

Pursuant to due call and notice thereof, a regular meeting of the North Mankato City Council was held in the Municipal Building Council Chambers on March 18, 2013. The Mayor called the meeting to order at 7:00 p.m. asking that everyone join in the Pledge of Allegiance. The following were present for the meeting, Mayor Dehen, Council Members Norland, Freyberg, Spears and Steiner, City Administrator Harrenstein, Finance Director Thorne, City Clerk Gehrke, Attorney Kennedy, Engineer Malm and Planner Fischer.

Approval of Agenda

Council Member Norland moved, seconded by Council Member Steiner, to approve the agenda as presented. Vote on the motion: Norland, Freyberg, Spears, Steiner and Dehen, aye; no nays. Motion carried.

Approval of Minutes

Council Member Norland moved, seconded by Council Member Steiner, to approve the minutes of the Council meeting of March 4, 2013. Vote on the motion: Norland, Freyberg, Spears, Steiner and Dehen, aye; no nays. Motion carried.

Correspondence

Letter from U.S. Department of Housing and Urban Development

Mayor Dehen referenced a letter from the U.S. Department of Housing and Urban Development (HUD) reporting that due to the sequestration order on March 1, 2013 approximately \$85 billion in budgetary resources were canceled across the Federal Government for the remainder of the fiscal year. Further information will be forthcoming as to how these budget cuts will impact North Mankato programs.

Open the Meeting to the Public for the First Time

Stacey Valenzuela, 14 Benson Trail

Stacey Valenzuela, 14 Benson Trail, appeared before the Council and expressed her concern regarding the new housing that is planned on Rolling Green Lane and asked why the neighbors were not informed of this proposed housing project.

Denny Savick, 810 Belgrade Avenue

Denny Savick, 810 Belgrade Avenue, appeared before the Council and welcomed the new City Administrator and asked the status of the refuse and recycling contract. The Mayor reported that Council Member Spears has been tasked with studying the refuse and recycling contract, looking at improvements and options including single sort recycling. The Mayor also stated the refuse and recycling contract is in place with Hansen Sanitation through December 31, 2013. In response to questions regarding the Recycling Center, the Mayor reported that North Mankato is in partnership with Nicollet County on the Recycling Center.

Phil Henry, 1300 Noretta Drive

Phil Henry, 1300 Noretta Drive, appeared before the Council and asked where the 2012 HUD money was allocated. Planner Fischer reported the HUD money was allocated to assist in the relocation of a house to Christenson Street which has not occurred at this time.

Sean Jamison, 2164 Rolling Green Lane

Sean Jamison, 2164 Rolling Green Lane, appeared before the Council and reported he moved to this location 1-1/2 years ago and is concerned the proposed housing development on Rolling Green Lane will affect their calm neighborhood.

Roger Skrukrud, 10 Benson Trail

Roger Skrukrud, 10 Benson Trail, appeared before the Council and stated his concern about the increased traffic the proposed housing development on Rolling Green Lane would create stating his children walk six blocks to the bus stop.

Barb Church, 102 E. Wheeler Avenue

Barb Church, 102 E. Wheeler Avenue, appeared before the Council and stated the *Free Press* article of Sunday, March 3, 2013 said it all about the Marigold Project. She expressed her concern regarding traffic, pedestrians, safety, soil correction and stated the Port Authority Commission and the developer created the problem. She also referenced the size and height of the project stating the City Code is in place to protect residents.

Denny Savick, 810 Belgrade Avenue

Denny Savick, 810 Belgrade Avenue appeared before the Council and stated the Council cannot violate the City Code and he will join the threat to sue the City if the project is allowed to go forward.

Attorney Kennedy stated that a threatened lawsuit is a non-factor when making the decision regarding variances and the Council's action should be based on facts. The legal position is that discussion of any potential lawsuits should take place in a closed session.

Bess Tsaouse, 136 Mary Circle

Bess Tsaouse, 136 Mary Circle, appeared before the Council and welcomed the new City Administrator. She stated the need for a strategic plan to be in place prior to the Marigold Project going forward. She also referenced the Benson West development and again urged the City Administrator to start working on a strategic plan.

Tom Hagen, 927 Lake Street

Tom Hagen, 927 Lake Street, appeared before the Council and referenced his background on Envision 2020 and stated that North Mankato needs to consider development such as Mutch's Hardware and Dino's Pizza which attract visitors because of their specialties. He also stated that a farmer's market and a park would be a good use of the Marigold property and that he would like to see the process opened to give a voice to the public.

Nicollet County Board Actions

The Mayor reported that March was proclaimed as Women's History Month in Nicollet County.

Consent Agenda

Council Member Spears moved, seconded by Council Member Norland, to approve the Consent Agenda which include:

1. Payment of Bills and Appropriations.

Vote on the motion: Norland, Freyberg, Spears, Steiner and Dehen, aye; no nays. Motion carried.

Staff Reports

City Planner

Minutes of March 14, 2013 Planning Commission Meeting

The Council accepted the minutes of the March 14, 2013 Planning Commission meeting.

Preliminary and Final Plat of Benson West

Planner Fischer presented the preliminary and final plat of Benson West reporting the applicants are proposing to replat Outlot A, Rolling Green Addition No. 3 to accommodate the development of multiple-family dwellings between Lookout Drive and Rolling Green Lane. The proposal consists of 6 six-unit and 15 four-unit dwellings for a total of 96 units on 10.76 acres of undeveloped property. Planner Fischer summarized the City Code requirement relating to the OR-1, Office-Residential zoning district which permits one-, two- and multi-family housing stating that the Benson West development proposal meets the design standards set forth in the City Code and meets all applicable requirements with the exception of the minimum lot frontage on Lot 3, Block 1. The proposed layout of the development consists of twenty-one (21) individual lots and Outlot A. Each lot either has a four-unit or six-unit residential dwelling with Outlot A reserved for parking and green space. Warren Smith, Survey Services, appeared before the Council and reported the development meets or exceeds the requirement for parking reporting each unit has the equivalent parking of 2-1/2 cars. Mr. Smith presented the Council with a rendition of a townhome unit reporting the units look like side-by-side twin homes and are an up/down split. A 60' wide City street right-of-way is planned and larger area utilities are in place. Mike Drummer, developer, appeared before the Council and answered questions regarding the proposed rent for the units. Mr. Drummer reported the projected rent for a two-bedroom unit is \$950 and \$1,100 for a three-bedroom unit. He also noted that each unit would have their own washer/dryer. Mr. Drummer referenced an earlier proposal for housing for college students, however, these units will not be marketed to college students but rather to families. Council Member Spears asked if a market study has been completed to ascertain the need for rental units in the area. Mr. Drummer reported that he commissioned a market study which stated that 500 apartments will be needed over the next five years. Council Member Steiner noted that zoning has not changed in this area since it was originally zoned. Engineer Malm reported traffic would be the same as any typical residential street and that sidewalks are in place on the east side of the street. Council Member Norland suggested before purchasing property, individuals should educate themselves regarding zoning of adjacent properties. In response to a question regarding notification of the proposed development, Planner Fischer reported that since the proposed project does not require rezoning, any variances or conditional use permits, a notice of hearing published in the official newspaper was the only notification requirement. Planner Fischer reported the Planning Commission reviewed and recommended approval of the preliminary and final plat of Benson West contingent on the driveway on Lot 3, Block 1 meeting applicable setbacks and that Lot 3, Block 1 is allowed having 40 feet of frontage on Cottonwood Circle. **Council Member Freyberg moved, seconded by Council Member Norland, to approve the preliminary and final plat of Benson West as recommended by the Planning Commission. Vote on the motion: Norland, Freyberg, Spears, Steiner and Dehen, aye; no nays. Motion carried.**

Z-3-13, Request to Rezone 2107 North Ridge Drive from R-1, One-Family Dwelling to R-2, One- and Two-Family Dwelling

Planner Fischer presented a request from Darcy Wennes, Belle House, to rezone 2107 North Ridge Drive from R-1 to R-2 for the purpose of using the home as a duplex. He summarized the current use of the home, the previous request from the applicant for a Reasonable Accommodation to allow up to eight (8) unrelated persons which was denied by the Planning Commission and City Council in September of 2012 and the rezoning policy adopted by the Council in December 2012. Planner Fischer stated that while criteria 1 and 2 within the rezoning policy have been met, criteria 3 has not been met due to the fact the dwelling has not been continually used and licensed as a multiple-family dwelling. The applicant, Darcy Wennes, was in attendance at the meeting and appeared before the Council. Mr. Wennes stated the home has never been a single-family dwelling, that it was built as a duplex and although it was for a period of time used as a single-family dwelling by removing doors, it has always been a duplex. Commissioner Spears stated this is an entrepreneur who is trying to conduct business in North Mankato; however, this is a case where the purchaser did not research the zoning requirements. Council Member Spears stated this should have been granted a Reasonable Accommodation. Attorney Kennedy reported considerable time was spent developing the policy due to the downzoning in 2005 and instituting the three-prong test. Planner Fischer reported the Planning Commission reviewed Z-3-13 and recommended denial based on the fact the request is not consistent with the rezoning policy as the dwelling has not been continually used and licensed as a multiple-family dwelling. **Council Member Norland moved, seconded by Council Member Steiner, to approve Z-3-13 to rezone 2107 North Ridge Drive from R-1, One-Family Dwelling to R-2, One- and Two-Family Dwelling. Vote on the motion: Norland aye; Freyberg, Spears, Steiner and Dehen, nay. Motion failed.**

V-1-13, Request for Lot Area, Lot Width, Setback and Lot Coverage Variances at 400 Wall Street

Planner Fischer presented V-1-13, a request from the North Mankato Port Authority and Vanyo Moody for variances to accommodate the development of an apartment complex at 400 Wall Street. He reported the developer, Vanyo Moody, was in attendance at the meeting. Planner Fischer gave background information reporting the variance requests were presented to the Council in February 2013 and tabled in order to allow time for the City Attorney to render a legal opinion regarding the variances. Planner Fischer reported no changes have been made to the original request for variances. Attorney Kennedy reported that at the request of the Council he prepared an analysis of the variance request reporting everyone agrees there is a practical difficulties test and that Findings of Fact should be stated voting for or against the variance. Attorney Kennedy also stated that approval of variances is specific to this location and this building and variances are unique to a particular location. He stated that this is not a rezoning but the zoning plan could be amended and apartments could be a permitted or a conditional use in the Central Business District (CBD).

Council Member Norland thanked Attorney Kennedy for the information and reported she would like to present her rebuttal to Council Member Freyberg's Findings of Fact:

Rebuttal to the facts, opinions and interpretations in Council Member Freyberg's Findings of Fact:

3. Freyberg: At the same meeting (January 10, 2013 Planning Commission meeting) I asked things relating to the role of the planning commission and the attorney forwarded his response. Item 4 in his response states "The Planning Commission may recommend a variance from the provisions of this chapter when" However, the rest of this sentence is important and it

reads in entirety City Code 155.10 “The Planning Commission may recommend a variance from the provisions of this chapter when, in its opinion, undue hardship may result from strict compliance. In granting any variance, the commission shall prescribe only conditions that it deems necessary to or desirable for the public interest.” It does not state for the developer’s interest.

Norland: Yes, the Planning Commission cannot set up clearly unworkable conditions in variances for the purpose of keeping out a development and must focus on public interest. So the question remains what is the Commission's interpretation and opinion of the public interest? It is in the public interest to get this gap in the downtown redeveloped as well as the others because it will grow into a lively active downtown and be an asset to the community. It will be good for businesses downtown who are also our neighbors. I recommend that you go to the SmartGrowth America website for more information. High density housing is a response to changing demographics in our country and this community. High density housing is credited with being a very efficient use of infrastructure as well as cutting down on suburban sprawl. So this type of development serves the public interest in a variety of ways.

Freyberg: On 2/14/2013 Knutson stated that the code is “out of date”. Code is established by comprehensive land use management or in the absence of a plan, zoning is used instead. Code relative to land management does not get out of date. Land use and zoning can be changed requiring the alternative codes to be in place. Consistency of code is what people building or buying homes and businesses rely on.

Norland: Yes, code does go out of date. Cities use changes in code and zoning to create industrial parks out of agricultural land as has happened both in Mankato and North Mankato. The CBD description first came forward sometime in the 60s. Times change. Philosophy changes.

Freyberg: On 2/14/2013 the statutory “three practical difficulties” were read. However, one line of the actual statute was omitted. This is that line: 2012 Minnesota Statute 462.357 Subdivision 6. Appeals and adjustments. “Economic considerations alone do not constitute practical difficulties.” On 2/14/2013 the variances being requested were deemed necessary for Mr. Moody’s project to be financially or economically feasible.

Norland: Note the use of the word "alone.” The variances were also requested so that they met site design requirements.

Freyberg: On 2/14/2013 the planning commission suggested that a soil correction is a reason to pass one of the difficulties tests. According to the developers agreement the Port Authority will be paying for the soils corrections, so this no longer is a difficulty to Mr. Moody.

Norland: Of course, the soil problems are one of the difficulties of this project. The fact that the soil problems will be solved does not negate the fact that they have been problems to this project. The city's agreeing to correct the soil demonstrates the public-private partnership needed to develop this land. If the situation had not been difficult, redevelopment would have happened a long time ago.

Freyberg: On 2/14/2013 Tom Hagen, who was co-chair of Envision 2020 stated that the Marigold project does not meet the criteria of Envision 2020.

Norland: Actually, I was a participant of the Envision 2020 planning project and, yes, Marigold project does meet the Envision 2020 criteria . I refer you to the 2006 Final Report, pages 21 - 24 and 27 and 28. To the contrary, the mini-visions, goals and rationale and action steps describe the development and redevelopment of urban villages, the use of mixed use zoning and the increasing of allowable housing densities, the amending of codes and support of development projects. The Envision 2020 group looked at lower Mankato and lower North Mankato as the "City Center" with all of these strategies applying. The City Center language means both entities. Therefore, the Marigold site should not be considered alone, but as part of the 180 block area of the City Center.

Freyberg: Handbook For Minnesota Cities by the League of Minnesota Cities Chapter 14 Section 3 Making a Record and Judicial Review (updated 9/18/2012) states; A decision making body cannot use vague and speculative opinions as a basis for a decision. This also applies to unsubstantiated concerns from citizens. However, expert testimony supporting the citizens' point of view may not be necessary if there is a factual basis for the opposition. Citizen Barb Church's testimony is factual direct quotes from Code and Statutes as well as those from Bess Tsaouse. Tom Hagen's factual comments come from his experience as a co-chair with Envision 2020.

Norland: Earlier testimony is, indeed, based on facts from the Code. That doesn't mean that the code can't be changed to meet the new situation. As time and viewpoints changed, so did the laws and codes.

Freyberg: The significance of this is found in the granting of TIF which is the request that will be made following the passing of the variance requests. 2012 Minnesota Statutes section 469.175 Subd 3. Municipality approval paragraph 2 states "that, in the opinion of the municipality: (i) the proposed development or redevelopment would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future. Therefore, the council needs this information recorded in their findings, to demonstrate the "but for". We can only determine the need by seeing the numbers.

Norland: The fact that the city has been working at developing this area into a more attractive and vigorous downtown for nearly 20 years answers the "but for" issue.

Norland: Practical Difficulties:

1. REASONABLE USE: The property was a dairy and then it stood empty for many years. it was a big building. That many units are a reasonable and efficient use of the property. Community redevelopment has developed over the years to higher density housing due to its environmental and economic benefits.
2. The soil problems were not caused by the developer and therefore were a difficulty that had to be overcome. The public and private sectors are working together to overcome this one. But it was a practical difficulty within this project.

3. The business district of lower north is part of the whole river valley business district, i.e. lower Mankato and lower North Mankato. We are one - our higher density building would balance with the grain elevator and the other newer high density developments in lower Mankato. If you look at the whole valley from a bird's eye view, you can see a bigger picture than lower north only.

All of this is about growing an even better city than we already have. Over recent years our economic strategies have brought in many good paying jobs and kept others; the central business district is beginning to blossom slowly. And we must keep up the momentum - this is about building for the future and not letting fears get in our way.

As many of you know, my husband has cancer. His favorite mantra is from the movie, *Shawshank Redemption*. "We have to get on with living, or get on with dying." I think that applies here.

Council Member Freyberg stated that he stands on his Findings of Fact presented at the February 19, 2013 City Council meeting.

Council Member Spears presented his proposed Findings of Fact: 1) The proposed Marigold development is located in the Central Business District. 2) Section 156.045, paragraph A of the North Mankato City Code regarding the Central Business District reads: "The Central Business District is intended to establish a district for the purpose of providing a high density shopping environment with special emphasis on pedestrian traffic." 3) The above paragraph states the general purposes and intent of North Mankato City Code Section 156.045. 4) Minnesota Statute 462.357 Subdivision 6 Paragraph 2 reads: To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board of governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance. 5) The proposed Marigold development will neither provide high density shopping nor enhance pedestrian traffic. Council Member Spears asked the following questions: How will this development enhance pedestrian traffic? How will this development provide high density shopping? What circumstance, unique to this property is the cause of the "developer's" plight? How will covering this property with a massive

building and paved parking not alter the character of the locality? Have not the reasonable uses for property in the CBD been spelled out in the permitted uses?

Council Member Steiner stated the Marigold property is an odd shaped lot, no businesses have built there since the property was available 23 years ago. He stated he lives near an 8-story apartment building in the 600 Block of Nicollet Avenue. He also stated this fits into the E2020 plan for the Mankato/North Mankato City Center.

Mayor Dehen stated this project has been long discussed and become emotionally charged over the course of the last year. Practical Difficulties: 1) Is this a reasonable use for this property? The Central Business District is zoned to promote high density usage. Many of the existing buildings already include multiple apartments. Of the available alternatives for the highest and best use for the development of this property would be for a multi-family residential unit. This is in keeping with the Envision 2020 Community Planning KPA strategy to increase allowable housing densities and is a step toward the espoused urban village concept. 2) The unique circumstances of this property include: a. Soil stabilization requirements; b. Drainage issues of this lot and the surrounding properties; c. Positioning of the lot as a transition zone from the Commercial Business District and abutting residential area. 3) The essential character of the area: a. If one reviews this lot in context of the Central Business District corridor as depicted in the expanded I & S model you will notice that this project is not the largest or most dense multi-family residential unit in lower North Mankato, as we are only a few blocks from Koppen Gardens. Further, if you consider the Central Business District in the context of the 180 block included in the City Center Partnership, this project is in keeping with the market trends occurring throughout the downtown area. However, as this project is completely different from that previously proposed and the City and market circumstances have evolved, the Mayor reported he has asked the City Administrator to review the previous Development Agreement and amend it accordingly, at which time it will be presented to the Council for their review. He also requested a Letter of Performa from the developer's bank.

Council Member Norland moved, seconded by Council Member Steiner to approve V-1-13, a variance for lot area, lot width, setback and lot coverage variances at 400 Wall Street as recommended by the Planning Commission. Vote on the motion: Norland, Steiner and Dehen, aye; Freyberg and Spears, nay. Motion carried.

Set Public Hearing for 2013 Community Development Block Grant (CDBG) Action Plan

Planner Fischer reported it is necessary to set and hold a public hearing to approve a 2013 Action Plan for the use of HUD entitlement funds. He reported that while our 2013 CDBG allocation is unknown at this time, it is expected to be less than the \$58,591 allocation in 2012. Planner Fischer reviewed eligible uses of CDBG funds which include but are not limited to: activities related to housing, public facilities, economic development and assistance to community-based organizations. He added that CDBG funds may be used for the development of comprehensive plans and requested direction from the Council regarding the use of these funds. Council Member Norland stated that she believes a North Mankato Comprehensive Plan has been started and would be a good place to continue. Council Member Spears stated the HUD funds should be looked at as a windfall. **Council Member Steiner moved, seconded by Council Member Norland, to set a public hearing for 7 p.m. on Monday, April 15, 2013, to consider approval of the 2013 Community Development Block Grant Program (CDBG) Action Plan. Vote on the motion: Norland, Freyberg, Spears, Steiner and Dehen, aye; no nays. Motion carried.**

City Clerk**Res. No. 23-13 Approving Loyola Booster Club Gambling License to Conduct Lawful Gambling at Big Dog Sports Café, 1712 Commerce Drive**

Clerk Gehrke presented a request from the Loyola Booster Club for a gambling license to conduct lawful gambling at Big Dog Sports Café, 1712 Commerce Drive. Clerk Gehrke reviewed the requirements for a gambling license noting that 40 percent of the members must be North Mankato residents or 80 percent of the members must reside in the Mankato School District in order to qualify to conduct gambling in North Mankato. She reported the Loyola Booster Club meets the 80 percent requirement. **Council Member Freyberg moved, seconded by Council Member Norland, to adopt Resolution No. 23-13 Approving Loyola Booster Club Gambling License to Conduct Lawful Gambling at Big Dog Sports Café, 1712 Commerce Drive. Vote on the Resolution: Norland, Freyberg, Spears and Steiner, aye; Dehen abstained; no nays. Motion carried.**

Report from Council Members**Council Member Norland**

Council Member Norland reported the St. Peter Area League of Women Voters with the assistance of the Nicollet County Historical Society will hold a presentation regarding ground water supply and conservation in Southern Minnesota "Beneath the Surface" at the Treaty Site History Center at 7 p.m. on Thursday, March 21, 2013. This event is free and open to the public.

Report from Mayor**Appointment to U.S. Highway 169 Corridor Coalition**

Mayor Dehen reported it is necessary for a North Mankato representative to serve on the U.S. Highway 169 Corridor Coalition. Council Member Freyberg volunteered to serve as the representative. Engineer Malm reported that he also attends the U.S. Highway 169 Corridor Coalition meetings on behalf of North Mankato.

North Mankato Bicycle Commission

The Mayor presented minutes of the February 27, 2013 North Mankato Bicycle Commission meeting reporting the Commission has prepared a City of North Mankato Bicycle Action Plan. He also presented a resolution adopting a policy for enhancement of bicycle facilities within the City of North Mankato. After review of the policy and resolution, this item was moved to the April 1, 2013 Council meeting to allow additional time for review by the City Engineer and City staff.

North Mankato Community Read 2013

Mayor Dehen reported the North Mankato Community Read 2013 is *Chasing Lincoln's Killer* by James L. Swanson. Events pertaining to this read will be held on March 21, March 26 and April 4.

Open the Meeting to the Public for the Second Time**Darcy Wennes, 2107 North Ridge Drive**

Darcy Wennes, 2107 North Ridge Drive, appeared before the Council and asked that a Request for Reasonable Accommodation be placed on the next City Council agenda. Administrator Harrenstein requested that Mr. Wennes contact staff regarding this request.

There being no further business, the meeting was adjourned at 9:02 p.m. on a motion by Council Member Steiner, seconded by Council Member Norland. Vote on the motion: Norland, Freyberg, Spears, Steiner and Dehen, aye; no nays. Motion carried.

Mayor

City Clerk