

**CITY OF MASON
COUNCIL WORK SESSION
MAY 23, 2011**

The meeting was called to order at 7:05 p.m. Mayor Prince made opening remarks stating the purpose of the meeting.

ATTENDANCE

The following members of Council were present: Michael Gilb, Christine Shimrock, Rich Cox, Tony Bradburn, David Nichols, and Don Prince. Charlene Pelfrey was absent.

ORDINANCE 2011-13 BETHANY GREEN CIRCLE DISCUSSION

Jeff Forbes explained the format for addressing the topic of discussion tonight. This format includes the nine general standards that a conditional permit must satisfy. He summarized the process beginning with the March 28th Public Hearing up to this point. Jeff stated that the next step is for Council to consider all the information presented at the public hearing and take action. Council is charged with the ultimate decision on this matter and has three options: approve as recommended by Planning Commission, approve with additional conditions, or deny. Council's role is to make this decision based on the testimony and information presented to them at the two sessions of the Public Hearing. They should not base the decision on information gained from outside sources. Council will be acting in a quasi-judicial or administrative capacity. Council will have the choice to amend Ordinance 2011-13 by incorporating any additional conditions at the June 13th Council Meeting. Council discussed the possibility of reopening or holding an additional public hearing in order to include additional credible information gathered outside of the Public Hearing. A public hearing would allow this information to be considered and included as part of the public record. Jeff stated that this has never been done to his knowledge. Brian Lazor stated that a Public Hearing requires 15 day notice to all property owners within 300 feet. Council considered referring the matter back to Planning Commission, since they did not have all the evidence. This is not an option, but would require reapplication by the developer.

Mayor Prince recommended that they consider each of the eight items of concern raised at the Public Hearing.

LIGHTING

Mayor Prince stated that his personal experience with industrial lighting spilling onto personal property is a real issue that negatively impacts residents. He suggested that a condition should be added that prohibits direct light beyond the property line at ground level. Other conditions discussed by council included limiting the hours of operation, lights out when business is closed, security lighting only when closed, and defining security lighting to minimize impact to residential (no 60 foot pole security lighting). Council questioned how light is regulated. Brian Lazor stated that Planning Commission tries to limit lighting to 0.5 foot-candles at the property line.

HEALTH

Councilmember Gilb stated that the most important issue is the health impact and that a condition should be added stating no hazardous substance could be brought onto this property. Mayor Prince stated that there are similar conditions within the city, including the Whippy Dip ice cream business next to the Marathon Gas Station on Main Street. Councilmember Bradburn reviewed documentation on the health hazards of benzene from a legitimate epidemiology study. The document states that low exposures of the known carcinogen, benzene, over an extended period of time has the potential to cause acute leukemia in children. The median urban concentration of benzene is 3-5 micrograms/cubic meter of air, whereas 31 micrograms can be measured at the gas pump. He summarized the 2004 and 2009 studies done in France on this subject which both show a statistically significant risk of developing leukemia to those children living near gas stations. Councilmember Bradburn said that there is a gas spillage every time someone overfills their gas tank and that this gasoline is not captured. Councilmember Gilb stated that one of the standards for granting a conditional use permit require that the use will not be hazardous. Both councilmembers expressed their frustration that this information was not available when the application was considered by Planning Commission. Mayor Prince stated that the information regarding a health issue was raised only at the second session of the public hearing which the developer was not prepared to defend. He discussed the confidence he has in EPA federal regulations to contain fumes and that the City is not in the business of regulating gas stations. The studies done in France were statistical studies not clinical studies and that the City of Mason cannot set health standards. Mayor Prince raised the question as to what should the City do with existing gas stations. Councilmember Bradburn stated that distance is dilution and that dilution is the solution. He believes that gas stations should not be located in a residential setting. Councilmember Gilb would like to err on the side of protecting the citizens of Mason. He stated that although we are not experts on this matter, perhaps a condition might include that the use not be hazardous. Council discussed the challenges enforcing and monitoring this condition.

NOISE

Councilmember Bradburn stated that a noise issue is difficult to control and disturbing to residents. He wondered if any studies have been conducted regarding noise levels emitted from gas stations. Councilmember Cox concurred with the difficult nature of containing intermittent loud noise such as the emptying of a dumpster, which this business would have. Council discussed ways of enforcing noise complaints. The noise ordinance outlines acceptable levels within each zoning district and that each district must contain this level within its zone. Additional conditions pertaining to noise would be difficult to enforce and if they are considered to be excessive could force the City into litigation.

TRAFFIC

Mayor Prince stated that he perceives this as a rush hour related issue with the potential of higher traffic flow. Councilmember Bradburn stated that turn lanes should be a cost to the developer and inquired about the probability of the roundabout. Richard Fair stated that this project should commence in 2013, although not all the funding has been secured. Councilmember Cox had questions regarding the entrance and exit locations so close to the intersection with the traffic volume. Richard Fair stated that locating the entrance opposite of a driveway is considered a safer condition. The Bayer Becker traffic study shows an additional 83 trips (2.4%).

VISUAL

Council felt that the buffer, screening, landscape, etc. had all been covered on this topic. Councilmember Bradburn would like to confirm that the berm/wall does in fact obstruct the view from any residence by viewing the site diagrams and Council should make this an additional condition.

AIR QUALITY

Council felt that air quality was mostly covered under the discussion of health risks with the addition of fumes and odor. Vice Mayor Nichols asked about how the City is prepared to handle a gas fire at any of our gas stations. Eric Hansen stated that each Fire Department apparatus carries 15-20 gallons of foam which is a total of around 100 gallons. Chief Moore stated that his experience with a gas station fire required about 5 gallons of foam.

WATER

Mayor Prince stated that all regulations by the EPA and Corp of Engineers should be enforced.

LEGAL

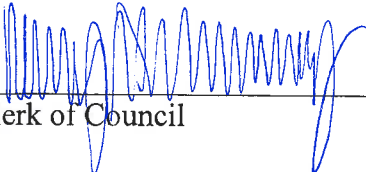
Jeff Forbes reiterated that a denial needs the articulation of what standards have not been met and that all we (and the court) have to work with is the record as set during these proceedings. Look at the standards as set forth in the code, apply the evidence as represented to the standards, and articulate what has not been met.

Earlier in the meeting, Jeff Forbes stated that if conditions are added to the Ordinance that the developer considers excessive, they have the option to file an administrative appeal and request the court to reverse. He also clarified that both the convenience store and gas pumps are conditional uses.


Councilmember Shimrock stated that this process requires the clarity to understand our options and that we may or may not agree. Councilmember Gilb stated that he may request at the June 13th meeting to table the decision on this matter to a meeting where Councilmember Bradburn can be in attendance.

ADJOURN

A motion to adjourn was made by Councilmember Bradburn, seconded by Councilmember Cox.
VOTE: ALL YEAS. TIME: 8:37 p.m.



Clerk of Council



Mayor