

**OFFICIAL PROCEEDINGS OF THE
BOARD OF ADJUSTMENT AND APPEALS**

REGULAR SESSION

SHAKOPEE, MINNESOTA

NOVEMBER 3, 2011

MEMBERS PRESENT: Gorton, McQuillan, Seidensticker, Magin, Klemm, Gorton and Collins

MEMBERS ABSENT: Mangan

STAFF PRESENT: Kyle Sobota, Planner I; Julie Klima, Planner II and Michael Leek, Community Development Director

1. ROLL CALL:

Vice-Chair Klemm called the meeting to order. Roll call was taken as noted above. Chair Gorton arrived after the Consent Agenda was approved. Vice-Chair Klemm continued to direct the meeting.

2. APPROVAL OF THE AGENDA:

Motion: Magin/McQuillan moved to approve the agenda. No discussion.

Vote: Motion carried 5-0.

3. RECOGNITION BY BOARD OF ADJUSTMENT AND APPEALS OF INTERESTED CITIZENS:

Vice-Chair Klemm recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

4. APPROVAL OF THE CONSENT AGENDA:

(All items listed with an asterisk (*) are considered to be routine by the Board of Adjustment and Appeals and will be enacted by one motion. There will be no separate discussion of these items unless a commissioner so requests, in which event the item will be removed from the consent agenda and considered in its normal sequence on the agenda.)

Vice-Chair Klemm noted that there was only one item on the Consent Agenda and it was the approval of the October meeting minutes.

Motion: McQuillan/Collins moved to approve the Consent Agenda.

Vote: Motion carried 5-0

***5. APPROVAL OF THE MINUTES OF THE OCTOBER 6, 2011 MEETING.**

6. CUP REVIEW AND RESOLUTION NO. PC10-033: A RESOLUTION OF THE CITY OF SHAKOPEE, MINNESOTA REVOKING A CONDITIONAL USE PERMIT FOR A VEHICLE SALES BUSINESS ON PROPERTY LOCATED AT 804 FIRST AVENUE EAST IN THE HIGHWAY BUSINESS (B-1) ZONE.

Vice-Chair Klemm opened the agenda item for the staff report. Mr. Sobota addressed the Board and presented Resolution No. PC10-033. Mr. Sobota stated that on January 7, 2010 the Board approved a Conditional Use Permit request by Jesus Camauta for vehicle sales at 804 First Avenue East. Conditions of approval regarding site improvements and other conditions were to be completed by September 1, 2010 for the Board to review at the October 7th meeting. Staff conducted a site inspection during the month of September and found several conditions of approval that had not been satisfied.

On October 7, 2010 the Board conducted a review of the Conditional Use Permit (CUP) and after discussion directed the applicant to prepare a timeline for compliance with the conditions and the Board tabled the item to the November 4th meeting. Between the October and November Board meeting, Mr. Camauta had procured a Hazardous Waste Generator License from Scott County, but had not provided a plan to comply with the other conditions. Mr. Camauta did not attend the Board meeting. The Board requested that staff prepare the necessary documents to consider the revocation of the CUP for their consideration at the December 9, 2010 meeting.

At the December 9th meeting the Board requested that Mr. Camauta provide a plan of action by December 28th for the access closure on Minnesota Street, fuel storage tank removal, impervious surface removal, and tree planting. The Board specifically gave direction to Mr. Camauta to have a signed contract with Pump and Meter Service to remove the fuel tanks during the 2011 construction season, to show his commitment to removal of the tanks. Mr. Camauta provided a letter on December 28th stating that he would comply with the conditions, but did not give completion dates.

At the January 6, 2011 meeting the Board asked that Mr. Camauta provide clear deadlines for when the unmet conditions would be met, the plan was presented to staff prior to the March meeting. On February 22, Mr. Camauta submitted a letter and site plan outlining his plans for completion of the conditions. To summarize the letter; Mr. Camauta proposed to complete work during the County Road 101 construction and gave deadlines for completion of October 15, 2011 for the removal of 1,200 square feet of impervious surfaces, planting of 5 Black Hills

Spruce Trees, removal of the northerly access to Minnesota Street, and removal of the underground fuel storage tanks.

At the March 3rd Board meeting, the Board's direction was to allow Mr. Camauta additional time to comply with the conditions based on the deadlines submitted by Mr. Camauta in his letter dated February 22. The Board also agreed with Mr. Camauta's request to reduce to the amount of impervious surface to be removed from the site from 3,700 square-feet to 1,200. The deadlines allowed all the work to be completed during County Road 101 construction.

Since the March meeting, the work on County Road 101 has been completed and the road is now open. Mr. Camauta has made aesthetic changes to the building, but has not satisfied any of the specific conditions or deadlines established at the March meeting. The accesses to the site from First Avenue were removed as part of the highway project; but the northerly access to Minnesota Street was not removed as Mr. Camauta desired to remove the access with his own contractor since it was not part of the scope and bid of the County Road 101 project.

For the Board's consideration staff has prepared a resolution that would rescind the Conditional Use Permit, if the Board determines that the business is in violation of the conditions of the approved CUP.

RESOLUTION NO. PC10-033

WHEREAS, the City of Shakopee received an application from Jesus Camauta, applicant, LakePointe Holdings II, fee owner, and Camauta's Import Auto, Inc., contract for deed vendee, for a Conditional Use Permit to allow vehicle sales under the provisions of Chapter 11, Land Use Regulation (Zoning), of the Shakopee City Code, Section 11.36, Subd. 3, to allow for a vehicle repair business on property located at 804 First Avenue East, in the Highway Business (B-1) Zone; and

WHEREAS, the property upon which the request was made is legally described as: The North 110 feet of Lots 9 and 10, and the North 110 feet of the West 15 feet of Lot 8, all in Block 10, East Shakopee, Scott County, Minnesota; and

WHEREAS, notice was provided and on January 7, 2010 the Board of Adjustment and Appeals conducted public hearings regarding the application, at which it heard from the Community Development Director and invited members of the public to comment; and

WHEREAS, on January 7, 2010, the Board of Adjustment and Appeals adopted resolution PC10-001 approving the CUP application. The approval included the following conditions:

1. All storage tanks above or below ground for fuel and oil must be removed from the site to comply with MN State Fire Code.
2. The two accesses on First Avenue and the northerly access on Minnesota Street must be removed. Right-of-Way permits from Scott County and City of Shakopee will be required. Any damage to existing sidewalks or curbing must be repaired.
9. The applicant must have an acceptable plan to remove at least 3,700 square feet of impervious surfaces. The plan must involve removal of pavement adjacent to lot lines to meet parking area setbacks.
21. All conditions of this resolution are to be met by September 1, 2010. City Staff will inspect the site for compliance during the month of September and draft an inspection report to be reviewed by the Board of Adjustment and Appeals at the October 7, 2010 meeting; and

WHEREAS, the Board of Adjustment and Appeals reviewed the matter on October 7, 2010 and directed the applicant to provide a plan for compliance with the conditions of approval.

WHEREAS, the Board of Adjustment and Appeals reviewed the matter on November 4, 2010, and the applicant had not completed a plan for compliance for the Board's review.

WHEREAS, the Board of Adjustment and Appeals directed City Staff to prepare a resolution to revoke the Conditional Use Permit on November 4, 2010 for review at the December 9, 2010 meeting.

WHEREAS, the Board of Adjustment and Appeals reviewed the matter on December 9, 2010, and the Board chose not to revoke the Conditional Use Permit and again requested that the applicant provide a plan with deadlines for compliance with the conditions, as well as a signed contract for removal of the underground fuel storage tanks.

WHEREAS, the Board of Adjustment and Appeals reviewed the matter on January 6, 2011, at which time the applicant provided a plan for compliance with the conditions, but did not reveal dates for the intended completion of the items.

WHEREAS, the Board of Adjustment and Appeals reviewed the matter on March 3, 2011 and agreed to allow the applicant to move forward with a plan for removal of a reduced amount of impervious surfaces from 3,700 to 1,200 square feet, removal of the underground fuel tanks, and closure of the northerly access to Minnesota Street, with all items to be completed by October 15, 2011.

WHEREAS, the Board of Adjustment and Appeals reviewed the matter on November 3, 2011; at which time the applicant and business owner of Camauta's Import Auto Inc. was made aware of the continued violation of the above conditions of approval. The applicant acknowledged the violations; and

WHEREAS, on November 3, 2011, the Board of Adjustment and Appeals reviewed the matter and determined that the use was not in compliance with the above 4 conditions of approval contained in Resolution PC10-001.

The Board of Adjustment and Appeals adopts the following findings of fact:

Finding #1 The applicant has not complied with Condition no. 1 "All storage tanks above or below ground for fuel and oil must be removed from the site to comply with MN State Fire Code."

Finding #2 The applicant has not complied with Condition no. 2 "The two accesses on First Avenue and the northerly access on Minnesota Street must be removed. Right-of-Way permits from Scott County and City of Shakopee will be required. Any damage to existing sidewalks or curbing must be repaired."

Finding #3 The applicant has not complied with Condition no. 9 "The applicant must have an acceptable plan to remove at least 3,700 square feet of impervious surfaces. The plan must involve removal of pavement adjacent to lot lines to meet parking area setbacks. The Board later agreed to reduce the required removal amount to 1,200 square-feet."

Finding #4 The applicant has not complied with Condition No. 21 "All conditions of this resolution are to be met by September 1, 2010. City Staff will inspect the site for compliance during the month of September and draft an inspection report to be reviewed by the Board of Adjustment and Appeals at the October 7, 2010 meeting."

Mr. Sobota opened the discussion to the Board. Discussion ensued as to the reapplication process if the CUP was revoked. Mr. Sobota stated that the applicant has 10 days to appeal once the CUP is revoked and after that there is no additional waiting period. The Board inquired if the City would notify State authorities that the CUP was revoked and if that would affect his vehicle sales license. Mr. Sobota stated that the city staff would notify the State and he stated that his license would be affected.

Vice-Chair Klemm inquired about the general timeline for satisfaction of any CUP conditions and if this is a typical amount of time. Mr. Sobota and Mr. Leek responded that the usual timeline for meeting conditions of a CUP is within a year and/or prior to the commencement of the business.

The Board inquired if there was an alternative to revoking the CUP, such as suspending operation of the business until the conditions were met. Mr. Leek responded the Board could either modify the conditions of the CUP or impose additional conditions.

The Board invited the applicant Jesus Camauta to address the Board. Mr. Camauta stated that he didn't understand the impact of the Hwy. 101 construction would have on his business. The construction left him with limited to no access to his business and it literally eliminated all business for a couple of months. He attempted to advertise to no avail, since patrons could not access his business. The financial impact was devastating. He had to sell cars wholesale out of state to pay the bills. He is currently looking at options of refinancing or leasing the location in order to make some money. He stated that he would like to keep the property and was looking at all options. He would like to refinance however, that would require an extension of the conditions. Mr. Camauta stated that he has no money to satisfy the conditions at this time, but is willing to complete them once his finances are in order.

The Board discussed the importance of one of the conditions, the removal of the gas tanks on the property. Information was presented that the removal of the tanks would take approximately 2 days, however there was a limited window of opportunity left since the removal would need to take place prior to the winter months. In addition, once the tanks were removed, they were to be replaced with asphalt, which would not be able to be laid during the winter months.

Mr. Camauta stated that he would not be able to complete the items until late spring or summer, since the winter is the slowest season for car sales.

Chair Gorton inquired if the applicant could lease the location if they revoked the CUP. Mr. Sobota stated that he could but could not lease to another car sales business.

Motion: Gorton moved to recommend a 7-month extension of the CUP and revisit the item at the May meeting to review full compliance. The motion failed, there was no second to the motion.

Motion: Magin/McQuillan moved to extend the CUP until the next meeting in November with the condition that the tanks be removed at that time.

Discussion ensued. Chair Gorton stated that the most serious condition was the removal of the tanks. It was also the most expensive. She reported that the applicant was most likely not going to be able to remove the tanks financially, in addition it was questionable that he would be able to remove the tanks due to the impending winter.

The Board discussed their concerns regarding extending the CUP, however they also understood that this was someone's livelihood at stake. They agreed that they had no problem extending the CUP due to financial hardship but they also felt that it was important that the applicant be aware of the final deadline date and that there would be no more extensions.

Magin rescinded his motion.

Motion: Magin/Gorton moved to extend the CUP until July 1st, 2012, at which time all the conditions must be completed.

Vote: Motion was carried 6-0.

The Board advised the applicant to seek legal assistance if he was to lease the building, in that all businesses on the property must follow the CUP.

7. **OTHER BUSINESS:**

No other business was noted.

8. **ADJOURN:**

Motion: Magin/Gorton moved to adjourn the meeting.

Vote: Motion carried 6-0. Meeting adjourned at 7:48 p.m.

Amy Hulet
Recording Secretary

OFFICIAL PROCEEDINGS OF THE PLANNING COMMISSION

REGULAR SESSION

SHAKOPEE, MINNESOTA

NOVEMBER 3, 2011

MEMBERS PRESENT: McQuillan, Seidensticker, Collins, Gorton, Klemm, and Magin

MEMBERS ABSENT: Mangan

STAFF PRESENT: Kyle Sobota, Planner I, Julie Klima, Planner II, Michael Leek, Community Development Director

1. ROLL CALL:

Chair Klemm called the meeting to order at 7:49 p.m. Roll call was taken as noted.

2. APPROVAL OF THE AGENDA:

Chair Klemm inquired if there were any additions or corrections to the agenda.

Motion: Magin/Gorton moved to approve the Agenda.

Vote: Motion carried 6-0.

3. RECOGNITION BY PLANNING COMMISSION OF INTERESTED CITIZENS:

Chair Klemm recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

4. APPROVAL OF THE MINUTES OF THE OCTOBER 6, 2011 MEETING:

Motion: Mangan/Gorton moved to approve the October 6th meeting minutes.

Vote: Motion carried 6-0.

5. RESIDENTIAL POINT POLICY DISCUSSION:

Ms. Klima addressed the Commission. She reported that in April staff provided copies of the Residential Pointing Policy to the Commission members for its review in anticipation of a future discussion. Staff is now seeking discussion and direction from the Commission as to how it wishes to proceed with the utilization of the Residential Pointing Policy (RPP). In anticipation of potential 2012 development activity, staff's intention is to gather the comments and direction of the Planning Commission and to move this item forward to the City Council in December.

The RPP was adopted by the Shakopee City Council in September 2005. The RPP was adopted at a time when the City was experiencing tremendous amounts of residential development. The intent of the RPP was to achieve a higher quality of development than was achieved by simply following the City Code requirements.

The RPP was only able to be applied to a small number of residential development proposals before the housing market experienced its decline. In the instances where the RPP was applied, the product received was not significantly different from those development projects completed prior to the implementation of the RPP. Application of the RPP also adds an additional step to the review process, and this may not be viewed as a proactive approach to promoting and accommodating new developments.

Staff has discussed the RPP and its adoption with the City Attorney. The City Attorney has advised that in order for the RPP to be fully defensible, any requirements should either be adopted into the City Code or should be adopted by resolution. At the time that the RPP was adopted, it was done so by motion rather than by resolution.

The RPP was drafted largely based on Maple Grove's similar policy. Staff has had recent discussions with Maple Grove staff regarding their views and practices with their own policy. Maple Grove does still utilize their policy, however, there are significant differences between its process and Shakopee's.

In recent discussions with Maple Grove staff it was learned that at the time that Maple Grove enacted its policy, it modified City regulations to require that all residential developments be approved through the Planned Unit Development (PUD) process. The PUD portion of the ordinance was also amended to require that the pointing policy be applied to all PUD's. As explained by Maple Grove staff, they use the pointing policy as a leverage tool when reviewing new developments. Inherent in that approach is that the City Council has provided staff with the authority to leverage design and other elements provided for in the policy.

Due to the factors discussed above, and especially in light of conversations with the City Attorney, staff recommends that use of the RPP be suspended and that the Planning Commission and City Council provide direction as to the elements of the RPP that it would like to see carried forward into proposed text amendments for inclusion in the City's Zoning and/or Subdivision Ordinance. Having learned more about how Maple Grove utilizes its pointing policy, i.e. requiring PUDs for all residential developments, it appears to staff that approach may be overly cumbersome. It also does not appear to result in uniformly superior subdivision design for Maple Grove, but rather allows them to negotiate specific features on a case-by-case basis.

Ms. Klima invited discussion from the Planning Commission. The Commission discussed the purpose of the RPP was to ultimately gain more leverage with the developers and builders in determining the overall outcome of the development. The Commission inquired if other communities who utilized a similar policy saw any significant impact while implementing the policy. It was determined that there was very little detectible impact.

Collins stated that he had worked with developers and from his experience reported that at times it was difficult to meet all the requirements. He inquired if there were multiple builders in a development would all of them be required to meet the standards of the policy. It was determined that they all would and that some builders may choose not to participate and therefore developments could take longer to build out.

Mr. Leek noted that there were some items in the RPP that may overlap with current City Codes, such as Senior Housing and Greenways.

Chair Klemm inquired about clarification of what staff is asking that they recommend to City Council and also if there were specific elements of the policy that staff would like to see incorporate into City Code. Ms. Klima stated that staff is not looking for the Commission to compare specific elements but looking for specific items of the policy that they would like to see move forward for additional discussion. In addition, Mr. Leek stated that in the interim, staff is suggesting that the Commission suspend the RPP until further time that the Commission could determine those items that aren't addressed in the City Code and the Commission would like to further discuss. They would like the Commission to present two separate motions.

Motion: Seidensticker/Magin moved to recommend to City Council to suspend the use of the RPP in its current state.

Vote: Motion carried 6-0. No discussion.

Motion: Magin/Seidensticker moved to direct staff to review the current RPP and compare elements of the policy to the current City Code to determine any deficiencies or repetitions and suggest any modifications.

Discussion ensued when Seidensticker inquired if the modifications would come back to the Planning Commission or go straight to City Council. Mr. Leek and Ms. Klima reported that the items would be brought back to the Commission for further discussion.

Vote: Motion was carried 6-0.

7. **OTHER BUSINESS:**

Mr. Leek advised the Commission that the City is proceeding with the AUAR update for the Opus and United Properties areas along 4th Avenue. He reported that there were a couple serious prospects and once the AUAR was completed in January the City was anticipating a preliminary plat for the United Properties location. There is another prospect looking at the Dean Lakes area. The City is encouraged with the interest of these prospects. The City has been working with 4 businesses within the past 6 months.

In addition, JoAnn Fabrics' Dean Lakes location is being built and going forward. The new building will be much larger than their current location. Mr. Leek also noted that County Road 21 is open and the Park & Ride for the area will open in April or May.

8. **ADJOURN:**

Motion: Gorton/Seidensticker moved to adjourn the meeting.

Vote: Motion carried 6-0. Meeting adjourned at 8:26 p.m.

Amy Hulet
Recording Secretary