



Shakopee Board of Adjustments and Appeals

Minutes

April 7, 2022

7:00 PM

City Hall, 485 Gorman St.

1. Roll Call

Chair Forsythe called the meeting to order.

Commissioners present: Josh Forsythe, Jesse Lara, Daniel Olson, Bennet Olupo, Noreen Reding, Kent Robbins, Ashlee Sepulvado

City staff present: Director of Planning & Development Michael Kerski

2. Approval of Agenda

Commissioner Noreen Reding made a motion to approve the agenda, seconded by Commissioner Kent Robbins and the motion passed.

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3. Call for Notarized Affidavits, Proof of Neighborhood Meeting and Sign in Sheet for appropriate Public Hearings

4. Recognition by Board of Adjustment and Appeals of Interested Citizens

5. Consent Business - (All items listed in this section are anticipated to be routine. After a discussion by the Chair there will be an opportunity for members of the BOAA to remove any items from the consent agenda for individual discussion. Those items removed will be considered following the public hearing portion of the agenda. Items remaining on the Consent Agenda will not be discussed and will be approved in one motion.)

Commissioner Kent Robbins made a motion to approve the consent agenda, seconded by Commissioner Bennett Olupo and the motion passed.

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5.A. Meeting Minutes of March 3, 2022.

6. General Business

A. PUBLIC HEARING: Conditional Use Permit For a Vehicle Service and Repair Operation at 612 1st Avenue East

Commissioner Kent Robbins made a motion to open the public hearing, seconded by Commissioner Noreen Reding and the motion passed.

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Mr. Kerski asked that the board to table the public hearing

Commissioner Kent Robbins made a motion to table the public hearing, seconded by Commissioner Ashlee Sepulvado and the motion passed.

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Commissioner Kent Robbins made a motion to take off CUP from table and open public hearing, seconded by Commissioner Bennett Olupo and the motion passed.

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Mr. Kerski presented Midas Muffler 612 1st Avenue East CUP and details.

Commissioner Sepulvado asked if they will maintain their current site. Mr. Kerski said that they will be moving. He stated that the applicant is there and that they don't currently own their site but I believe they are potentially purchasing but they can address that.

Commissioner Sepulvado asked that approval is based on making recommended changes.

Mr. Stevie, owner of Midas introduced himself and why the move to the new building. They are out growing their current spot, the current building has several issues, they don't own it and they want to own their own building, with the biggest issue is parking. There are only four parking spots and then they have to park on the street during the day. The new property will give them 27 parking spots and they will own the building.

Commissioner Sepulvado asked how many service stalls would be at the new location. Mr. Stevie they would have two more then they currently have. They currently have six.

Commissioner Robbins asked if they were steadily busy with the business. Mr. Stevie said it was amazing how busy they are and they have grown 38% year to date.

Commissioner Reding asked where the parking be around the building or on street parking and Mr. Stevie stated it will be around the building.

Commissioner Sepulvado said how happy she was for him and asked if they are adding employees and Mr. Stevie said they would be adding two technicians and adding a service writer or cashier in the front. She asked what their timing was based on construction and lease of his current spot. He said it would depend on building permits. He said that they are ready to go. They have contractors in place.

Commissioner Robbins asked if they would be going full tilt by June or July. Mr. Stevie said he would loved to be going that fast. Robbins and ready for business by fall. Mr.

Stevie said that's the plan.

Commissioner Olson asked where they would store parts and what's the plan to store tires since they are so bulky, do they have room to store them inside? Mr. Stevie said currently on the backside where the waiting room is going to be there will be a roll up door is where the dumpster will be, they will have room there. They will work with city staff for an outdoor enclosure for the tires.

Commissioner Kent Robbins made a motion to close the public hearing, seconded by Commissioner Daniel Olson and the motion passed.

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Commissioner Olupo stated that he thought it was cool to see someone who worked at the facility for so long end up owning the business and owning the property, congratulations.

Commissioner Ashlee Sepulvado made a motion to approving Resolution No. PC2022-004, a resolution approving the conditional use permit for vehicle repair and service on their property located at 612 1st Avenue East, subject to the conditions noted in the draft Resolution, seconded by Commissioner Jesse Lara and the motion passed.

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B. Conditional Use Permit Revocation

Commissioner Kent Robbins made a motion to close the public hearing, seconded by Commissioner Noreen Reding and the motion passed.

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Mr. Kerski presented a CUP revocation for 7300 CR 101 because of noncompliance. He listed the violations of the compliance violations. He also showed pictures of violations.

Commission Sepulvado asked how many complaints staff received. Mr. Kerski stated there were numerous complaints from city council and surrounding property owners and people just driving by the property.

Commissioner Sepulvado asked if they were provided warnings. Mr. Kerski said that they received a letter late last year notifying them that they were going be revoked. At that time, they said they would clean up the site.

Commissioner Sepulvado asked how long before this hearing had the property known there were issues and Mr. Kerski said months. Staff members have been working on this and were told that the site was cleaned up and all the trucks were moved out and they went out and saw that it was not really true. Staff visited the site again So they made another site visit with an owner's representative and found what the pictures show how the site looks like a couple of days ago. Nothing really has changed.

We were also alerted by the city's environmental staff that they found oil and grease floating on the surface water out there, so it was not being properly stored. So our engineering staff went out there and told them that it needed to be cleaned up. This area is in a sensitive watershed area that's right on top of the river so it is considered a major violation.

Commissioner Sepulvado asked if we pass the resolution what is the penalty. Mr. Kerski stated that they would not be able to use the site anymore. They could clean the site up and come back for a new CUP and meet the conditions for the new CUP whatever those may be. They also have the ability to appeal to the City Council. They have 10 days to file an appeal.

Commissioner Sepulvado asked if they do nothing say they abandon the site. Mr. Kerski doubts the property owner would abandon the site because it is a valuable piece of property. He would likely bring it into compliance.

Commissioner Olupo asked how long they need to wait to appeal. Mr. Kerski said they have 10 days to appeal.

Commissioner Olupo asked how long they must wait before they could reapply for a new CUP. Mr. Kerski it takes 60 days for the process. They would have to clean the property to staff satisfaction before we even recommend another CUP.

Commissioner Robbins asked if the property owner has given any reasons for this. Mr. Kerski said that they had some issues with their tenants but again that is not the city's problem nor the Board's issue. They are required through the CUP to follow the conditions. We have hundreds of these throughout the city, our code enforcement people and our staff keep a pretty close eye on them and when we have a multitude of complaints that's when we go into an enforcement action.

Commissioner Olson asked if they were ticketed for any of the violations. Mr. Kerski stated that we don't ticket it is set up through our code that they receive a letter by certified mail and regular mail a notice of violation and when this reached again a level of revocation, we let them know by regular mail and by certified mail, that is why they get a CUP if they violate it is revoked.

Chair Forsythe asked when they approximately received the first letter. Mr. Kerski said he believed it was around October or November of last year.

Commissioner Lara said if the Board considers moving forward with revocation, they wait the time period, clean up the site, reapply for a new CUP, and we approve it, and this repeats, where does it stop? Mr. Kerski stated that it would get revoked again. This is our process. The City Council did pass a Property Maintenance ordinance that is another layer on top of this that does apply to commercial properties, so you'll be getting a lot more work because the way that the ordinance is set up the Board is the appeal body for any notice that a property owner receives.

You are not taking away the use of the property as a industrial as long as they meet current code. This conditional use is over and above, it's an exception because they promised to meet certain conditions and when they don't they lose those rights.

Commissioner Sepulvado said that there is not a three strikes your out rule it's just cyclical. Mr. Kerski said no. In his five years here this is the first one to be revoked. They get notified, usually in a couple of weeks it gets cleaned up and that's the end of the discussion.

Chair Forsythe asked if the CUP is revoked they cannot conduct business at the site until it is cleaned up, is that correct. Mr. Kerski confirmed that.

Dan Walen, from Shakopee works for Eugene Hansen at the property and this was just brought to his attention about month or two ago about the complaints. Kyle Bigelow from Cargo Van that rents from them now that was one of the big complaints, he was in disagreement with the mechanics over there for using his parking. For the last month in half or two months the property is pretty well cleaned up. We are in the process of sending everything to our attorney to evict three of our renters. Notices of evictions have been delivered.

Chair Forsythe asked Mr. Walen if the pictures they were shown were pretty accurate of what the site currently looks like. Mr. Walen said the motors have been moved because he has personally moved them himself.

Commissioner Sepulvado asked when the motors were moved and he said Monday. He stated Mark Noble was out Tuesday. Commissioner Sepulvado asked Mr. Kerski if the pictures were taken on Tuesday, which he confirmed. She then stated to Mr. Walen, 'you said the engine was moved'. He said he moved it personally.

Commissioner Sepulvado stated but the picture was of the engine still. Mr. Walen said Mark Noble was out there Tuesday and we met him. Sepulvado stated, 'Tuesday comes after Monday so, if you moved it on Monday and he came out on Tuesday, he wouldn't have taken that picture.' Mr. Walen stated that Mark Noble was out there when the motors were no longer out back behind there because I know that I moved them personally. It was either Monday or Tuesday. She then asked, 'then why would he have a photo of it still out there?' Mr. Walen thought that Mark was out there Tuesday morning. I met him myself and Mr. Messenbrink.

Commissioner Sepulvado asked to clarify what is his relation to the owner to the building. He works for him on doing maintenance on a lot of the other properties. She asked if there was a reason why the owner wasn't there. The owner is in Arizona, and he is 85 years old. She asked if there was not a property manager. Mr. Walen said he was the property

manager.

Chair Forsythe asked that Mr. Walen referenced that the property is rented to four different tenants. Mr. Walen explained about his tenants.

Commissioner Sepulvado asked when he received the complaints why did he not address them then? Mr Walen states that he was just informed on one of them. The owner just sent him a copy of the letter the city sent three weeks ago that was sent to him from John.

Chair Forsythe said that the first letter was sent in October according to city staff is that probably right? Mr. Walen said that he actually just received the first letter from Eugene two or three weeks ago on the one complaint. Mr. Walens stated the Eugene is 85 and dementia is starting

Commissioner Robbins said he wanted to understand that the city sent something in October but that Mr. Walen didn't receive anything until two or three weeks ago. Mr. Walen said that he believes that John sent it to Eugene but he just found out about it about a month and half ago whenever he sent it to me.

Commissioner Sepulvado asked why he never addressed it or bring it to your attention sooner. Mr. Walen said that Eugen is 85 and has dementia starting to come in a so he has his good days and bad days.

Mr. Kerski stated that Scott County shows the ownership of the property as Mr. Messenbrink. Somewhere along the line he switched it to Mr. Hansen. We have to notify who the original CUP holder was and the current property owner according to Scott County records that is still Mr. Messenbrink. Mr. Walen stated that he works for Mr. Messenbrink and not for John Hansen.

Commissioner Sepulvado asked if the city was not supposed to be made aware of a change like that. Mr. Kerski said typically property owners inform us but we found out when Mark Noble was out there on Tuesday when Mr. Messenbrink said that it is Mr. Hansen's property. Mr. Walen said that they were thrown under the bus on it.

Commissioner Lara asked that Eugene Hansen is the owner but the notices have been going to John Messenbrink.

Chair Forsythe asked if Mr. Messenbrink is still involved just not the owner and Mr. Walen agreed.

Commissioner Lara wanted to clarify that Mr. Hansen has been getting the notices here. Mr Walen says that he lives in Arizona and travels the world.

Chair Forsythe wanted to clarify that Mr. Messenbrink lives here and has been receiving the notices but has not been passing them on to Mr. Walen and has also failed to clean up the area. Mr. Walen stated that a month ago he was with him with a loader and has been yanking trucks for two days straight.

Commissioner Robbins shared comments about why the board had to consider this action.

Commissioner Sepulvado shared her concerns with what the condition of the site was prior to the pictures that Mark Noble took on Tuesday and there are still violations that need to be corrected. Mr. Walen stated that is why they will move forward with the evictions of some of their tenants.

Commissioner Reding asked how many offices or buildings are out there. Mr. Walen stated there was one building originally and Mr. Messenbrink built four additional building on the empty lot. She then asked the size of the buildings. He said the four buildings are 24 to 28 hundred square feet per shop.

Commissioner Reding asked if they are set up for car repair or for specific kind of business that this might happen again. Mr. Walen stated that this would not happen again. He has done heavy equipment repair in the past and when he got into the shops it made him sick. The buildings are not even a year old. The next tenants he plans on personally inspecting and checking on the conditions of the property.

Commissioner Olupo stated, 'you said that three of the four tenants created the violations,' Mr. Walen said yes. Commissioner Olupo asked, 'can you remind us what you told the tenants' Mr. Walen said that they were told that their leases would not be renewed, which would be in March 2023. The first two, they told them they would let them out of their lease. On Monday they will be filling eviction notices on the other three of the tenants.

Commissioner Olupo asked what they said to the tenants about the violations. Mr. Walen said that they were informed about the time that he was about a month and half ago.

Chair Forsythe asked what paperwork did he see a month and a half ago because you said you just received a letter two or three weeks ago. Mr. Walen stated March 14th.

Commissioner Sepulvado asked Mr. Kerski by revoking this, does it apply to the whole site. Mr. Kerski said that is correct. They own multiple properties here. There is a woodworking shop the first property to the east. The second property Cargo Vango. The third property is this property. The CUP is just for this property. They don't have any other CUP's. I heard the word landscaping, that would require an additional CUP which currently no one has. Mr. Hansen showed up at City Hall last fall stating that he owned the property not Mr. Messenbrink and that he was going to have more tenants and file for more CUP's. Then I said the purpose of the original letter was that you clean up that site first and if you are going to put a landscaping company that's another CUP that you would need. He stated at that time that he had a towing company on the site, which is not allowed.

That first letter said that the towing company requires a CUP, not allowed, there are all sorts of requirements for towing companies in the city. The only way we got that stuff done was we issued a stop work order on the building that was under construction for the wood company and that quickly motivated everyone to get rid of the towing company and anything else that was on the property that was illegal. But it did not get this site cleaned up.

Commissioner Lara asked where Mr. Messenbrink lived in Minnesota and Mr. Walen said he thought Prior Lake. He asked if he was here and was he aware of this meeting tonight and Mr. Walen stated he is not here and thought that Mark Noble mentioned it on Tuesday.

Commissioner Sepulvado stated she had sympathy for what has happened in the background but her disappointed in how they have handled the situation.

Commissioner Kent Robbins made a motion to adopt Resolution No. PC2022-005, revoking CUP Resolution No. PC2021-003 for vehicle service and repair at 7300 County Road 101, seconded by Commissioner Daniel Olson and the motion passed.

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7. Other Business

Mr. Kerski good news that city council was going to look at raising the boards pay. Also the property maintenance ordinance, rental and multi-family ordinance the appeals will be coming to you.

8. Adjourn to Thursday, May 5, 2022 at 7:00 p.m.

Commissioner Kent Robbins made a motion to adjourn to Thursday, May 5, 2022 at 7:00 p.m., seconded by Commissioner Bennett Olupo and the motion passed.

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