

WAITE PARK CITY COUNCIL MEETING**MAY 2, 2017**

A meeting of the Waite Park City Council was held at Waite Park City Hall on Tuesday, May 2, 2017 beginning at 6:30 PM.

MEMBERS PRESENT

Members present were Mayor Miller, Councilmembers Linquist, Schneider, Schulz and Theisen

CITY REPRESENTATIVES PRESENT

City Representatives present were City Administrator Johnson, Deputy Clerk-Treasurer Virnig, Chief of Police Bentrud, Public Works Director Schluenz, Planning and Community Development Director Noerenberg, Attorney Hansmeier, SEH Engineer Wotzka

OTHERS PRESENT

Dan Bemboom, Tim Jansky, John Reed, Matt Duffy, Mae Beeler, Mike Friedman, Sharon Richter, Scott Fuller, Brandon Plautz, Kevin Brink, Teresa Bohnen, Larry Logeman

OPEN FORUM

Mayor Miller invited anyone wishing to speak during the open forum to step forward, but no one came forth.

COUNCIL AGENDA

Motion by Member Theisen, second by Member Schneider, to approve the 5/2/17 Council Agenda as amended.

6.A. (Add) Consideration of Hearing Loop System for Council Chambers

The motion carried unanimously.

1. CONSENT AGENDA

Motion by Member Schulz, second by Member Linquist, to approve the following 5/2/17 Consent Agenda items:

- 1.A. Approved Council Minutes of April 3, 2017
- 1.B. Approved Special Council Minutes of April 10, 2017
- 1.C. Approved Board of Appeal and Equalization Minutes of April 10, 2017
- 1.D. (Pulled for discussion – regarding Resolution for Super America Gambling License for MN Fishing Museum at 29 3rd Street NE)
- 1.E. (Pulled for discussion – regarding Resolution for Super America Gambling License for MN Fishing Museum at 107 28th Ave South)
- 1.F. (Pulled for discussion – regarding Resolution for Super America Gambling License for MN Fishing Museum at 1013 2nd Street South)
- 1.G. Approved Off Sale 3.2 License for Kwik Trip at 458 Great Oak Drive
- 1.H. Approved Off Sale Tobacco License for Kwik Trip at 458 Great Oak Drive
- 1.I. Approved Massage Enterprise License for Laura Frank at 701 2nd Street S.
- 1.J. Approved Memorandum of Understanding with District 742
- 1.K. Approved Resolution on Viking Electric Development Agreement (**RESOLUTION NO. 050217-04**)

The motion carried unanimously.

1.D. RESOLUTION FOR SUPER AMERICA GAMBLING LICENSE FOR MN FISHING MUSEUM AT 29 3RD STREET NE

1.E. RESOLUTION FOR SUPER AMERICA GAMBLING LICENSE FOR MN FISHING MUSEUM AT 107 28TH AVE SOUTH

1.F. RESOLUTION FOR SUPER AMERICA GAMBLING LICENSE FOR MN FISHING MUSEUM AT 1013 2ND STREET SOUTH

Member Linquist questioned if there was a way the City could guide local non-profits to gambling license premises in Waite Park so they are able to receive gambling revenues. It was determined there may be ways, but the non-profits would need to vocalize their interest.

Motion by Member Linquist, second by Member Schulz to approve the resolutions for Super America Gambling Licenses for MN Fishing Museum at 29 3rd Street NE, 107 28th Avenue South and 1013 2nd Street South. The motion carried unanimously. (RESOLUTION NO. 050217-01, 050217-02 & 050217-03)

2. CONTINUED NUISANCE ABATEMENT HEARING – UTILIZATION OF ANDERSON TRUCKING PROPERTIES BY COPART – OLD HIGHWAY ROAD NORTH

This issue was initially reviewed by the City Council at their meeting on April 3rd, 2017. At that time the City Council opted to extend the review to an upcoming meeting to allow time for additional review/consideration and an opportunity to visit the Copart facility in Avon if they chose.

Motion by Member Linquist, second by Member Schulz, to remove the tabling of the Copart nuisance abatement hearing. The motion carried unanimously.

City staff has been coordinating with staff of Copart, Inc., including their legal counsel, on an issue regarding their current use of property owned by Anderson Trucking Service, Inc. and located on Old Highway Road North and Bel Clare Drive. The utilization of the property by Copart has, after review and consideration by staff and the City Attorney, been determined to be in non-compliance with several aspects of the City Code, including but not limited to the storing of junk motor vehicles upon the property. Primarily to facilitate the request of Copart to appeal to the City Council determination that the property is not suitable for use by Copart due to their operations as what is classified as a prohibited "auto reduction yard" within City Ordinance, a notice and order was sent by staff to Copart on March 1st, 2017, advising of the determination and requiring removal of all vehicles and equipment upon the site by March 6th, 2017. The subject items were not removed, as staff expected, and Copart's legal counsel has opted to pursue an appeal of the removal order and determination with the City Council, which is acting in the capacity as established under the nuisance abatement process outlined by Ordinance 90.

The issue at hand stems from contact between Jon Noerenberg, Planning and Community Development Director, and various Copart staff and the commercial realtor representing the Anderson Trucking property. Staff had been contacted in early December 2016 by Copart regarding their interest in a site nearby Fleet Farm (former SJ Louis property) and staff evaluated and responded they would not be supportive of the use at that site due to the incompatible zoning and adjacent residential uses. At that time, Staff reviewed the submitted "Statement of Operations" submitted by Copart and determined that the use could be considered as outdoor storage, which is permissible in the I-1, Light Industrial District with proper screening per City Code. A copy of the letter provided to Copart at that time in response to their interest in the SJ Louis property was presented. Staff gave consideration to the use as possibly being defined as a junk yard, but upon review of the definition of "junk yard" per Ordinance, as below, Staff determined the use did not fit that classification.

"Junk Yard. Shall mean an area where used, waste, discarded or salvaged material is disassembled, including but not limited to scrap iron and other metal, paper, rags, rubber products, bottles and lumber. Storage of such material in conjunction with a permitted manufacturing process when within an enclosed area of building shall not be included."

Copart staff and their commercial realtor made contact with staff again in early January 2017. Staff reviewed the applicable ordinances and did not believe the use fit into the category of outdoor storage, based upon compliance with the submitted statement of operations, discussions with Copart staff, and provision of an agreed-upon screening plan for the property. A copy of the outdoor storage ordinance for commercial/industrial areas was presented. Staff agreed that due to winter weather conditions of the time the provision of fencing /screening could be delayed, but advised verbally and via

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email to the realtor that a plan would need to be approved prior to commencement of any activity upon the site. Staff prepared and sent a letter outlining the determination for the property to Copart on January 13, 2017, a copy of which was presented.

No further contact occurred regarding the property or with Copart staff until early February 2017, when staff was made aware that vehicles and equipment were being brought into the property. Upon discussions between the Planning and Community Development Director, City Administrator, City Attorney, and Mayor, further review of the use of the property and Copart's operations noted that it is classified as an "automobile reduction yard", and not "outdoor storage". Per Ordinance definition, an auto reduction yard is defined as below:

"Automobile Reduction Yard. Shall mean a lot or yard where one or more unlicensed motor vehicles, or the remains thereof, are kept for the purpose of dismantling, wrecking, crushing, sale of parts, sale of scrap, storage or abandonment."

Staff was unaware of the classification of auto reduction yard within the ordinance as it is not listed as either a permitted or conditional use within any established zoning districts, and is subsequently prohibited. Staff noted the error in determination and sent an updated determination letter to Copart on February 9th, 2017, outlining the previous incorrect determination and informing them that continued use of the site would not be permissible and requiring that the use be discontinued and all vehicles and equipment removed by May 1, 2017. A copy of this correspondence was presented.

Copart staff and their legal counsel, after receipt of the updated determination, held meetings with City Staff, City Attorney, and Mayor Miller at City Hall and an on-site meeting at their Avon facility to review their operation. Copart disputes that they meet the definition of "auto reduction yard" within the ordinance and has expressed their desire to continue their use and expansion of their operations upon the property, which they are leasing. Staff advised that a determination would be made and that if Copart did not agree with the results they would have the opportunity to appeal and discuss with the City Council.

After considerable review and discussion, Staff sent the determination letter regarding Copart's use of the property on March 1st, 2017, a copy of which was presented. Review of operations and City Ordinances identified that the use does not comply with the ordinance as it is deemed an "automobile reduction yard" due to the storage of unlicensed vehicles (Copart has continually disputed the licensing aspect), and due to the storing or parking of junk motor vehicles, which the vehicles and equipment being stored by Copart would qualify as. Per Ordinance 61, Section 61.13, "Storing or Parking of Junked Vehicle", which states the following:

"Storing or Parking of Junked Vehicle. No person shall park, store, or leave any junked vehicle, whether attended or unattended, upon any public or private property within the City. No person, as an owner of or an occupant having control of private property within the City, shall permit the parking, storing, or leaving any junked vehicle upon private property, unless the junked vehicle is stored within a building. For purposes of this Ordinance, a junked vehicle shall constitute any vehicle, as defined in this section, which has unlawfully affixed or attached to it an expired State registration or license plate or plates, or the condition of which is wrecked, dismantled, partially dismantled, inoperative, abandoned, or discarded. The presence of a junked vehicle within the City upon private or public property as described by this Ordinance is declared to be a hazard to the public health and safety, and a public nuisance that the City may abate as a nuisance."

The violation of this ordinance is considered a nuisance and utilizes the abatement process outlined in Ordinance 90, "General Public Nuisances, which is described as below:

"Abatement of Nuisance. If, after service of notice, the person served fails to abate the nuisance or make the necessary repairs, alterations or changes in accordance with the order of the Building/Code Enforcement Officer, at the direction of the Building/Code Enforcement Officer, the nuisance will be presented to the City Council at a regular meeting. The Waite Park City Council may, after notice to the owner or occupant and opportunity to be heard, cause such nuisance to be abated at the expense of the City of Waite Park and recover such expenditure by assessing the cost of the enforcement action against the real property upon which the nuisance existed and to certify the same for collection in the same manner as taxes and special assessments are certified and collected. Costs of enforcement shall include administrative costs, including the cost of service and posting."

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Due to the nature of these different City ordinance sections they are categorized in, there were several methods by which enforcement of the requirement to vacate the property could be undertaken that were outlined to Copart in the March 1, 2017 letter, including the following:

- Through a review of the City Council, acting as the Hearing Officer as outlined by Ordinance 14 – Penalties and Fees.
- Through a review by the City Council acting as the Board of Appeals for interpretation by the Zoning Administrator, as outlined by Ordinance 52, Section 53 – Zoning – Board of Adjustment and Appeals.
- The zoning violation enforcement process outlined by Ordinance 52, Section 55 – Zoning – Enforcement and Penalty.
- The nuisance abatement process outlined in Ordinance 90 – General Public Nuisances.

All of the above-referenced procedures would ultimately result in the opportunity for review by the City Council. In this instance, Staff is following the nuisance abatement process as established by Ordinance 90, as the storing of junk vehicles, as outlined earlier, has been determined to be the prevailing higher standard.

A response letter from Copart's legal counsel was received on March 7, 2017, disputing the City's determination and order for correction and requesting the review via the City Council. A copy of this correspondence was presented.

Staff advises of the following aspects in which the utilization of the property by Copart for their operations as a storage/auction yard for automobiles does not meet City requirements and should not be considered as a permitted use:

- The utilization of the property for storage/parking of junk motor vehicles is considered a nuisance per Ordinance 61, Section 61.13, "Storing or Parking of Junked Vehicle", and is subject to abatement procedures as outlined in Ordinance 90, "General Public Nuisances". Regardless of licensure, a vehicle which is wrecked, dismantled, partially dismantled, inoperative, abandoned, or discarded qualify as a junk motor vehicle, and the vast majority of vehicles handled by Copart meet this definition.
- The use constitutes an "Automobile Reduction Yard" per City Ordinance. Given the volumes of vehicles and the extensive turnover time (as noted by Copart, longer than outlined in the submitted Statement of Operations), it is not feasible that current licensure is maintained for all damaged vehicles in storage at the facility. Additionally, Copart's location in Avon utilizes signage, which notes them as "salvage auto auctions", which aligns with the use as an auto reduction yard.
- The transfer of titles and vehicles also constitutes a sale of the vehicle. Vehicle sales are not listed as either a permitted or conditional use within the I-1, Light Industrial District. City ordinance does not differentiate vehicle sales by level of damage or lack thereof, only by "new" or "used". New and used vehicle dealers typically require an approval of the local zoning administrator by the State of Minnesota and no such approval has been requested nor provided by Copart for this property.

Staff would note the vehicles and equipment were brought into the property and the site began to mobilize for operations prior to the submittal and approval of a screening plan by staff, as discussed earlier on in the process. While the provision of the screening plan would not have corrected the underlying error by staff in the determination of the use as permitted "outdoor storage", it would have provided another level of review and opportunity to have caught the error before commencement of operations upon the site.

While Copart may have an investment in the site in having a lease agreement and having started mobilizing operations upon it, the error was identified relatively early in their utilization of the property and before any capital investments in the form of remodeling/adding buildings, fencing, permanent site equipment, paving, or fencing/screening. Staff and the City Attorney do not believe that such an error constitutes an ongoing allowance for continued use of the site, and proposed expansion, in violation of applicable City ordinance.

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If the City Council expresses an interest in allowing the Copart facility at the subject property to move forward with operations, it would require an ordinance amendment to make accommodation for such uses within the defined I-1, Light Industrial District. This process, and any additional subsequent actions such as the Conditional Use Permit (if the ordinance is amended to consider the use as a conditional use, as would be recommended by Staff if such consideration is given to allow the facility) would need to be completed prior to commencement of further operations by Copart upon the site. If directed by the City Council, Staff would undertake these procedures and coordinate with Copart on any applications and plans they may need to provide as part of the process.

The Council's decision on this issue now is that of determining whether staff interpreted the Ordinances correctly. It is important for Council to review the definitions of an Automobile Reduction Yard under Ordinance 52 and the definition of Storing or Parking of Junked Vehicle in Ordinance 61.13. Both definitions are included in the above background information. If Council believes that Copart's operation fits under either one or both of these definitions, the determination by Staff should be upheld and the use would be prohibited because the Ordinance does not allow it. If you feel Copart's operation should be allowed even though the Ordinance would prohibit it, you should then consider amending the Ordinance. That issue should be considered separately from the action before the Council.

Staff would recommend that the City Council make the following determinations:

1. Uphold the determination that the site is in violation of Ordinance 61, Section 61.13 "Storing or Parking of Junked Vehicle" and that the utilization for storage and parking of junk motor vehicles must be discontinued per standards of Ordinance 90, "General Public Nuisances".
2. That the use constitutes a prohibited "Automobile Reduction Yard" per City Ordinance and must be discontinued.
3. That the use constitutes prohibited sale of motor vehicles in an I-1, Light Industrial District and must be discontinued.

Staff would recommend that the City Council follow the nuisance abatement process as established by Ordinance 90, as the storing of junk vehicles, as outlined earlier, because it has been determined to be the prevailing higher standard.

Staff recommends setting July 3, 2017 as the deadline for removal of all vehicles/equipment and discontinuance of the site by Copart.

Please note, that Council only needs to determine a violation of one of the Ordinances for the determination by Staff to be upheld because each Ordinance that has been listed is deemed to be a prohibited use.

The Council Members indicated they have visited the Avon site. Member Schneider stated it is not their role to agree or disagree with whether Copart is a good business to be in the City or not. Their role is to interpret the ordinances.

Member Linquist questioned how many jobs Copart would bring into the City. Kevin Brink, the listing broker of INH Commercial Real Estate Company at 175 7th Avenue South in Waite Park, introduced representatives in attendance at the meeting.

Teresa Bohnen, President of the Chamber of Commerce, stated the Chamber of Commerce is very excited for the opportunity to work with Copart because of their responsibility in communities as well as their philanthropy and what they do within the community. She stated the Chamber was asked to get involved in this issue and the Chamber of Commerce feels this company has the power to impact our community as a whole and they support the company.

Larry Hoesch, representing the Greater St. Cloud Development Corporation stated they hope that this is an opportunity where resolution can be made between two willing parties for both the betterment of the City and the region. They like to see companies grow and thrive in the community.

Mr. Brink then talked about the proposed property. Because of the power lines running through the property, they feel it would be hard for others to develop the property and that Copart is of the highest and best use for the property. Other Copart locations are within retail and residential areas. They are looking to create 20-30 jobs and donate to various organizations in the area such as Waite Park Babe Ruth. 50% of their clientele through sales on internet are charities. They have already invested more than \$150,000 on this project. They are not asking for any financing from the City. They are willing to

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work on enhanced screening, etc. They feel Copart is not an auto reduction yard. They do not dismantle vehicles.

John Reed, Copart's Director of Acquisitions, stated they have 4-6 people employed now for this project, which will grow to 8-10 people initially. They feel this project will impact the local economy \$800,000- \$1,000,000 initially. Member Linquist asked about the plans for screening. Mr. Reed stated that most of their rural areas have an 8-foot solid screening fence around their facility. They could also install this fencing in white, tan or dark green and also add a monument. Member Linquist stated the proposed parcel is laid out kind of in two pieces with Old Highway North running through the parcel. He asked if Copart would consider splitting the proposed property and only locating to the north side of Old Highway North. Mr. Reed stated he would have to look at it, but that is typically not their practice to only locate on part of a property. Mr. Reed stated almost all vehicles are titled and registered to the owner. The vehicles are brought to the facility and title is transferred to the insurance company once the previous owner is paid. Vehicles that are abandoned may not have a title right away, but they get one as soon as they can. Sharon Richter, General Manager of the Avon location, stated vehicles go through a titling process. All vehicles are accounted for and held for resale with the State. They do get audited by the DMV as well.

Member Schneider stated everything he heard about the company is quite intriguing, but at this time there would have to be some changes in City ordinance to allow this company to operate at the proposed site. The obligation of tonight's meeting is to just view the present ordinances against the proposed operation. Member Schulz feels this is a zoning issue and whether their company would be in compliance with the zoning ordinance. City Administrator Johnson stated there are two issues to be looked at. One is under the zoning ordinance pertaining to automobile reduction yards and the other issue pertains to Ordinance 61.13, Storing or Parking of a Junked Vehicle.

Matt Duffy, Attorney representing Copart, stated under the automobile reduction ordinance, there is a provision that the vehicles have to be unlicensed. They feel that Copart is not an automobile reduction yard. They don't process, reduce, etc. It doesn't meet that part of the ordinance. It is also not a nuisance either. The owner values the vehicles. Mr. Duffy brought up the fact that the initial letter to Copart from the City stated they were a permitted use and they can continue operating on the site. They are asking the City Council to agree that Copart is a permitted use for the proposed property. If they are not allowed on that site, they feel they should be refunded the money they have invested in the property so far.

Member Linquist feels they should look under the nuisance ordinance, not the zoning ordinance. Attorney Hansmeier suggested they look at the proposed motion at hand suggesting they have the right to uphold reversing the determination that is in violation of Ordinance 90 and other applicable ordinances. He suggests that they either uphold or reverse the determination.

Motion by Member Schneider, second by Member Schulz, to uphold the determination that the site is in violation of Ordinance 90 and other applicable ordinances as described herein, and as a result it has been determined that the nuisance abatement process is established by Ordinance 90, as the storage of junk vehicles has determined to be the prevailing higher standard and the process the Council will follow in making this determination which will also be applicable to all other applicable ordinances described to be in violation as presented.

Mayor Miller stated this was an ordinance issue and he is a little disappointed in the Chamber of Commerce and St. Cloud Development Corporation for getting involved in city ordinances. He is also a little upset that Copart has been in Avon for 20 years and now all of a sudden they think they can buy the City off by a donation to Waite Park Babe Ruth and Waite Park Family Fun Fest.

Ayes: Mayor Miller, Members Schneider, Schulz, Theisen

Nays: Member Linquist

Abstained: None

The motion carried.