



**MINUTES**  
**CITY COUNCIL PUBLIC HEARING**  
**December 7, 2010**

**CALL TO ORDER**

The public hearing was called to order by Mayor Gilbert at 5:10 pm.

**Present:** Mayor: Randy Gilbert; Council: Sam Rettinger, Sharon Henderson, Brian Carpenter, and Liz Olson

**Staff Present:** City Administrator: Terrance Post; Public Works Director: Marv Wurzer; and Special Counsel: Arlo Vande Vegte

**Absent:** None

**Others Present:** Shane and Kris Rudd, Elite Auto (2325 West Wayzata Boulevard); and Rick Perry, Perry's Truck Repair (525 Brimhall Avenue)

**APPROVE AGENDA**

*A motion was made by Olson, seconded by Henderson, to approve the Agenda as presented. Ayes: all.*

**PUBLIC HEARING**

Mayor Gilbert stated that the purpose of the hearing was to hear and receive information about 525 Brimhall Avenue and 2325 West Wayzata Boulevard with respect to City Zoning Code, to make factual findings, and to discuss what, if any, code enforcement proceedings should be undertaken.

Administrator Post referred Mayor and Council members to a bench handout distributed to them which contained copies of March and April Planning Commission meeting minutes, copy of the notice sent to the owners of both properties being discussed, correspondence from Elite Auto requesting postponement of the public hearing due to scheduling conflicts, and three letters of support for the Elite Auto business.

Post clarified that the purpose of the hearing is to gather information and is focused on obtaining answers to three questions from the affected property owners. The City has retained Special Counsel Arlo Vande Vegte to assist and advise the City in this exercise. Post reviewed the history behind the hearing's purpose, noting that discussion of Zoning Code compliance was initiated when the owners of the business at 2325 West Wayzata Boulevard presented City staff with a form from the Minnesota Department of Motor Vehicles in fall of 2009. The form required City staff to indicate by checking a box whether or not the business, Elite Auto, was in compliance with City Zoning requirements.

Planning Consultant Ann Perry was engaged to review the files and support a conclusion in terms of zoning compliance, and it was the conclusion of Ms. Perry that Elite Auto was not in compliance with a variety of zoning provisions. The primary zoning compliance issue was one of an illegal use of the property. The owners of Elite Auto did appear before the Planning Commission to discuss the zoning compliance concerns; however, their discussion centered largely on the site conditions and site plan issues. The Planning Commission recommended the Council review the zoning compliance issues as well. The City Council focused on the central issue of the use of the property as a

junkyard or wrecking yard as defined in Zoning Code. Meetings were initiated with the business owners and their legal representation to discuss the compliance matters, but further discussion was suspended temporarily due to the City entering into an RFP process for a City Attorney as a result of unrelated conflict of interest concerns. The Council elected to appoint Arlo Vande Vegte as Special Counsel to avoid further delays in addressing the zoning compliance issues outstanding.

Special Counsel Vande Vegte advised that the first step in the evening's hearing process should be to address the written request from the Rudds to postpone the public hearing as business owner Dick Rudd is out of town, their counsel was unable to be present to represent them, and they felt they had not received adequate notice of the hearing. He noted Shane and Kris Rudd were in attendance and recommended the Council address the Rudds to determine whether they want to proceed with the portion of the hearing regarding their property, or whether they would desire a continuance of their portion of the hearing. If the Rudds desire their attorney to be present prior to responding to the questions to be asked of them, it is their right to have an attorney present and he advised the Council continue the portion of the hearing pertaining to their property.

Mayor Gilbert desired to be on record as stating the hearing's purpose was to gather facts and the three questions to be posed are straightforward. He had heard over the last few weeks that the City is trying to push a business out of town and emphasized that could not be further from truth. The Council is seeking to discuss facts and come to an amicable solution.

Shane and Kris Rudd discussed their concerns about participating in the hearing at this time without counsel or the business owner, Dick Rudd, able to be present; and continued to question the purpose and timing of the hearing.

Mayor and Council members expressed frustration at the Rudds unwillingness to move forward with the hearing and reiterated that the process was initiated by Elite Auto at the time they presented the City with a State form requiring signature. It was pointed out that the Rudds could request their attorney respond in writing on their behalf if desired, and that means of communication are available for the Rudds to be in contact with Dick Rudd and their legal representation. Mayor Gilbert stated that the purpose of the hearing process was to establish clarity regarding the uses at the impacted properties.

Counsel Vande Vegte commented that the City has a responsibility to the enforcement issues and the hearing process is not about trying to put anybody out of business. The hearing is to solely address the three questions identified in the hearing notice. The City desires to conduct the matter fairly, consider all the issues, and arrive at a rational conclusion.

Discussion continued at length with the Rudds regarding past meeting efforts and a timeframe for continuance of their portion of the public hearing, taking into account their concerns about availability of legal representation and owner Dick Rudd for attendance.

*A motion was made by Carpenter, seconded by Henderson, to continue the portion of the public hearing addressing 2325 West Wayzata Boulevard until further discussion on December 21, 2010 at 5:00 pm. Ayes: all.*

#### **Property at 525 Brimhall Avenue**

Counsel Vande Vegte invited Rick Perry, owner of the property at 525 Brimhall Avenue, to present the history of his property and explain what it has been used for.

Rick Perry, Perry's Truck Repair, described the scope of his business in detail. Activities on the site include truck repair, welding, sandblasting, towing, auto body repair, scrap metal sales, and vehicle recycling. He responded to Counsel Vande Vegte's questions regarding vehicles stored on the property in an unusable condition, how long Mr. Perry's business has been towing vehicles for metal recycling, the timing and purpose of the screening fencing installed in 2003, and how his business activities have changed over time since Mr. Perry's addition was constructed in 1974. Upon additional questioning by Council member Carpenter, Mr. Perry clarified that at a given time he has approximately 10 to 15 vehicles on site without current license that are scheduled for recycling and turn over in about a month's time, and defined what constitutes product inventory for his business.

Counsel Vande Vegte encouraged Mr. Perry to submit any other written findings he would like to share with the Council, and such findings could be sent directly to his attention.

**ADJOURN**

Hearing no objection, Mayor Gilbert adjourned the public hearing by general consent at 6:09 pm.

Respectfully submitted,

Terrance Post  
City Administrator