

**DUNDAS CITY COUNCIL
REGULAR MEETING MINUTES
and PUBLIC HEARING MINUTES
Monday, June 14, 2010
7:00 p.m. Dundas City Hall**

PRESENT: Mayor Glenn Switzer; Councilors John Cruz, Chad Pribyl, Nathan Ryan, John Zander

OTHERS PRESENT: Doug Kurtt, Gene Kruse, Dawn Kruse, Chip DeMann, Tom Seeze, Michelle Millenacker, Chuck DeMann, Dan Zander, Erick Kaardal (Attorney), Lisa Thorsgaard (Court Reporter), Police Chief Gordon Mincke, City Attorney Paula Callies, City Engineer Tom McMahan, Administrator/Clerk John McCarthy, Deputy Clerk/Treasurer Linda Ripka and others

CALL TO ORDER

Mayor Switzer called the meeting to order at 7:00 p.m. with the Pledge of Allegiance. Roll Call taken; a quorum was present.

PUBLIC FORUM

Mayor Switzer called for any public comments on items other than on the agenda. No one spoke.

APPROVAL OF AGENDA

Motion by Cruz, second by Ryan, to approve the Agenda. Motion Carried Unanimously. (MCU)

CONSENT AGENDA

Motion by Ryan, second by Pribyl, to approve the Consent Agenda as follows:

Approval of Regular Meeting Minutes of May 24, 2010;

Approve Payment for Training;

Special Action Claims - Wells Fargo Bond Payment \$24, 297.50;

Expenditures - \$72,408.87

MCU

Councilor John Zander recused himself at 7:02 p.m.

Mayor Switzer closed the regular meeting at 7:02 p.m.

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PUBLIC HEARING – To Consider Revoking the Conditional Use Permit for Titan Supply Company

Open Public Hearing: Mayor Switzer opened the Public Hearing at 7:02 p.m.

Staff Report: City Administrator McCarthy exhibits received from Titan Supply Company's Attorney Erick Kaardal to the Council and for the record. He noted the City also received an email earlier this date from Attorney Kaardal. McCarthy stated it appears all documents have been previously reviewed and received by Council and about half of the exhibits are a reprint of the Dundas City Zoning Code, Chapter 1500.

McCarthy reported at the May 24, 2010, regular City Council meeting, the Council called for a public hearing regarding revoking the Conditional Use Permit (CUP) for Titan Supply Company as described by Resolution 2004-34 and restated by Resolution 2008-39. Notice was published in the *Northfield News* on June 2, 2010, and delivered to property owners by US Mail as required by State statute. He further reported the City agreed to several time extensions to allow the applicant to comply with the conditions of the CUP. McCarthy stated Council had requested Titan submit progress reports on specified dates and complete plans by June 9, 2010. A progress report was not received from Titan Supply on May 26 and complete plans were not received by June 9 as required.

McCarthy stated there are three items in the CUP which Titan has not complied with. (1) Submittal process for complete building plans. Titan has been discussing their building plan but has not submitted a complete plan. (2) Another item is a paragraph in the CUP permitting outdoor storage for parts and equipment not subject to rust. One inspection of the permitted storage revealed several items judged to be subject to rust. City has been told by Dan Zander (Titan) City staff will not be permitted to do another inspection. (3) The last item is the submittal of a site plan including a stormwater control plan. The City received some concept drawings, but not a complete site plan required to issue a building permit. Some of the plans may have met criteria if they had been completed.

McCarthy reported I&S Engineering, for Titan Supply, prepared a possible site plan which was reviewed and appeared to adequately address the drainage issue. Titan Supply was advised the City would require a new Conditional Use Permit (CUP) if they wanted to erect a fourth silo as shown on that concept plan. He noted the site plan was apparently determined by Titan as not acceptable.

McCarthy stated Titan has represented they have a right of appeal based on the City Engineer not agreeing with their engineer. City's stand is the City Engineer has not reviewed a complete building plan, including a site plan, to determine if the plan has met City's criteria. McCarthy noted the City Engineer has submitted a memo in the Public Hearing packet, and stated he also submitted a memo.

City Attorney Callies reviewed her memo regarding her legal position and the need to determine the facts. CUP stays in effect unless conditions have not been complied with and any violation is a violation of City ordinance. Failure to correct is grounds for termination of the CUP. She stated the City is providing a process to revoke the CUP and Council determines if conditions of the CUP have been violated. Callies recommended Council direct the City Attorney to write a resolution stating the reasons for revoking and referred to McCarthy's memo stating the reasons for revoking a CUP. She explained the question for Council is: has there been a violation of the conditions stated in the CUP.

Titan Supply Company Report: Erick Kaardal, attorney for Titan Supply Company, referred to his memo of May 24, 2010, to the City Council. He stated the Council has made biased remarks, lack impartiality and the appearance of impartiality. Kaardal questioned Council's ability to conduct a fair hearing.

PUBLIC HEARING – Titan Supply Company Revoke Conditional Use Permit (CUP) (con't)

Titan Supply Company Report:

Kaardal submitted as part of the record a audio recording of the Council Meeting of May 24, 2010. Kaardal read from his letter of June 14, 2010. Kaardal concluded his client wants to put up the silos but staff has caused the delay. He requested the City abide by the laws and not unfairly revoke the CUP.

Dan Zander stated he is sole owner of Titan Supply Company. He remarked the City has malice toward him and his brother, John Zander. He stated he wants to put the silos up.

John Zander stated there have been resentment and retaliation toward him.

Public Comment: No statements from the public were received.

Close Public Hearing: Mayor Switzer asked if Titan has prepared a complete building permit application. There was no response. Mayor Switzer closed the public hearing at 8:10 p.m.

The following documents were submitted to be part of the record for the Public Hearing.

City of Dundas Documents:

1. Notice of Public Hearing
2. Resolution 2004-34
3. Resolution 2008-39
4. Dundas Zoning Ordinance Chapter 1500, Section 15, Subsection 4, page 15-2
5. Dundas Zoning Ordinance Chapter 1500, Section 20, Subsection 3, page 20-2
6. Benny Svien Letter October 2, 2008 with enclosures of:
2007 MN State Building Code pp 137, 140, 145, 138, 33
7. Thomas McMahon Letter of October 8, 2008
8. Benny Svien Letter Januar7 13, 2009 with enclosure of:
2007 MN State Building Code pg 33
9. John McCarthy's Email January 14, 2009 to Dan Zander
10. Meeting Summary February 11, 2010
11. Paul Callies Letter June 10, 2010
12. Tom McMahon Memorandum June 9, 2010
13. Zoning Administrator's Report June 10, 2010
14. Mohrman & Kaardal, PA, Letter June 9, 2010

Titan Supply Company Documents (submitted by Erick Kaardal, Attorney):

1. Mohrman & Kaardal, PA letter June 14, 2010
2. Exhibit for Titan Supply Company dated June 14, 2010 (279 pages)
3. Compact Disk recording of the City Council Meeting of May 24, 2010

Mayor Switzer reopened the regular meeting at 8:11 p.m.

Councilor John Zander returned to seat at 8:11 p.m.

ORDINANCES/RESOLUTIONS

Ordinance 2010-04 An Ordinance Establishing a Four-Year Term for the Office of Mayor

Motion by Ryan, second by Pribyl, to approve Ordinance 2010-04. Councilor Zander felt citizens should be given the opportunity for feedback. Cruz and Switzer stated the idea of a four-year term has been discussed in the past.

Motion by Pribyl, second Ryan, to table Ordinance 2010-04 to the next Council meeting on June 28, 2010, and directing staff to put the information in the *Dundas Messenger* and on the City's website. MCU

Resolution 2010-19 A Resolution Appointing Election Judges for the 2010 Election

Motion by Switzer, second by Cruz, to approve Resolution 2010-19. MCU

Resolution 2010-20 A Resolution Approving the Dispensation of Intoxicating Liquor at a Community Festival

Motion by Ryan, second by Cruz, to approve Resolution 2010-20. Administrator McCarthy indicated it is a way for the community to involve more local businesses to participate in the City's festival on Saturday, June 26. MCU

Resolution 2010-21 A Resolution Designating Community Festivals and Approving the Dispensation of Intoxicating Liquor

Motion by Ryan, second by Zander, to approve Resolution 2010-21. MCU

Mayor Switzer recessed meeting at 8:22 p.m.; meeting resumed at 8:35 p.m.

OLD BUSINESS

Motion by Pribyl, second by Cruz, to adjust agenda relating to Old Business. MCU

Councilor John Zander recused himself at 8:37 p.m.

Consider Information Received at the Public Hearing Regarding Revoking the Titan Supply Company Conditional Use Permit (CUP)

Mayor Switzer explained the purpose, at this time, is to look at the information presented at the Public Hearing on the Conditional Use Permit (CUP) and consider if the CUP criteria has been met. Switzer stated no building permit application has been submitted.

Councilor Ryan stated the biggest issue is there was not a building permit application submitted to erect the silos within six months as required by the CUP, Resolution 2008-39.

Switzer referred to the two resolutions which had been signed by the Zanders and explained he was confused that they did not understand them. He explained staff has to receive a complete building permit application to see what is in compliance and where to go from there.

Ryan referred to the need for a complete building permit application to make a final decision.

McMahon stated Titan has not submitted a complete building permit application. A proposed site plan including a possible stormwater solution had been submitted, but he was informed afterward that another solution was being reviewed.

Ryan asked staff to compare any work they have been associated with involving other cities. McMahon referred to experience in other cities and stated he never experienced this kind of situation. McCarthy referred to what was then the largest single private investment in a Minnesota building project, located where he previously lived which took about two years to complete. The project was a major industrial plant involving the storing of hazardous materials and storage bins.

OLD BUSINESS

Consider Information Received at the Public Hearing Regarding Revoking the Titan Supply Company Conditional Use Permit (CUP) (con't)

Ryan affirmed the project begin before he started on the Council, and stated it is not a matter of malice but an issue of complying with zoning regulations.

Councilor Pribyl stated he has no malice toward Dan or John Zander. He finds it sad for the Zanders as their business is being hurt and the City loses as tax dollars are paying for this process. He further stated, since 2009 the City has bent over backwards to try and help the Zanders and each time the project gets extended because the Zanders challenge the City's interpretation of the code. Pribyl stated there has been extension after extension on deadlines. He continued stating as Councilors we are here to help the citizens and try to do what is best for the City.

Councilor Cruz asked staff to explain the building code issue referencing the statement from Dan Zander regarding connection of silos to the building and it's application for needing a sprinkling system in the existing structure. McMahon stated in response to a question posed by Zanders in February, decision could not be made until a code inspection was performed. Cruz stated he serves on the Planning Commission and has strived for proper documents and ordinances. He stated he has no malice toward the Zander, he has talked to both Zanders and he has been on the property. Cruz stated he looks at the facts and the specific paper work required by the CUP, which have not been submitted to the City.

Mayor Switzer indicated there is no malice from the Council toward the Zanders, and he has stated repeatedly throughout this process he would welcome the business expansion. He remarked the Council has tried to work with the Zanders to get the project done. Switzer stated he asked at the last meeting if Zander planned on putting the silos up with Zander replying he was not going to put any more money in it. Switzer continued by stating the Council refers to the facts and reference Benny Svien's letter of October 2, 2008, rejecting the application as incomplete and provided Titan with a list of items required. Switzer also referred to City Engineer's report of October 8, 2008.

Motion by Switzer, second by Cruz, to direct the city attorney to prepare a Resolution to Revoke the Conditional Use Permit for Titan Supply Company as outlined in the Zoning Administrator's Report of June 10, 2010, for consideration at the next Council meeting on Monday, June 28, 2010. MCU 4-0. Abstained: Zander

Consider Tabled Motion Regarding the Residency of Councilmember John Zander

Motion by Ryan, second by Cruz, to remove from the table the motion regarding the Residency of Councilmember John Zander. Attorney Callies indicated she reviewed the December 20, 2007, letter from previous City Attorney Tom Neuville to the Council. She clarified the determination is whether a Councilmember is a resident of the City of Dundas and how a vacancy occurs.

Councilor Ryan read for the record the letter from John Zander's law firm June 10, 2010. Ryan stated this has nothing to do with Zander's actions as a Councilor but has to do with being a resident or not. He remarked the letter is a direct threat to Council and is meant to sway their vote and he considered it as being an open meeting violation. Ryan stated John Zander's attorney states an action to remove Zander will result in legal action against the City and other individuals. Ryan asked Zander to state a time line of his residency in Dundas.

John Zander did not respond to the request but stated the burden of proof is Councilor Ryan to present.

Councilor Pribyl asked Zander if he is ready to answer any questions.

Zander stated not necessary at this point to answer any questions. He further stated, if you have enough basis to pursue the issue this far, you should have enough to make a decision.

Callies stated the Council can ascertain the facts, appoint a neutral person to make a determination and report back to Council.

Mayor Switzer indicated the question can be simply answered and proven with documents. He stated the topic has been raised by others in the community and before by Council.

OLD BUSINESS

Consider Tabled Motion Regarding the Residency of Councilmember John Zander (con't)

Motion by Ryan, second by Cruz, to amend motion to declare a vacancy on City Council due to non residency. Councilor Ryan stated it is his belief John Zander is not a resident of Dundas based on his wife not sharing the same address. He referred to the State statute which defines the residence of an individual as being the in the same precinct as where the individual's family lives unless the individual establishes a home in the other precinct. Ryan stated he doesn't think Zander intend to remain in Dundas as his family doesn't live here. He stated when it first came up in 2007, John Zander revealed he never registered to vote in Dundas and Zander further stated to the Council he has never registered to vote. Ryan stated Zander's wife's address is Janesville, MN, and Statue states residency is with family; therefore, Ryan stated he is asking for clarification and proof.

Callies stated based on Statue, Ryan has presented some facts and she recommends an investigator could look into the matter and provide additional information.

Ryan stated before the 2008 elections, Zander invited him to an apartment in Dundas which did not appear lived in and Zander's wife arrived later with a suitcase. He indicated he did not want to use the City money's to hire an investigator to prove it when Zander could answer yes or no.

Councilor Pribyl confirmed he would like it answered with proof as it is a public office. In addition. state law states an Councilor needs to live in the City. He requested Zander to prove he lives here to the citizens instead of skirting the issue.

Zander questioned the validity of introducing his wife's address.

Cruz asked where did you live at the time you were on Council in 2007.

Zander stated with Dan Gannon on Railway Street.

Cruz stated he considered the letter to Council as malicious and to make the comment regarding legal action speaks of your character. Cruz stated he has not acted maliciously against Zander.

Zander stated he takes it personally that such actions are frivolous.

Callies stated the laws allows council to declare vacancy.

Councilor Zander left at 9:55 p.m

McCarthy reminded Council the question is not if Zander was a resident at time of running for office but if he is a resident now.

Ryan asked to duly note Zander left during the meeting. He stated he can simply state whether he is or not and proof it to save unnecessary expense.

Councilor Zander returned at 9:57 p.m.

Zander stated motion made without any inquiry to him before the motion was made and came up because of Titan Supply. He asked why the delay in asking now instead of 2008.

Ryan stated Dan Zander indicated his is the sole owner of Titan Supply and it is a separate issue. Ryan stated he did ask Zander in 2008 if he was a resident of Dundas and he didn't answer then.

Switzer stated this is the chance to clear the air but is difficult with the refusal from Zander to answer yes or no

Zander stated to clear the air, hire an investigator.

Cruz stated Zander could solve the issue by answering the question now. He stated he is not in favor of hiring an investigator and spending additional money.

Pribyl indicated Council has the authority to vacate the position or not. He indicated his is not in favor of spending any money on an investigator.

Attorney Kaardal, representing Zander, was recognized and stated the letter states he is a resident and more investigation should be required. He requested a public hearing.

Tom Seesz, resident at 209 Railway Street South, was recognized and stated it is sad that Councilor Zander will not state his address and answer item g.

Pribyl indicated the Council seat is up this year and if Council does not act upon a residency question then what message does it send. He commented that in 2008 two non residents filed. Pribyl stated he wants the issue resolved.

OLD BUSINESS

Consider Tabled Motion Regarding the Residency of Councilmember John Zander (con't)

Callies stated there is no requirement for a public hearing and an investigator could provide further information for Council to make a determination.

Motion by Switzer, second by Cruz, to table until next Council meeting, June 28, 2010. Motion failed on a tie vote. Roll Call - Yes: Switzer, Cruz No: Ryan, Pribyl Abstained: Zander

Motion by Pribyl, second by Ryan, to authorize City Attorney to prepare a Resolution to declare a vacancy due to non residency to be considered at July 12, 2010, Council meeting. Motion carried. Yes: Switzer, Cruz, Ryan, Pribyl. Abstained: Zander

Motion by Pribyl, second by Ryan, to go to New Business items and then address last item of Old Business. MCU

NEW BUSINESS

Define Restaurants for Sunday Liquor Sales

Motion by Pribyl, second by Cruz, to define all licensed establishments holding a current Restaurant License issued by the MN Department of Health, including Limited Service Restaurants as a Restaurant for the purpose of Sunday Liquor Sales. MCU

Liquor Licenses for period July 1, 2010 through June 30, 2011 - Special Sunday On Sale or Dawn's Corner Bar, Inc.; dba: Dawn's Corner Bar at 200 Railway Street North

Motion by Cruz, second by Pribyl to approve the Special Sunday On Sale License for Dawn's Corner Bar. MCU

Authorize Completion of a Development Plan for the Mill Towns Trail Trailhead

Motion by Pribyl, second by Cruz, to authorize completion of a Development Plan for the Mill Towns Trailhead. Councilor Pribyl indicated Park & Recreation Board working on a plan for the trail and are developing short and long term landscape plan. He inquired about funding. Switzer reported Northfield Rotary donated \$10,000 for kiosk. MCU

Councilor Zander left Council chambers at 10:39 p.m.; returned at 10:40 p.m.

Accept Park & Recreation Advisory Board Work Plan for 2010

McCarthy reported the Park & Recreation request additional wood fiber, a sitting bench at Millstone Park, bike rack at Trailhead and improving the ice rink at Bridgewater Heights.

Motion by Cruz, second by Pribyl for additional wood fiber and sitting bench at Millstone Park, bike rack at Trailhead and improve the ice rink at Bridgewater Height with goal for lighting this winter. MCU

NEW BUSINESS

ATV and Golf Carts

McCarthy request staff work on reviewing the intended use regarding the ordinance on ATV and Golf Car licensing as it becoming difficult to regulate.

Motion by Pribyl, second by Cruz, to authorize a review of City Code Title 7, §705.01 Motorized Golf Cart and ATV Regulations with the review to be presented to the City Council at the July 12, 2010, regular meeting. MCU

OLD BUSINESS

Amended Annexation Agreement

Motion by Switzer, second by Cruz, to authorize Mayor Switzer to begin discussions with Bridgewater Township to develop a joint policy for sharing the cost with respect to road maintenance and other improvements pursuant to Section 11 of the Annexation Agreement. MCU

REPORTS OF OFFICERS, BOARD AND COMMITTEES

City Attorney Paula Callies

Kor Property: Callies reported the Kor Property deed has been processed by Rice County.

City Administrator/Clerk John McCarthy

Northfield Tax Comparison: McCarthy explained there are different ways of looking at taxes than by comparable assessor’s value.

Building Permits: McCarthy reported nine new housing permits for the year with Northfield recently reported five.

Water Break: McCarthy reported on the water break along Archibald Lane. He stated it was an unique break and appears to be related to improper installation. He stated the break involved a small area where every utility was located.

Business News: McCarhty report on a new business located in the Industrial Park area on Railway Street, Dakota Pump and Controls from Watertown, SD. He further reported Southside Rebuilders is doing a good job cleaning up their area; Weaver Lane businesses have a new consolidated sign; Firehouse Liquor has improved front appearance of the store; MGM liquor has applied for 2010/2011 off sale liquor license; and Subway plans to open this summer.

Mayor and Councilors and Committees

Mayor Switzer indicated Committee has met and started the process on the 2011 Budget.

ADJOURNMENT

Motion by Cruz, second by Ryan, to adjourn the regular meeting of the Council at 10:59 p.m.

Submitted by:

Attested by:

John McCarthy, Administrator/Clerk

Glenn Switzer, Mayor