

MINUTES OF PLANNING COMMISSION MEETING  
May 18, 2020

Pursuant to due call and notice thereof, a regular Planning Commission meeting was held at City Hall on the 18th day of May, 2020 at 6:30 PM

**THE FOLLOWING WERE PRESENT:** Commissioner Ferris, Commissioner Zelinske, Commissioner Torkelson, Commissioner Thompson, Commissioner Burton and Commissioner Fitch

**THE FOLLOWING WERE ABSENT:** Commissioner Tinsley

**THE FOLLOWING WERE ALSO PRESENT:** Administrator Ibisch, Clerk Rappe, City Attorney Leth, Anthony Heaser, and Barry O'Neil

**CALL TO ORDER AT 6:30PM**

**MINUTES OF THE PREVIOUS MEETING APRIL 20, 2020 - Motion made to Approve the April 20, 2020 Meeting Minutes made by Commissioner Thompson, second by Commissioner Burton with All Voting Aye.**

**PUBLIC HEARING HEASER VARIANCE REQUEST** – Chairman Ferris opened the Public Hearing Administrator Ibisch stated that the memo from the Zoning Administrator and the emails from the City Attorney and the City Engineer and the encroachment agreement that was made with the Murry's, the letter from the previous City Administrator and findings of fact. Staff recommendation is negative on this request. From the city's perspective the issue is between the previous owner of the property and the current owner.

Tony Heaser - 903 12<sup>th</sup> Ave NW – he highlighted the building permit allowing the house to be built on the easement and the building inspector approved it and issued a certificate of occupancy. He was not notified by the previous owners or his title company and lawyer. He wants to build an addition and is asking for a 2 ½ foot vacation of the easement on the north side. From the street back 22 feet to behind the garage. City Attorney Leth stated that Jay Hanson, the buyer's attorney, asked that this issue be addressed. So the time to address this would have been at closing. Attorney Leth stated that the encroachment agreement was recorded by Jay Hanson, Heaser's Attorney on July 16, the closing was on July 13 the agreement was passed by the City Council on July 11

Barry O Neil, representing Jay Hanson Title, yes Jay Hanson reached out to the seller's attorney Paul Kiltinen after the issue was identified. Attorney Leth stated there was never any discussion of a vacation agreement only an encroachment agreement with Mr. Kiltinen. Mr. O'Neill stated Jay Hanson asked Mr. Kiltinen for a vacation agreement. Mr. O'Neil threatened action to rescind this agreement if we can't fix this. Mr. O'Neil stated that his conversations with Mr. Theobald didn't have any problem vacating this easement.

Commissioner Burton asked if they can show that they can't sell the home. Attorney Leth stated that Mr. Heaser closed on the house with the encroachment agreement. Mr. O'Neil is only speculating that the home cannot be sold as it is. Mr. Heaser stated that the mortgage insurance will not insure a clouded title.

Commissioner Burton stated that this is between the seller and the buyer not the City and the buyer. Commissioner Burton stated that we have no evidence that the permit allows the encroachment, the building permit was signed off.

Commissioner Thompson stated that building has been allowed in easements but it is not recommended for the reason of property damage and if there is an easement that means there is utilities in that easement. Building in the easement is at the builder's own risk.

Attorney Leth stated that the City Engineer did not have an issue with the agreement and his concern is if the city needs to increase the size of the storm water main that he would not support a vacation of the easement.

Mr. O'Neil asked that if the variance is denied that something has to be done about this property. Mr. Heaser since the garage is already encroaching if the Commission would just give him a variance or vacation for the current encroachment so that he could have a clear title he will not put on his addition.

Public Hearing Closed

Commissioner Thompson – from a title standpoint is there a reason he would not have a clear title and the potential buyer would have the same issue. Not unless the buyer or title would object. Attorney Leth stated that she does not feel that this makes the title unmarketable, she noted the request came because it was unmarketable.

Chairman Ferris stated that Hanson (heaser's attorney) knew about the agreement and requested the agreement and still let the closing proceed.

Commissioner Thompson – this does not seem like this is the City's responsibility.

Commissioner Burton stated that this was presented as being requested by the title company and does not see any burden on the City regarding this.

Commissioner Fitch – does not believe that this is the City's problem. Does not think we should vacate our easement.

Commissioner Burton – this is a culmination of a bunch of errors and the City's resolve was to create the encroachment agreement to let the sale go forth and does not feel the variance of the easement should go forward.

Commissioner Thompson – this agreement happened after the fact of the building permit per the request of the buyer (Heaser).

Commissioner Torkelson – is afraid that if we were to grant this what will happen to others in this same situation.

Commissioner Zelinske – asked Heaser that he bought it and closed on it and then found out about it why didn't you go after the title company. Tony stated that even if the variance is not granted we need to fix this.

Commissioner Burton – **Motion to table to allow the homeowner to get together with City staff to figure out the best way to deal with this, second by Commissioner Thompson with All Voting Aye.**

**ZONING ORDINANCE REWRITE** - Laura Chamberlain, HKgi, took the Planning Commission through the Executive Summary of the Zoning Ordinance Rewrite.

The Planning Commission had no questions but would like a copy of her presentation for the maps at the end.

Adjourn 8:26PM

Respectfully Submitted,

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Linda Rappe, City Clerk