

City of Excelsior
Planning Commission

Minutes

Tuesday, February 5, 2014

1. CALL TO ORDER

The meeting was called to order at 6:15 p.m. by Chair Rude.

2. ROLL CALL

Commissioners Present: Busch, Duyvejonck, Hannah, Honzl, Wilson and
Chair Craig

Commissioners Absent: None

Also Present: City Planner Richards, City Attorney Staunton

3. APPROVAL OF MINUTES

Chair Craig noted there are three are three sets of minutes to approve - **November 2013, December 3, 2013, and January 2014.**

Commissioner Busch stated that her name was misspelled in the November minutes, page four, under Unfinished Business.

Commissioner Wilson moved, Commissioner Busch seconded, to approve the minutes of the **November , 2013** Planning Commission meeting, with the correction noted. Motion carried 6/0.

Commissioner Busch said that page 5, New Business, has spacing issues in the paragraphs. Commissioner Duyvejonck said the minutes state that Acting Chair Duyvejonck called the meeting to order. Commissioner Duyvejonck said she was the Acting Chair at the November Planning Commission meeting but not at the December meeting and that this should be changed to Chair Craig called the meeting to order. Commissioner Busch stated that page 6 has a sentence that reads, "Richards stated the design intent that was originally approved by the City Council." The Commission discussed that this should read, "Richards stated the design intent with the black background that was originally approved by the City Council." Richards stated that there are paragraphing issues in the December minutes, also. Richards will give the minutes to City Manager Luger for corrections.

Commissioner Busch moved, Commissioner Wilson seconded, to approve the minutes of the December 3, 2013 Planning Commission meeting, with the corrections noted. Motion carried 6/0.

Commissioner Wilson said that item 5(a) states that Wilson volunteered and went to the City Council meeting, but this should be corrected to Hannah who volunteered to attend the City Council meeting.

Commissioner Busch moved, Commissioner Hannah seconded, to approve the minutes of the **January 2014** Planning Commission meeting, with the correction noted. Motion carried 6/0.

4. PENDING ISSUES/PROJECTS

Chair Craig said the Commission needs to appoint a liaison to the February 18, 2014 City Council meeting. Commissioner Busch volunteered and Chair Craig volunteered to be the backup, should Commissioner Busch be unable to attend.

5. PUBLIC HEARINGS

Proposed Ordinance to Amend Article 38...

Richards stated that the Commission has been discussed this item for several meetings and that there has not been a public hearing on it since the December 3, 2013 Planning Commission meeting. Richards said there has been discussion by the Commission to open this up for more public involvement. Richards said notice was published in the Sun Sailor and the Lakeshore Weekly News for this Public Hearing.

Richards discussed the items that the Commissioned wanted accomplished. He said the Commission wanted staff to meet with the Excelsior-Lake Minnetonka Chamber of Commerce. Richards said that he and City Manager Luger attended a meeting with the Chamber of January 7th. He said attendees were supportive of the efforts of the Commission, in regards to franchise businesses. Richards said one attendee commented on the number of establishments that qualify in Excelsior as a formula business. Richards said attendees at the meeting were also very interested in this type of regulation potentially extending in the B1 district. He said there is less of a concern in the B2 areas. Richards said the Commission also asked staff to discuss the item with a couple of newspapers. Richards and City Manager Luger spoke with the Sun Sailor and the Lakeshore Weekly News. Richards said one article is in their packet and passed copies of the other article to the Commissioners.

Ks said that the pc has been trying to do some outreach over the past couple of months and now we have gotten word around and some people are here tonight to tell the pc what they think of the formula business regulations. Ks drafted a memo this afternoon reg letters from mark Kelly and peter coyle. He hasn't been able to do a comprehensive review of these letters. Suggested the pc listen to what they have to say tonight. ks recommended that the pc continue the public hearing to the next pc meeting next month, after hearing the testimony tonight.

Nicki opened the public hearing.

Petery coyle, lawyer representing oppidan, inc. addressed the council. Has a couple of points to address. 1) the former condition of the property that oppidan has redeveloped was in pretty

tough condition. Opidan has invested roughly \$5m to bring it back to a more usable, marketable condition. He also acknowledged that the city council and pc played an important part in that, largely due to standards that the city has in place today. He said the city has tools that they currently use, through the design standards, conditional use permit process and the zoning ordinance, in order to regulate land use. He said he's won't disagree with the city in using those tools. However, he disagrees with how the city is targeting a specific category of businesses, which they think is improper and would be invalid and unenforceable, if challenged. The phrasing of the ordinance bans all businesses, without regard to impact. He said there is no acknowledgment of the different types of businesses. He said some businesses are exempted from the restricted categories. He said the ordinance fails in his opinion, based on its vagueness. He believes this ordinance violates constitutional standards.

Mr. Coyle handed out photos of the improvements Opidan made to their property. He said this ordinance is way over the top. Jay Moore of Opidan was also in attendance.

Wilson asked Coyle if whether he is against the concept of the ordinance or the specifics that have been written to date. Coyle said he's not against the concept, providing it's applied uniformly, but he said there is nothing in it currently that's uniform.

Hannah asked about the \$5m invested to date and where did it go. Coyle said into the property. Moore said between purchase and redevelopment. Hannah asked how much redevelopment cost. Sr said it's not relevant. Hannah asked how Coyle would propose the guidelines to preserve a unique city and a unique piece of property. Hannah asked for his suggestions. He said we don't want to be a cookie cutter town, looking like many other cities around the state. Coyle said the pc has the authority to address things like color, materials, lighting, size, setbacks, all of those things that help create a space and define uniqueness. When the city starts to get inside the business and decide whether the business is formulaic, Coyle said it's none of the city's business. He also said that treating a business as a formula business because of a trademarked sign is irrelevant. If the city is trying to keep exc as a destination, you can exclude certain categories of uses, but you have to allow all coffee shops or gas stations, or financial services companies. You can't pick winners and losers. You can define what they look like in the community, as long as you apply it uniformly.

Wilson said the pc is trying to pick the image that a company is trying to convey. Coyle said you have the ability to manage the lighting, theming, or overall branding of a business, but if you allow clothing stores in your city, you have to allow all clothing stores in your city.

Hannah said we would like the companies that join our city, be respectful of the uniqueness of excelsior. Coyle said that some cities do achieve more restrictive design standards and businesses will make changes, if they do want to be in the city.

Nicki said part of it is looking at regulating location. She said Coyle raised a valid point about uniformity. She said no matter how small, we don't want a McDonald's by the harbor. She said this is why we are having a public hearing, so we can get public feedback.

Coyle said drawing such stark lines, you'll end up with unintended consequences that you don't mean. Allowing wells fargo but not the investment guy or the gas station but not the coffee shop. Nicki said the pc has had a lot of discussion. Nicki asked if anyone else wants to speak.

Jay moore/oppidan said it is there intent to see this project thru to the end. He said they are still trying to fulfill the plan and bring a grocery store to excelsior. Banning franchising businesses limits the draw for them to recruit, lease, and bring businesses into the city of excelsior that want to do business here. He said there are lots of trendy franchise businesses that want ot do business in excelsior. Women's clothing, women's jewelry, banking, yogurt, insurance agencies, but if they have a national tag on their sign, they would be prohibited. They're stuck with half an investment bu thte full project has a \$10 m price tag. They would like to have a fair chance to bring a quality development intot he city of excelsior.

Sr said one of the oridinaces most used is port townsend, wa. Used a lot of the definitional part o fht eoridinace. He may give them a call to see how it's working for them.

Nicki suggested going thru the bullet points in mr. coyle's letter.

Ks said the question is the categories and where do you draw the line.

Hannah said he appreciates mr coyle's comments regarding the interior of the business vs the exterior.

Honzl said it seems we are talking anbout two different issues - the look of the business and the size of the business. What do we define as franchise formula? Seems like two different discussions.

Wilson said the focus is on maintaining the character of water street. We're not necessarily saying a franchise is the defined thing, but ht eforumaul or cookie cutter look of the business. Also where it's located within the city is the other part of the discussion.

Duj said that we were first looking at water st as the area the pc wanted to protect.

Nicki said we need to start with the good, which is keeping the character of the street, water street, George street. Beth said one of the reasons it grew beyond George st is maybe the result of we attacked our signage ordinance, also. We attacked the signage ordinance separately. Sr said we attacked the backlit portion of the signage.

STOPPED AT 46:53.

6. ADJOURNMENT: 2:46:35