in fact, the Planning Commission discussed the proposed ordinance at multiple meetings prior to it being forwarded to the City Council.

Karpas said the proposed ordinance would not change anything within the Comprehensive Plan since all it would be doing is creating a zoning district which is a carbon copy of the R-1A District. Same uses, same densities, no changes. The thought behind the creation of this district was to protect the neighborhood and potentially allow for some diversity in housing should the Old Log fail. By placing the Old Log property in its own district it would be easier to amend the district to allow for a different use without creating an unintended circumstance elsewhere in the R-1A District. This also allows the city to create a document for the Old Log, which we don't have now.

He said what the neighbors are looking for is premature and actually not part of this ordinance. All this ordinance is doing is creating a place for the Old Log, not creating a conditional use permit for the Old Log. That is a separate deal all together. Once this district is completed, the Old Log would need to apply to the city to become a Conditional Use within the R-1C District. At that time, the city would look into regulating the use. That has nothing to do with this ordinance, that's not to say we can't have this discussion, but it's not really productive until we have an ordinance and an application since the Old Log can continue to operate as a legal non-conforming use as it always has.

Bob Newman feels both sides want the same thing, a viable business that fits into the residential nature of the neighborhood. Mr. Frankenfield agreed, noting he feels he bought a theater, restaurant and event center. Some neighbors disagreed with that statement. The neighbors and Mr. Frankenfield agreed to meet and discuss some of the issues prior the December 4<sup>th</sup> work session.

## 5. Adjournment

Roy moved to adjourn. Second by Cook. Meeting adjourned at 5:50 pm.

Respectfully submitted  
Gus Karpas  
City Clerk