



**Meeting of the City Council
Held at the Elk River City Hall
Monday, June 17, 2024**

Members Present: Mayor John Dietz, Councilmember Jennifer Wagner, Councilmember Mike Beyer, Councilmember Matt Westgaard, Councilmember Cory Grupa

Members Absent: None

Staff Present: Business Services Director/Assistant City Administrator Joe Stremcha, Community Development Director Zack Carlton, Economic Development Director Brent O'Neil, Senior Planner Chris Leeseberg, and Deputy Clerk Jolene Richter

Others Present: City Attorney Jared Shepherd

1. CALL MEETING TO ORDER

Pursuant to due call and notice thereof, the meeting was called to order at 6:03 PM.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

3. CONSIDER AGENDA

Commissioner Westgaard noted he would be abstaining from Item 7.5 due to a conflict of interest.

Moved by Councilmember Beyer and seconded by Councilmember Grupa to approve the agenda. Motion Carried 5-0.

4. CONSENT AGENDA

4.1 June 3, 2024, City Council Regular Minutes.

4.2 Check Register as outlined in the staff report.

4.3 Pay Estimates as outlined in the staff report.

4.4 Resolution 24-32 Supporting the Environmental and Natural Resources Trust Fund.

4.5 Adopt-a-Storm Drain Program Agreement 24-16.

4.6 Interim Police Chief Designation - Darren McKernan.

4.7 2024-2025 Liquor License Renewals.

4.8 Duffy Development Letter of Support for Coachman II State Funding Application.

4.9 Resolution 24-33: Variance Request for Dodge Avenue and 5th Street Intersection.

4.10 Separation Agreement and Waiver of Claims as outlined in the staff report.

4.11 Hire Megan Knopik as the Northbound Liquor Store Manager, effective July 8, 2024.

4.12 Resolution 24-34 Plat: Beaudry Elk River Second Addition, 19132 Elk Lake RD NW - Ken Beaudry.

4.13 Select Consultant for the 2024 Downtown Small Area Plan.

4.14 Extend Land Use Approvals: Plat and Conditional Use Permit (PUD) - Broadway on 10 Apartment Project as outlined in the staff report.

5. OPEN FORUM

Sandra Borders, 17155 Quincy St NW, who was suspended from the Activity Center, explained her perspective of the situation and apologized to an employee at the senior center. She purchased new cards to donate to the center to be used by the Smear cards group.

Mayor Dietz asked Mr. Stremcha to reach out to Ms. Borders about her suspension.

Danny Abrahamson, 17936 Tyler Drive NW, explained we all say things sometimes we don't intend and have to deal with the consequences and apologize. He feels the seniors deserve an apology as well. He stated some of the seniors feel the activity center is their home and are appreciative to have the right to be at the senior center.

6. PRESENTATIONS, AWARDS, AND RECOGNITION

6.1 City of Elk River Volunteer of the Month

Mayor Dietz presented the June Volunteer of the Month award to Scott Kruger. He highlighted the following:

- Elk River youth basketball and baseball coach for more than 10 years
- Has made many clocks and flags that have been donated to military service members, cancer patients, friends, family, and the Elk River Police Department.
- His handmade clocks have benefited Ducks Unlimited, Norske Torske Klubben, ALS fishing tournament, and other local banquets and individuals
- Very strong supporter of the Elk River law enforcement community

6.2 Planning Commission Interviews

The Council interviewed applicants for the Planning Commission.

6.3 Parks and Recreation Commission Interviews

The Council interviewed applicants for the Parks and Recreation Commission.

7. PUBLIC HEARINGS

7.1 Conditional Use Permit: Commercial Cannabis Cultivation, 10700 165th Ave NW - Vireo Health

The staff report was presented.

Mayor Dietz opened the public hearing.

Mark Doherty, Vireo Health, applicant, stated he is available for any questions.

Mayor Dietz closed the public hearing

Moved by Councilmember Westgaard and seconded by Councilmember Wagner to approve the Conditional Use Permit authorizing the establishment of a Commercial Cannabis Facility with the following conditions to satisfy the standards outlined in Section 30-654:

- 1. The facility must comply with all licensing and operating procedures required under Minnesota Statutes Chapter 342.**
- 2. The Conditional Use Permit may be issued prior to the applicant having received all necessary state permits and licenses, but the applicant shall submit proof of obtaining all state permits prior to beginning cultivation operations.**
- 3. Issuance of this CUP does not exempt the applicant from all standards outlined in state statute.**
- 4. The operation/building must connect to city sewer and water and pay the required SAC/WAC fees in accordance with city codes.**
- 5. Construction activities will require signed plans prepared by a qualified professional.**
- 6. All other uses of the property must cease prior to issuance of a certificate of occupancy.**

Motion Carried 5-0.

7.2 Conditional Use Permit: Agricultural Animals (two horses) on a Residential Lot, 20373 Vance St. NW - Katie Bedbury

The staff report was presented.

Mayor Dietz opened the public hearing.

John Peterson, 20355 Vance St NW, neighbor to the Southeast, appreciates the Planning Commission considering his concerns. He is still concerned about the fence line and would like to see it moved to the west.

Mayor Dietz asked how the site was chosen. Mr. Leeseberg explained the applicant stated there would be two acres and sketched about where it would be, and he put that into CAD to get the location map.

Mayor Dietz closed the public hearing.

Councilmember Westgaard asked if there were any wetlands or anything else that would be considered in the location. Mr. Leeseberg stated no. Councilmember Westgaard also asked if there was a way to get the applicant together with the neighbor to discuss the location. Mr. Leeseberg stated it would be tough to do after the CUP has been approved by the Council.

Councilmember Beyer asked if the Council were to approve the CUP, and they wanted to change their diagram would they need to come back to the Council. Councilmember Wagner asked if we can legally state where the fenced area goes as long as the applicant follows the setback requirements. City Attorney Shepherd explained that the conditions would be the requirements held to the applicant and further explained there is a graph, but it is not to scale and gives a hint of the location, so it is not exact, but what is exact are the setbacks and the conditions listed.

Moved by Councilmember Wagner and seconded by Councilmember Beyer to approve the Conditional Use Permit with the following conditions to satisfy the standards outlined in Section 30-654:

- 1. No more than two (2) agricultural animal units shall be allowed on the property.**
- 2. No on-site commercial activities such as breeding, boarding, or selling shall be permitted.**
- 3. The shelter structure and area for feeding and water shall be located no less than 200 feet from any existing neighboring residence as shown in the Staff Site Plan dated 6-17-2024.**
- 4. A Manure Management Plan must be approved by the city.**
- 5. The manure compost bay shall be located no less than 200 feet from any existing neighboring residence.**
- 6. Manure shall not be land-applied to the subject parcel.**
- 7. Manure accumulations shall be managed such that no pollution hazards or nuisance conditions are created or maintained.**
- 8. If the city finds that the manure and other waste materials create a nuisance by attracting flies, other insects, and rodents, or by creating offensive odors, the city**

may order the manure and other waste materials to be removed on a more frequent schedule.

Motion Carried 5-0.

7.3 Conditional Use Permit: Motor Vehicle Specialty Service Station (Retail Tire Service Station), 17994 Zane Street - Les Schwab Tire Center

The staff report was presented.

Mayor Dietz opened the public hearing.

Ron Isaacson, 411 East Main St. Bozeman MT, on behalf of Les Schwab Tire Centers, the applicant stated he is available for questions.

Mayor Dietz closed the public hearing.

Moved by Councilmember Westgaard and seconded by Councilmember Grupa to approve the Conditional Use Permit with the following conditions to satisfy the standards outlined in Section 30-654:

- **The parking lot/driveway setback variance (V 24-04) must be recorded before issuing building permits.**
- **The use of hazardous materials such as oils, lubricants, chemicals, and solvents shall be handled in accordance with all state standards.**
- **The applicant must receive written approval from the existing overhead power-line utility before issuance of building permits.**

Motion Carried 5-0.

7.4 Interim Use Permit: Residential Occupation with Outdoor Storage, 10208 209th Ave NW - Jason Bye

The staff report was presented.

Mayor Dietz opened the public hearing.

Jason Bye, 10208 209th Ave NW, applicant and homeowner. Mr. Bye explained what his company, Tower Electrical and Construction (TEC), does and what he is asking for with the IUP. He explained they are a small wireless construction company that builds and maintains cellphone tower sites with the work done off-site. He also stated if he has deliveries that require a semi, he would make other arrangements, and he plans on following the 18 conditions listed. He continued to say he is asking for similar uses of six other businesses with outdoor storage that are operating within a mile of his location. He has stated he has taken all the appropriate steps that the city has guided him to take and has been openly communicating.

Bryan Rucks, 10296 209th Ave NW, property to the west. He has concerns about the property and is concerned that this property will turn into a property like a salvage yard. He has concerns regarding the neighbor's well and stated it only takes one spill and the first well that will be affected is the neighbor's well to the east. The fence he puts up doesn't do them any good because they are at a high elevation, and they can see over it. He doesn't have a problem with Jason as a neighbor. His biggest

problem is any ground pollution that could happen and the outdoor storage.

Katie Lehmann, 10170 208th Ave NW, is concerned about noise, light pollution, and other pollution. She would like to keep their neighborhood as a residential area.

Deann Wells, 10296 209th Ave NW, asked the Council to deny the application. She has an issue with the effects the business would have on their property value. She is concerned about deliveries that take place for the business. They have had deliveries go down their driveway, and she is very concerned about the safety and the neighbors and the big trucks stopping and backing up on the county road. She is concerned that the applicant is already violating the codes. She respectfully asked the Council to consider the neighbors.

Mayor Dietz closed the public hearing.

Councilmember Wagner wanted to clarify that the Planning Commission feels the IUP has enough conditions in it that if the conditions are not met the IUP can be revoked and that is why they passed it. Councilmember Westgaard concurred. Councilmember Wagner explained that residential occupations should never get to the point of being industrial and posed the question: at what point does this become an industrial business? She is also concerned with the hours of operation being 7 a.m. - 7 p.m. Monday - Saturday in a residential area. She questioned conditions 15 and 16 stating, "Business delivery vehicles shall not back into the site from 209th Avenue/County Road 33 and signage identifying the business/deliveries shall be installed per county and city requirements" and wondered if it is a reasonable expectation that delivery vehicles would not back down the driveway and the fact the sign is needed at the end of the driveway shows it is a bigger business. She stated this is blurring the line between being a reasonable residential occupation versus becoming an industrial property.

Mr. Leeseberg clarified the ordinance was recently codified and the hours of operation and the approved outdoor storage were approved per these types of requests.

Councilmember Beyer wanted to clarify the difference between a CUP and an IUP. Mr. Leeseberg explained the difference is that with a CUP the business stays with the process and the property, and IUP ends when the property is sold. There are different rules and regulations for approving them. IUP is time-based with deadlines. They both allow use but the IUP has a sunset date and CUP can continue.

Councilmember Beyer explained that the Council agreed that home occupations should consist of small businesses and explained that a bigger business is more difficult to approve.

Councilmember Westgaard explained a residential occupation can be anything from piano lessons, and tax accountants to larger industrial uses that borders on what should be allowed in a residential district. He thinks the IUP process is more appropriate than a CUP, and it allows monitoring and revoking the IUP. There are a lot of these residential occupations that exist and the IUP is an attempt to get some control over what happens in the residential districts, so the quality of life for residents can be maintained. He further explained they have the responsibility to lay out a specific set of conditions to maintain a rule and to allow him to operate his business and thinks it comes down to the impact of the adjoining properties.

Councilmember Grupa agrees regarding the IUP process to control the situation. He also explained he doesn't agree with how this happened regarding doing something first and asking for forgiveness later and stated that is not how you should do it. He has concerns regarding the deliveries, and the size of

the company and doesn't think it belongs in a residential area and thinks it belongs in an industrial area. He is concerned regarding the possible pollution of the neighbor's well or the pond.

Mayor Dietz agreed with the statement that was made regarding putting something up and then asking for forgiveness later is not the best way. He has a hard time believing the Council would have passed this if it was originally brought to them. He stated he has several issues with this proposal and would not be in support of the IUP.

City Attorney Shepherd explained if there is going to be a motion to deny, he would recommend staff bring back a resolution and findings for a denial.

Mayor Dietz asked City Attorney Shepherd if it is denied then what happens. City Attorney Shepherd said the property owner would have to take care of his property and make sure it follows residential use.

Mayor Dietz asked if the Council is legally able to deny the IUP. City Attorney Shepherd explained the way an IUP is structured. The Council has the discretion to approve or deny it.

Moved by Councilmember Beyer and seconded by Councilmember Grupa to deny the Interim Use Permit for residential occupation with outdoor storage at 10208 209th Ave NW and to have staff bring back a resolution of findings for denial. Motion Carried 4-1. Councilmember Westgaard opposed.

7.5 Business Assistance Agreement - Heritage Millwork Project Resolution 24-35

The staff report was presented.

Mayor Dietz opened the public hearing. There being no one to speak to this matter, Mayor Dietz closed the public hearing.

Moved by Councilmember Wagner and seconded by Councilmember Beyer to, adopt, Resolution 24-35 authorizing execution of a business assistance agreement with Heritage Millwork, Inc., PLM Properties, LLC, and affiliates. Motion Carried 4-0. Councilmember Westgaard abstained due to a conflict of interest.

8. GENERAL BUSINESS

There was no general business.

9. MOTION TO ADJOURN REGULAR MEETING

Moved by Councilmember Westgaard and seconded by Councilmember Beyer to adjourn the regular meeting. Motion Carried 5-0.

The regular meeting adjourned at 7:35 p.m. Mayor Dietz called the work session to order at 7:40 p.m.

10. WORK SESSION – UPPER TOWN CONFERENCE ROOM

10.1 FT Center Room Rental, Turf, and Ice Rates

The staff report was presented.

The Council discussed the fundamental changes in the Furniture and Things Event Center rate structure.

Mr. Stremcha presented the current rates and discussed an alternative methodology for establishing rates going forward as outlined in the staff report.

The Council discussed and agreed to set rates and discontinue allowing contracts. The Council reviewed the initial rates staff proposed and directed staff to come back with comparison rates. The Council discussed when the rates should go into effect. They agreed for the duration of 2024 they would use the existing rate structure, then as of January 1, the rates would be set to the new rates, and moving forward they would follow a calendar year.

11. MOTION TO ADJOURN

Moved by Councilmember Westgaard and seconded by Councilmember Beyer to adjourn the meeting. Motion Carried 5-0.

The meeting adjourned at 8:58 p.m.

Minutes prepared by Jolene Richter.

12. INFORMATION

12.1 Financial Report - May



John J. Dietz, Mayor



Tina Allard, City Clerk