

**CITY OF PARK RAPIDS
 REGULAR MEETING
 PLANNING COMMISSION
 SEPTEMBER 28, 2015, 6:00 p.m.
 Park Rapids Library, 210 First Street West – Lower Level
 Park Rapids, Minnesota**

1. CALL TO ORDER: The September 28, 2015, Regular Meeting of the Park Rapids Planning Commission was called to order at 6:04 p.m.

2. ROLL CALL: Present: Commissioners Dick Bradow, Joel Vorhes, Nels Peterson, Dick Rutherford, and City Councilmember Paul Utke. Absent: None. Staff Present: City Planner Ryan Mathisrud and Planning Assistant Carmen L. Lockhart. Others Present: Denise Hemenway, Lila Kalish, Ken Kalish, Jamie Mauer, Lori Crep, Janice Dodge, Angel Juntunen, Harry Dodge, Terry Kruft, and Randy McFarren.

3. APPROVAL OF AGENDA: A motion was made by Peterson, seconded by Vorhes, and unanimously carried to approve the following agenda as presented.

4. APPROVAL OF REGULAR MEETING PLANNING COMMISSION MINUTES OF JULY 27, 2015: A motion was made by Vorhes, seconded by Rutherford, and unanimously carried to approve the July 27, 2015 Regular Meeting Minutes as presented.

5. PUBLIC HEARING:

5A. CONDITIONAL USE PERMIT REQUEST FROM FRATERNAL ORDER OF EAGLES AERIE #870 TO OPERATE AS A PRIVATE CLUB AND BAR WITH ON SALE LIQUOR RENTING SPACE AT 1400 1ST STREET EAST FROM LORALIE CREP IN A B-1 HIGHWAY BUSINESS ZONING DISTRICT, PID#32.30.00300:

Mathisrud explained the applicant is the Fraternal Order of Eagles Aerie #870 to operate a bar at the Pizza Ranch location, 1400 First Street East. The property owner is Loralee Ulvin-Crep and the intent is to lease the property to the Eagles Aerie #870. Mathisrud provided a little background on this request stating the Eagles had a location at 1107 First Street East and a number of months ago they closed and sold that location and are now in the process of finding a new location to operate in. The property owner of 1400 First Street East intends to lease their property and existing bar area to the Eagles with the intent for them to operate the bar and have it open to the public including liquor sales and then have club assemblies at that location. They currently serve 50 to 150 patrons per day or at least they did at their previous location and they hold two meetings per month which has a smaller gathering of approximately 20 members. At this time they don't intend to make any major changes to the building to accommodate this new use. The location is along Highway 34 East and the total site area is approximately 2.27 acres so they do have a fairly large location. It is currently zoned B-1 for Highway Business District and the Future Land Use Map shows it as future commercial use for some time into the future. Under the B-1 Zoning Ordinance

the intent is for commercial uses which generate substantial amounts of traffic which originates from outside the community. Under Conditional Uses, that is uses that require a conditional use to operate, the city has adopted #(9) Private clubs, (i.e. VFW, Eagles, and the like) as requiring a conditional use permit to operate and that is issued by the Planning Commission and ultimately the City Council.

Mathisrud explained there are no known environmentally sensitive areas in this location and it is previously developed. It is currently connected to public utilities and there is also municipal storm sewer available on Highway 34. In doing a rough calculation of required parking there is approximately 91 parking spaces that are required for this use and that includes calculation for both existing uses as well as future uses and equates to approximately one parking space for every 150 square feet and it appears as if the existing lot is partially paved and partially gravel. There is approximately 70 spaces in the paved area and additional 80 spaces in the unpaved area. Mathisrud displayed pictures of the site depicting the paved and unpaved parking area as well as the existing vegetation on the site to the south and it does have a large stand of mature trees both to the south and to the east.

Mathisrud advised that private clubs and bars, as many know, can have community impacts which is why they are a conditional use item and these impacts include parking demands, access issues and noise issues. This particular property is adjacent to a residential neighborhood known as Green Acres to the south and there does appear to be adequate buffering both to the south and to the east. Adequate parking does appear to be available and this proposed use will likely not be significant from other uses which is the existing bar. However, this proposed use may increase the number of people that are using that location which is the point so that is something that will hopefully generate more traffic. The applicant does intend to apply for a liquor license and sign permits prior to opening and upon approval of the Conditional Use Permit. The existing owner does intend to give up their liquor license in exchange. In 2013 the property owner did request a Conditional Use Permit for an outdoor patio and at that time a condition on that was to limit the noise level so the music would have to be turned off at 10:00 p.m. to reduce noise in the adjacent residential area.

Mathisrud recommended approval of the conditional use permit to be issued to Loralie Ulvin-Crep at 1400 1st Street East to allow the Eagles Aerie 870 to operate a club and public bar with on sale liquor to be located in the B-1, Highway Business District with the following conditions:

1. The applicant must obtain a valid liquor license prior to serving alcohol.
2. Applicant must comply with all City and State requirements regarding the sale of alcohol and maintain a valid liquor license.
3. All new signage requires a separate permit issued by the Planning Department.
4. The property shall remain free of noxious weeds, trash and debris.
5. The CUP shall not be transferable to another club.
6. The property owner shall meet the city parking ordinance by providing fully striped and paved parking area.

Utke asked how much of the remaining gravel needs to be paved and what does that entail? Mathisrud replied the minimum necessary to meet the code which is based on an aerial calculation would be 91 parking spaces. It is difficult to tell how many fit on the existing paved lot as it is not striped. Utke responded so whatever it takes to meet the current ordinance. Mathisrud replied whatever it takes to meet the ordinance requirements for parking.

Peterson said I thought we had discussed allowing gravel parking lots and changing that to a certain degree and allowing gravel because it's environmentally more friendly than tar as once you place the asphalt down then you've got more runoff and is that going to create an issue, more run off? Mathisrud responded that is a great question but with parking areas it doesn't matter as far as storm water wise the difference between gravel and asphalt the run off coefficient is not significantly different between the two so any parking lot as far as mitigating storm water impacts, it is preferable to do some sort of detention in order to retain that runoff from that whether it's gravel or asphalt. Peterson said he doesn't have his notes from reading the Environmental Protection Agency's laws regarding that but I'm fairly certain the way I understand it is after sitting on this city and discussing the assessments going on with sidewalks and water runoff that the EPA is pretty clear that gravel parking lots are much more friendly and less cost because they let the water penetrate and it's the easiest way to deal with any amount of water and personally, myself, I would just as soon see that recommendation removed from it being an understanding that whether they want to pave it or not is fine but as it is now is fine too. We had discussed this previously at meetings about paved parking areas and possibly backing off of the requirement, because we create more issues with asphalt.

Utke said one area of the paved parking area was where does the water go? And if it is an area served by our storm water system then it needed to be paved for sure because of the fact that gravel was washing into our storm water system and creating a problem.

Peterson said I don't think we have an issue up there though do we? Utke said it slopes to the south there. Peterson said that is about as perfect as you can make it an environmentally friendly site right now as it is, that's what I would assume.

Vorhes inquired if the requirement is going to be to pave 91? Mathisrud said 91 parking spaces if that number is accurate based on the calculation. Vorhes said then they would have their additional gravel lot still if you said to pave 91 spaces so to me it's almost an all or none, you say okay either you pave all the parking lot that you're going to provide or we say no, you can retain the gravel that you have and pave whatever you want of it.

Rutherford said you can't pick and choose. Peterson said well said. Rutherford said you have been doing it, I'm just saying. Peterson said it's currently gravel and myself I think if we're concerned about run off water in the town I would certainly lean towards leaving it gravel and not requiring it to be paved because it's much more friendly as it is than asphalt. Vorhes said as I recall the discussion basically if it was served by storm water sewers we wanted paving and unless there was a gravel road in front then it was kind of hard pressed to say hey you need to pave your lot but yet the road servicing the property was gravel. Mathisrud said even with paving if there are storm water facilities available we do try to encourage infiltration as well through some sort of onsite retention or other storm water retention or detention measures. Vorhes said it would be difficult to go back and require that it be paved a couple years down the road after you've given a Conditional Use Permit unless you did a city wide ordinance and told everybody with a gravel lot that they need it paved if they meet certain criteria.

Rutherford said I don't think you're saying they have to pave the whole thing anyhow. Mathisrud responded no. Rutherford said only the 91 spots and that's it. Mathisrud said that is correct, that is my recommendation. Rutherford said if they can come up with 91 spots with what is tarred there now, they're fine as long as they're not

all smart cars. Peterson added he tends to lean more towards what's environmentally friendly and I think per the EPA recommendations, gravel is the most friendly thing you can do so myself, I would leave it in the hands of the applicants if they want to pave it fine, if they don't they don't need to. I lean towards environmentally friendly and I would strike #6 from the recommendations by the staff.

Bradow asked if the current ordinance require it to be paved right now? Mathisrud said if they are adjacent to municipal storm water facilities, they are required to have a paved parking lot and this one is adjacent to municipal storm water facilities however it does appear to slope to the south so it would be a little more difficult to capture that storm water from it without some additional cost to do that. It is technically under the ordinance it is adjacent to the storm water facilities. Peterson asked where is the storm water there? Mathisrud said it on Highway 34 but uncertain on which side of the road. Peterson said so what good is it in this case with the entire slope goes to the south so you can easily say that it doesn't have any impact on the storm water system also and we wanted to go so far to make the claim that we want to utilize this storm water system that would be a daunting task to re-slope that whole parking area to make that a legitimate argument and you can't do it so I would have to disagree, it doesn't fit with the regular, it's outside of the normal so therefore I would strike it.

The Public Hearing was opened at 6:21 p.m.

Lori Crep said she has a few hard feelings, not hard feelings, but what I'm thinking is I've had my liquor license for 30 some years, not that I don't think that this will be a good relationship with the Fraternal Order of the Eagles, but I just have a hard time giving that up and I know that's the way it is but this is going to be a two year lease per say or it could be longer do I have to apply for another one or what do I do? Am I sure that I'm going to get my liquor license back if I'm a good girl? I know that's the way it has to be but it's like kind of hard too but it's the way it has to be because that will be their liquor license at that time and I understand that, but then I would have to reapply and go through everything again right?

Peterson said he doesn't understand why another liquor license has to be applied for? Utke asked what is the law on that? Mathisrud said as he understands with the City Clerk Margie Vik that only one liquor license can be issued to a premises, I don't know this for sure because I'm not an expert on the liquor licensing component but as I understand it only one liquor license can be issued. Peterson asked is there only one bar in the building? Crep said right and they will take care of that but it's just that you know, when I need to apply will there be any complications or anything? Mathisrud said to be clear, basically because this is a new use, you're currently operating as a legally established nonconforming use for the bar area so by terminating your existing bar and transferring and somebody else starting a new use through this Conditional Use Permit if they would terminate their relationship with you, you would have to apply for a new Conditional Use Permit to operate as it would be like restarting the clock starting new. Crep asked if there would be any problem with that? Mathisrud said you go through this process. Vorhes said as far as liquor license you would have to reapply.

Ken Kalish stated he is the secretary of the Eagles and we are looking to re-establish ourselves. We've had some problems and I think just about everybody knows it. We have been trying to come up with a way to do this and we don't have a lot of money, that's admittedly first. We're able to get by with a number of savings that we've instituted and I don't know how many members we're going to have starting with the

current year as I don't know how many people are going to renew their memberships. We were at 107 but we had to go down from that because some people were late in paying their dues so right now our membership is right around 85 people so we're not the largest organization you're ever going to encounter. We've been carefully husbanding our dollars and the requirement to pave part of the gravel area is going to hurt us quite a bit. I don't know if we are going to be able to find a loan from an institution to help us do that. I don't think there is anyone here who doesn't know that the previous officers of the club ran up \$250,000 in real estate tax arrears and we were able to pay that off with the sale of the building but we still do have a lot over there it's just an unimproved lot just south of the Enterprise building and we're trying to sell that and if we can, great happy times are here again, if we can't we're hanging on to a vestige of what used to be and we're working as hard as we can to make this thing come through. I know that we had a lot comments about the number of police calls at the Eagles and there was some stuff going around town about the Eagles becoming the new Art's Place and that's not what we're looking for at all. We have an entirely new slate of officers and there's only one person who is an officer now who was an officer in the club before and that's Terry Kruft and he was president and he is now past president and we've added new people in for the trustees which are the operators of any business enterprise we have. We're working quite hard and are meeting now at Boogies and we would like to stop that and move in and get things going again. Aerie #870 was founded in October 111 years ago so they've been around for a long time and have done a lot of good and we're trying real hard to get by on shoestring to make this thing work and we're pretty sure we can, but putting a requirement on us to pave an area I mean that's not inexpensive and I'm afraid and we'll have to go back and see if we can find the pennies, nickels and dimes to do that but we very much to want to go through with the process and any help you can give us would be most deeply appreciated. Thank you.

Peterson commented if you seriously consider what's morally correct, the gravel yard slopes to the south, it's of no impact to the storage system and I would just say based on the morality of the issue the right thing to do is strike number 6.

Rutherford asked when the next one that comes up are you going to do the same thing? Peterson said possibly. Rutherford asked are we going to change the ordinance or pick and choose again? Peterson said we can pick and choose because we have that right because it doesn't fall into regular and we've been instructed when it falls into regular we can move out of regular and we've been instructed with that so in this case, this is not regular, the ground slopes away, it just comes down to just simply that, what's morally right in this case, and this is what's right. Rutherford said I understand, they don't even know how many parking spaces they have, they might have 91 parking spots. Peterson said they have more than that, when you just look at that and look at the cars that are there and move through there by assuming rows, you come up to well over 100 parking spots there. Rutherford asked in the tar? Peterson said no, with the gravel. Rutherford said I'm just saying that in the tar they don't know how many they've got until once it's striped. Peterson said it's been this way for a long time and I just feel what's morally right is what we have to conform to here.

The Public Hearing was closed at 6:30 p.m.

Utke inquired the name of the applicant says it is the Fraternal Order of the Eagles and up there you got permit is to be issued to Loralie Crep, which one is correct? Mathisrud explained that Conditional Use Permits are issued to the property

owners and so the property owner is Loralie Crep. Utke asked if the Findings are correct the way it is written with the applicant being the Eagles and the permit going to Crep. Mathisrud agreed.

The Findings of Facts were reviewed. The commissioners came to the following conclusions: Is the proposed use identified as a conditional use in this zoning district? YES.

1. *Are there characteristics of the proposed use that may violate the public health, safety, or general welfare of Park Rapids City residents? NO.*
2. *Is the proposed use inconsistent with the intent of the Park Rapids City Comprehensive Plan and Zoning Ordinance? NO.*
3. *Does the proposed use present any unique concerns regarding erosion, runoff, water pollution or sedimentation? NO.*
4. *Could the proposed use create any special problems with parking? NO.*
5. *Would the proposed use cause any problems with access or traffic generation? NO.*
6. *Is the proposed use incompatible with other uses located in the zoning district? NO.*

For each response answered affirmatively, are there conditions that could be attached to the granting of a permit that would mitigate the adverse impact? *No affirmative answers, but Mathisrud and the Commissioners recommended the following conditions:*

1. The applicant must obtain a valid liquor license prior to serving alcohol.
2. Applicant must comply with all City and State requirements regarding the sale of alcohol and maintain a valid liquor license.
3. All new signage requires a separate permit issued by the Planning Department.
4. The property shall remain free of noxious weeds, trash and debris.
5. The CUP shall not be transferable to another club.

The commissioners agreed on conditions #1 through #5 and there was further discussion regarding condition #6.

6. The property owner shall meet the city parking ordinance by providing fully striped and paved parking area.

Peterson said he recommends striking #6 for the following reasons: (1) the slope of the topography slopes to the south so it is of no impact; (2) on the very first question of the Findings of Fact we answered No; (3) the answer to question #3 was NO. So in this case I would propose we strike #6 from the recommendation.

Bradow asked the other commissioners their thoughts. Bradow referred to a letter from the applicant on page 16 that should have been incorporated into discussion and will reopen public hearing if necessary. Bradow asked if anyone wants the public hearing reopened. Bradow asked how many small weddings and parties they are anticipating which would give us a number of cars that would be there and how often.

Rutherford requested Bradow reopen the public hearing.

The Public Hearing was reopened at 6:37 p.m.

Rutherford asked Crep with the bowling how many people do you get there at night? Crep said we don't do any bowling at this time. Rutherford asked during the winter time? Crep said sometimes we do but we've been so busy with the Pizza Ranch we don't have time but I would say maybe 30-40 people on a Friday, Saturday night? Rutherford asked how many during the week do you get at Pizza Ranch? Crep replied at lunch we probably have 20 to 90 and sometimes at night we have 40-50 but it depends as Sunday and Monday nights we aren't open. Thursday nights are children's nights where kids eat free under 8 so we get a few more people so we might have 70. Rutherford said so you are looking at 150 minimum if you take the cars from the club and the cars from the Pizza Ranch. Vorhes commented up to 150 cars. Crep said well that's not guaranteed because you might only have 20 at the club that time too. Bradow commented that your Pizza Ranch clients move in and out as they eat and then leave.

Bradow inquired how many small weddings and banquet hall parties to do you think might occur? Angel Juntunen said because of the room there would not be 200-300 people that used to come to the old location and doesn't foresee there being a whole lot maybe one or two a month. Juntunen asked Crep how many birthday parties she does in a month's time? Crep said they do a lot of little birthday parties, little kid parties and that type of thing and we mainly have dining, they come in, they eat and they leave, it's a fast type of thing, they don't linger there. Juntunen said because it's going to be a smaller facility I'm guessing that birthday parties, 25th anniversary parties where you might have 40 or 50 people might be all that we would have. Vorhes asked what the capacity of the bar area, 65-70? Crep said she didn't know. Juntunen said we don't expect it to be like it was. Bradow asked if they are planning to have live entertainment? Juntunen responded no, and if we did it would probably be like it was 15-20 years ago as there will not be a \$1500 band but maybe a little \$300 band in the back area but for now maybe a DJ once in a while. Crep said people aren't out like they used to be. Juntunen said we lost a lot of money having bands so I don't foresee us having bands.

Kalish commented one point that Vorhes touched on and I think needs to be amplified is when you're asking how many people are there, you're not asking how many cars would be there, it is very unusual to have 100 people in the building and to have 100 cars outside, it's going to be half that and that's important. Most people who go to this type of thing are not going to be driving alone.

The Public Hearing was closed again at 6:41 p.m.

Bradow asked Peterson if he is not for paving it and dropping #6? Peterson said he is in favor of dropping #6 for a multitude of reasons and the bottom line is that it's morally not correct, it just isn't and to advise otherwise isn't right. I think we have to walk on faith too just like they are that they hope this can work and that's what I want to encourage as I would not want to discourage them from being successful.

Utke asked as far as the paved area, you've based the square footage on the full building which is the bowling alley too, does that have a different factor than just the bar alone so that's all taken into account on those 91 spaces? Utke said what I'm thinking is there is a lot a space there where people are in that part. Mathisrud said that's a great question but doesn't know if there is a specific call out in our definition that would

exclude the lane space or not, obviously it may make sense to exclude the lane space but depending on how that's defined, it may or may not be excluded from the overall calculation. The parking calculation specifically states 1 space for every 150 square feet of gross floor area for bowling alleys, bars, nightclubs and theatres. Utke asked that's how you calculated it? Mathisrud said yes.

Rutherford commented he would like to see it go through but would like to put a condition on a, or down the road say two years from now when they come back, if we've had a problem, can readjust it? Peterson questioned can we discuss it again at that time? Rutherford inquired can we bring it up and say okay, we've given you two years and we see where the neighbors back there might be getting flooded out, you get what I'm saying? Peterson said I don't think that's happening there is very nice vegetation back there. Rutherford said I understand there is very good vegetation back there. I'm just asking questions, I would like to see it go through. Bradow said I don't think we can come back and revisit this once we recommend approval to the City Council and the City Council agrees to approve it, then the CUP is in place until the ownership changes, correct? Mathisrud explained on this one because it's conditioned it will terminate when ownership changes or if one of those conditions are violated because if one of those conditions is not maintained, we can revoke the Conditional Use Permit. Bradow said so we will more than likely not get a chance to revisit this two years from now. Vorhes said if it comes back we would. Mathisrud advised when the new Conditional Use Permit comes forward then we can look at it at that time. Bradow said but not under this? Vorhes commented or if you pass an ordinance that affects all gravel lots within the City of Park Rapids then you could revisit it but it would require everybody that has a gravel lot to pave it. Mathisrud agreed, yes if we do something to clarify the language in the City Code, then yes, but it would likely not kick in until some other trigger is met that would require that. Vorhes stated he can't imagine that it would be passed a year from the date of the ordinance that all gravel lots be paved for instance if served by storm sewer. I can't imagine that would ever pass. Lockhart asked isn't that what's in place now? Mathisrud said yes all new development if adjacent to municipal storm water facilities has to have a paved parking lot as long as that is triggered by the parking ordinance. Vorhes said that is easier to do on a new development and is more politically easy to sell on a new development than on an existing one, to say I've been going for many years with a gravel lot and been just fine and now all of a sudden the city is going to come and say no gravel lots period.

Bradow asked the commissioners who wants to keep #6 as a condition:
Rutherford said he would like to keep it. Vorhes said he is inclined to say no, don't keep #6; Bradow agreed with Vorhes to remove #6. Utke said he would remove #6 also.

A motion was made by Vorhes, seconded by Rutherford, and unanimously carried to recommend to the City Council approval of a Conditional Use Permit be issued to the property owner Loralie Crep as requested from Fraternal Order of Eagles Aerie #870 to operate as a private club and bar with on sale liquor renting space at 1400 1st Street East from Loralie Crep, in a B-1 Highway Business District, PID#32.30.00300 with the following conditions:

- 1. The applicant must obtain a valid liquor license prior to serving alcohol.**
- 2. Applicant must comply with all City and State requirements regarding the sale of alcohol and maintain a valid liquor license.**
- 3. All new signage requires a separate permit issued by the Planning Department.**

4. **The property shall remain free of noxious weeds trash and debris.**
5. **The CUP shall not be transferable to another club.**

Bradow advised the applicant needs to attend the City Council meeting on October 13th for final approval.

6. INFORMATIONAL/DISCUSSION:

6A. POINT OF SALE SSTS ORDINANCE DISCUSSION: Mathisrud explained when he brought this Septic System Ordinance that we all reviewed and forwarded for approval to the City Council, they approved that however there was some discussion about adding a point of sale provision to the ordinance and several of the council members asked that I prepare a draft ordinance for code review and possible approval. Mathisrud stated he did some research on this and would like some feedback from the commissioners as to whether or not this would work or not. Once I get a full draft completed and I will bring it to you for a recommendation to approve or deny whatever you feel would be appropriate for this. As you know SSTS Subsurface Sewage Treatment Systems and a Point of Sale Ordinance and what is it? Basically what that is is a provision that we would add to our existing septic system ordinance that would require when someone is going to sell property that disclose the condition of that septic system by having a third party complete an inspection of that system. This would be above and beyond what the county's ordinance is however the county had this implemented for a short period of time a number of years ago so they attempted this for a little while and removed it in response to some changes from the state on septic systems and how they were going to regulate them so they dropped it at that point and have not instated in yet and they may not instate it in the future, we don't know.

Basically if someone is going through a real estate transaction they've got to present a Septic System Compliance Form completed by a licensed inspector who evaluates the systems and if it is not good to go they will issue a Notice of Noncompliance. If the system is compliant, the transaction proceeds and if it is not compliant it requires additional steps which the buyer and seller basically negotiate how it will transpire and eventually what it is supposed to do ensure upgraded systems or hook up to city services.

Mathisrud said he started developing an ordinance based on the state template and then also several other county's ordinances which basically many of them follow that state template fairly similarly with some minor differences.

Mathisrud indicated he included four requirements that must be met at the time of property transfer.

1. That a compliance inspection be performed with the last three years.

So if you purchase a property and it was inspected at that time and issued a Certificate of Compliance and you go two years later to sell that property your certificate

if it was valid can be used for the next sale. If it has been beyond three years or the system is older than five years and you haven't had this inspection done in the last three years then you would have to have a new inspection completed.

2. The inspector has to be certified and licensed to perform inspections.
3. That paperwork has to be disclosed to the buyer.
4. If a Certificate of Compliance cannot be provided an escrow of funds has to be completed and made available to ensure the upgrade of that system or connection to city services.

Mathisrud commented that item #4 is one that I am asking for input on because as far as escrow goes, the county did not have an escrow requirement when they did theirs and were able to achieve some compliance without that and I have heard but not verified from some real estate people that there are often times some issues with escrowing funds for septic systems, that escrow companies don't typically hold funds for septic system and I don't know the details so it is something I will need to look into. You can do it either way with or without the escrow as some counties do it and some do not. There are some differences in the amount of funds as well according to the estimate of cost to replace the septic system.

Mathisrud stated he has a couple of exceptions:

1. Basically for transactions where there is no building or plumbing fixtures or no septic systems on site – those would not have to go through this process.
2. If the transfer does not require the completion of a Certificate of Real Estate Value, then it doesn't have to go through this. There are certain transactions that don't have to have that Certificate of Real Estate Value.
3. If the transfer is a tax forfeiture so if you lose it to the county or something like that, that does not trigger an upgrade until sale of this property to another party.
4. If somebody entered into a Contract for Deed and they're the original vendee of the Contract for Deed and they got into that agreement prior to adopting this ordinance, they would be exempt from these requirements.
5. If they are already hooked up to city sewer, they're exempt.
6. Court rulings for wills, probate, divorce, state settlements, etc. as those are usually a simple deed.
7. If there is no tax required on the transaction.

Mathisrud said the next question is what happens during the winter when septic systems are frozen and you can't complete this and most counties have this but I'm scratching my head because I bought my house in the winter time and I received a valid Certificate of Compliance in March when the ground was frozen. Most of them have provisions where you don't have to get this Compliance Certificate during the winter months when those inspections can't be completed. In such a case where you go through that process you basically set up some sort of a written agreement between

buyer and seller and which states who's responsible for that and if you get a bad inspection and then who is required to escrow the funds.

The next question is the responsibility for completing the upgrade must be in writing between the two parties so basically you go through this inspection and you figure out who's going to be responsible for upgrading the system if it's failed.

The Seller at the time of recording of the transaction is required to provide this documentation that all of this has occurred so the Seller is to do that and that's evidenced by a packet of information which is this Certificate of Compliance and then a form filled out that is given to the city.

The part of the ordinance that would issue a penalty would state that if the seller does not do all of this and present a valid Certificate of Compliance or an escrow agreement or something of that nature, then it shall constitute a misdemeanor and then the cost of getting that system into compliance will be recovered from the seller.

Peterson asked what is the main objective? Mathisrud explained the objective of the Point of Sale Ordinance is to have another element to help insure people are keeping their septic systems compliant and keeping their systems protecting ground water. This is basically one tool for insuring environmental compliance and making sure the systems are working properly. Peterson said if the objective is ground water then with the sale, let's just take the case of two homes A and B. Home A they sell their property and it triggers the point of sale and they find a noncompliant septic system and maybe the lateral is discharging leakage into the ground and we captured so we have one in this case unprotected the ground water which is the objective, but home B doesn't sell for 50 years and it has a broken lateral too, so therefore we haven't gained any ground that protected the ground water with a point of sale. Mathisrud agreed that's true but we have provisions in our current ordinance where if we are notified, say somebody isn't selling their property and we identify a system that is leaking through other reasons from either staff completed survey or those types of things that identify a system, we have provisions to require upgrade to bring that system back into compliance. So this tool would not insure something like that would be dealt with and there are some other tools in the ordinance to do that but this would add an additional tool for insuring compliance with the existing properties that are going through that transfer of property. One of the benefits of that is during the real estate transaction there is often money available to insure that upgrade and compliance happens at that time.

Peterson said under a real estate transaction under Minnesota State Statute 115.55 addressing subsurface sewage treatment systems by law already disclosure of subsurface sewage treatment system to buyer from the seller and when the seller fills out his disclosure statement which is required by law and this is also upheld by the realtors who are conforming to the highest duties any citizen has to a buyer or seller which is the fiduciary duties, they are the highest of the high, then if the property seller states yes he does have a seller than it moves on to a 3 page document that he must fill

out that states everything about the known septic tank, a grant obtaining a compliance and having an inspection done and all this information is put before the buyer and it becomes a negotiating tool between the buyer and the seller, why would a point of sale be necessary to override something that trumps the point of sale in law, why do we need anything of duplicity that doesn't even come close to enforcing what this enforces?

Mathisrud responded that is a great question and basically that form is a disclosure form between the seller to the buyer so if the seller knows that there is an issue with their system, they have a duty to disclose them, but if they do not know of any issue they obviously don't have anything to disclose so if you've never had your system inspected in 30 or 50 years or whatever and your toilet still flushes, you may not know if your system is compliant or not, that's all you're disclosing on that form. That form, as I understand, does not require an inspection be completed, that form simply is a disclosure between the seller to the buyer. Peterson said my question to that then would be, the property owner that conforms to the law and upholds his septic system now is impacted by the point of sale and the irresponsible owner with a noncompliant system is also upheld to the point of sale, my question to that then would be who are encouraging and who are we betraying with the point of sale? Are we betraying then the responsible property owner and encouraging the noncompliant property owner by this point of sale because they are already by law required to do this.

Vorhes responded no, just the opposite, because if I've got a nonconforming what will happen is, the way I would like to see it, money will be escrowed and if one of you buys my house the septic gets replaced but it comes out of my sale proceeds to have it happen. Peterson said that's already occurring between the buyer and the seller. Vorhes stated no, it is not. Peterson said especially if you have a banker involved, it's there already. Bradow said no, he's only looking for that disclosure. Peterson said yeah, but just by law. Bradow said it doesn't require an inspection. Vorhes agreed and said it does not require an inspection and says to the best of my knowledge and you can say I do not know. Peterson said and that's perfectly fine, but are we encouraging a dumb buyer or a smart buyer, what are we encouraging here with this? Vorhes said we are encouraging getting failing septic systems back into working order. Peterson said and so there for the compliant property owner now has to. Vorhes said what he has to do is basically spend a couple hundred dollars at most to do an inspection. Peterson argued why should he, why should he? And let alone the noncompliant seller may not sell their property for 50 years so we haven't won anything at all with the point of sale. We haven't even come close to gaining our objective with a point of sale to protect the ground water and I want to take that a step further the ground water is everybody's concern. I'm concerned about it too. We live in a rural area, out of all the sewer systems we have out there in the town that are noncompliant are probably just a few, maybe there's more but in a rural area, any area for that matter there is a human hand involved here and change occurs in time and to force something down that doesn't meet our objective by an ordinance isn't necessary because the community, everybody is interested in ground water clarity there is no denying that. We can meet that objective just be leaving things as is and not having something and another point, you bring a point of sale into a real estate transaction something that is the time of

essence is played out there and this will come into that real estate transaction now and maybe possibly even kill it and that is not our objective either, so that's two strikes right there against the point of sale, it does not work. It doesn't work. We've already got laws that trump the point of sale. Vorhes commented they do not trump the point of sale. Peterson argued yes they do, because they are upheld by the realtors and realtors are upheld by fiduciary duties and they are the trump of anything. Vorhes explained basically I can say I do not know and it doesn't get inspected. Peterson said that's fine, now it's in the buyer's hand, any smart buyer, any lender is going to require that it gets inspected. Vorhes and Bradow said no, that's not true. Peterson argued well regardless it doesn't encourage the responsible property owner and it doesn't encourage us to make sales in this town and it doesn't encourage us to move in time with what we already have on the table.

Vorhes commented now if you want something that would work but it would be very expensive you could say that every so many years we send somebody out to inspect septic systems. Peterson said we don't need to do that. Vorhes said if you are worried about the ground water like you say you are. Peterson replied and we are and you are too and we've just proven that the point of sale won't do anything for the groundwater. Vorhes advised this wouldn't be done on point of sale you do it every three years, you must get an inspection but I don't think we want to spend the money to do that.

Mathisrud explained he did make a recommendation to the council that we complete a city wide survey in lieu of a point of sale ordinance and was directed to consider a point of sale ordinance instead of doing a city wide survey.

Peterson asked what do we do if we do an inspection like that and we find an 80 year old that owns a piece of property that has a noncompliant septic system and that's living within the minimum means he has and he can't afford to upgrade his system? What are we going to do to that guy? That property will sell eventually or transact when he dies and then that issue is going to be resolved. He may last another 20 years but are we ethically good at evicting an 80 year old off his property because he can't meet compliance? But in the fact that when you look at ours as a community we can let that go for 20 years, it's not going to make or break us. Vorhes stated a point of sale wouldn't evict him. Peterson said no, but a compliance evaluation of who has septic systems and who's not in compliance, that will, so that issue will come forward in a big way, how are we going to deal with that? Vorhes said at one point and I don't know if it is still the case, there were grants available for this. Bradow commented he thinks that time has passed and was in place for when the shoreline ordinance was being checked.

Rutherford asked how many do you think that we have in the city. Mathisrud said he doesn't have a full list which is why I wanted a city wide survey completed so I can get a really good list for tracking but I would estimate the we have approximately 150 systems and as we went through the annexation process we brought in a lot of real estate into the city that was previously inspected by the county and so by picking up that real estate those existing systems the city now is responsible for managing that and

insuring that systems are in compliance or are moved towards compliance. So we have approximately 150 systems and there are roughly 45 or so systems in Discovery Circle and those will presumably get taken care of if we complete a utility project out there in the next couple of years. There are failing systems over there and there are likely failing systems other places in the community as well. The intent of the city is to get as many systems hooked up to city sewer and water as is practical both for the property owner as well as the city. Peterson said he thinks that intent is well grounded and very good and that is our intent to go that direction, but at the same time I think we have to recognize that things take time to change and we do not need a duplicity of laws and what I would recommend is not to create any ordinance at all and let it fall to the county and that's how it has been and that meets the Minnesota Pollution Control Agency's recommendations too and we just let time take its course and it all will be resolved in due time for the people of this city without costing them more money.

Utke advised it actually it falls to the city because we adopted an ordinance that kind of mirrored the county's, so you're correct in a way, that we would both be enforcing the same way. Peterson said we have an old ordinance that was adopted years ago. Utke and Mathisrud advised the new ordinance was adopted by the City Council in July, 2015. Utke explained it was a mirror basically to the county's with just a couple things that fit the city so we are one of the same. Peterson said he doesn't have a copy of that and was unaware of that.

Rutherford said in listening to it, the city adopted it for the reason we don't want the county telling us what to do, we can do it ourselves and Discovery Circle will come in and we are going to cut it down to about 100 septic systems in the city. Peterson said right and when Discovery Circle comes in for them to comply by law they have to hookup. Rutherford and Bradow said within three years. Peterson said three years is a very short amount of time. Lockhart added unless their system is failing then they have to hook up right away.

Mathisrud said regardless of whether or not we agree on the pretense of the point of sale ordinance, I would like to get to at least get some comments because I do have to draft one up and bring it to you for a recommendation and if your recommendation is to not approve it I would forward that to the City Council but I have to at least draft something up worth presenting. Peterson commented he thinks it is a very difficult thing to draft because it doesn't meet the objective of cleaning up the ground water, simple as that, it just fails.

Bradow inquired if we don't do anything, what are we telling the City Council that we don't want to have any improvements made on failing systems, we just want to turn our head on them? Peterson said but we're not, because we already have the sellers and buyers that are the most interested parties here, they are going to address it. Bradow said not necessarily. Vorhes said no. Peterson argued but we can't, you have to have more faith in people than that, they will because the realtors are involved with that and because of the realtors. Vorhes said they get the sale and it doesn't matter. Peterson said that's irrelevant. Bradow commented they just hand you the form, you've

bought and sold houses before, they just hand you the form and you fill it out. Peterson said that is not true. Vorhes stated that is absolutely true, I just listed two properties. Peterson argued are you guys aware of the fiduciary duties that the realtors are upholding? Bradow and Vorhes stated yes they are. Peterson said so if you can't believe that the realtors are doing their job then we have an issue somewhere else. Rutherford agreed we do. Bradow said the issue is where they hand me that form. Peterson said no, maybe we need to be dealing with the issue at the state level with the realtors. Vorhes said the only thing he can do is say he based what I disclosed on what my seller told me. Bradow said they can't call me the seller a liar, the realtor just hands you a form and they collect it and put it in the folder. Vorhes said the realtor has no duty to investigate. Peterson argued yes they do. The commissioners advised they do not. Peterson said they don't have to investigate but they are required by fiduciary duties to be looking out for the best interest of that seller and buyer.

There was further debate concerning the duties of the real estate agents. Peterson said you are all absolutely wrong. Vorhes advised he just listed two properties. Peterson said if we have a problem that is in this system that is in the Minnesota Law that this is not working, then we need to address it there and not here by point of sale which does not meet our objective, that's the end of argument, the point of sale doesn't meet the objective, this does by the fiduciary duties of the realtors and that is law and if a realtor is not upholding their duty, that's a violation and that's a serious violation. Now if we're letting the realtors get away with that, then that needs to be addressed down at the state level, not here. Bradow said I think you just expanded their fiduciary duty. Peterson said he understands what their fiduciary duties are very clearly. You guys can mock the fiduciary duties but they are one of the highest rules we have to apply in this society. Vorhes said listen you're talking to an attorney that has the same duty or higher. Peterson said then I would hope you recognize my argument. Vorhes said the problem that you have is that yes they have a fiduciary duty they cannot knowingly lie, they have no duty to investigate. Peterson said they have a duty to represent that seller and buyer. Vorhes said no, the seller. Peterson said the ones that have a dual agent represent the buyer and seller. Vorhes said how many times do you have a dual agent? Peterson responded almost all the time today. Vorhes said no. Peterson argued almost all the time. Vorhes said no you don't actually. Peterson said I want to say again and I want to reaffirm it, the point of sale does not meet your objective.

Mathisrud explained he will put together a draft and bring it at the next commission meeting for review and decide if acceptable to move it forward and if we can't then we will go another route. Bradow said in the interest of time and to help to Mathisrud let's say if we are interested in proceeding or not, Peterson does not like the point of sale. Rutherford stated yes, he does want to proceed with a draft. Vorhes said yes he does. Bradow said yes he does. Utke said no, he does not like it. Bradow summarized saying there are three responding yes and two responding no at this point.

Rutherford asked what other neighboring cities have a point of sale? Mathisrud advised most cities adopt county references and that typically how it works as nobody usually goes above and beyond but that's not always the case and I don't know off hand

the name of the cities that do it where the county doesn't. Mathisrud commented 50% of governmental units currently have point of sale ordinances. Last year it was 49% so there is a trend towards most municipalities are now adopting these. It's not something that will, I don't believe is going to be mandated by the state, but it is certainly being look at very seriously. All the counties around the cities have one St. Louis County up towards Duluth has one. Several counties south of here have one including Crow Wing County, so it's not uncommon.

OTHER DISCUSSION: Mathisrud provided a picture of a fence and asked the commissioners their opinion as he had received a complaint about a fence constructed from pallets. There was discussion concerning the ordinance language concerning the durable materials fences are made of and if it should be modified. There was a concern that this particular fence may be over 4 ft. high in the front yard. Mathisrud will check the height of the fence.

Mathisrud advised there may be a front yard fence height variance in the future from a different party.

7. ADJOURNMENT: A motion was made by Utke, seconded by Rutherford, and unanimously carried to adjourn the meeting at 7:37 p.m.

Chair Dick Bradow

ATTEST:

Carmen L. Lockhart
Planning Assistant