

## **August 11, 2008**

The regular meeting of the Mayor and Council of the City of Madison was held Monday, August 11, 2008, at 5:30 PM at the former Senior Center, located at 434 Hancock Street. Present were the following: Mayor DuPree; Council Members Perriman, Blanton, Hunt, Naples, and Booth; City Manager Nunn; City Clerk Thomas; Planner Callahan; Project Coordinator Huff; and City Attorney Reitman.

The meeting was called to order by Mayor DuPree.

Council Member Naples conducted the pledge of allegiance.

**Approval of Minutes of Previous Meeting** – Council Member Booth motion to approve the minutes of July 24 and July 28, 2008, as presented. Naples second. Opportunity for discussion. Vote unanimous. The motion carries.

**Approval of Order of Agenda Items** – City Manager Nunn requested that a request by Madison Contemporary for an encroachment on City right-of-way be added to the agenda. Mayor DuPree said this would be included under the Manager's report. He reviewed the items requiring votes and those items available for public comment.

### **Zoning Hearings**

**Text Amendment – Pertaining to sale of light duty trailers as an accessory use for passenger vehicle retail businesses in C-3 – Mike Conrads** – Mayor DuPree opened the public hearing and explained each side will be given ten minutes for public comments. Planner Jaeck reviewed the proposed text amendment for the sale of light duty trailers as an accessory use for passenger vehicle retail businesses in C-3. Jaeck reported the Planning Commission recommended with a unanimous vote to approve the text amendment as a conditional use. After discussion, Mayor DuPree asked Planner Jaeck to review the six zoning standards relative to the application. After Jaeck's review and after further discussion, Mayor DuPree offered the applicant an opportunity for comments. Mike Conrads, the applicant, said he represents his parents, who own the property, and they want to see the property succeed. He said in the past there has been a great deal of transition on the property. He said this is a way to add another line to increase business. He said the intention is to have a few trailers on display behind the opaque barrier. Conrads said he would suggest a revision to the text amendment regarding the dimensions (Exhibit C (3)). He would recommend that the measurement for the height be changed from nine feet to ten feet and be measured from the ground. Bruce Kelly, President of Horton Automotive, said they are selling small haulers (such as lawn mower trailers). He said they respect the aesthetics of a historic small town and they plan to keep their entire inventory on the left side (south side). Mayor DuPree offered an opportunity for additional comments in favor of the text

amendment. No comments. Mayor DuPree offered an opportunity for comments in opposition to the text amendment. No comments. With no further comments, Mayor DuPree closed the public hearing.

Council Member Naples said the Council recently created a new C-5 zone because of conflict with blurred uses between districts (light industrial, limited commercial, etc). He said the debate centered on the need to compartmentalize and put things where they belong. Naples said he sees this text amendment as going backward and that this new definition of light duty trailers should possibly be an amendment to the ordinance. He said he is not in favor of patching the holes in the roof with the text amendments. Naples also said he questions standard #1 regarding economic viability since there is no evidence that the addition of the trailers is a necessity to the economic viability of this property. Naples said there are two other zones where these trailers could be sold. Council Member Perriman said he is glad to see a business on the property and trying to thrive. He said the text amendment has met the criteria of staff and he said he supports the text amendment. Council Member Perriman motion to approve the text amendment. Booth second. Opportunity for discussion. Council Member Blanton said when the ordinance was passed he recalls that they discussed that additional changes would be required in the future. He said if staff is satisfied with the change in the language that measures the height from the ground level (ten feet) that he would support this revision to the text amendment regarding the height measurement. Mayor DuPree asked Perriman and Booth if they would consider the change in the height measurement as a friendly amendment and both agreed. Council Member Naples said he considers that standard #1 is not satisfied since the property is economically viable as it stands. Mayor DuPree said he would argue the opposite that various businesses have tried to succeed on this property and the repeated lack of occupancy proves this property is not economically viable. Mayor DuPree said the Chamber and other business professionals have advised that businesses must do multiple things to succeed. Naples said there is not proof that the addition of trailers will make a difference. After further discussion, Council Member Booth called the question. Vote 3:2. Council Members Naples and Hunt opposed the motion. The motion carries.

**Zoning Map Amendment – Parcel M20-059 – 805 Park Lane – Request to divide parcel and place the small lot in R-2 from R-1 – Applicant: Jim Davis-** Mayor DuPree opened the public hearing and explained the same protocol would be applied to this application. Planner Jaeck reviewed the application for a map amendment to parcel M20-059 at 805 Park Lane. The request is to divide the parcel and rezone the small lot from R-2 to R-1. Jaeck said the prospective buyers have requested that this parcel be placed in the historic district. This will be considered at a later date. Jaeck reported the land use map and FLUM map show the property as residential. Mayor DuPree asked about the feasibility of moving the sewer easement. City Manager Nunn said the easement could be moved. Mayor DuPree asked Jaeck to address the first compliance issue.

Jaeck said the property had been vacant for twenty-one months and it is not economically appealing as it is and you could argue that developing the vacant piece of property with a home would improve the economic value. Jaeck reported the Planning Commission had voted unanimously to recommend approval of the map amendment. He said they did have questions about the sewer easement. Mayor DuPree offered an opportunity for the applicant to comment. Jim Davis said he was representing his mother through her power of attorney. Mayor DuPree offered an opportunity for comments in favor of the map amendment. No comments. Mayor DuPree offered an opportunity for comments in opposition to the map amendment. No comments. With no further comments, Mayor DuPree closed the public hearing.

Council Member Naples said this map amendment satisfies all the standards. Planner Callahan asked that the effective date of the map amendment be contingent on adding the property to the historic district. Attorney Reitman asked the applicant if he was agreeable to this. The applicant said he agreed. Council Member Booth motion to approve the map amendment for 805 Park Lane with the effective date to be the time that the property is added to the historic district. Naples second. Opportunity for discussion. Vote unanimous. The motion carries.

**Variance Request – Re: parking requirements parcel M08-066 – 242 Thomason Street – Applicant: John Gleba** - Mayor DuPree opened the public hearing with the same protocol as previously. Planner Jaeck reviewed the variance request for off site parking for parcel M08-066 located at 242 Thomason Street. He said this will be annex office. Jaeck said staff considers this a status quo solution. There was only one opposing vote at the Planning Commission Meeting (Joiner). His concern was there were no sidewalks for employees to use from the off-site parking area. The other Planning Commission members did not perceive this as a pedestrian concern since this portion of Thomason Street is a quiet street. Mayor and Council discussed the parking constraints for this property.

Council Member Hunt asked Attorney Reitman if he should recuse himself since he had talked with the property owner about potentially purchasing the property. The property has been purchased and the transaction has been closed. Attorney Reitman said, since the transaction has been completed, it is not necessary for Hunt to recuse himself.

Planner Callahan explained this is a net sum gain. She said there is adequate parking between the two lots and the request will allow for two parking places in the driveway. After discussion, Council Member Naples asked staff to review the standards. After Jaeck's review, Council Member Naples said Jaeck's written report was quite divergent from his oral report. Jaeck said his initial report was a little too harsh. Planner Callahan said presentation at Council is a collective representation of public comments and comments from the Planning

Commission. She said there may be a better approach such as a text amendment rather than a variance, but the applicant has a right to bring the variance for consideration. Council Member Hunt asked about setting a precedent. Callahan said there is a very narrow band of having a similar business with similar circumstances.

Mayor DuPree offered the applicant an opportunity to comment. John Gleba owner of Madison Consulting Group said they have purchased this property. This will be an annex for the current business located at 200 North Second Street. He said they are not adding any employees, but are planning to relocate six employees to the annex. The employees will continue to park at the current location and he said it is only a short walk to the annex. Council Member Naples asked Gleba if he was aware of P-2 parking requirements when he purchased the property. Gleba said he was aware. Council Member Hunt said this is still a residential neighborhood and if they are required to have additional parking, Hunt is concerned about how this would affect the neighborhood.

Mayor DuPree offered an opportunity for additional comments in favor of the variance. Benjamin Biscoglia, co-owner, said when they purchased the property they knew there would be parking issues, but they thought their parking could mirror the Brady Inn. He said they need four spaces and this cannot be done without either a variance or for them to tear down a portion of the building. They need this only on a temporary basis. Mike Conrads of the Brady Inn said they own the vacant lot next door. He said they are great neighbors and they had made an effort to purchase the vacant lot. He said he is in favor of the variance.

Mayor DuPree offered an opportunity for comments in opposition to the variance or questions. David Land asked if the property is sold, where would the six employees park? City Manager Nunn said there is no vesting in the business. He said staff goes through the check list every time a license is requested.

Cassandra McGovern expressed a concern about trees and also asked about the surface there now and what surface would be installed. Mayor DuPree explained that this variance would not require the need for any other surface and would not require cutting any trees. The variance is trying to avoid these issues.

With no further comments, Mayor DuPree closed the public hearing.

After discussion, Council Member Naples said he agrees with not cutting down the trees, but the applicant was aware of the parking standards when the property was purchased and Naples said he is of the opinion that the standards have not been met. Council Member Blanton said according to staff it is not cut and dry that it doesn't meet the standard. He said some of the areas are grey, but sometimes common sense should prevail and the integrity of the neighborhood should be protected. Naples said Council should protect the integrity of the zoning ordinance and he asked Attorney Reitman to comment.

Reitman said the question is whether this would create an adverse precedent. He said staff has indicated that this is a very narrow circumstance. Planner Callahan reviewed other options. Attorney Reitman reviewed the zoning standards.

Council Member Naples said the applicant was aware of the parking constraints when he purchased the property. Mayor DuPree said they must consider what works best for the community. He said there are extraordinary circumstances, but he is also concerned about protecting the ordinance. After further discussion, Council Member Hunt asked about the formula for parking and Planner Callahan explained. Hunt asked Biscoglia what he meant by temporary. Biscoglia explained that as they grow, they must come up with a more permanent solution. Mayor DuPree suggested granting a temporary variance and make the variance not transferable. Attorney Reitman asked the applicant about a temporary variance and an acceptable length of time. Biscoglia indicated three years. Council Member Naples suggested talking with the owner of the drug store about some temporary parking. They indicated they had discussed inquired about this, but the cost was too prohibitive.

Mayor DuPree said this issue is reflective of the entire process and recommended granting the variance request for three years and making it not transferable. City Manager Nunn asked for assurances from the owners that employees would not park at the end of the street. Council Member Perriman motion to grant the variance for three years, variance is not transferable, and parking will not be allowed at the end of the street. Booth second. Council Member Naples urged the Council to vote against the motion and to ask the applicant to come forward with another plan. Council Member Hunt said if Council forces them to do a parking lot, it will force more traffic down a one-lane street and he said zoning rules and ordinances are established to protect the area. Council Member Booth called the question. Vote 4:1. Council Member Naples voted in opposition to the motion. The motion carries.

### **Legal Matters**

**Resolution – Municipal Gas Contracts – Amendments** – City Manager Nunn explained this involves the City granting the Gas Authority the ability to purchase gas in future years. Attorney Reitman said he had reviewed the contracts. He said they are a standard form agreement and resolution. Council Member Blanton motion to approve the resolution, the second amendment to the gas supply contract, and the first amendment to gas portfolio III supplemental contract between the City of Madison and the Municipal Gas Authority and authorize the Mayor to sign. Perriman second. Opportunity for discussion. Vote unanimous.

### **New Business**

**Encroachment on City Right-of-Way – Madison Contemporary** – Liselott Johnsson with Madison Contemporary reviewed their new project downtown at

140 East Washington Street. She said it would be approximately 13,000 square feet of contemporary art. She said it would include a café space, a book store, eight studio spaces and a classroom. She said they are scheduled to open Spring 2009. Planner Callahan said the HPC must approve the fascade. Callahan said encroachment permits will be necessary for the areas on public property such as the extended canopy on the front and a diminished canopy on the side street. The encroachment will include the canopy and the posts. The encroachment on East Washington will be 9 feet 8 inches and on Hancock Street, 8 feet 4 inches. Attorney Reitman was asked to research the indemnification and permits needed and prepare the necessary documents in a draft form for review. This will be added to another agenda. Everett Royal asked to address the Mayor and Council. Royal said the encroachment agreement is not a lease, but an agreement allowing encroachment on public property. The property owner must prove that it is safe and will not endanger the public. Callahan explained that the café is attached to the front and the intention is for people to sit outside and above the sidewalk.

**City Manager's Report** – City Manager Nunn reported Town Park is progressing. The contracts for the Pavilion and the Cottage have been approved. The granite has been chosen for Project 2.2. An open house will be conducted at the Indian Creek WRF on September 25. The public is invited and tours of the facility will be conducted. Nunn said sheetrock is being hung at the Municipal Complex and the landscaper has been installing sod.

City Manager Nunn said International Paper has requested to purchase water from the City. They have installed a wet yard and pump approximately 1,000,000 gallons of water per day. They reclaim the water, but they lose approximately 100,000 gallons of water per day. They would like to extend the City's line under the railroad to their property and install a four-inch tap and purchase approximately 100,000 gallons of water per day. Nunn is recommending proceeding with this request since the City has the capacity. Nunn said no action is required.

City Manager Nunn reported he would like to complete the extension of the water line on Cox Road for approximately \$15,000 - \$18,000. He said this will add water and fire protection to all the residents on Cox Road.

**Report/Summary from Cemetery Open House – Cemetery Stewardship Commission** - Planner Callahan presented a report from the open house conducted by the Cemetery Stewardship Commission. Callahan reviewed the results of survey that was conducted at the open house. Mayor DuPree said all grave sites should be located and marked. Planner Callahan said this had been omitted in error. Mayor DuPree said he thought ultimately there would have to be a secondary access to the Cemetery. Callahan reviewed some alternatives suggested. Council Member Booth said at the open house that she did not perceive a huge ground swell in favor of a secondary access. She

recommended exploring the creative options from the Cemetery Stewardship Commission.

**Other Business of Council** – Mayor DuPree reported the Audit Committee met today. He also said he attended the Board of Health meeting and encouraged the media to assist with reporting on the teen pregnancy issue. Mayor DuPree said he attended a training session on Open Meetings/Open Records. He said we need a retention policy.

**Public Comments**

Mike Conrads suggested a worksession to review the text amendment process.

**Adjournment**

With no further business, Council Member Booth motion to adjourn. Perriman second. Vote unanimous.

Approved: \_\_\_\_\_  
Tom E. DuPree, Jr., Mayor

Attest: \_\_\_\_\_  
Mellie A. Thomas, City Clerk

Date: \_\_\_\_\_