

**MINNETONKA PLANNING COMMISSION
MINUTES**

FEBRUARY 4, 2010

1. CALL TO ORDER

Chair Cheleen called the meeting to order at 6:30 p.m.

2. ROLL CALL

Commissioners Lehman, Sjeklocha, A. Thomas, Adams, and Cheleen were present. Walker was absent.

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, and Principal Planner Susan Thomas.

3. APPROVAL OF AGENDA: The agenda was approved as submitted with a modification provided in the change memo dated February 4, 2010.

4. APPROVAL OF MINUTES: January 21, 2010

Sjeklocha moved, second by Lehman, to approve the January 21, 2010, meeting minutes as submitted.

Lehman, Sjeklocha, A. Thomas, Adams, and Cheleen voted yes. Walker was absent. Motion carried.

5. REPORT FROM STAFF

Gordon briefed the commission on land use applications considered by the city council at its meeting of January 25, 2010:

- Adopted a resolution concerning a 3-lot subdivision of existing properties at 10500 Bren Road East.
- Adopted a resolution approving a conditional use permit for a drive-thru window at 4950 County Road 101.
- Adopted a resolution vacating a portion of public right-of-way easement at 16611 Black Oaks Lane. Gordon noted that the developer's agreement requires the developer to fix any damage done to the street or private property.

Gordon announced that the February 18, 2010 planning commission meeting has been cancelled. The next meeting will be March 4, 2010.

6. REPORT FROM PLANNING COMMISSION MEMBERS

Chair Cheleen described a Land Use Planning Workshop he and Walker attended. Highlights discussed include constitutional limitations that exist in land-use planning; state-enabling statutes; the Metropolitan Land Planning Act; the Minnesota Environmental Review program; the open-meeting law; the 60-day rule to expedite applications; and the planning and zoning discretion pyramid. Chair Cheleen shared two new acronyms he learned: NOPE which stands for “not on planet earth” and BANANAS which represents “build absolutely nothing anywhere near anybody.”

7. PUBLIC HEARINGS: CONSENT AGENDA: None

8. PUBLIC HEARINGS

**A. Items concerning an outdoor seating area at 5765 Sanibel Drive.
(87039.09a)**

Chair Cheleen introduced the proposal and called for the staff report.

S. Thomas reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Lehman confirmed with S. Thomas that the city park property is zoned residential. S. Thomas explained that R1 zoning is standard for city parks and the comprehensive guide plan classifies the property as park. Lehman noted that zoning regulations require the 200-foot setback, but not the proposed use of the property. S. Thomas agreed.

Lehman asked for the distance from the outdoor seating area to the property on the north side. S. Thomas estimated the distance to be 135 feet to 140 feet. Lehman commented that while the parcel may be unbuildable, because of its residential zoning, a variance is required. S. Thomas agreed.

Adams noticed that neighbors are concerned with noise. He asked how many calls to police had been made in the last couple years to Scoreboard. S. Thomas explained that since 2004, the police department received 95 response calls that were not medical or alarm related. None of the calls were due to excessive noise. The majority of calls dealt with theft from vehicles, suspicious activity after hours of operation, and driving while under the influence. Adams asked if complaints regarding parking had been received. S. Thomas answered that there were less

than 5 parking complaints received by the police department during the last 6 years.

Sjeklocha asked if the condition of approval should require litter pick up “every hour” or “periodically”. She saw both used in the report. S. Thomas explained that the ordinance for outdoor seating requires litter pick up periodically, but staff intended the condition to require litter pick up hourly.

Sjeklocha questioned if there is a minimum distance that an outdoor seating area can be from a road. S. Thomas explained that the required setback for an outdoor patio is equal to the required setback for a building. In this case, the required setback is 50 feet from the property line. The proposal appears to meet the 50-foot setback. There is a condition of approval that requires the applicant to provide an as-built survey and plans when applying for the building permit to ensure that the patio would be 50-feet back from the property line.

In response to Lehman’s question, S. Thomas stated that the city does not have ordinance regulations restricting the hours of operation of an outdoor patio. The old Don Pablo’s site did have a seating time cut off due to its proximity to residential housing. The current conditional use permit sets a 10 p.m. deadline for seating in the outdoor patio and so would the proposed conditional use permit.

Lehman asked if S. Thomas knew of a similar use which had a set closing time for an outdoor patio. S. Thomas did not recall an instance during the last eight years when the city set a required closing time for an outdoor patio. Lehman asked for staff’s thoughts regarding a condition that would set a closing time for the outdoor patio. S. Thomas responded that commissioners could add that condition.

Chair Cheleen read the 1999 conditional use permit that states that the “use of the outdoor seating area shall cease by 10 p.m. daily.” He knew it was not previously being enforced that way. The proposed conditional use permit would allow the south patio to have a more relaxed restriction than it currently does. The south patio is the one that creates the problem because there is no building buffering the residential houses on the southeast. He was unsure what should be done, but it seemed that the proposed conditional use permit would be less restrictive. It might be more realistic. Since there is a bar, he guessed the bar side could be open until 1 a.m. S. Thomas stated that the commission could maintain the existing condition or add even stronger language. Chair Cheleen inferred from the letters from neighbors that the south patio did not cease activity at 10 p.m.

Michael "Jim" Jennings, applicant, stated that not many customers stay late. He liked to say that he is very cognizant of the neighbors. The front patio can be used rather than the south patio. He would cooperate. He wants to get along with the neighbors. They are customers, too.

Lehman asked for the restaurant's closing time. Mr. Jennings said 1 a.m. There is no service after 12:30 a.m. Lehman asked Mr. Jennings if he had an idea of a reasonable time to cease use of the outdoor patios. Mr. Jennings stated that mostly just smokers sit outside. Building a new patio in front would be advantageous for everyone.

Chair Cheleen asked Mr. Jennings how he would feel about a condition for the south patio that would require seating to cease by 10 p.m. every day and the proposed patio cease seating by 11 p.m. Mr. Jennings wanted to check with his staff. He is not around the restaurant at that hour.

Chair Cheleen noted that the planning commission's action is a recommendation to the city council.

The public hearing was opened.

Paul Hines, 11112 Abbott Lane, stated that his townhouse is about 150 yards to 250 yards away from the property. He was not speaking on behalf of the association or the board. His point of view is shared by his neighbors. As it was 10 years ago, his issue is basically a noise issue. Some of the townhouse owners have been dealing with an increase in the amount of noise due to the conversion of the restaurant from a non-liquor-serving restaurant to a liquor-serving restaurant, the addition of outdoor seating, and increase in the amount of emergency vehicle traffic caused by the added school facility down the road. Mr. Hines stated:

- Agreements were made 10 years ago between neighbors and Mr. Jennings. Since then, the neighbors have learned to live with noise associated with the restaurant.
- He hoped the noise would occur on the west side.
- Homeowners call the business establishment with complaints. Maybe they would be better off calling the police department.
- He wanted a reasonable agreement that would require the noise to stop at a certain time.
- The noise did not stop at 10 p.m. The establishment makes a legitimate effort to stop seating customers outside.

- He discovered that the city does not have an ordinance regulating where smoking may occur. Smokers at Scoreboard have retreated to the south patio. They stay late and are able to be served a beverage after 10 p.m. Loud noise often occurs until closing.
- When the establishment is called, the noise is reduced or eliminated.
- He was not against the expansion as long as the expansion does not further contribute to the late noise.

David Payne, 5912 Carter Lane, has known Jim Jennings for 40 years. Mr. Payne owned Al's Bar in St. Louis Park. He stated that all of Jim's restaurants have been very well run, have great staff, and are an asset to their communities. He has been a customer of all of his restaurants over the years, especially Scoreboard and Jimmy's. He stated that:

- He does not hear noise from Scoreboard from his deck.
- He had a restaurant with outdoor seating located 150 feet from residences. He faced the speakers toward the building and never had a noise complaint. There are ways to monitor and control noise.
- The west side patio would have a noise buffer. The noise would travel toward Shady Oak Road.
- Shady Oak Road has become so busy that the noise factor from Shady Oak Road would be more of a concern than any noise from Scoreboard. Shady Oak Road will be even busier now with the completion of construction.
- The majority of neighbors he spoke with are customers of Scoreboard and support creation of the west patio. The other patio is covered by a roof and they want one in the sun. In the long term, it would benefit everyone in the area.

Mr. Jennings added that he is not crazy about spending the money for the patio, but business dictates keeping up with competition. His reason for adding the patio is to provide a better dining experience. That occurs most often between 5 p.m. and 9 p.m.

No additional testimony was submitted and the hearing was closed.

Adams felt the request is reasonable. The location of the proposed patio would be buffered by the building. He had no problem with the variance allowing the proximity of the patio to Shady Oak Road. He opposed the proposal because of the lack of parking. He was there last Friday night at 5 p.m. Both parking lots in

front of the Sun Dial Center and behind Scoreboard were full. He could not find a place to park. The only available stalls were the two for the liquor store and the dry cleaners. He was shocked to see people walking down Bren Road into the back parking lot of Scoreboard. He guessed the customers parked in the District 287 lot that is behind the Sundial Shopping Center. Parking is not allowed on Bren Road at that point. According to city ordinance, the area does not meet parking requirements by 70 spaces. Adding outdoor eating would not help the parking availability. Parking needs to be planned to accommodate a Friday night at 5 p.m. There is an unsafe condition right now. Adding additional seating would increase the safety hazard. He did not support the proposal.

Chair Cheleen understood the parking issue and did not disagree with Adams. He visited the site today at 1p.m. Parking stalls from the entrance on Shady Oak Road and down were full, but there were available stalls further out. He wanted to support the proposal, but with the condition that the south patio have no seating after 10 p.m. every day.

Lehman agreed that it has been a challenge for him to find a parking space when patronizing the site. He found the same challenge when he visited the Gold Nugget. He was not sure he would be ready to put property owners on notice that unless parking issues would be fixed to not expect to have a variance or conditional use permit for an improvement approved. He agreed with Adams' concerns with the parking, but was not sure he could use that as a basis for denying a conditional use permit request as presented. There should be a reasonable time limit set to allow outdoor seating. Neighbors should be able to expect a time when the noise would be eliminated or reduced significantly. He supported a time limit on all use in addition to a time limit when seating would be allowed in the outdoor patios.

Sjeklocha agreed with Lehman. She wants to see the south outdoor eating area be closed totally by a specific time. The current conditional use permit set 10 p.m. as the time for all activity to cease. She was comfortable with the resolution for the west patio. She agreed with Mr. Jennings' statement that people like to eat between 5 p.m. and 9 p.m. She ate dinner at Scoreboard last night. She favored requiring hourly litter pick up.

A. Thomas leaned toward requiring time limits for seating. He was comfortable with limits on both or one of the patios. He remembered he was involved in the discussion 10 years ago. It was a hard decision because most customers come there to eat. After the eating crowd, there is more of a drinking crowd. He sympathized with the neighbors. The compromise is the time limit. He did not care if it would be on one or both outdoor patios. The eating crowd is not as loud

as the drinking crowd. He supported the 10 p.m. time limit. He appreciated Adams' concern regarding parking, but agreed a can of worms could be opened all over the city if existing and approved parking conditions would be used as grounds for denial. There are more and more restaurants requesting outdoor seating. In general, he favored less parking and more green area. He was more comfortable going with either or both outdoor-eating areas with a 10 p.m. closing requirement. It can be a condition of approval and it can be enforced. He encouraged residents to call the police for in-progress violations. Then staff will have a record and be able to advise commissioners and the city council.

Chair Cheleen recognized that most commissioners agreed with a 10 p.m. cut off time for both of the patios or just the south patio.

Sjeklocha moved, second by Lehman, to recommend that the city council adopt the resolution on pages A27–A31 of the staff report with the changes provided in the change memo dated February 4, 2010 and the addition of a condition to require “hourly” litter pick-ups and addition of a condition to cease all use of the south outdoor eating area by 10 p.m. every night. This resolution amends and replaces an existing conditional use permit for outdoor seating areas at the Scoreboard restaurant at 5765 Sanibel Drive, with a residential setback variance from 200 feet to 124 feet.

Approval is based on the following findings:

- 1) Aside from the above described setback variance, the proposal meets the required conditional use permit standards.
- 2) The intent of the setback requirement as it relates to outdoor seating is to minimize the impact seating may have on residential neighborhoods. The proposed seating area meets this intent and is, therefore reasonable.
 - a. Shady Oak Road, a four-lane street, would separate the outdoor seating area from the residentially-zoned properties.
 - b. The two closest residentially-zoned properties are located directly west of the outdoor patio. One is parkland, Lone Lake Park, which is owned by the city. The second is privately owned undeveloped residential property. In addition, severe slopes and Woodland Preservation areas on the park property and the vacant property to the north, would significantly limit development potential.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, the following occur:
 - a. The existing cross-parking easement between the Sundial and Scoreboard properties must be submitted for review and approval of the city attorney. The city attorney may require an update to the existing cross-parking easement.
 - b. Submit a survey detailing the location of property lines, the 100-year storm elevation, the existing building and proposed outdoor seating area. The proposed seating area must meet all minimum setbacks from property lines and 100-year storm elevation.
 - c. Submit a letter of credit or cash escrow 150% of an estimated cost or 125% of a bid cost to complete landscaping as indicated on the Amendment to Conditional Use Permit plan date-stamped January 5, 2010.
 - d. This resolution must be recorded with the county and a copy of the resolution must be returned to the city.
- 2) Outdoor seating areas on the site must be maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Phase 1 site plan/floor plan, for the south side outdoor seating area, dated June 4, 1999. Attached to this resolution as Exhibit A.
 - Amendment to conditional use permit plan and elevations, including landscaping, for the west side outdoor seating area, date-stamped January 5, 2010. Attached to this resolution as Exhibit B.
- 3) The outdoor seating areas must be surrounded by an uninterrupted enclosure, unless as required by the fire marshal.
- 4) The outdoor seating areas must be equipped with refuse containers and patrolled hourly, during the restaurants hours of operation, for litter pick-up.
- 5) Speakers or audio equipment which is audible from adjacent parcels is not permitted.

- 6) Customers may not be formally seated by restaurant employees in the west outdoor seating area after 10 p.m. Sunday through Thursday or after 11 p.m. Friday and Saturday. All activity must cease in the south outdoor seating area by 10 p.m. every day.
- 7) Existing exterior trash and recycling storage areas must be enclosed with materials compatible with the principal structure.
- 8) The outdoor seating areas on the south and west sides of the building must meet minimum fire code standards as required by the fire marshal. Violation of the fire code will result in penalties as outlined in City Code 1310 and may include closure of the outdoor seating areas.
- 9) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 10) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 11) The applicant must agree to these conditions in writing.
- 12) This resolution repeals and replaces Resolution 99-125, adopted by the Minnetonka City Council on July 12, 1999.

Lehman, Sjeklocha, A. Thomas, and Cheleen voted yes. Adams voted no. Walker was absent. Motion carried.

Chair Cheleen stated that an appeal of the planning commission's decision must be made in writing to the planning director within 10 days.

9. ADJOURNMENT

A. Thomas moved, second by Adams, to adjourn the meeting at 7:35 p.m. Motion carried unanimously.

By: _____
Lois T. Mason

Planning Secretary