

**CITY OF BAYPORT  
SPECIAL CITY COUNCIL MEETING MINUTES  
COUNCIL CHAMBERS  
MAY 19, 2008  
FOLLOWING PLANNING COMMISSION MEETING**

**CALL TO ORDER**

Pursuant to due call and notice, Mayor Nowaczek called the special City Council meeting of May 19, 2008 to order at 8:15 p.m., and asked Councilmembers, staff and the audience to join in pledging allegiance to the American Flag.

**ROLL CALL**

Members Present: Mayor Jon Nowaczek, Councilmembers Connie Carlson, Dan Johnson, Torry Kraftson, and Sharon Ridgway

Members Absent: None

Others Present: Administrator Mike McGuire, Public Works Supervisor Mel Horak, Assistant Administrator/Planner Sara Taylor, and Attorney Nick Vivian

**NEW BUSINESS**

Consider a request for a conditional use permit to operate a restaurant at the existing building located at 101 5<sup>th</sup> Avenue South, adjacent to the Bayport Marina: Mayor Nowaczek recognized the unique situation of the application before the city, given the location of the establishment and the surrounding neighbors. He believes the Planning Commission public hearing aired all the issues in a fair manner. He noted the city's desire to balance the applicant's request with the greater needs of the community. Assistant Administrator/Planner Taylor reviewed the recommendations of the Planning Commission, noting the conditions of approval and findings of fact were approved as presented in the staff report, with the exception of the hours of operation. The hours recommended by the Planning Commission were 8:00 a.m.-11:00 p.m. Sunday-Thursday and 8:00 a.m.-12:00 a.m. Friday-Saturday. She noted that the sale of liquor on Sunday cannot begin before 10:00 a.m. It was noted that the applicant is requesting reinstatement of the former conditional use permit (CUP). The entire text of the original CUP is not included in the staff materials, since it is quite lengthy and only two conditions, seating capacity and exterior lighting, pertain specifically to the restaurant building. Staff believes that additional conditions of approval for the CUP reinstatement should be considered for amendment at this time.

Councilmember Ridgway believes the outdoor music noise issue can be addressed through enforcement of the city's noise ordinances and questioned whether dancing should be addressed in the CUP. She stated that most restaurants have a specified kitchen closing time, and feels that a fine dining restaurant can finish its business within an hour or so of that time. She believes the recommendations of the Planning Commission are reasonable, but also sees the merits of a 1:00 a.m. closing. Administrator McGuire indicated the City Council may want to add a specific time that the premises must be cleared. It was noted that whatever hours are decided, it would mean that patrons would have to be out by that time.

Councilmember Carlson stated she checked with other area fine dining restaurants and most kitchens close by 11:00 p.m., including weekends. She questioned whether Mr. Scanlon could request additional hours of operation for special events, beyond what is approved in the CUP. Administrator McGuire indicated that the City Council could specify permission for a certain number of special use events per year in the CUP to allow for a later closing time. She added that the dumpster area should be enclosed.

Councilmember Kraftson believes the Planning Commission did a good job of balancing the concerns of all parties and made fair recommendations, which he supports. He would like the Police Department to be proactive in monitoring any noise complaints and potential impaired driving concerns. He would appreciate Mr. Scanlon following through with previous statements to the City Council regarding promoting responsible drinking at his business.

Councilmember Johnson concurred with Councilmember Kraftson's comments and indicated to Mr. Scanlon that he is willing to change the hours of operation in the future, if the applicant can show good reason. However, he is concerned that the issues raised by the residential neighbors need to be addressed and believes the staff and Planning Commission recommendations are fair. He recommended that additional language is needed regarding proper screening/enclosure of the dumpster.

Mayor Nowaczek spoke to the additional Service Availability Charge (SAC) fees that will be charged to the restaurant building by the Metropolitan Council. He noted the fees, based on seating capacity, must be paid prior to opening the restaurant, and he recommended that specific language regarding payment of the fees be added as a condition of approval. Administrator McGuire noted that additional SAC fees, and related city sewer/water access fees, were not paid when the deck was added to the restaurant years ago, and the Metropolitan Council is now reviewing for additional SAC charges. He added that the Metropolitan Council and city fees would need to be paid prior to the issuance of the requested liquor licenses.

Councilmember Kraftson introduced the following resolution and moved its adoption, noting approval based on the conditions as listed in the Planning Commission staff report, with the hours of operation revised to 8:00 a.m.-11:00 p.m. Sunday-Thursday and 8:00 a.m.-12:00 a.m. Friday and Saturday; required enclosure of the dumpster area completed prior to reinstatement of the CUP; and compliance with the Metropolitan Council SAC fees. He revised his motion to state applicant could put money into escrow to cover the Metropolitan Council's current claim.

**Resolution 08-07**

**RESOLUTION APPROVING THE REINSTATEMENT OF A CONDITIONAL USE PERMIT (CUP) TO OPERATE A RESTAURANT AT 101 5<sup>TH</sup> AVENUE SOUTH, LEGALLY DESCRIBED AS LOT 2, BLOCK 2, BAYPORT MARINA, BAYPORT, WASHINGTON COUNTY, MINNESOTA**

The motion for adoption of the foregoing resolution was duly seconded by Councilmember Johnson and upon roll call being taken thereon, the following vote via voice:

Jon Nowaczek – aye	Torry Kraftson – aye
Connie Carlson – aye	Sharon Ridgway – aye
Dan Johnson – aye	

**UNFINISHED BUSINESS**

Consider approval of liquor licenses for the establishment “Refuge on the River” located at 101 5<sup>th</sup> Avenue South: Councilmember Johnson stated he was in favor of approving the requested liquor licenses, noting that the CUP conditions pose some limitations on the applicant's licensure. Councilmember Ridgway requested clarification on the licenses and indicated she was in favor of approval. Attorney Vivian clarified that staff recommended approval of the liquor licenses conditioned upon the same requirements as the CUP approval.

It was moved by Councilmember Johnson and seconded by Councilmember Carlson to approve the liquor licenses requested by Mike Scanlon for his business, Refuge on the River, located at 101 5<sup>th</sup> Avenue South, subject to the same conditions as the conditional use permit issued for the property.

Councilmember Kraftson questioned whether the applicant's liquor licenses could be approved prior to meeting the conditions of the CUP, noting it may take some time to complete the process.

Councilmember Johnson noted that the restaurant cannot open without the property meeting all the CUP conditions of approval and indicated he does not think the liquor license approval should be conditioned upon the same, as noted in his motion. Staff clarified it was their intent to allow the applicant to start the process for liquor license approval with the State of Minnesota, but under no conditions would the city issue the licenses unless all conditions of the CUP were satisfied. Mayor Nowaczek reiterated that the applicant could escrow funds for the anticipated SAC charges, should the Metropolitan Council determination slow the process.

Motion carried.

#### **ADJOURNMENT**

It was moved by Councilmember Carlson and seconded by Councilmember Johnson to adjourn the meeting at 8:50 p.m. Motion carried.