MINUTES
SPECIAL JOINT PLANNING BOARD & CITY COUNCIL MEETING

JUNE 29, 2023

Vice Chair Jean Soine called the meeting to order at 6:00 p.m. Planning Board members present were Josh Hellermann, Randy Christman, Jacob Bertram, and Katy Westlund. Council members present were Mayor Shawn Reinke, Megan Brick, Paul Thielen, and Neil Herzberg. Others present were Tariq Al-Rifai, City Administrator; Kristin Leither, Social Media Specialist; Bill Spooner, Spooner & Glenz; Brad Mehlhop, Building Official; Cody Haakonson, Police Officer; Nathan Bork, Tanya Levinski, Judy Kulzer, Jen Kulzer, Virg Kulzer, Tom Osenfrezh, Doreen Miller, Joe Miller, Kris Nindeeson, Dick Butler, Robb Hoiseth, Alan Bear, Jean Nichols, Justin Hoppe, and Patty Herzberg.

Motion was made by Hellermann to approve the minutes from the May 31, 2023 Special Planning Board meeting. Seconded by Christman and unanimously carried.

Soine explained that Reinke will moderate the public hearing. Soine will take over the Planning Board Meeting after the hearing is closed and the Planning Board will make their recommendation. Reinke explained that Council will not make a vote tonight, they are there to listen and answer questions.

INFORMATIONAL

Mehlhop reported that he is working to close permits from 2020. He has checked in on them and most either work full-time and are doing the project themselves or are waiting for materials. Soine reviewed the CCLD Review Newsletter and the next Planning Board Meeting will be Monday, July 17, 2023 at 6:00 p.m.

PUBLIC HEARING – ORDINANCE NO. 43, 3RD SERIES

Reinke opened the public hearing at 6:05 p.m. He went over the public hearing guidelines. Reinke stated the hearing is to discuss whether to amend the Zoning Ordinance regarding the height of buildings in the I-2 zone. Building height would be increased from 45 feet to a max of 75 feet and a storage silo height would be increased from 90 feet to a max of 100 feet. This issue came up from revising the Zoning Ordinance over the past few years. The City has previously issued variances if someone wanted to build something that didn't comply with the ordinance. They have amended the ordinance for residential zones due to a variance request that was denied. AMPI is planning to build some taller silos and Nature Energy plans to build higher than the current ordinance allows. Per the advice from their City attorney, building, and zoning officials, the Council's position is to only grant variances if they can't meet the specific requirements as stated by the law, which many requests don't. This is something that would be discussed regardless of Nature Energy's plans to build in Paynesville.

Al-Rifai researched the industrial building height limits of 16 surrounding municipalities. Those height restrictions range from 35 feet to 85 feet. These municipalities also just issue variances if someone wants to build higher than their ordinance allows. Al-Rifai explained that the City wants to be competitive with the surrounding area to attract businesses. This amendment is

just for building and storage silo heights. Smoke stacks, towers, movie theater screens and other structures are completely separate.

Nathan Bork expressed concerns about Nature Energy since his property would be close to the location they plan to build their facility. He is concerned that he didn't get any notification about the plans. He went over his education and is worried about any hazardous byproducts from the process. Bork asked who went to Denmark, what the legal requirements are for notifying neighbors of such products, and how the Biden administration is involved in trying to push this.

Reinke clarified that Nature Energy has not received any approval from the City yet. This meeting is in regards to the zoning ordinance and not about whether Nature Energy choses to develop in Paynesville. Nature Energy is looking to privately purchase property north of the City. If that purchase goes through, then Nature Energy will need to rezone the property in order to fit the industrial needs, which will involve another public hearing. They will then need to get MPCA (Minnesota Pollution Control Agency) clearance and work with other regulatory agencies. Once Nature Energy gets clearance from MPCA, then they will come back to the City to apply for a conditional use permit. If the Council approves the conditional use permit, that is when Nature Energy would have final approval to operate in the City. The conditional use permitting process would include ensuring there are appropriate roads for their trucks and that smell is not an issue. By Reinke's estimate, a conditional permit application is eight to twelve months out from now. Discussions about Nature Energy will take place at a later date, but tonight's meeting is just about the height amendment.

Alan Bear, who lives on the lake, spoke of his concern for the skyline. He asked what kind of community Paynesville is and if they were creating an environment where people want to be. Bear brought up that there have been lawsuits over buildings blocking the lake view in some communities. This could also affect the tax value of some properties. Bear asked if the police and fire departments are equipped to handle emergencies in taller buildings. He is also worried that passing this amendment will open doors for taller buildings in other zones.

Reinke read a letter submitted by Barbara Schmit. She asks the Planning Board to vote no to the amendment. She asked if there have been any requests to change the ordinance and has not gotten an answer. She was told it was proposed at the advice of the City Attorney, but would still like to know the answer stating that facts and numbers are important to support any changes. She sees a new ordinance as a blanket slate for the proposed I-2 zone where there will be no limits on any structures. Schmit believes structures over the current height limits should go through the variance process as they do now.

Reinke read another letter submitted by Elizabeth Lahr. She asks the board to vote no on the amendment. She sees the new ordinance as a blanket slate for the proposed zone where there are no height limitations for any structure. She feels they should go through the variance request and asked what kind of community the Council wants Paynesville to be and how the proposed amendment supports that.

Joe Miller stated he sees this as a blanket policy that the City doesn't need. Other cities do variances and he doesn't see why Paynesville can't do the same. Justin Hoppe stated that Melrose and Albany seem to be growing just fine by doing variances.

Robb Hoiseth said there has been a lot of things on social media and it would be good for the Council to put out the pros and cons of Nature Energy moving to Paynesville to get people to support the project. He feels the planned location is really close to the river but he is interested in the project. Hoiseth feels there should be more in the Paynesville Press to help inform residents.

Judy Kulzer said that she is a long-time resident and she has seen the downtown fail. She feels that this community should be proactive in attracting businesses to town. Regarding the plant being near the river, her husband worked for Cold Spring Granite which takes water from the nearby river and they have to test multiple times a day that what they put back in the river is cleaner than what they took out. They are also monitored by the EPA. There are all sorts of checks and balances that would apply to Nature Energy as well. Kulzer encouraged people to attend the meeting next week where Nature Energy representatives will be present to answer questions. She doesn't want to see this tear the community apart.

Doreen Miller said she is not against green energy, she just doesn't want green energy in her City. She attended a meeting last Sunday where information was given out that stated a lot of farmers don't want this since they are building their own digesters. She feels there has been a lack of information and transparency regarding this issue coming from the City. She also asked why no one from the Press was in attendance tonight.

Reinke responded that Mike Jacobson from the Paynesville Press said he would be watching the livestream on this meeting on YouTube. The City can't dictate what the Paynesville Press decides to print, but Jacobson was hoping to have an article about Nature Energy in next week's paper. Reinke also stated that there will be a public session on July 7th at 6:00 p.m. at the Highschool Auditorium with Nature Energy present to answer questions.

Reinke addressed the question of why the City doesn't just issue a variance. He explained the City used to just sign off on any variances, this practice opens the City up to lawsuits. A variance should only be granted if the land has unique circumstances that makes it impossible for the owner to follow the ordinance. Very few variance requests are brought up because the land itself is the issue. When the City Council revised the Zoning Ordinance they made it clear that they would start following the law when it came to variances. Like Bear spoke about, cities are getting sued because they granted variances and zoning regulations are being violated.

Spooner reiterated that for variances to pass it has to be a circumstance of the land that justifies it, not personal circumstance or just the want to build differently. Almost nothing about the land would justify a height variance. Spooner stated that cities that grant height variances would lose every time if they were sued. Variances are not the legal way to accommodate people, the right way is to adjust the zoning ordinance to meet the needs of the individual districts.

Reinke answered some questions that came up regarding who went to Denmark, Chuck DeWolf, the City Engineer, Council member Brick, Council member Herzberg, and City Administrator Al-Rifai where the ones who went to visit the facilities. Bolton & Menk, Inc. paid for DeWolf's travel expenses and the others were funded through the City's Economic Development fund which mostly consisted of grant money and interest made from EDAP loans. Tax payer money was not used for the trip.

Regarding the Biden administration's involvement, you will have to ask the Biden administration themselves. Regarding requirements for notifying residents of a new business, the City does not need to send notices for a new business unless a conditional use permit is applied for. If a permit is applied for then all property owners within a certain radius will be notified and informed of a date and time for a public hearing which will be set by the Planning Board.

Reinke agrees that the Council could have done something sooner, but they are still a good year out from anything breaking ground. Nature Energy has been planning an open house for awhile and have finally set a date for a presentation. The Nature Energy project still has a long way to go and there are questions that the City can't answer yet and they need to make sure they get answers before anything is approved. The Council knows that they need public opinion before moving forward with the company. The City has not given the green light on anything yet and nothing will be happening in the near future.

Reinke reiterated that this meeting is just regarding the height amendment to the zoning ordinance. This will only affect buildings and silo heights in the I-2 zone. Smokestacks, monuments, movie theater screens and other structures are completely separate and will not be changing. The Council has not been trying to hide information, the meetings are public and the Press has published editorials about Nature Energy submitted by Council members.

It was asked what the Council's vision for Paynesville is. Reinke said that Paynesville is a town and country community and they need to continue to embrace the urban and rural environment they live in. That means working with City and Township residents and those that visit and those that farm in the community in order to grow. The last census revealed that the local population is declining. In order to grow they need to become an inviting city. That doesn't mean signing blank checks so businesses can do whatever they want, but they need to know that the Council is willing to work with them and come up with reasonable regulations.

Reinke confirmed that APMI's silos are already over 80 feet tall. This amendment would make right what APMI has already been approved for and allow them to continue to grow as the third largest employer in the City. Reinke believes this amendment to the zoning ordinance is appropriate knowing that there will be ample time to talk about Nature Energy.

Herzberg explained that currently, the I-2 zone only consists of AMPI and Cenex. Reinke stated that Nature Energy will have to apply to re-zone the land they want to build on, which will include further hearings. Herzberg also mentioned there are plans in case of leaks but those would be better addressed by Nature Energy. He also asked Reinke about the concerns about police and fire response for higher buildings. Reinke stated that since it is industrial, it will not affect the City's population and so the police should not have to make any significant changes. Regarding the Fire Department, Mehlhop asked Chief Soine about the recommended heights to which he has no concerns about. If the department would need special equipment, they have a mutual aid contract and would easily be able to get the resources they need.

Brick has heard questions about ladder trucks and pointed out that there are buildings in Minneapolis that are several hundred feet taller than the tallest ladder truck in North America. So, building height is not dependent on ladder trucks. There has also been talk about location of businesses. A lot of it involves sales of private property which the Council has no say in.

People can sell their property to whomever they chose and property owners can build what they want within the ordinance requirements. Brick said there are industries that require City water rather than building a well and that will affect where they chose to build. Thielen said this is a slow first step and there will be more meetings to answer everybody's questions and speculating will not help anyone.

Bork asked how the new building and silo heights will affect the airport and what Nature Energy will be requiring. Al-Rifai stated that the maximum building will be around 65 feet, the tallest point of their structure will be their smokestack. Brick stated that the smokestack will have to follow EPA regulations which are based off of proximity to people and will be determined once they have land purchased. Al-Rifai stated regarding the airport, Nature Energy will need to get the ok from the FAA, but as far as he is aware there shouldn't be an issue.

Bork also asked if the conditional use permit was required for possible safety and pollution reasons. Reinke responded that the conditional use permit is a requirement under the City's zoning ordinance for a business like this to operate. The City will be looking at things that the Council and residents are concerned about and making sure there are contingency plans. The MPCA will make their recommendations and the City will reaffirm those recommendations as well as work with traffic control and things of that nature.

Bork asked how Nature Energy could affect property values. Reinke responded that he is not sure and that is something that cannot be measured at this point, but this meeting is for the zoning ordinance. There will be more answers regarding Nature Energy at a later meeting.

There being no further comments or questions, Reinke closed the Public Hearing at 7:08 p.m. and Soine re-opened the Planning Board meeting.

ORDINANCE NO. 43, 3RD SERIES

Westlund stated that the Planning Board did not invite Council to this meeting it was decided for them. Soine pointed out that boards are not asked, but are directed by the Council to hold meetings and make recommendations. Westlund then went on to say that she moved to Paynesville for the safe community and amenities available. When she moved she learned she couldn't have chickens so she proposed an ordinance to the Council, but it was tabled for two years. Westlund claims that if members vote yes today they are participating in a sub diversion of democracy since this is absolutely for Nature Energy. She cites Section 25A that mentions chimneys and other structures would not be included in the principal height and not subject to the height limitations. Which Soine pointed out is already a part of the ordinance and would not be changed regardless of their decision tonight, this meeting is just about the amendment to building and silo heights. Westlund continues to say that from a design perspective, the only things that should be above the treetops are church steeples and major institutions. She states that people should not have a blank check to build as high as they want and urges member to vote no.

Hellermann stated there have been a lot of things said tonight, but regarding the ordinance he is ok with the change. The other stuff needs to be talked about at a different time. Bertram reminded everyone that the Board is hear to just make a recommendation and that a decision

has to be made. Council has to make the final decision and comments can still be brought up later.

Motion was made by Westlund to table all issues and ordinances, ordinance changes that will turn or benefit Nature Energy until we come to a comp plan where the community can determine a plan forward for the community of Paynesville and what we want to be for the future. Motion died due to lack of a second.

Motion was made by Hellermann to approve the amendments to Chapter 36 Section 36-49 regarding I-2 height requirements and recommend such to the City Council. Seconded by Bertram and carried 4:1 (Westlund, no; Hellermann, yes; Bertram, yes; Christman, yes; Soine, yes).

There being no further business, the meeting was adjourned at 7:23 p.m.

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Tariq Al-Rifai, City Administrator