

MINUTES

COTTAGE GROVE CITY COUNCIL

COUNCIL CHAMBER
12800 RAVINE PARKWAY SOUTH

May 17, 2023

REGULAR MEETING - 7:00 P.M **COUNCIL CHAMBER**

1. CALL TO ORDER

The City Council of the City of Cottage Grove, Washington County, Minnesota, held a regular meeting on May 17, 2023, at Cottage Grove City Hall, 12800 Ravine Parkway. Mayor Bailey called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

The audience, staff, and City Council Members stood and recited the Pledge of Allegiance.

3. ROLL CALL

City Clerk Tammy Anderson called the roll: Mayor Bailey - Here; Council Member Dennis - Here; Council Member Khambata - Here; Council Member Olsen - Here; Council Member Thiede - Here.

Also present: Jennifer Levitt, City Administrator; Korine Land, City Attorney-LeVander, Gillen & Miller, PA; Tammy Anderson, City Clerk; Ryan Burfeind, Public Works Director; Zac Dockter, Parks and Rec Director; Pete Koerner, Public Safety Director; Brenda Malinowski, Finance Director; Amanda Meyer, City Engineer; Mike Mroska, Senior Planner; Emily Schmitz, Senior Planner/Interim Community Development Director; Dan Schoen, Community Engagement Officer; Eric Rigby, Communications Manager.

4. OPEN FORUM

Mayor Bailey opened the Open Forum. As no one wished to address the Council, Mayor Bailey closed the Open Forum.

5. ADOPTION OF AGENDA

Council Member Dennis made a motion to approve the agenda; second by Council Member Olsen. Motion carried: 5-0.

6. PRESENTATIONS

A. Recognize Jerret Wright's Years of Service to the Planning Commission

Mayor Bailey invited Jerret and his wife to join the Council in front of the dais for this recognition. He stated both Jerret and his wife have been very active in our City in a number of ways, including taking photos, being involved with Strawberry Fest, and serving on commissions. He asked Council Member Khambata, the liaison to the Planning Commission, to speak about Jerret; Mayor Bailey stated the reason we're doing this recognition tonight is because they're moving out of Cottage Grove, and we're very sad to see that happen.

Council Member Khambata stated he had the pleasure of working with Jerret on the Planning Commission when he was the Chair of that commission; in those years, Jerret was always insightful, brought good questions to the table, and he truly believed Jerret was a large part of the process that led to a considerable amount of economic development that Cottage Grove has experienced. His are big shoes that we'll have to try to fill when we add a new Planning Commissioner. As someone who had the pleasure of working with him and helped mentor him, he's really going to miss him.

Council Member Dennis spoke about Jerret's character; in 2018, Jerret ran for City Council because he wanted to make a difference, he liked the direction in which the City was going, and had a very positive aura and spirit in everything that he did. Getting to know Jerret through that process, Jerret actually created friendships with many of us here. Having been a long-term Council liaison to the Planning Commission, it was his pleasure, along with support of the other Council members, to interview Jerret and offer him a chance to join the City Council. When Jerret left for a military deployment, he and Jerret kept in touch; when he returned, he was willing to be part of the team again, which was absolutely fantastic. He's always been professional, dignified, respectful, and caring, and that's something that's very important when it comes to running the people's business, making sure we're doing the right thing on behalf of the community.

Council Member Dennis stated Jerret has a special car, a 1967 Mercury Cougar, which was a gift from his dad when Jerret turned 16, and Jerret recently found it again. It's blue and it's called The General. Council Member Dennis stated he had something in his collection, a Redline Hot Wheels 1968 Mercury Cougar, in the same blue color with black interior. It's a very cool collectible and he knows Jerret is going to work on his car and maybe bring it to car shows at some point in the future; he thought this was something he could put on the dashboard and remember our time together here. Council Member Dennis thanked Jerret and his wife, on behalf of all of us here in the community, as it's been a pleasure.

Jerret thanked the City Council for this recognition. He never expected to run against the current Council Members, who had become very good friends and family, but he definitely learned a lot, too. He thanked all of them very much for their friendship; he hopes he can still visit them in the future.

Mayor Bailey and Council Member Khambata presented the plaque to Jerret on behalf of all Cottage Grove citizens, our staff, and the Council, and thanked him for his

years of service. He wished them good luck where they're going and told them to be safe. Everyone applauded.

B. Emergency Medical Services Week Proclamation

Staff Recommendation: Receive a presentation from Public Safety providing an update on the Heart Safe City initiative and proclaim May 21-27, 2023 as Emergency Medical Services Week.

Pete Koerner, Public Safety Director, stated he thinks everyone will be impressed to hear what a great paramedic EMS service we have. He's extremely proud of our service, which began in 1974 as the first agency that had police officer paramedics. There have been many changes over the years, and its now transitioned to the Fire Department, so we have fire paramedics. Regardless of what patch is worn on the sleeve, he'd put our services up against any community in the State. Last year, our Fire Department had talked about making us a Heart Safe community; Council supported the Letter of Intent with the Minnesota Department of Health. With that, we've really been moving quickly on this and have had a lot of success.

Director Koerner stated with the Heart Safe communities, we want to increase public awareness by placing AEDs wherever people live, work, and play. Educating the public on how to use AEDs and administer CPR is a big part of that. We need 800 Heartbeats (the term for scoring) to be a designated a Heart Safe Community; that requirement is based on the community population. To date, we have 805 Heartbeats, so have accomplished that goal. Categories include: CPR and awareness events; AED locations; Early advanced care; Community Heart Health; and Sustainability.

Our CPR Goal was to have 2,000 people trained in hands-only CPR; since starting this last year, we've already had 1,600 people trained, but we need to train 400 more people to hit our goal. We're doing training at all events possible, including Night to Unite, and businesses have really embraced this training. We've done training at 17 different events, but we're only required to do 14; our Fire Department has set a new goal of 25 events where they'll be doing training. Every time we hit a goal, the Fire Department sets a new one, which is good.

Our Cottage Grove Lions Club hosted a meeting at the Central Fire Station; prior to that meeting, they did the training. Every time we post photos on Facebook, we get another five businesses who want to participate in the training. Getting people to participate has been really successful.

AED Location and Mapping: Right now, we have 53 AEDs identified in Cottage Grove, including Cub Foods, the Ice Arena, Woodridge Park, and many others. We're encouraging more, and earlier this year we added 36 AEDs to our squad cars, even our unmarked squads and our ATV have one; that was through a grant of over \$82,000 we received to purchase those. Now our Fire Department has a new goal of 75 AEDs, so they keep pushing us to get more of them installed.

You can help with this initiative: Spread the word to businesses, organizations; Send AED locations to Cottage Grove Public Safety-Fire Division, Deputy Chief Jon Pritchard, jpritchard@cottagegrovemn.gov; Learn CPR! If you'd like to schedule training, contact Deputy Pritchard at 651-458-2859; that information is also on our website.

Council Member Dennis thanked Director Koerner for his presentation and reminding people we have a great organization to serve people in their time of need. It's an honor for him to read this proclamation, as he's wearing his National Registry EMT pin tonight; for many years while in law enforcement he had an opportunity to make a contribution. Our community is served very, very well. He read aloud the Emergency Medical Services Week Proclamation.

Motion by Council Member Dennis to proclaim May 21-27, 2023 as Emergency Medical Services Week; second by Council Member Thiede. Motion carried: 5-0.

C. Public Works Week Proclamation

Staff Recommendation: Proclaim May 21 through May 27, 2023 as National Public Works Week in the City of Cottage Grove, Minnesota.

Ryan Burfeind, Public Works Director, stated next week is National Public Works Week; it's a great time of year to really thank all of the Public Works professionals that we have who many times do a lot of unsung work in our community. They make sure you have water and sewer, treated drinking water, the roads are plowed, parks are maintained, and our mechanics make sure all vehicles and facilities are maintained. The work that they do is very important. We had a lunch today for all of our workers to thank them for everything they do at Public Works, which they really enjoyed. Everyone knows the amazing work our staff does; this winter, in particular was the third snowiest winter of all time. On April 1, even those who were on annual leave dropped what they were doing and came in for that snowstorm; that's the type of dedication that they have to take care of our community. He's very thankful for that.

Council Member Olsen thanked Director Burfeind for allowing him to stop down today to say thank you to the hardworking men and women of Public Works and Parks, who spent so much time in plow trucks this year. Council Member Olsen read aloud the National Public Works Week Proclamation.

Motion by Council Member Olsen to proclaim May 21 through May 27, 2023 as Public Works Week in the City of Cottage Grove, Minnesota; second by Council Member Khambata. Motion carried: 5-0.

7. CONSENT AGENDA

- A. Approve the April 19, 2023 City Council Regular Meeting minutes.
- B. Response to Open Forum on May 3, 2023 (Spooner).
- C. Response to Open Forum on May 3, 2023 (Ebbenga).
- D. Approve the issuance of rental licenses to the properties listed in the attached table.
- E. Approve the service agreement with SafeAssure for workplace safety consultant services.
- F. Approve the professional services agreement with First National Insurance for insurance broker services.

- G. Authorize entering into an agreement with PMA Asset Management, LLC, for investment advisory services.
- H. Authorize Public Safety to accept a \$14,000 UASI grant through the Washington County Department of Emergency Management to fund the purchase of a multi-gas hazardous materials monitor and technical rope rescue equipment.
- I. Adopt Resolution 2023-071 authorizing the preparation of a feasibility report for the 2024 Pavement Management Project for portions of the Thompson Grove Estates neighborhood, Prestige Estates neighborhood, Hillside Trail, East Point Douglas Road, and Jamaica Avenue.
- J. Adopt Resolution 2023-062 approving the plans and specifications and establishing June 9, 2023 as the bid date for the Grange Trunk Watermain Project.
- K. 1) Adopt Resolution 2023-064 approving the Final Plat for Ravine Crossing. 2) Approve the Ravine Crossing Development Agreement with Tamarack Land, LLC. 3) Adopt Resolution 2023-073 approving the Ravine Crossing Plans dated March 22, 2023, prepared by James R. Hill, Inc., subject to final approval by the City Engineer in writing.
- L. Adopt Resolution 2023-065 approving a one-year extension of the preliminary plat approval for Preserve at Prairie Dunes.

Council Member Dennis wished to pull Item G, Investment Advisory Services, for further comment and/or discussion. He stated this is a process that he, Council Member Khambata, Finance Director Brenda Malinowski, and City Administrator Jennifer Levitt worked on. We put out bids looking for an investment management company to help us be able to react a little bit more quickly to market forces more intrinsically, through more of a focused eye, toward how we manage some of our different assets and available fund balances. We want to ensure that we're handling that money in the very best way. We interviewed three different firms, and started with qualifications, the firm's background, and with whom they've previously worked. We also looked at staff qualifications, including experience levels, strength of their organizational charts, capacity and backup, so they're big enough to be able to handle us and their other clients. We also wanted to see if they fit well with Cottage Grove, in terms of this organization's philosophies on behalf of the community. We looked at their investment approach, including security, quality, safety, communications, and completeness of proposal; we wanted to have a very good idea of how these companies would handle our finances and make recommendations for us in real time. We also looked at investment philosophy and strategy, to include completeness and clarity of proposal and understanding of Cottage Grove's unique portfolio. We also looked at communication reporting and value-added services: Report formats, communication techniques on a monthly and quarterly basis, and other no-cost services that might be available to lend us to find more value by working with a given company. We decided to go with PMA Asset Management, LLC, as we felt they would connect more closely to the conservative nature of how we like to handle the funds and act as stewards relative to that money. They are a local organization that happens to be the right size to do the job

for us; one of the primary people in that business is Pat Harris, and he was on the City Council in St. Paul for a number of years. He also has a tremendous background of being a very high-up leader in some different investment houses. We like that because he understands what we deal with as public officials here and how to best bring all of this together on behalf of our community members. Another notable thing about PMA is that they only handle public sector organizations, so they have the background and experience to do a great job with us. He asked Director Malinowski to add any key information he might have missed that she'd like to share with the public and the great job that we did in the negotiation process to make sure that we got even better value for the community.

Director Malinowski said they'd received a proposal from PMA, and we had gone back, talked as a team, and decided to negotiate their rate a little bit. We were able to go down one basis point for the first \$25M. The other value added that we found with PMA Asset Management is they also handle the 4M Fund, which is through the League of Minnesota Cities, so that will give us more synergy and streamline our cash investment. So, we had further savings that way because of that short-term money being able to go over to the 4M Fund quickly.

Council Member Dennis stated all of us have a copy of this on our dais tonight; this is our AAA Bond Rating that we recently received. Thinking about handling money, being able to align things, and bringing more value to the table is something that he felt was important to share with the community so people will know we're always focused on bringing the best possible return, business wise, that we can to the process. On behalf of himself and the rest of the team that worked on this, we'll ask the Council tonight to accept PMA as the company to work with.

Motion by Council Member Khambata to approve the Consent Agenda; second by Council Member Olsen. Motion carried: 5-0.

8. APPROVE DISBURSEMENTS

- A. Approve payments for the period of 4-29-2023 through 5-18-2023 in the amount of \$2,234,737.95.

Motion by Council Member Dennis to approve disbursements; second by Council Member Thiede. Motion carried: 5-0.

9. PUBLIC HEARINGS - None.

10. BID AWARDS

- A. Summers Landing 3rd and 4th Additions Final Streets Improvement-Award Bid

Staff Recommendation: Adopt Resolution 2023-072 awarding the bid for the Summers Landing 3rd and 4th Additions Final Streets Improvements

Project to OMG Midwest, Inc., dba Minnesota Paving & Materials, in the amount of \$366,575.00.

Amanda Meyer, City Engineer, stated in all of our developments we do a final street project, we remove the wedge, do some curb and sidewalk replacement, and then get that final layer of pavement completed. The Summers Landing 3rd and 4th Additions are more in the North and a little bit on the left side of the Summers Landing neighborhood.

We again got good bids; with this project, we were working with the Engineer's Estimate of \$521,750 about the same time as the Mill & Overlay Project; you will see it's a bit higher than what you see in our bid results. The lowest bidder was OMG Midwest, Inc., dba Minnesota Paving & Materials, at \$366,575. Like we saw with that Mill & Overlay Project, those bituminous prices are coming down, as are the concrete prices. We were very happy to see the lower prices.

Motion by Council Member Khambata to Adopt Resolution 2023-072 awarding the bid for the Summers Landing 3rd and 4th Additions Final Streets Improvements Project to OMG Midwest, Inc., dba Minnesota Paving & Materials, in the amount of \$366,575.00; second by Council Member Olsen. Motion carried: 5-0.

11. REGULAR AGENDA

- A. 7404 Lamar Avenue Proposed Restaurant - Minor Subdivision, Rezoning, Site Plan Review, and Variance
Staff Recommendation: 1) Adopt Resolution 2023-068 approving the minor subdivision to combine a half acre from 7400 Lamar Avenue and a remnant parcel from 7310 Lamar Avenue, located to the north of 7404 Lamar Avenue. 2) Adopt Ordinance No. 1065 approving the rezoning of the half acre being combined to the 7404 Lamar Avenue from R-3, Single Family Residential, to B-2, Retail Business. 3) Adopt Resolution 2023-069 approving the variance to construct a parking lot setback 2.5 feet from the side property line when 20 feet is required when adjacent to a residentially zoned property. 4) Adopt Resolution 2023-070 approving the Site Plan Review of a proposed restaurant in the existing building located at 7404 Lamar Avenue.

Mike Mroska, Senior Planner, stated Wayne Butt has submitted an application for a Minor Subdivision, Rezoning, Site Plan Review, and Variance. The subject property is located at 7404 Lamar Avenue; the property is currently guided as Commercial in the Land Use Plan and is zoned B-2, Retail Business District. The site is approximately 0.9 acres in size.

Planner Mroska reviewed history of the site beginning in 1938; in 1980, the site was redeveloped into a landscaping business, which is pretty much the building currently on the site. The site has been adjusted and compacted because of that use over time. Different landscaping companies and commercial uses have been in and out of that

building since that time; most of the uses in there have been commercial, related to landscaping or construction. The Applicant purchased the property in 2021; since then, he has pulled some permit applications and added a patio in 2022, which leads us to the next point. The Applicant has been in constant contact with City staff since he started working on the site so there is a lot of history with the site and a lot of history with this current proposal. We have worked with the Applicant through many different proposals, different ideas for uses, planning applications, and building permit applications; he's had meetings with many Council Members and staff throughout the process on site and at City Hall. With our ongoing dialogue, staff worked to find solutions for the City to support a use. We worked really hard to try to find options, including a Zoning Code update, among many other Planning Applications at the time.

Use: The Applicant submitted a Planning Application for a catering establishment, but the catering establishment proposal also referenced a restaurant or catering establishment; those are two different uses. In our Zoning Code, the definition for a catering establishment is an establishment that prepares food for offsite consumption; the food is made at the site and provided offsite, it's not meant to be served onsite. A restaurant use is where an establishment is open to the public where food or drink is prepared and offered to the public; to be considered a restaurant, at least 50% of the seating shall be available to the public during hours of operation. During the Planning Commission meeting, one of the commissioners asked a question about why that is; the reason why it was drafted that way is to kind of separate a restaurant from an event center. Event centers are where the intent is to rent a facility to host groups, private social gatherings, banquets, meetings, weddings, etc. We wanted to separate those two uses. It's also worth noting that a catering establishment is a permitted use in this Zoning District and so is a restaurant; however, when we looked at the use that was submitted, we went with the restaurant use as the approval as it's the most intense use and the supporting documents support a restaurant use. Floor Plan/Seating Plan: The Applicant submitted those plans as part of his application. The proposed interior plan shows 90 seats, and the exterior patio plan shows 30 seats; so, again, we reviewed that against our Code as a restaurant use. Because of that, it's worth noting that all of these uses, planning, and application on the site are connected. Not one of them can stand alone, but all are dependent on each other. Minor Subdivision: Since we're doing a restaurant, the existing septic system on site on 7404 Lamar Avenue is not large enough to support a restaurant use; it can support about 15 persons. So, the Applicant has to construct a new septic system, but as previously mentioned, the prior uses of the site have compacted the soils so the existing site is not able to be used to support a septic system. The Applicant owns the property of 7400 Lamar Avenue, to the North, and also the property at 7430 Lamar Avenue. So, that's a unique opportunity for the Applicant to be able to construct a septic system on that property to the North, as it can support it. Because of that, City Code requires the septic system be on the same property as the principal use, so the Applicant has to do a Minor Subdivision or lot combination. The Applicant is proposing to take approximately .5 acre from 7400 Lamar, and there's a little exception parcel on the northern part of the parcel there from 7310 Lamar Avenue; that's actually from the Furber Farm. The Applicant wants to take about .5 acre from 7310 Lamar, and on the right is what the lot would look like once

they are combined, so it's about 1.4 acres once it's combined. It's also worth noting that this Minor Subdivision is in compliance with City Code. Rezoning: If we combine the lots, we're going to have to rezone them as 7400 Lamar Avenue and the lower exception parcel of 7310 Lamar Avenue are currently zoned R-3, Single Family Residential. They need to be rezoned to B-2, Retail Business District, because that's what the principal use is; that's what the Applicant is proposing here. It is not proposed to rezone 7400 Lamar Avenue as part of this application. Another thing worth noting is this proposed rezoning is consistent with the Land Use Plan in the Comprehensive Plan, as the properties are guided on the Land Use Plan as Commercial. Site Plan Review - Parking: The proposed building has an occupancy of 99 persons; the Applicant is proposing 99 seats. So, we took the occupancy and used that to calculate parking. Every use in the community has parking criteria; for a restaurant, it's 1 stall per 3 seats, so in this case, they require 33 total parking stalls. The Applicant is proposing 36 on site, so an excess of 3 stalls. The site is compacted and is very limited because of the stormwater pond, setbacks, etc. Also, as part of this application, the Applicant is proposing 3 on-street parking stalls that are in the public right-of-way, in front of the building. They can be used by anyone; they are not included in the parking calculations for this site. There will also be 2 ADA Handicap Parking stalls, also located on the street; that's similar to the adjacent uses, they were all kind of grandfathered in with their on-street accessible parking. Parking Lot/Driveway Setback Variance Request: The Applicant is requesting a Variance from the minimum required parking lot setback and driveway setback of 20 feet from the residential lot line. The Applicant argues that a 2.5-foot setback is required due to the following site constraints: Narrow shape of the lot; Wellhead location; Previous site uses had similar setbacks to parking lots and to the property line. Site Plan Review - Outdoor Seating and Dining: This use is all dependent on parking, so we had to work around parking when we reviewed it because the site is confined by the amount of parking it can support. The Applicant is proposing 30 seats on the patio; per the City Code, if you have 30 seats or less, you do not need to park the patio, so that's why the Applicant is only proposing 30 seats. Only the indoor seating has to park per Code. Our Code also has a section that requires the patio seating area not to exceed 30% of the total square footage of the building, or 657 square feet; the intent behind that is the patio is part of the use but not the primary use of the building. The use of the building is the interior, the patio is secondary, so that's the intent behind the ordinance; the Applicant is proposing a seating plan that fits that requirement. Our City Code requires a patio seating area be setback 150 feet for residential Zoning Districts, unless sufficient screening and other impact-reducing elements are provided. The Applicant is providing a 6-foot, zero maintenance privacy fence along the southern property line; he's also planting landscaping around the patio to assist in buffering and screening the patio from the adjacent residential use. The residential use is approximately 43.5 feet from the property line, about 65 feet from the actual house; however, there has been thought put into putting the landscaping there to help reduce the impacts of the patio seating area from the adjacent use. Site Plan Review - Landscaping: There is a very detailed landscaping plan, which is in conformance with the landscaping ordinance. There are overstory trees throughout the site, arbor vitae buffer trees that grow quickly, grow tall, and are thick; they will help with screening the

use. There are also numerous perennials and other decorative plantings along the patio. Neighborhood Meeting: A Neighborhood Meeting was held on March 7, 2023; the Applicant sent invitations to 31 property owners within 500 feet of 7404 Lamar Avenue, and 4 residents attended. Discussion focused on future restaurant uses, use of the property, site history, the site, and street parking. Public Hearing: The notice was mailed to 31 property owners within 500 feet of 7404 Lamar Avenue and was also published in the St. Paul Pioneer Press on April 24, 2023. Staff received two written comments that are included in the Council packets and were also provided to the Planning Commissioners. The Public Hearing was held at the Planning Commission Meeting on April 24, 2023; one resident participated and asked questions about on-site parking. The Planning Commission asked questions about the comment letters, trash enclosure, seating, the proposed septic system, and stormwater. After discussion, the Planning Commission voted to approve the request. Recommendation: Is on the screen, but it's worth noting that all of these are tied together; all are dependent on each other. Planner Mrosla stated he's available for any questions, and the Applicant is also present.

Mayor Bailey stated before Council asked any questions, he wanted to ask City Attorney Kori Land about the history of this site. Mayor Bailey stated he and Council Member Dennis were also part of some of the meetings about this site, but maybe Attorney Land wanted to share more details on this site.

Attorney Land stated the information was provided at the dais and was presented on the screen; there's a very long history with this application so she doesn't think the Applicant can say that the City was ever out of touch for long since he has owned the property. When she started looking at the history of it for tonight's meeting, she was able to put together some documentation that she thought might be helpful for the Council. She didn't do it in sufficient time to present it in the Council's packet, and it's thick, so she'd like to submit it into the record. She's going to go through it now in some pretty painstaking detail because she thought it was really important for Council to consider tonight for this hearing; so, she submits this into the record:

What that documentation shows is beginning in January, 2022, City staff, as Planner Mrosla mentioned, had met with Mr. Butt on the application and on his building and what he wanted to do with the use. He had submitted a building permit, and at that time, he had said his intention was to convert the former building into an event center.

Then we fast forward to April, 2022, and it was discovered that there was some activity going on at the site, and the owner, Mr. Butt, wanted to confirm what uses would be allowed at the site. He was confirming that the use would be either a restaurant use as a permitted use, and he wanted to confirm that an event center was not a permitted use. He submitted that information at the time to Community Development Director Christine Costello; she confirmed the property is not appropriate for an event center, as that's not allowed in a B-2 Zoning District, but a restaurant would be allowed. So, that was confirmed as long ago as April, 2022.

Later, in that same email chain, there was a Stop Work Order because again there was some work going on without permits, and the City staff needed to understand what construction was being done in the building. Mr. Butt's response was, "I'm just

repurposing the building for a future use, to be determined later.” So, unfortunately, staff must determine what building permits are appropriate and available, and what must be done based on the use. So, to say that I’m simply repurposing it or doing some interior remodeling is not sufficient for City staff; we need to know what the use is going to be in order to know what rules to apply. So, staff continued to poke and find the building plans, and there were some construction plans that were submitted so that there could be some interior remodeling. Staff provided building permits so that the construction could continue.

On May 16, 2022, Mr. Butt sent an email to the City staff and said, “We need to get an inspection done because the building is being repurposed for a wedding venue,” so he’s indicating that he’s still leaning towards an event center at this location. But then, not long after that, on May 20, 2022, only four days later, he says, “I just need a current permit application to reflect the work for the landscape building.” So, he’s sending mixed signals to City staff; is it a landscape building or is it an event center, and it has made it a very confusing project for the City staff to work on. Finally, on May 20, 2022, he submitted floorplans for what he called the landscape building. You have plans in the packet today, and Planner Mroska showed them in a slide that clearly shows a dining room with tables in it. At the time of the building permit application, that was shown as a display room. So, there’s been some very, very mixed signals on this project. Then there was discovery that there was a website being advertised as lakeside events for this location, and people could sign up to reserve the place or to anticipate that it would be open for business later that fall. City staff sent a Cease and Desist letter, saying it is not appropriately zoned for an event center, you should not be advertising it as such, and that would be a violation of our Code.

On June 27, 2022, Mr. Butt sent an email to City staff saying he’s ready to submit a Text Amendment that would allow for an event venue; so, he was anticipating again that he’s going to be doing an event center at this location. So, he wanted to know if he could submit a Zoning Text Amendment to get that use so that it would be allowed in a B-2 Zoning District because he was ready to “hit the ground running,” as he said, in the fall.

On July 1, 2022, his first Zoning Application was for a Text Amendment to allow for an event center as a Conditional Use in the B-2 Zoning District. Prior to that application even being able to be considered by the Planning Commission or the Council, he submitted another Land Use Application for a Conditional Use Permit on July 27, 2022, asking for permission to operate a convention, banquet, or exhibition hall; that is the same as an event center, but it’s not called an event center, so he was trying to get an application for a use that was not allowed in the B-2 Zoning District because that particular use is not allowed. The application was rejected for the Conditional Use Permit, but the Text Amendment application was still live, if you will, as the staff was still processing that application.

After Mr. Butt received the rejection letter saying that it could not be processed because it was not an allowable use, Mr. Butt came into City Hall and he demanded to meet with City staff. Unfortunately, everybody was out on that particular day except for one of our Junior Planners; so, Conner Jakes sat down with Mr. Butt and met with him, initially alone, and then eventually with City Administrator Jennifer Levitt. He took very

good notes of that meeting. In that meeting, although Mr. Butt was very agitated and very angry that he felt like he was not being dealt with appropriately or fairly by staff, he was able to calm the situation down; he explained that it simply was an issue with the Land Use Application, and it was solely being rejected because it simply isn't allowed. It's not an application we could accept. City Administrator Levitt did a great job of explaining all of the different options that Mr. Butt had; we could process the Zoning Text Amendment, but that would need to get through the City Council and be approved. Then he would have to apply for the appropriate septic system to comply with whatever use it was he wanted because the existing one could only support 15 people; clearly, he wanted to do something different than a use that would only have 15 people in it. He also needed to address parking issues and see if he had sufficient parking, based on the use. So, she went through in detail again all of the things that would be needed for him to have a successful project at this location.

On August 11, 2022, she thought that was the date when Mayor Bailey noted that he and Council Member Dennis actually sat down with Mr. Butt and talked about his plans. He indicated that he didn't intend to open an event center at this location.

On August 15, 2022, he then withdrew his application for the Text Amendment. He indicated now he wanted to open a catering establishment instead, and he thought that was one of the things that Mayor Bailey and Council Member Dennis had discussed with him at the August 11 meeting. They asked if he was a restaurant, an event center, or if he was a catering establishment. Mr. Butt ultimately decided to withdraw that first application, so now, at this point, we have no pending applications for the Planning Commission or the Council.

Then, between August 15 and August 16, 2022, again staff discovered that there was work being done on the outside of the property, there was some retaining wall work that was being done; so, staff requested that Mr. Butt again submit the plans, tell us what it is you're doing. His response was, "We are all confused as to why a Zoning Permit is required for our landscape business to conduct landscape at the property." So, again, sending mixed signals that he intended to open a landscape business now at the property, when all intentions and indications had been that he was either going to do an event center or a restaurant or a catering establishment.

You may recall that on October 19, 2022, Mr. Butt appeared here, at the Open Forum, and extended an invitation to the entire Council to attend his meet and greet at his new event center that would be opening at this location. I sent a letter the next day, again similar to the letter that had been sent to him in June when he had done a similar situation, and said you're not zoned correctly for an event center. You have not applied, at this point we have no pending applications for one, and so that use would be unauthorized. If you have more than 15 people at your location, the septic system cannot support that. So, your occupancy load is for 15 people, please be aware of that.

On December 27, 2022, he submitted another Zoning Application, this time for a Site Plan Review and for a catering establishment and a Minor Subdivision because he knew that anything that he needed to do had to support the septic system.

In January, 2023, that application, after being reviewed by staff, was rejected because it was deemed incomplete. As you probably recall from many years being on Planning Commissions, I'm sure most of you have sat at that table one time or another,

that City staff has 15 business days to accept or reject any Planning Application that comes before them. So, by January 11, they sent a letter saying that it didn't have all of the supporting documentation for that Application, and it listed the additional things that were needed. In addition, it mentioned in that January 11 letter that here's the difference: You have applied for a catering business, that is what you're saying on your application, and here's what the definition of a catering business is; it spelled it out, that it requires you to consume the food offsite. You prep it onsite, but it is consumed offsite.

On January 17, 2023, he then submitted four (4) applications. Now, granted, he's not doing this in a vacuum; he's meeting with staff to find out what applications are going to be needed. That's why there are four applications; they worked with him to try to get this project to work, that's why there's a re-subdivision of the lots to make the septic system appropriate for a restaurant use. That's why it requires a Rezoning Application, because now that you're combining the lots, not all the zoning matches. So, there's that, and then once you look at the property and realize this is where he wants to put the things, there's a Variance Application. So, he had four Applications, not just a Site Plan, not just a Minor Subdivision, but he needed a variance as well as the rezoning application. So, he submitted those four Applications; they were reviewed by City staff and again determined to be incomplete because he was missing some pretty basic elements from our Code, as well as an explanation for why he needed the variances.

He submitted additional information between January 17 and February 3, 2023, but it was again deemed incomplete because it still didn't have sufficient information. He tried to submit additional information between February 3 and March 14, 2023, but it was still deemed to be incomplete. More importantly, in that letter, it was pointed out on the Variance Application, because he provided some additional reasons for why he needed the variance, this is what the response was: City staff met with you at City Hall on March 22, 2022, where you presented your proposal. At that time, staff shared concerns about parking on site with the patio design, as shown. Following the meeting, staff provided your design team with the underlying Zoning District standards; instead of amending your proposal to meeting zoning standards, you chose to submit a Permit Application, this was for the deck, to construct a patio as presented. Due to the construction of the patio, it now interferes with the placement of a compliant driveway. In order to support a variance request, one of the required findings must include the following: The plight of the landowner is due to circumstances unique to the property that are not created by the landowner. Because you created the reason for the variance, staff cannot support this variance for the driveway, and will recommend denial. We strongly advise you to find an alternative option for the driveway so that it can be compliant, which may require you to move the deck or redevelop the property to the south, which you also own. So, the variance issue was brought up prior to the deck being constructed, prior to him doing any of that work on the property. He knew that he was creating a variance by installing the deck in that location.

On March 23, 2023, he submitted additional documentation and at that point, March 23, 2023, is when all four Applications were finally deemed complete and processed accordingly.

On April 24, 2023, there was a Planning Commission meeting. The Planning Commission, based on staff's recommendation, did recommend to the Council that they

approve all four Applications. At that Public Hearing, it's really important that you note this: When asked by one of the commissioners, as there had been some confusion about if it's a catering business or a restaurant or an event center, what exactly is your intention, Mr. Butt replied that, "Everyone wants a restaurant in this town," and that's from the minutes of the Planning Commission meeting. "He and Angi never wanted to be restaurant owners, but that's what the folks are asking for, and we can do a restaurant. They will not be in there managing day-to-day operations, but we have a chef in mind, and he's ready to go. So, as soon as we get through the City Council, we'll start digging ground." He told the Planning Commission at a Public Hearing his full intention is a restaurant; that's what all of the Applications are based on, is as a restaurant.

After the Planning Commission meeting, he sent an email three days later to City staff saying, "My Application included a catering establishment, too, right?" City staff was very clear that a catering establishment is different than a restaurant; one consumes food onsite, one does not. That was the response and the City has been very consistent in saying that response.

Now, I'm sure you are well aware that within the last few days the Applicant is saying on social media and in the public that he is being forced to open a restaurant, that he does not want to open a restaurant; that he wants it to be a wedding venue, which as we know is an event center, and he has been told and he knows that this is not allowed. So, we have been very, very consistent in the message that an event center is not allowed, that a catering business is not allowed; that this use must be a restaurant and that is consistent with the plans that he submitted. His Application states "Restaurant," the one that's in front of you states "Restaurant." He said everyone wants a restaurant and that's what we can do.

Looking at the history of what he's wanted to do over the last year and a half, an event center, a landscape business, event center, catering establishment, now the Applications are for a restaurant. That's the only Application you can consider; the question is do you believe him? Staff has really tried to make this Application work; they really have, as you can see from the four Applications that are before you, and the creative solutions that they've come up with to make a restaurant use work. But the analysis and the recommendations are all tied to a restaurant use, that's it. If you don't believe that he's going to open a restaurant in this place, you have no option but to deny the Applications because that's what the recommendations rely on, a restaurant use. Without a restaurant use, everything is irrelevant. And that's why I prepared the Findings for Denial for you tonight; the Findings for Denial that you find at the Council dais have all of the findings that she's mentioned, as well as some of the things that Planner Mroska mentioned. So, they all support denial. She asks Council to weigh the evidence after you've given the Applicant an opportunity to speak, and you are the finders of fact. If you find that he will open a restaurant, we can support a restaurant. If you don't believe that he will, then she asks that Council adopt all four Findings and Resolutions for Denial.

Mayor Bailey said this is the time now for any questions from Council.

Council Member Thiede stated just as a clarification, in terms of eating food onsite or offsite, there are restaurants that have takeout where the food is actually eaten offsite; he asked if that isn't almost like a little catering activity.

Attorney Land replied absolutely, it is. However, he has not indicated in the plans that this is going to be a catering establishment; it has solely been pitched as a restaurant.

Council Member Thiede asked if he could actually have takeout in his restaurant. Attorney Land replied takeout is different than a catering business; a catering business is intended to prep the food for consumption offsite, and that is the primary business. Takeout is a subset or a sub-use of a restaurant.

Council Member Dennis stated that was a lot to take in from Attorney Land. He first wanted to say that he's very appreciative of the investments that Wayne and his family have made here in the community. He's had the opportunity to speak with him on many occasions, including last night. One of the things he's always been concerned with, and it's not necessarily the government's job to want to protect somebody, but when you've got a community member who's putting a lot of money on the line, you want to see the right thing be done for people and not fall into risk. These are some of the conversations that we've had. This is a tough thing. He asked if there was any appetite to make a motion to go with the staff original approvals; if there's not as we would go through a process, then we'd look for a secondary option that we could fall back on.

Mayor Bailey stated at this point where we're at is we haven't even heard from the Applicant yet or any witnesses; he thought we were at a point right now for Council to ask questions of staff. Then, he will invite the Applicant up to speak before the Council, as well as anybody else in the audience that would like to speak on this topic. At that point, we obviously have some directions that we as a Council can do.

Council Member Dennis stated having been in the meetings and having had a lot of dialogue, the target has moved, and he's been concerned about that. He's talked with Wayne directly about that at different times. He doesn't want to see him make a mistake, he doesn't want to see a mistake on behalf of the community and see something fail. His concern is as a person, as a representative of the community, and as a fellow business owner, somebody who understands what it might take to be successful; he doesn't want to see something go in there that would not work. He doesn't want to see that loss happen for him or the community. At this moment, he'd like to open this up to the rest of the process and just see where people are at and how we want to go with it; maybe we can hear again from Mr. Butt if he wants to speak about it. We just need to try to come to a reasonable outcome here for everybody.

Council Member Khambata had a couple of questions for Attorney Land. He asked if he was correct that this was previously a landscape business.

Attorney Land replied yes; she didn't know when it closed, but obviously prior to his ownership.

Council Member Khambata stated in the timeline that Planner Mrosia provided to us, he didn't see an application for a building permit for a commercial kitchen. He asked if there was a kitchen onsite, if that had been constructed or is it in process.

Attorney Land replied that Council Member Khambata was spot on, as the floorplans do not show any kind of kitchen, which has always led us to be a little suspicious; at the same time, he's calling it a restaurant, he's put on the Application it's a restaurant, and it's showing a dining area. So, we are treating it as a restaurant.

Council Member Khambata stated January 19, 2022, was the first interaction that staff had regarding this project; he asked if that was accurate. Attorney Land stated she actually didn't know; she's sure Planner Mroska could answer that question better than she could, but that's the first time she had documentation.

Council Member Olsen stated that was a lot of good information, and he appreciated the exhaustive explanation of the information because he was not a part of some of those conversations that Attorney Land mentioned. It was definitely helpful for him to understand the nature of that dialogue. He stated she had mentioned the Planning Commission meeting; the comment made was essentially that the community wants a restaurant, that's not something that we're familiar with or something that we really have a lot of experience with, but yet we want to provide something to the public. He thought that was admirable. We know that Wayne and Angi have worked very hard over the years to build the business at Furber Farm; he suspects they weren't wedding planners before that either, but they tried to learn and reached out to subject matter experts. He also mentioned that there was a chef who was prepared to join the group and help with the development of the restaurant, which he thought was a critical element. Without a commercial kitchen, you really can't have a restaurant. So, if there's an approval for a restaurant use and then the use is not what the approval actually says, if we're two months down the line and it's not a restaurant, it's something different, he asked what happens then.

Attorney Land replied it would depend on what the "it" is; if we discover that he's renting it out as an event center and he's having food catered in, that would be a violation of our ordinances as well as disapproval. So, we would bring him in for a revocation of all of the approvals.

Council Member Olsen stated if the approvals were revoked, in essence the business doesn't have the ability to move forward. He stated that was good because he doesn't want to see something like that happen; he would prefer that if we're in a place where the restaurant isn't really what is wanted or desired, or the Application isn't consistent with what's wanted or desired, he would prefer that we just deny the Application and then we start again with what do we really want to do here. It sounds like staff has spent a lot of time, there's been lots of communication, there's definitely been guidance in terms of what he wants to do or not do, but this is the way that staff can help him. Staff is always here to try to help, to support any business that we have in town that either wants to get off its feet or might be in the midst of a change or something else. Again, that's admirable; he thanked them for all of their hard work. This has been going on for a really long time.

Council Member Olsen asked in order to think about that area, students from the Humphrey School of Business at the University of Minnesota asked us if they could do a Small Area Study of Old Cottage Grove; they did this for their MBA. So, we had a chance to see that study, and it provided some pretty strong feedback with respect to

what people who were contacted in that area wanted or didn't want. He asked if somebody was able to encapsulate that for a minute and talk a little bit about the feedback that was part of that Small Area Study because he really thinks it's instructive.

Planner Mrosia stated the students did a Small Area Study. They held a Neighborhood Meeting where they invited residents from the community to get their feedback on what they wanted to see that area be long term, as we look forward to the 2050 Comprehensive Plan. They did surveys and then had a Neighborhood Meeting where many people stated they didn't want to see a change. They liked that area the way it is. If there was to be a commercial use in that area, they wanted it to be small scale, more or less like a coffeeshop, an ice cream shop, and be able to walk there. The biggest takeaway from the meeting was they didn't want to see a change; they liked the character of the neighborhood.

Council Member Olsen stated when the students did the presentation, there was reference to the new Boondocks Boutique out there, people really seemed to like it, and it fit with the character of the neighborhood. He's been in that business many times, and they do a fantastic job there. He asked if there was any concern about this proposed use that came out in that Small Area Study or if that was even discussed. He didn't know if this Planning Application was something of which the students were aware.

Planner Mrosia replied that yes, that conversation was had with the students, so they were aware of it; however, to his knowledge, it was not really discussed at the Neighborhood Meeting and it was not presented in the findings in the students' report.

Council Member Olsen stated he asked about that Neighborhood Meeting, but very few people attended, so it's hard to get data that we would consider valid based on the sample size from the number of people present. With that Small Area Study, the sample size was much bigger; he thought it was very instructive, really good information. So, if this isn't something that people want, including the Applicant, first of all he's confused why we're even talking about it if it's something the Applicant doesn't want. Secondly, he wouldn't want to approve something that nobody really wants to operate in the first place because that's just asking for trouble. He appreciated the feedback, there was a lot of good information from the staff. He's excited to hear from the Applicant.

Mayor Bailey asked Mr. Butt if he wanted to speak on this topic and asked him to give his name and address for the record.

Ryan Kaess, Mr. Butt's lawyer, stated he represents Angelayne, Lakeside Events, Furber Farms, and represents Wayne and Angi Butt individually in a number of matters. He wanted to make this very short; they're asking Council now to approve this as a restaurant. As of right now, we want this to be a restaurant. Mr. Butt owns this land, and if Mr. Butt sells this land tomorrow, that's really none of the staff's concern. Mr. Kaess stated he has heard a lot of these concerns and these comments, and right now, he wants to be very, very blunt to the Council. We are asking that you approve this as a restaurant. Does he know if Mr. Butt is going to open up a restaurant there? That is the intention as of right now. Is it going to be fiscally possible? We hope so. He's known Wayne Butt for a number of years, he's one of the most interesting and successful entrepreneurs he's ever represented, and he represents a lot of them. We are asking and we are telling you that we intend to get shovels in the ground and put a restaurant

there. Will it work? He doesn't know. Will we sell this tomorrow? He doesn't know. What we are asking this Council to do, and, quite frankly, what he thinks they have to do because he's not heard a legitimate reason to deny this Application; the staff not believing my client he doesn't think is a legitimate reason. If two months from now, or six months from now, quite frankly, to be blunt, to build a restaurant, he doesn't know how many of them have been involved with businesses, but he's been involved with businesses when they try to start restaurants; it's not a two-month process, it's not a three-month process, it takes a long time. And, yes, there's infrastructure there, and we'll be back in front of this Council asking for more things. If Mr. Butt doesn't have a restaurant there, or if a restaurant doesn't show up there, then Council will know about it, and they can shut us down. But to have the feeling that Mr. Butt is lying to you as the reason to deny this seems to be arbitrary and capricious. If, after two months, three months, Mr. Butt is running an event center there, which by the way, in reviewing your updated Zoning Codes, he believes he can have an event center there based upon your updated Zoning Codes; he may be incorrect on that, but that's a discussion for another time. Right now, we are asking for a restaurant, that's it. We don't have to get into anything else, we are accepting these 34 conditions; even a condition that he's never seen in practicing law 20 years, he's not sure there's any other city, and he doesn't know if you've told your restaurant owners this, but they cannot rent out their own restaurants for private events. So, if you wanted to rent out a restaurant for the Chamber of Commerce to come in and meet, you can't do that in Cottage Grove. He's looked at this, and there's no other city in the State of Minnesota that has such a provision, but we're willing to accept it. We're saying do it, approve this tonight, that's what we're asking you to do. Do we have some disagreements? Yes. Do we have some disagreements on how the City Attorney has characterized this process? Yes. All that's water under the bridge. What we are asking to do, very simply, is to approve this as a restaurant, and that's what we're going to begin starting tomorrow morning. If you have any specific questions for my client or myself, we'd be more than willing to answer them.

Council Member Khambata stated he's had the pleasure of working with Mr. Butt on the Chamber and in numerous other capacities; you are a successful entrepreneur, and you have been investing in this community for the better part of a decade; he asked Mr. Butt if that was accurate, and Mr. Butt replied yes. He told Mr. Butt he wants him to be successful, and he doesn't think there's anybody up here who says we don't Wayne or any other business owner in Cottage Grove to be successful. So, he's going to ask him some questions, and it's not meant to paint him in a bad light, but as somebody who has helped business owners acquire property, you're asking for a Variance, you're asking for a Zoning Code Amendment; these are things for which you typically have to present a practical difficulty or an unnecessary hardship. If he were the Chair of the Planning Commission, like he used to be, these are the questions he would have asked him: You would identify yourself as a seasoned investor, so to him, when you purchased this property off market, he has to assume that you were not competing against any other buyers; he asked Mr. Butt if that was accurate. Did you have the luxury of time is the question he's asking; when you acquired this property, did you know that you were going to intend to use it for this purpose? Mr. Butt replied, "Not

whatsoever, no.” Council Member Khambata stated so you acquired this property, it was a landscaping business; he asked Mr. Butt if that was accurate. Mr. Butt replied, “Yes. Well, I would say landscaping/storage, ‘cause the gentleman that was in there was storing nothing but landscaping.” Council Member Khambata stated maybe not a very productive landscaping business, but that’s what it was zoned for, that’s what it was being presented as, and for lack of better assessment, that’s what it was. So, you bought this landscaping business; it wasn’t already a wedding event center, it wasn’t already a restaurant, so there was no overarching expectation that that’s what it was going to be. Is that accurate? Mr. Butt replied, “That’s accurate.” Was your Purchase Agreement subject to getting the zoning approvals? Mr. Butt replied, “Not at all.” Council Member Khambata asked why not? Mr. Butt asked, “The purchase? There was no intent to use it as a, as anything. The goal was just to own the property. The goal was to own the properties along Lamar Avenue, along with the Furber Farm, so we can create a barrier around the Furber Farm to avoid noise complaints.” Council Member Khambata asked, so, the property is still useful to you if it’s not an event center? Mr. Butt replied, “Not at this time, not after the investment.” Council Member Khambata stated okay, that brings him to his next point; prior to investing what he can only imagine is a substantial amount of money into updates to the exterior, he hasn’t been inside the building, but from the outside it looks like it’s in a lot better condition than it previously was. He asked Mr. Butt had you determined what you wanted to use it for before you started spending all that money? Mr. Butt replied, “Yes, so when the construction started, the intent was to eventually, like the Furber Farm, get out an accurate, you know, looking at the demographics of how we could sell weddings and start the wedding process. So, yeah, the goal was to be an event center for weddings long term. And, so, at one time as Kori Land pointed out, we, and if you look at our Application, it does say catering establishment, which, at the time, if you Google catering establishment, it includes restaurants, nightclubs, everything, whether the food is consumed on or offsite. But between that time of stating catering establishment and restaurant, because we withdrew the Application as per our attorney, you could host events. I called the restaurant owners in town, and I’ve asked them repeatedly, even last week, can I host an event in your facility at 100%, and the answer was yes. I said, no, you can’t, the City just changed the Code to 50%.” Council Member Khambata stated let’s stay on point here. At that point, when you determined that you wanted to use it as this type of establishment, did you first seek this zoning approval before investing those dollars?

Mr. Kaess stated he had to ask this question; he’s not sure exactly how relevant this is. He’s a little troubled by these questions; you’ve got a Planning Commission.

Council Member Khambata stated he’s trying to understand why, because in his mind a practical difficulty is I have a restaurant, and I need to expand my parking lot, so I need a variance. Mr. Kaess stated, “Correct.”

Council Member Khambata stated a practical difficulty is I have a restaurant and I need more land; I’d like to rezone the neighboring parcel. None of that existed here. He’s asking us to tailor make this parcel for an intended use that was never permitted here prior to him owning this property. So, when you ask if we’re being arbitrary and capricious.

Mr. Kaess stated with all due respect, Council Member, these seem to be questions; you've got a Planning Commission that voted 7-nothing, and in the last week, something happened. He doesn't know what it is, but something happened.

Mayor Bailey stated this happened. Mr. Kaess stated again, with all due respect, that's not relevant here.

Council Member Khambata stated he's not done, he appreciated Mr. Kaess interjecting, and if he'd like to answer for Mr. Butt, that's fine, but he'd like to stay on point. He asked Mr. Butt if he'd say he put a significant amount of money into this place; when were you planning on putting in a kitchen in a restaurant, in a business that you were going to feed people? This just looks so backwards to him, and he's trying to understand where the practical difficulty or the unnecessary hardship is.

Mr. Butt stated, "My question is why did the Code change for a restaurant to 50% capacity when we can be a restaurant and host events?"

Council Member Khambata stated as your attorney stated, that's probably a conversation for another day. But that brings up a good point. He asked Attorney Land if the B-2 Zoning District allows for a restaurant where you can cater an event up to 50% occupancy. Attorney Land replied yes.

Council Member Khambata asked Mr. Butt what's the stated occupancy of your building? Mr. Butt replied, "100." Council Member Khambata stated he heard 90 from Planner Mroska; he asked if it was 90 seats or if it was 100. Planner Mroska replied it's 90 seats, maximum occupancy is 99. Council Member Khambata asked Mr. Butt if he was comfortable booking your place out for events that are less than 50 people? Mr. Butt replied, "Absolutely, I'd do anything to make a buck right now." Mr. Kaess stated, "But he can't do that under your Code."

Council Member Khambata stated that's because we don't allow event centers there, but we allow restaurants, and now we allow restaurants where you can book out half of your occupancy. He asked Mr. Butt if he was ever intending on booking larger than 50 people for weddings there? Mr. Butt asked him to repeat the question. Council Member Khambata stated he thought in previous conversations he'd stated he wanted a quaint, small wedding venue; he asked him what qualified as a quaint, small wedding venue because he's just looking at the facts here. If a restaurant allows you to have a wedding there, but it can only be less than 50 people, and you were never intending on having more than 50 people, he doesn't see why he's mad.

Mr. Kaess stated, "Time out, he wanted to make sure you can't do that, Council Member, and by your own ordinance you have to be public; you can't have a wedding there."

Council Member Khambata stated that's why he's segueing into that. So, you can allow weddings to be there, if you are a restaurant, which is allowed in B-2 Zoning. So, you want to have the one part but you don't want to do the other part. Is that accurate, or do you want to operate a restaurant, and will you put in a kitchen?

Mr. Butt replied, "When the Application was made on December 27, his request was for a catering establishment. On March 6, Mike Mroska asked me to modify that Application and put the word restaurant in there, and so my application, my writeup reads restaurant or catering establishment. If you Google catering establishment, it's a laundry list of things."

Council Member Khambata asked what does our Zoning Code say is a catering establishment because that is what you would have to comply with, not what Google says.

Mr. Butt stated, "Okay, if we're a restaurant and now the Code all of a sudden changed to 50%, where'd the 50% come from? Because if we could, if I can call Junction 70 right now, and I just did a week ago, and I can rent the entire facility at 100%. I corrected him; I said no, you can't. He said what do you mean? I said the Code just changed on January 1 to 50%; he goes, I didn't know that. No restaurant in town knew that. The restaurants in town have never been informed of the 50% change; so, if we could've done 100% like the other restaurants, we could compete for that big space. But I'll live with 50% to get us running. I can always come back tomorrow and submit an Application to be an event center."

Council Member Khambata asked where's the kitchen? If it was going to be a catering facility, wouldn't you also need to prepare food there?

Mr. Butt replied, "Yes, you can use hot plates; you don't need to invest a full-blown kitchen with fire suppression and vents. The gentleman I spoke with at the Planning Commission he wanted to do it plain Jane. We could run a sushi restaurant. Do you need cooking for sushi? No, you need refrigeration."

Council Member Khambata asked where's your refrigerator?

Mr. Kaess stated, "Again, this is very, very detailed. My client has met all the standards, your Planning Commission has voted 7-nothing. I understand there was some sort of Facebook post, an intervening act that was highly inappropriate. You were diving into; you're basically asking my client why he invests the way he invests."

Council Member Khambata stated he's trying to establish the practical difficulty being if this were already a restaurant, 100% if you wanted to expand your restaurant, I don't see that being a problem. But you're asking us to do three things that didn't already exist there to make it so that it can be a restaurant.

Mr. Kaess stated, "And if he doesn't open it, he loses money. At the end of the day, the only person here that's going to lose money is Wayne Butt."

Council Member Khambata stated and I don't want him to lose money.

Mr. Kaess stated, "I'm sure Wayne appreciates your concern for him, but I would think that, you know, he's gotten pretty old here. I think he can handle himself, and he wants to own a restaurant there. He's saying he can do it. What you're telling me is you're telling the Council because of some Facebook post feels that they can better tell Wayne how to spend his money. And if he doesn't put a kitchen in, guess what? No one's gonna come eat at a restaurant with no kitchen. So, one of two things is gonna happen; he's either gonna have a kitchen or he's not gonna have a restaurant 'cause nobody's gonna come there. I just don't understand this line of questioning; it seems to be very personal in nature instead of focusing on you have a Planning Commission that voted 7-nothing. I don't understand most of what I've heard tonight. Mr. Butt has spent lots of money in this community; you have people here that basically come to your gas stations, hotels that are filled up by Furber Farms, and this has almost gotten so personal, I've never seen something like this in my 20 years of practicing law. This is amazing."

Council Member Khambata stated my questions are to the point, as somebody who is a business broker, the first thing you do is you get zoning approval before you start spending the money.

Mr. Kaess replied, "So, maybe Mr. Butt is a bad businessman." Council Member Khambata replied and that's fine; Mr. Kaess stated, "Then let him be a bad businessman." Council Member Khambata stated if he wants a restaurant, let it be a restaurant; it seems to fit, we've got a 7-0 vote that they want it, but Wayne, do you want a restaurant? Is that what you wanna do now?

Mr. Butt replied, "Tony, I'm looking you in the eye, and I'm looking at all my family and friends, watching this video tonight, I'll do whatever it takes. Yes, let's be a restaurant."

Council Member Khambata stated that if we approve a restaurant, and you never seat a person to eat there and you run events out of there, it's not a restaurant; it's an event center. Mr. Butt stated, "And you'll shut the place down, it's illegal." Council Member Khambata stated he doesn't want to go through an arbitrary process if we're just going to come full circle; he just wants to be clear on that. If that's his intent, just be honest about it and let's start back at square one, and let's find a way for an event center to work.

Council Member Olsen stated he's having a hard time interpreting legalese, so he asked Attorney Land to do that for him. So, we've heard from the attorney; what am I really hearing? Let's break it down into common sense language.

Attorney Land stated she thinks Mr. Butt's attorney is saying you have a recommendation for approval for a restaurant. Regardless of what Mr. Butt has said on social media or in the public, he is today telling you he will operate a restaurant. There might not be a kitchen in it today; obviously, you cannot operate a restaurant without one. She thinks perhaps the one thing she would like to clarify with Mr. Butt is when he applied for a catering establishment, that does not mean it's an establishment that allows food to be catered into the facility. It means you prepare food at this facility, but nobody eats it onsite. It is intended to be a catering kitchen where the food is taken offsite to other places. That was the original Application, but then once it was refined with City staff on the intent of what he really wanted to do, and he showed tables in that area that originally was shown as display area, then it was determined that it was a restaurant. That was the use that best fit. She asked Council Member Olsen if that helped; Council Member Olsen replied, yes, that helps a lot.

Council Member Olsen stated he thinks where the communication gap exists, at least based on what he's hearing, is Attorney Kaess' first statement was hey, we're here asking you to approve a restaurant use; that's what we want, please do that for us. That's obviously the Application that's in front of us, that went through the Planning Commission, etc. But there's been some additional dialogue that makes it sound like please approve it as a restaurant use, and then we'll come back to you another time with a different use. That's fine, he can do what he wants to do; we'll deal with that when that happens. He's not uncomfortable with going with the Planning Commission's recommendation if that's truly what the Applicant wants, and we feel confident that that's what he's going to do. We have provisions in place that if he doesn't do that, then

we can address it. He thinks that's reasonable, but he stated he'll let his Council colleagues share their thoughts.

Mayor Bailey asked Mr. Butt if there was anything else he wanted to share at this point; Mr. Butt replied, "Not at this time. Thank you, Mayor."

Mayor Bailey asked if anybody in the audience wanted to speak on this topic; if so, he asked them to go up to the podium and please state their name and address for the record.

Patrick Vollmuth, 6647 Hyde Avenue South, Cottage Grove, stated he's just here in support of Wayne; he stated he's known Wayne for a little bit. He grew up in a small town, probably smaller than Old Cottage Grove; now, all the old buildings are gone, the town is small, so he thinks we should give Wayne credit for preserving the buildings that he has so far. He stated he can't speak to the legalese of what's going on, but he hasn't read too much about the ordinances and what they are, so he's not going to speak on that. He is just here to support Wayne and Angi, as they're preserving a little bit of history. He knows we're probably short on time, you don't need to hear a whole story, but he is here to support Wayne. He thinks, in his opinion as a citizen and a voter in Cottage Grove, that we should just slow down a little bit; don't disapprove his plans. From what he hears, the ordinances what they were, what they are, there's a little bit of confusion going on there; is it a landscape business, is it a restaurant, is it an event center? As far as Wayne buying a building, at the time maybe he did or didn't have an intended something in mind; that doesn't really matter. But maybe after he bought it, hey, this would be good for this or this would be good for that. Wayne has bent over backwards to do what the City Council and the Planning Commission want, so, he gives the guy a little credit. Whatever he posted online, so what? It's his First Amendment rights; he's mad, he's angry. He wants to work with the City Council, he wants to do it right. He's a law-abiding citizen, so he just wanted to point that out. He knows there's a lot going on here for him to just kind of walk into this today, but he would ask you to slow down and work together for a peaceful resolution to this. He'd love to go to a restaurant. Thank you for listening.

Blake Kunci, 6100 Summit Curve South, Cottage Grove, thanked the Council for allowing him time to speak here. He's hearing things for the first time and then digesting the information in this audience, in what's being shared. He clarified his hearing aids only amplify, they do not clarify, so he asked that they try to do their best to speak into the microphone, as it's been a little bit challenging so he's been watching lips intently this evening to follow along as best he can. He asked Attorney Land if it's correct that she said a catering business is a business that makes food and delivers food outside of the facility; Attorney Land replied that is the definition. Food is prepared on site for consumption offsite. Mr. Consul stated he's been to Minnesota Wild Catering, had his wedding there, and they made the food on the premises and they served it on the premises. He's also been to other wedding reception type venues where the catering is there and they serve it there. He's not too sure why, maybe that's extraordinary or

maybe a different ordinance here in the City of Cottage Grove. He's just noticing that elsewhere, and he could be wrong, he could be remiss, but that's been his experience. Secondly, if there are disparate treatments from one restaurant to another in Cottage Grove, he would hope that there wouldn't be disparate treatment in any of the ordinances. He gets the fact that this particular property might need a septic system, so there might be different things for that regard, but as far as treating all the restaurants as equal, please consider that. Thank you for giving me this time; he appreciates it.

Mary Marty, 7889 Lamar Avenue South, Cottage Grove, stated she was not informed, but she heard that or read someplace during this meeting that they sent out only to people within 500 feet; that doesn't include very many since there's a business next door, they own the house next door, in back is a lake, and in front they might've had three people. She doesn't know how many they informed, but they didn't communicate to the City of Old Cottage Grove. Secondly, we do not like the buses and the drunks that are imported from out of town into Old Cottage Grove. She heard Wayne Butt himself say that there have only been two residential people from Cottage Grove get married at that church or at that farm. That means that all those people are imported from other towns, and that's fine, but it's not your neighborhood, it's mine. If I had gone about trying to get this business set up, and I had made all these mistakes, and I had made all these bumbles and all these excuses, you would not have given me any variance, you would not have given me anything. Now, that is speculative; I also want to speculate that it sounds like Steve Dennis is in Wayne Butt's pocket. It's just what it sounds like from being here and listening to everything; he had nothing but praise. I understand he's a businessman, I understand he wants to make money. Let him do it, but let him go through the proper procedures, and I don't think that he has gone through the proper procedures. And when I saw that you guys were ready to approve everything that he's asking for, it was like how could you do that? That's all she has to say, thank you.

Council Member Dennis stated don't confuse compassion with anything other than care for another individual; don't confuse that, and don't make an accusation you can't back up. That's what I have to say, it's not true.

Council Member Olsen stated in response to Ms. Marty's comment, he's an old timer so he was on the Council when Wayne and Angi came forward with the Furber Farm plan. What he can speak to is through the course of that planning process, we had several different speed bumps where we had to talk through making adjustments, variances; one very specific concession he recalls was the difference between a gravel parking lot and a paved parking lot, the expense of that, and could we find our way to enable the business to use a gravel parking lot. The reason he points that out is we work very hard as a Council and a staff with all of our local business owners, and when I say local business owners what he means to say is any business that's in town is a local business. Target is a local business; we've worked with them several times on adjustments in their parking lot due to a need for different landscaping or stormwater, because those rules change. As rules change, we have to try to change with them. We are very, very thoughtful about any sort of arbitrary or capricious behavior. So, if there's anybody who's watching this at home or listening that has an impression that somehow

the City Council puts their finger on the scale, whether it's if a City Council Member is in somebody's pocket or not, we've had that happen to us before. We've been accused of being in 3M's pocket when the incinerator was approved, despite the fact that we fought it as hard as we could and we just lost the fight. People come into these kinds of conversations towards the tail end, and we have the benefit of having been there from the beginning. So, that gives us a lot of knowledge about the process, step by step, how we did things. So, again, it's very important for people to remember and to understand that as a Council, we are dispassionate; we look at things from both sides, we are bound by the law to do that, and we are bound to act within the confines of the law, which is why we ask so many questions of our City Attorney, as she does an excellent job. The last thing he'll say is none of us, and he means this sincerely, none of us, it's important to note that, none of us have our votes for sale, ever. So, whether it's one way or the other, it's all based on findings of fact and our best judgment and experience and the input that we get from staff, residents, etc. So, he doesn't like hearing somebody is in somebody's pocket, or that there's some sort of a difference in the way restaurants are being treated in the City, because none of that is true, none of it.

Council Member Dennis stated he agrees almost entirely with what Council Member Olsen had to say. One of the differences, having been here for a long time, and as someone who had invested in the community, we initially went through some challenges with signs, etc. that we had to try to work through; it wasn't easy. One of the key differences when people talk about the City and try to lump everything together, is there are different components of the City: *Staff Members*: Operate in a very narrow band, they stay between the lines, follow the ordinances, and the other processes that we have. *Commission Members*: Volunteers from the community, who live here and pay taxes here. They are able to take findings of fact or recommendations or guidance from the City staff, and get to look at things in a certain fashion and apply their decision-making process into crafting what their final answer would be as a recommendation to the City Council. *City Council*: We are legally hired and elected officials, who are representatives of the community. So, sometimes we look at things through a lens of saying that we're in the people business, and we are; people have heard me say it over and over here through the years, we try very much to sell happiness wherever possible, to do the right thing on behalf of the greatest good and the largest number of people. Again, we have a little bit more latitude, and we have an opportunity. If we want to exercise some care, compassion, empathy, or respect to anyone in the community that we serve and represent, we have the authority to do that, and that's what we've done a little bit here tonight. So, this is not about putting fingers on scales, trying to manipulate outcomes, being in pockets, those types of things; it has nothing to do with that. This is about trying to do the right thing for the greater good. Thank you.

Edgar Marty, who lives on Lamar Avenue, stated he thinks this is pretty clearcut, whether it's a catering place, a restaurant, whatever; if you're going to have a venue for that, then you need a kitchen. You're submitting plans and everything for something that doesn't even have a kitchen drawn in it. He doesn't know how it could even move forward; that's like trying to submit plans for a body shop and not having a paint booth. How can you sit there and say it's going to be a body shop when you don't have the

infrastructure built inside for that body shop. They're saying it's a kitchen catering place, whatever, they'll come back later, argue it; how can you sit there and say it's a kitchen or restaurant or anything if it doesn't have the infrastructure planned in their own plans for his own building. That really blows his mind, and that's all he has to say on the subject.

Mayor Bailey asked if anybody else would like to speak; nobody else wished to do so.

Council Member Olsen asked Mayor Bailey how he wanted to handle the various elements of this; he knew they were all connected. He asked if he wanted separate votes on each one.

Attorney Land stated she'd recommend that you consider the Variance Application first because that will then dictate how you vote on the rest of the Applications. The Variance Application in her opinion is the hardest because you have to overcome the fact that it's a self-created issue; he had some reasons that he originally stated in his Application. He indicated that there were some obstacles in the narrow site; however, he was warned ahead of time, prior to the construction of the deck, that he would be creating the need for the Variance. So, if you could consider the Variance Application first, decide how you want to address that and whether you want to approve it or deny it, then that will determine how you vote on the rest of the Resolutions.

Council Member Thiede stated a point of clarification; he thought Planner Mroska said that these were all interrelated, so does that suggest that if any one of them does not pass, then none of them pass?

Attorney Land replied that is correct because the initial one is based on the restaurant use; all of them are based on the recommendation for approval, based on the restaurant use. If he's not going to use it as a restaurant, then you should not approve them. If the Variance does not pass, then the remaining ones also cannot pass because the Site Plan is dependent upon the Variance, which is dependent upon the use and the Rezoning and the Subdivision; they're all tied together.

Council Member Thiede stated so we're talking about 2023-070; Mayor Bailey stated 2023-069 is the top one. Council Member Thiede stated that's not the Variance for the restaurant, that's a Variance for the parking lot.

Attorney Land clarified the Variance Application is for a restaurant use; the Variance Application specifically is for a setback for the driveway and the parking lot, but it is all related to the restaurant use.

Council Member Khambata asked Attorney Land to remind him of the 34 conditions and if one of them is that they be open to the public.

Attorney Land replied that's actually the definition in our new City Code, which went into effect on January 1; so, she's not surprised that all of the restaurants haven't been informed yet of that requirement. But that is a requirement of the Code, whether it's in there as one of the conditions or not, it's irrelevant as they'd have to comply with the Code anyway.

Council Member Khambata asked being a restaurant, is there anything in our Code that requires a kitchen.

Attorney Land replied it's sort of common sense; in order to have a restaurant, you have to have a kitchen and be licensed by the Department of Health or at least Washington County's Health Department. So, in order to be deemed a restaurant, you have to have an onsite kitchen.

Council Member Khambata asked in order to get the Certificate of Occupancy to operate the restaurant, is it correct that they would need Washington County Health certification; Attorney Land replied yes. Council Member Khambata stated without that, they can't operate a restaurant, to which Attorney Land replied that is correct.

Mayor Bailey stated what was interesting is Mr. Kaess made the comment earlier about things that are out on social media are irrelevant; Mayor Bailey stated he begs to differ. When an Applicant, before he or she comes before the City Council for a permit and variances to open a restaurant, asks people to come here to voice their support for him, knowing that he doesn't want a restaurant because that's what he says in the multiple postings, including at the Chamber of Commerce, Mayor Bailey stated he's concerned. He sees Angi is here, and they both know he's been to their establishment's multiple times, he's been to their home, saw their grandson, pet the dogs, etc. We were trying to work with our staff to make this work, make this property work. He understands Mr. Kaess didn't like the line of questioning that was coming from Council Member Khambata, but told Mr. Kaess from his personal standpoint, he would have checked the zoning before he bought something to make sure he knew what was able to go in there. With all due respect to Mr. Butt, the fact of the matter is he just said, and it's now on the record, that today he wants a restaurant, maybe tomorrow he'll come and apply for another permit to do an event center. That is not what we want out there; that's not what's called for on that spot, it never was, nor was it a restaurant, but we were trying to work with him to make that happen. What bothers him about his comment, what upset him the most about what he saw in the postings was Council Member Dennis and I actually sat with Mr. Butt and some of the representatives with whom he was working to make this happen; and he told us directly this is what I want, this is what I want, this will be good, okay, that's fine. And we worked with our staff through all of these different variances and issues to come to a point where now he's saying one thing to get people here on social media, and then says another thing when he's standing up here. So, he has a concern with trust, okay? He's just telling him that right off the bat. So, Council can make the determination on what they want to do at this point, but one of the things he values is people being trustworthy. He does whatever he can, he's an advocate for this community in every way, shape, or form. He was an advocate for when they wanted to open the Furber Farms out there. In a couple of days, we're going to try to attract more businesses to our community for what our citizens are asking for, but on this particular case, he can't vote for this. He cannot move forward with a restaurant use with the understanding of what Mr. Butt has publicly said and the basis of findings of fact from our staff that has been provided to us today. So, depending on whatever decision the Council makes, in this particular case, he will be voting no.

Council Member Dennis directed a question to Attorney Land: Remembering the time that he spent as a liaison to the Planning Commission, when a Variance is granted, is it

correct that Variance stays with the property into the future, in perpetuity. Attorney Land replied all of these Land Use Applications stay with the property.

Council Member Dennis stated just for us to understand, when a Variance has been adopted to a piece of property, what would happen if you came back later on and wanted to change that Variance? Attorney Land replied the Variance would need to be amended. With any of these Land Use Applications, once approved, they are basically written in stone; they're recorded against the property, and they will remain there in the current conditions, all of the words, unless the Applicant comes back for an amendment or the Council brings it forward for a revocation.

Council Member Dennis stated then they would have to show again a hardship or a condition requiring that; Attorney Land stated yes.

Council Member Thiede stated he's known Wayne and Angi for a while, we've had a lot of discussion in the clouds as to what would be neat in Old Cottage Grove, some kind of old downtown shops and buildings, and things like that. So, he thinks while we don't agree on everything, he admires Wayne's passion, etc. for getting businesses going and having the guts to do it; he might not have as much patience as he needs in some cases. Referring back to the study that the University of Minnesota students did, one of the big things they advised about resident comments was people wanted a coffeeshop or something like that, which was kind of like the restaurant. So, based on what he's seen, he knows that in any type of business it's a struggle sometimes to figure out what people are going to want; he guesses he supports a restaurant being there, and he would support a Variance to allow a restaurant there. He has faith in Wayne that he would do everything he could to make that happen.

Council Member Khambata stated he doesn't see a hardship to justify the Variance; he thinks it's self-inflicted, so he's a no.

Mayor Bailey asked if Resolution 2023-069 is the one that's first; he just wanted to be very clear. Attorney Land replied yes, the Variance. Mayor Bailey stated he'd look for a motion to approve or to deny Resolution 2023-069.

Motion by Council Member Thiede to Adopt Resolution 2023-069 approving the Variance to construct a parking lot setback 2.5 feet from the side property line when 20 feet is required when located adjacent to a property residentially zoned property; there was no second on the motion. Motion failed: 1-4.

Council Member Khambata asked Attorney Land if he had to go in individual order on the rest of these; Attorney Land stated once you adopt the Variance, then no, then the order is irrelevant.

Motion by Council Member Khambata to deny Adopting Resolution 2023-069, which was asking to approve the Variance to construct a parking lot setback 2.5 feet from the side property line when 20 feet is required when located adjacent to a residentially zoned property; second by Council Member Olsen. Council Member Olsen encouraged

City staff to continue working with the Applicant on whatever the actual desired use is going to be so that we can hopefully find some resolution to that and some compromise that will work for all involved. Motion carried: 4-1 (Nay by Council Member Thiede).

Motion by Council Member Khambata to deny Resolution 2023-068, Ordinance No. 1065, and Resolution 2023-070; second by Council Member Olsen. Motion carried: 4-1 (Nay by Council Member Thiede).

- B. Norhart Architecture - Comprehensive Plan Amendment, Rezoning, and Site Plan Review for Proposed Apartment Project
Staff Recommendation: 1) Adopt Resolution 2023-066 approving an amendment to the 2040 Comprehensive Plan to re-guide 7.15 acres of land from Industrial to High Density Residential, and authorize staff to submit the amendment to the Metropolitan Council. 2) Adopt Ordinance No. 1064 approving a zoning amendment to change the zoning of the 7.15 acres from AG-2, Agriculture, to R-6, High Density Residential, contingent on the Metropolitan Council's approval of the associated Comprehensive Plan Amendment. 3) Adopt Resolution 2023-067 approving the Site Plan Review for a 299-unit, five-story, market rate multifamily apartment building on an approximate 7.15-acre parcel located on the southeast corner of 100th Street and Hadley Avenue.

Emily Schmitz, Senior Planner/Interim Community Development Director, stated Norhart Architecture is proposing a 299-unit multifamily building on a parcel that we've spoken about internally as the "Zywiec 40," located just south of 100th Street and adjacent to Hadley Avenue. This particular parcel was part of a preliminary plat, approved in May 2022. There are two parts to this preliminary plat: The Zywiec 40, for which the preliminary plat created four developable parcels; further to the south, there was a lower density proposed project. However, given the market conditions, the Applicant at the time did not continue to move forward with the Final Plat, so the project stalled at that point. However, Norhart Architecture actually submitted a Final Plat, which was approved in December 2022; the Final Plat was just for the Zywiec 40.

One of the applications as a part of this request is a Comprehensive Plan Amendment; as you can see, this particular parcel is currently guided as Industrial. However, as we've seen industrial development continue in this particular area, we've come to understand that this uniquely shaped parcel isn't necessarily conducive to support an industrial development; therefore, as Norhart has proposed their project, we recognize that the request to re-guide to a high density would be appropriate. There's also a request for rezoning from Industrial to R-6 High Density Residential.

Proposed Site Plan: A 299-unit market rate apartment is proposed. It is five stories, so there are two access points off of Hadley Avenue for an appropriate flow through the site. Pedestrian connections to Hadley Avenue are also proposed, as well as future constructed trails along 100th Street. Setbacks are proposed to meet the City's minimum standards. It's important to point out a 30-foot setback from adjacent residential properties is required; however, this Applicant is proposing a 180-foot

setback from the building to adjacent residential properties to continue to provide a buffer to any of those existing residential neighborhoods, specifically to the north. The height of the proposed project is 55 feet, which is permitted within the district. The onsite parking they're proposing is surface, as well as underground parking; they're providing 1.6 parking spaces per unit, which aligns with our City's minimum standards. Streets and Utilities: There are currently no streets that look like this on the "Zywiec 40" parcel. It's important to reference the Southwest Arterial Study that Washington County completed in 2022; that evaluated the realignment of 100th Street and provided connectivity between Jamaica Avenue, specifically down to Grey Cloud island, and Hadley Avenue. This particular configuration has also been in our Comprehensive Plan's long range plans for many years. The South District Street and Utility Project is the project to construct the utilities and the streets within this particular area. The utilities will be installed as a part of this project in 2023, and the streets are planned to be installed in 2024. Staff is working closely with the Applicant to be sure that they're providing a temporary access as they work to start construction this fall. Landscape: Proposed landscaping on the site meets the City's minimum standards. It's important to note that they focused their landscaping buffers adjacent to the public rights-of-way. They certainly can't buffer the entire building; however, they want to ensure that that is complementing the building and the site as a whole. She pointed out they're planning to preserve an additional open space, kind of on the northern portion of this site, for their residents. Architecture: We require Class 1 materials, and the Applicant worked hard to ensure that they were proposing and providing those materials on this project; brick, stone, and glass will be used, and a large portion of this project is glazing or glass. They're proposing greater than 65% on each of the elevations of the proposed building. Neighborhood Meeting: The Applicant held their neighborhood meeting on April 11. There were two concerns staff heard: 1) Traffic impacts, which we evaluate with every project that comes into this particular area. We referenced the AUAR that evaluated the traffic of potential development in the area, ensuring that we're providing those improvements as needed. 2) School District capacity impacts, with these additional units. Staff works very closely with the School District on a regular basis; we typically communicate on a monthly basis, providing updates on any potential development or even thoughts of development that we might have in the community in an effort to help the School District as they continue their long-range planning efforts. The School District is currently making a huge effort to invite the community to provide their input and ideas on resident surveys and community meetings.

Planner Schmitz stated she and the Applicant would be happy to answer questions.

Council Member Thiede stated he thought there was a parcel to the north, across 100th, that we had for another apartment complex. Planner Schmitz replied we've been in communication with a developer who is interested in that particular parcel.

Mayor Bailey asked if that was MWF. Administrator Levitt stated the red X that is shown on the screen, the parcel she believes is in question, is currently under option by MWF Properties.

Council Member Olsen stated his concerns revolve around two things addressed in Planner Schmitz's presentation; traffic seems to be a concern whenever there's new construction that takes place in a neighborhood. He's also asked if we're being proactive in terms of anticipating any negative outcomes from this facility relative to the School District or any sort of roadway infrastructure that might need to change. He knew it was a little bit challenging for Planning staff, or staff in general, to do that, but it seems like what consistently happens is we build something, then we wait until a bad thing happens, and then we address said bad thing. When he was a commissioner on the Public Safety Health and Welfare Commission, we knew that the construction of new homes in Timber Ridge, which definitely added a lot of cars to the road, would result in some sort of issue at the intersection of Hardwood Avenue and 70th Street. We talked it through and we all agreed, and then we had to wait until there was a motorcycle accident or two before we could actually get stoplights put in there. He'd like to know what sort of proactive dialogue we're having with City Engineers, the developer, the School District, etc. about ensuring that if and when this project comes online, that we've worked proactively vs. reactively to address some of these concerns. The neighbors will let us know if something is bad or something is wrong if we don't try to get out in front of it and correct it ahead of time.

Administrator Levitt stated that's a great point; clearly, partnerships and forward thinking is something that obviously we have learned from some of our lessons in the past. So, when we looked at our Comprehensive Plan and we looked at actually how we were going to lay out the streets, this was all forward planned. We looked at the AUAR, we looked at all the different uses and the intensity of those uses, and what the traffic generations would be. We were so forward in this that we actually had a full plan set out to build the streets; then we saw a lot of development kind of take a bit of a back seat, not progressing as far, so we modified the bid to actually just construct some of the utilities and not all the roadways in what she'll call the X. But we are positioned now, if this project moves forward, to rebid that project and be under construction next year. She knows engineering can come up and talk about the improvements that are being made to 100th Street, as it relates to NorthPoint. Mayor Bailey can probably talk about his meeting today at the Transportation Advisory Board (TAB) at the Metropolitan Council, as we're looking to secure funds. We know that we have the design efforts substantially underway, working with 3M as a willing landowner for right-of-way acquisition. She would say we are very forward thinking in this, and this incremental project will not have a negative impact on the traffic, and we are prepared to build the ultimate solution.

Council Member Olsen asked Administrator Levitt to speak about the School District as well, tell him what that dialogue sounds like.

Administrator Levitt stated she reported to the Council on Friday that we attended a luncheon with the School District because obviously we work very closely together; every two weeks we actually transfer data to them, tell them how many lots have been platted, how many building permits have been issued, if it's multifamily, high density, or single family. So, they know exactly which school is receiving those potential students, and they have ratios that they apply to that. They had already, before this school year, adjusted the boundary to where these students would go, knowing the challenges that

they had at the Pine Hill Elementary School. They are still continuing to refine a future referendum question that they anticipate being on the ballot in November; our project did not cause the impetus for that, but we work together in partnership with them so that we can develop a solution that works for everyone. We know that great schools actually help provide our opportunities for housing and businesses; people want to be where great schools are, so their success is our success.

Council Member Olsen thanked Administrator Levitt. It sounds like staff has really gotten out in front of all of those issues, and he appreciated the update; that made him feel much more comfortable.

Mayor Bailey stated regarding the School District, we had a meeting with them a couple weeks ago. With this particular area and areas to the south, for any other possible developments there, he believes Pine Hill is at capacity right now. Their intent is everything on this side of the road is going to go to Pullman in St. Paul Park; that's because Pullman is being underutilized with students, so they have plenty of room there and their intent is to bus over to Pullman.

Mayor Bailey invited the Applicant to speak.

Marybeth Wise, 1081 4th Street SW, Forest Lake, thanked the Council for having them here tonight. We had a very productive workshop with you, and Planner Schmitz did a great job of explaining the project we're doing. She stated when they design their buildings and our apartments, the resident is on top of mind for them; our main goal is to provide, we go the extra mile, and we try to provide lifestyle living, luxury amenities, convenience, and community. Touching upon community, that extends from just our residents to the community around us; as Planner Schmitz pointed out, we made the effort to really provide a large buffer so they're not impacted with a view right up on the edge of the property. We are also already working with the community and are sponsoring a hole at one of the local golf tournaments; it's nice to already be getting involved, and we're happy to do that. We look forward to doing more. She thanked Council for having them here, and we're excited to be building in part of the community.

Mayor Bailey asked should the approval go through tonight, what's their timeframe. Ms. Wise replied they're looking to put shovels in the ground in November 2023, and it will be a two-year project, so we'll finish in November 2025.

Council Member Thiede stated with another apartment building and another aspect of traffic, he asked for the latest on Washington County and getting to Highway 61 on 100th Street.

Mayor Bailey stated regarding what Administrator Levitt was speaking to, he's also on TAB for the Metropolitan Council. In our meeting earlier today, we had submitted the 100th Street project for financial consideration from TAB and the Technical Advisory Committee (TAC) for just over \$7M. We are now on that point where there are four projects that are going to be added, and he's speaking on behalf of our community and Washington County for this project next month. If that comes through, then obviously the goal would be that we have another \$7M; we obviously have some money coming federally, and we're also working on a couple other grants to continue the funding process. He said that's a County road, and obviously we're working through that; we're

talking about pretty much everything east of Jamaica Avenue, and the goal is we'll have a new easy access road that will go all the way out to Highway 61 and the bridge. Our intent in the future is to go over the railroad tracks so there won't be a crossing; the idea there is obviously truck traffic and residential traffic can have another way out of our community from the south end of Cottage Grove.

Council Member Thiede stated if this project is going to take two years, and NorthPoint starts opening up, we're going to hit a situation like Council Member Olsen was just talking about; all of that traffic is going to bunch up to try to get out via Jamaica or go down through 95th Street or through an already busy Hadley Avenue. He thinks we really need to be focused on whether we have to delay some things in terms of the number of people that go in that area; otherwise, we're going to have a mess.

Mayor Bailey asked Director Burfeind in the project we submitted to the Metropolitan Council, what years it was for them; the funding for this project would be the next years, 2024 and 2025.

Director Burfeind replied that's correct, 2026 was our goal for the construction year, but he noted with NorthPoint that worked under our current plans and roadway construction. For traffic, it goes in two directions; so, an apartment does not compete in any way with an industrial user because they're coming into town, and apartment residents are leaving town or staying in town. So, actually, it's those same uses over and over again that really drive traffic issues in the peak time. These different uses are actually a good thing in terms of traffic flow.

Mayor Bailey asked if there was anybody in the audience who wanted to speak on this.

Zach Hartfiel, 8068 Hornell Avenue South, stated the School District tomorrow is meeting for the attendance boundaries for elementary and middle school; Norhart will be going to Armstrong Elementary and Cottage Grove Middle School. That's the map they have drawn up for tomorrow's meeting. That's just updated information.

Mayor Bailey thanked him for that clarification, as he knew they'd heard that Armstrong and Hillside are also underutilized.

Motion by Council Member Dennis to Adopt Resolution 2023-066 approving an Amendment to the 2040 Comprehensive Plan to re-guide 7.15 acres of land from Industrial to High Density Residential, and authorize staff to submit the Amendment to the Metropolitan Council; second by Council Member Thiede. Motion carried: 5-0.

Motion by Council Member Khambata to Adopt Ordinance No. 1064 approving a zoning amendment to change the zoning of the 7.15 acres from AG-2, Agriculture, to R-6, High Density Residential, contingent on the Metropolitan Council's approval of the associated Comprehensive Plan Amendment; second by Council Member Dennis. Motion carried: 5-0.

Motion by Council Member Thiede to Adopt Resolution 2023-067 approving the Site Plan Review for a 299-unit, five-story, market rate multifamily apartment building on an approximate 7.15-acre parcel located on the southeast corner of 100th Street and

Hadley Avenue; second by Council Member Khambata. Motion carried: 5-0.

- C. Low Zone Water Treatment Plant and Public Works Utility & Engineering Building
Staff Recommendation: 1) Adopt Resolution 2023-063 approving the Site Plan Review for the Low Zone Water Treatment Plant and Public Works Utility & Engineering Building, to be located at the northeast corner of Ideal Avenue and 110th Street. 2) Adopt Resolution 2023-074 approving the plans and specifications and establishing a June 29, 2023 bid date for the Low Zone Water Treatment Plant Project.

Planner Schmitz stated she will walk through the planning parts of this proposal, then Director Burfeind will speak more about the plans and specifications and the bid date.

Planner Schmitz stated from a planning perspective, the proposal is a two-building site plan, so we view the site as a whole on an approximate 20-acre parcel that is located in the northeast corner of 110th Street and Ideal Avenue. As we looked at the site, we're proposing to access off 110th Street to the south, as well as Hadley Avenue to the west. This design allows for future expansion areas as well, to the east and a little bit to the north. The proposed locations of the buildings on the site meet our minimum setback requirements, as well as the minimum required parking stalls; in this case, we're proposing 95 parking stalls. She mentioned that there are lesser stalls proposed as a part of the Water Treatment building because that particular building does not require as many staff; so, those parking stalls were planned and proposed further to the north as a part of the site. Architecture: Our consultants worked hard to ensure that the architecture proposed not only met the City's minimum standards but aligned and complemented other City buildings. There are precast concrete panels, combined with glazing, glass, brick, and stone was a focus. She displayed the renderings provided for both buildings. Landscape: We are proposing to plant the minimum required landscaping; however, Director Burfeind will give additional details on the planning and location of the landscape.

Director Burfeind stated there are a lot of trees along the eastern property line, which is currently a residential property, so we were trying to provide some screening. Those trees are actually above and beyond the minimum landscape requirements. We heard feedback at the Neighborhood Meeting that they almost felt we were boxed in, we did too good of a job screening with screening; so, we'll work with them to maybe thin that out a little bit. With the landscaping around the property, we have some small berms, three feet high; we're not trying to hide this building, as he thought we designed a pretty nice looking building. It's not a very intensive use; this isn't some trucking operation that we're trying to screen. The Water Treatment Plant itself will have one pickup come and go a day; we'll only change out the treatment filters once every four-to-five years, and that's something that we watch. Vehicles will park inside the building. So, it's very minimal use. The Utility building will have about 20 staff, and it's really a 7:00 a.m. to 4:00 p.m., Monday-Friday operation; it's not a 24-7 logistical operation. We want to be able to see it, we don't want to create large berms; we want to have visibility for the public because this is a very important piece of infrastructure. We don't want folks to get

in there overnight and feel like they're hidden from view and they can cause issues for our water system; we want people to be able to see it and have visibility. The question at the Planning Commission was why aren't you building the huge berms that NorthPoint is; that's not our intent, we're not trying to screen something in that manner. The landscape plan meets all the requirements, which is important. The existing trees are a big point of discussion right now, and he'll speak about that shortly. He displayed an overall site rendering and how those buildings will work and complement each other. Future Expansion: The area highlighted in blue is the City parcel; the area highlighted in yellow is the parcel owned by NorthPoint. This whole area is guided Industrial; that's one of the main reasons this treatment plant is there, it really fits into industrial guidance in our Comprehensive Plan. Trees: We were asked about the trees at the Neighborhood Meeting, if the remaining trees on Ideal Avenue were going to be cut down. At the time, with the information we had, the indication was that they would have to be cut down to install the deep sanitary sewer to serve this building. In reality, as we really worked through the design up until last Thursday, we feel pretty comfortable now that we can install that sanitary sewer and really save the trees that are still there north of 110th Street. The two little circle areas, highlighted in yellow, is where the driveways go through; we have to cut down the trees there because we have to get the driveways into the property, but we're going to do our best to save those remaining trees. He can't promise that every tree will be saved; if we get into the roots of a tree, you can't leave a dangerous tree that will fall down later, but we're going to do our best to keep those utilities and all the work on the City property, not on the right-of-way where those trees actually sit. Our goal will be to save those trees. There was some question on the species, they were talked about as a hawthorn tree; he had our City Forester go out there twice, and he's very confident they're a hackberry. Either way, a good tree is a good tree; it still has meaning and benefit, and they look very nice, so we'll do our best to save those. Water Treatment Plant: Some people have asked if this is a Sewer Treatment Plant or what we'll be doing here. This is a drinking Water Treatment Plant, so we're going to remove PFAS; this is fully funded by the 3M Settlement. This is very exciting for the community, as the project cost is estimated at \$32M, and no City funding will be used to build this Water Treatment Plant. It uses the same methods we have right now; we have interim treatment in place in town with big carbon filters with a lot more specialized carbon in them. He displayed three photos: 1) White vessels, which remove all of the PFAS from the drinking water; 2) A big green vessel that will actually remove all iron and manganese, as there's enough iron and manganese in our water that it will create issues with those carbon filters and reduce the life, so we'll get iron and manganese removed. That's what everyone sees when we do flushing twice a year and our water turns brown; 3) Big pumps that will pump the treated water back out to our system and back to the water towers. All of this is enclosed, and it's a very quiet operation.

Director Burfeind stated the two recommendations are before the Council; he stated the first was a Planning Application, and the City is the Applicant, but it is a Planning Application. That's not approving the project from moving ahead from a cost perspective or plans perspective. It is a Site Plan Review for the two projects on the site; we want to be transparent, and that does not specifically authorize to move forward on those

projects. The real authorization tonight is for the Low Zone Water Treatment Plant, for plans and specifications and setting a bid date. It's very important to get that project moving.

We talked about the Utility Building about a month or so ago, and that's on a different path; that would come back for plan approval and setting a bid date at a later time. So, there is one Application tonight and then a different motion to approve the Low Zone Water Treatment Plant plans and specifications.

Council Member Thiede asked what's actually going to be in this first bid; you're probably going to do some other grading and property prep.

Director Burfeind replied when you look at sites, you want to do mass site grading to balance things out together. So, there is some work for the overall property for the mass site grading, but none of the utilities or other infrastructure for that Utility Building is part of this plan package. It's just mostly balancing out the site; if you move dirt twice, you spend twice the money. So, if we have to dig out a pond and make things balance; that cost is about \$200K to do some of that grading, but that's just setting up the site for the future. It would be very expensive and costly to not do that right now.

Council Member Thiede asked if that would be putting in both of the retention ponds. Director Burfeind replied that's correct, just digging them out; Council Member Thiede stated it's making it pad ready, which Director Burfeind confirmed.

Council Member Khambata asked about the timeline.

Director Burfeind stated for the Water Treatment Plant, we'll be bidding it out this summer, and will start construction later this year, in September. Our real goal is to have it operational by June 1, 2025; that sounds like a long time, but it's a very complex building, long lead times on things, so that's our main goal we want to hit before that summer. The second treatment plant he'll be talking about later on this year, into next year, which will be one year behind and operational by 2026; we have a very important deadline of December, 2026, to have all of this in place with the new EPA rules.

Mayor Bailey asked if anybody in the audience wished to speak on this item; no one spoke.

Motion by Council Member Olsen to Adopt Resolution 2023-063 approving the Site Plan Review for the Low Zone Water Treatment Plant and Public Works Utility & Engineering Building, to be located at the northeast corner of Ideal Avenue South and 110th Street South; second by Council Member Thiede.

Council Member Dennis stated he felt like this was Custer's Last Stand; he's not supported the Public Works Utility Building, but he does support the Low Zone Water Treatment Plant. He's been consistent all the way through; this is packaged in such a way that the two are locked together. So, he just wants to be very clear to the community that he supports clean water and safe water for everybody, but he doesn't support the cost factor for the Public Works Utility & Engineering Building at this point. He's not going to change his mind at the last moment, so he can't authorize that; it's a nice plan, he knew a lot of good work was put into it, but he thinks there are other needs

we have. It creates some efficiencies of moving vehicles and things like that, which he definitely understands. He doesn't take this personally and doesn't want staff to take it personally, but he has his financial principles, and he just can't authorize that kind of spending when we've got a lot of other things that have to be paid off. He wants to protect that AAA rating.

Council Member Olsen asked Administrator Levitt or Director Burfeind if this Site Plan, both the Water Treatment Plant and the Public Works Utility & Engineering Building, was reviewed by Standard & Poor's when we went out to bond last time.

Administrator Levitt stated we disclosed to Standard & Poor's our future debt service, and that was included in it.

Council Member Olsen confirmed that was actually part of what they reviewed; he knew we had just gone through that Financial Management Plan process.

Council Member Dennis stated there are other cost factors to be concerned; he asked if he was correct that we'll have to raise our water costs to people to pay for this, which was confirmed. Secondly, there are always substantial Operations and Maintenance costs associated with a project like this. He will say that our Public Works team has done a very good job all the way through; we commented on all the work that was done this winter with all the snowfall. These folks would make things work regardless of what building they were in because they care and they want to do a good job. He's looking at the totality of it, and he thinks money is better spent for other things and opportunities that we could have.

Mayor Bailey interjected, said that he's also still working on some additional State funding, as Director Burfeind and I had been testifying at the Capitol; he doesn't know if it will make it in this year to help fund things. Council Member Dennis stated if we get that money to pay for it and alleviate the taxpayer costs, that would be a good thing. Mayor Bailey stated that's the goal, and we're really doing this due to the fact of the increased size and staff that we'll need for the Water Treatment Plant.

Motion carried: 4-1 (Nay by Council Member Dennis).

Motion by Council Member Thiede to Adopt Resolution 2023-074 approving the plans and specifications and establishing a June 29, 2023 bid date for the Low Zone Water Treatment Plant Project; second by Council Member Khambata. Council Member Dennis stated because he supports clean, healthy, and safe water for people, he will vote yes on this. Motion carried: 5-0.

12. COUNCIL COMMENTS AND REQUESTS

Council Member Dennis stated he's looking forward to the trip that we're going to make out to Las Vegas on behalf of the City, the ICSC event. We've worked hard to put together an itinerary for a number of individuals, companies, and investors that we're going to seek to work with and bring some opportunity here to town; things that people have been looking for long term is kind of our target list. He hopes the community gets behind this and wishes us well, and we can see some good things happen. Mayor Bailey stated absolutely, he agrees with him.

Council Member Thiede stated there are only four weeks before Strawberry Fest, so definitely get excited. Also, if you have any groups that want to be in the parade, it seems this is coming up quickly, but you need to get your registrations in to be in the parade. There's also a 5K and a walk and a softball tournament, and many other events; you can learn about all of those at cottagegrovestrawberryfest.com. Everything you need, including registration forms, is on that website. Get excited, we've got some great bands, and a little bird told him there's going to be great weather; if that's not correct, then it's the little bird's fault. So, get excited and let's have a great time again!

Council Member Olsen stated there will be a Memorial Day ceremony, on May 29, right here at City Hall, at 10:00 a.m. This is a time change; historically, we've had the Memorial Day event at 1:00 p.m. It will take place at the Veterans Memorial. There's a very exciting speaker this year, our own Cottage Grove Fire Department Captain Nick Arrigoni. Nick currently serves in the military as a Staff Sergeant, and is part of the Minnesota National Guard Charlie Company, in the 2211 battalion; they are essentially airborne medics. Nick is a medic, they drop into the war zone and provide medical services to any injured troops, and if necessary, they provide a ride to a medical facility. Nick has been in this role for about 12 years, so he's certainly not new; he was actually deployed for a year, in 2018, where he served in Kuwait, Iraq, Jordan, and Syria. We're really looking forward to having Nick speak at the event, as well as others who will be part of the event; unfortunately, this year we won't have Council Member Dennis as our coordinator. He's put tons of time, energy, and effort into that event for the last six years or more. So City staff, in conjunction with our Beyond the Yellow Ribbon team, will be coordinating this event for the foreseeable future. We want the public to attend, as it's very important to remember the fallen, especially as this is Military Appreciation Month. Memorial Day is a very somber day; it's a time for us to reflect on the people who gave all to protect us and our freedoms. He hopes we will see all of you here at City Hall.

Council Member Olsen gave a shout out to our friends at River Oaks Golf Course. We had our annual Cottage Grove Lions Awards Dinner at River Oaks last night, the first time we've held it there; it gets bigger and bigger every year, so we needed a little more space. The team at River Oaks did a marvelous job; the food and the service were great, they worked very closely with us on logistics, and really made for a fun evening. He complimented Dennis and his staff, and noted Courtney really worked hard for us, too, so he'd appreciate it if Parks and Recreation Director Zac Dockter would pass that along to her.

Mayor Bailey stated at our last Council Meeting he had the opportunity to share that he and his wife attended a play at Park High School, Mama Mia, which was amazing. He mentioned there are many talents in our community, and an ice skating show will be at the Cottage Grove Ice Arena on May 20, called America's Songbook on Ice. If you want tickets to that, they're available online through the Parks and Recreation Department or the City's website. He encouraged people to attend to see some of the youth and adults in our community put on a really great show.

Mayor Bailey stated his wife went online and ordered her St. Paul Saints tickets, and she said there were hardly any tickets left; he believed our City had a section, and it said there weren't many tickets left in that section. He thinks that's a great thing because that just means our community is really going to get out there and have some fun. He encouraged anybody if they wanted to come join us and celebrate the City of Cottage Grove, it will be on June 10; that's a perfect date, because that's a kickoff or lead in to all of the events for Strawberry Fest. So, you can start to celebrate by taking in America's pastime, baseball, celebrate the City of Cottage Grove, and then head right into Strawberry Fest and all those festivities.

Mayor Bailey stated tonight we have a Workshop, Closed to the Public, closed pursuant to Minnesota Statute 13D.05, Subd. (3)a, to conduct a performance evaluation of City Administrator Jennifer Levitt. We will be adjourning tonight's meeting from there. He told everybody to have a great evening and great upcoming Memorial Day; hopefully, we'll see everybody at the Memorial Day ceremony.

13. WORKSHOPS - OPEN TO PUBLIC - None.

14. WORKSHOPS – CLOSED TO PUBLIC

A. Close the meeting pursuant to Minnesota Statute 13D.05, Subd. (3)a to conduct a performance evaluation of City Administrator Jennifer Levitt.

15. ADJOURNMENT

Motion by Council Member Olsen, second by Council Member Thiede, to open the meeting. Motion by Council Member Dennis, seconded by Council Member Thiede to adjourn the meeting at 8:42 p.m. Motion carried: 5-0.

Minutes prepared by Judy Graf and reviewed by Tamara Anderson, City Clerk.