

MINUTES OF THE REGULAR COUNCIL MEETING

February 10, 2011

The Council meeting was called to order by Mayor John Schaaf at 7:02 p.m. at the Community Meeting Room, 100 Village Center Drive, Suite 150, City of North Oaks, Minnesota. Present were Council members Gregg Nelson, Marty Long, Tim Dunleavy, Bruce Ackerman and Mayor John Schaaf. Also present were City Administrator Melinda Coleman, City Attorney Dave Magnuson, Recording Secretary Donna Osterbauer, and Videographer Kevin Scattum.

Pledge of Allegiance

Approval of Agenda

Tim Dunleavy moved to approve the agenda. The motion was seconded by Gregg Nelson and passed unanimously.

Proclamations, Recognitions & Appearances

Bob Parrott with the Ramsey County Sheriff Department is the Community Service Officer for North Oaks. He updated the Council on his status. He has been working full time patrolling North Oaks since February 1st. He is not a sworn officer, he is a civilian so he is not armed and does not have a bullet proof vest. His goal is to be in front of every home in North Oaks, every day.

The two biggest challenges in the City of North Oaks:

1. speed on the main roads through town
2. trespassers

Citizen Comments

None

Consent Agenda

1. Minutes of the Regular Council Meeting January 13, 2011 for approval, with the following change: Under the Administrator's Report, it indicates that Mayor Schaaf made a motion and it should have stated that Gregg Nelson made the motion.

Gregg Nelson moved to amend the minutes. The motion was seconded by Tim Dunleavy and passed unanimously.

The building official's report stated that "the valuations are 50% better this year." Council Member Bruce Ackerman asked for clarification on that statement. Melinda Coleman will check on it and get back to the Council.

Under the City Attorney's report, there was a question regarding who the people from The Pines were that planted the trees in the setback. The Mayor clarified that it was several people. It was the residents, the contractor, the Board of Directors and a management company.

2. Minutes of the Planning Commission Meeting January 27, 2011 for approval

3. Licenses for approval: **Mechanical Contractors:** Affordable Comfort Mechanical; Aspen Ventilation & Heating; Carter Custom Construction &

Fireplace; G & H Heating & Air; Kalmes Mechanical, Inc;
Krinkie's One Hour Heating & Air; Schwantes Heating; Total
Comfort

Arborists: Brach and Bough Tree Service and Landscape Care;
Quality Turf Maintenance Co.

4. LMCIT, Liability Coverage Waiver Form

5. Claims for approval: Check: #9433 - #9468

Tim Dunleavy moved to approve the Consent Agenda. The motion was seconded by Bruce Ackerman and passed unanimously.

Petitions, Requests & Communications

None

Unfinished Business

1. Address Identification Ordinance – Tabled

New Business

1. Resolution 1241 Concerning the Commencement of Formal Renewal Proceedings under the Federal Cable Communication Policy Act of 1984, As Amended.

Resident and Cable Communication Board Member, Steve Beilke, from 7 Hawk Lane, introduced Cor Wilson, Executive Director of North Suburban Communications Commission.

Cor updated the Council on why there is a need for Resolution 1241.

The cable franchise renewal is an administrative litigation process that is set out primarily in federal law. Under that law, it is a three year franchise renewal process where the cable company has to notify the City three years prior to the expiration date of the cable franchise that they want to renew. They have to determine what the cities cable related needs are for the future. Resolution 1241 is part of the initiation of that process. They didn't want to give Comcast any excuse for throwing up road blocks so they are asking all of their cities to adopt the resolution. Four of the cities have already adopted this and the City of North Oaks would be the fifth.

Resolution 1241 was read by Council Members:

Council Member Dunleavy read pages 1 & 2, Council Member Nelson read pages 3 & 4, and Council Member Ackerman read pages 5 & 6.

Gregg Nelson moved to approve Resolution 1241. The motion was seconded by Tim Dunleavy and passed unanimously.

2. Resolution 1242 – Creating the Natural Resource Commission

Council Member Long read Resolution 1242.

Under "Composition and Size of Commission" it should read: (2) year term, (3) Commissioners.

The motion was made by Bruce Ackerman and seconded by Gregg Nelson for discussion purposes only and passed unanimously.

Mary Long moved to approve Resolution 1242 as amended through the drafting process. The motion was seconded by Bruce Ackerman.

Fred Halvorsen, President of the Pines of North Oaks Board of Directors, asked what the definition of natural resources is. Mayor Schaaf stated that at the top of the resolution it talks about purpose which is “a natural and underdeveloped aspect within the community of all natural resources such as lakes, watercourses, fens, trees, wildlife and natural treasures to the city.”

Bruce Ackerman amended the resolution by striking the words “large strands of natural”. It will now read “trees.” The motion was seconded by Marty Long and the amendment passed unanimously.

The resolution passed unanimously at 8:01 pm.

3. CUP 10-11 125 Village Center Drive Sushi Restaurant

Melinda Coleman explained that the applicants are requesting a Conditional Use Permit (CUP) for the purpose of converting an existing retail shop space into a Japanese restaurant at 125 Village Center Drive. The applicable sections of the Zoning Ordinance are as follows:

The following Conditional Uses may be permitted, (7) Restaurants with accumulated square footage limited to less than 30% of the shopping center square footage after securing a conditional use permit in accordance with Section 151.076.

Section 151.076 Conditional Use Permits:

The Planning Commission shall consider the effect of the proposed CUP and whether additional requirements may be necessary to reduce any adverse effects. Consideration shall be given to, among other things, the following factors:

- (a) Relationship of the proposed Conditional Use to the Comprehensive Plan.
- (b) The nature of the Land and adjacent Land or Building where the Use is to be located.
- (c) Whether such Use will in any way depreciate the area in which it is proposed.
- (d) The effect upon traffic into and from the Land and on adjoining Roads, Streets or Highways.
- (e) Whether such use would disrupt the reasonable use and enjoyment of other Land in the neighborhood.
- (f) Whether adequate utilities, Road, Streets and other facilities exist or will be available in the near future.
- (g) Whether the proposed Conditional Use conforms to all of the provisions of this Ordinance.
- (h) The effect upon natural drainage patterns onto and from the site.
- (i) Whether the proposed use will be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the City.
- (j) Whether the proposed Use would create additional requirements of public cost for public facilities and services and whether or not such use will be detrimental to the economic welfare of the neighborhood or the city.
- (k) Whether the proposed Use is environmentally sound and will not involve Uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, Land or the general welfare because of excessive production of traffic, noise, smoke, fumes, wastes, toxins, glare or odors.

Staff reviewed the application and the following were noted:

1. In 2005 there was a zoning ordinance amended to allow restaurant uses up to 30% from 15% in the Village Center complex. A study was undertaken at that time to look at

parking considerations to ensure that if restaurant uses were expanded, that there would be adequate parking and safe traffic movements throughout the Village Center complex. The traffic study found out that the parking supply exceeded demand. The peak parking, at the time of the study, was 179 stalls and the peak period was between 5 and 6 pm. That represented 60% of the total supply of 299 spaces. This proposal will now bring it to that 30% max, so there are no more opportunities for restaurants unless someone leaves.

2. The Japanese Restaurant will be located in Suite 125 which is an end space in the center. The restaurant will be 2,557 square feet and will be open 11 am to 10 pm daily.
3. When the applicant applies for a liquor license, it be acknowledged that alcoholic beverages may not be taken outside to the common seating area. This permit does not include outdoor seating.

Staff finds that CUP 10 -11 meets the minimum Ordinance requirements.

The Planning Commission held a public hearing on January 27th. The applicant and the representative from The Village Shopping Center spoke in favor of the project and provided more detail about the proposed restaurant. Planning Commissioners asked questions regarding operations, liquor license and parking. After discussion, the Planning Commission voted unanimously to recommend to the City Council, approval of the CUP for a restaurant at 125 Village Center Drive. Their motion to approve included three conditions:

1. That a building permit is obtained for review of the remodel and that the plans also are reviewed and approved by Ramsey County Department of Health.
2. That it be recorded for that this CUP does not include approval for outdoor seating, except for the existing seating in the common area at the center.
3. That this CUP does not give approval or conditions pertaining to the issuance of a liquor license.

Mary McNellis was in attendance representing the North Oaks Village Center, LLC, the owner of the retail center. She provided the Council with the specific location of the restaurant. This space faces into the sculpture garden where the fountain, the sculptures and the informal seating common area are. It faces the Taste of Scandinavia.

She informed the Council that it is a significant investment of dollars in construction to get the space converted to a food use space. With the signing of this lease, both buildings in the Village Center Retail Center will be leased at 100%.

Bruce Ackerman moved to approve conditional use permit 10-11. The motion was seconded by Tim Dunleavy to approve a restaurant at 125 Village Center Drive with the following conditions:

1. That a building permit is obtained for review of the remodel and that the plans also are reviewed and approved by Ramsey County Department of Health.
2. That it be recorded for that this CUP does not include approval for outdoor seating, except for the existing seating in the common area at the center.
3. That this CUP does not give approval or conditions pertaining to the issuance of a liquor license.

Motion passes unanimously by Council.

Weihuan Chen and Amy Lee, his real estate broker, were present and said that the estimated opening will be July 15, 2011.

4. CUP 11-01 The Pines – behind 9 Buchal Heights Tree Work

Mayor Schaaf will be recusing himself from the vote on this CUP because of an economic conflict of interest as he is a resident of The Pines.

City Administrator informed everyone that The Pines Home Owners Association is requesting to remove buckthorn and one diseased oak tree on common property within the development. The general location is behind 9 Buchal Heights Drive.

When the Pines development/subdivision was approved, a Conservation Easement was dedicated over Tract VV. “The Conservation Easement shall be owned, preserved, and maintained in its natural and scenic condition with nothing constructed, erected, or placed thereon and no use shall be made thereof, including cutting thereon, without first obtaining a Conditional Use Permit from the City.

“The term vegetation means any and all grass, weeds, brush, shrubbery, ground cover, trees and the like, whether now existing or hereafter existing.”

The City Forester identified the tree as being diseased, so he notified The Pines that it needed to be removed. While they were doing the work on the oak tree, they would also like to remove some buckthorn in that area as well. It has been requested that the applicant work with the City Forester prior to beginning their work. Another item that was required before approval was to see some written documentation from the property owner in Deer Hills that was giving them access and we have received that letter.

The Planning Commission held a public hearing on January 27th. A representative from the Pines Home Owners Association was present and addressed questions from the Commission regarding access to the work site and number of trees to be removed. It was clarified that only one oak tree would be removed. The Planning Commission recommended approval of the CUP with conditions.

The action requested was approval or denial of a permit to the Pines Home Owners Association for removal of buckthorn and one diseased oak tree. Staff requests that if Council makes a motion to approve that they agree to waive the \$400 permit fee because the project is located on Conservation Land and the protection/tree care work would be of benefit to the entire community.

Marty Long moved to approve CUP 11-01 that a conditional use permit to the Pines Home Owners Association for removal of buckthorn and a diseased oak tree be approved with the following condition:

1. The City Forester reviews the plans showing specific trees and buckthorn removal areas prior to work beginning.
2. The City Council waives the \$400 application fee for The Pines Homeowners Association.

The motion was seconded by Tim Dunleavy and passed unanimously. Mayor recuses.

1. Council Member Reports

Tim Dunleavy

- **Finance Committee**

There was a Finance Meeting on Monday, February 7, 2011. 2010 was closed out and they started on 2011 budgets.

- **Lake Johanna Fire Board**

Attended the first meeting for 2011. They provided a 2010 fire report which shows the number of calls per city. Last year there were 104 calls to the City and this year there were 252. The biggest year, 2006, of losses from fire were \$ 1.5 million and last year it was \$3,500.

Bruce Ackerman

- **NOHOA**

Attended the NOHOA meeting on Thursday, February 3, 2011.

They discussed increasing coordination between NOHOA and the City, deer management, NOHOA website development (will cost about \$6,000 annually) and the creation of a 501(c) 3 organization. The members of the 501(c) 3 organization would be the North Oaks Homeowners Association. They have already put in a request to the IRS. The Foundation would be called The North Oaks Community Foundation.

Marty Long

- **Natural Resource Committee**

- The USDA working with the MDA has been successful in the containment of Emerald Ash Borer for 2010.

- It may appear that we have more deer this year because it's easier to see them. They are using the roads as trails.

- Last month we heard about the possibility of water being moved from the Mississippi to Lake Gilfillan. In addition to the homeowners on the Lake having a better view, etc., it would be an enhancement of wildlife.

- **VLAWMO**

Nothing to report

Gregg Nelson

- **Planning Commission**

The Planning Commission met on January 27 and 2 public hearings were held. The first was related to the Sushi Restaurant. The City Planning Commission members voted to recommend approval to the City Council.

The second public hearing was on the tree issue in The Pines and The City Planning Commission recommended approval of that project.

2. Mayor John Schaaf

- They met with the Lake Gilfillan Watershed Association and they are going to be having a meeting of their association. The City Council may need to have a special council meeting specifically to focus on this issue because there potentially could be a bonding request.

- Met on several occasions with NOHOA President, Mark Azman, and have exchanged information back and forth to help him with the understanding of the relationship of NOHOA with the City.

Administrator Report

1. 2010 Budget Year End Report

All financial obligations on the expense side have been fulfilled. We are waiting on about \$17,000 additional dollars that need to be booked for revenue in 2010. Those include about \$16,000 from the cable TV franchise fee – 4th quarter payment and about \$6,000 to \$7,000 that will be billed to NOHOA for end of year truing up expenses.

On the income statement under taxes and assessments, we received \$ 1,130,817.00 from Ramsey County Property Tax payments. That is about \$5,000 less than budgeted, so that means we had a very small percentage of non payment for property taxes which is very good.

On the expense side for 2010, line item 230 – city office. The office rent was budgeted at \$36,000 and we spent over \$58,000. When the 2010 budget was done, it was unsure if the City offices were moving or not.

This number reflects the first half rate under the old lease when we were downstairs for \$18,000 and the second – the city half of 18,000 plus NOHOA'S share.

Line item 270 - Road Striping and signs is over what we budgeted and that is due to the cost of re-doing all the street signs in North Oaks. We don't pay for the actual signs that have the street name on them, that is NOHOA'S responsibility. The City purchased the sign materials and were then reimbursed by NOHOA.

The Cable TV expense on line item 312. We budgeted \$10,000, but we spent \$61, 622 on the cable equipment for the community room. This was paid through our cable franchise fees.

Our 2010 budget was \$1,590,880 and our receipts totaled \$1, 820,386 which then results in \$46,472.00 we were under budget for the year.

Discussion at the Finance committee was where to allocate the \$46,472.00. One idea was to allocate that money to the fire department capital improvement fund because we know there will be some heavy demands in the upcoming two years. There will be a discussion in March on how to spend the surplus money.

Mayor Schaaf clarified that the actual expenses for 2010 were \$1, 773, 915 pre-audit, and the revenues (combination of property taxes and fees) were \$1, 820,386 which leaves a surplus of \$46,472.00. This is about 2 ½ percentage points better than budget. The cash is currently sitting in the bank.

2. 2011 Budget Year to Date

The City Administrator gave a brief update on the 2011 budget, including that there will be additional rental income in 2011. Coldwell Banker will be renting the Community Room long term.

3. Wenck & Associates Contract Update

City Administrator met with Keith Benker who is a consultant with Wenck & Associates. They discussed their work scope for 2011 including:

- Possible re-do of the website, all of the records that are kept on there, and archive some of those to make it more user friendly
- Continue to work with the Annual Report
- Continue to review the results of the April & October sampling events
- The issue of being on standby for additional work

City Attorney Report

1. Sarpal Case Update

Attorney Magnuson asked Council Member Bruce Ackerman to report on the Sarpal Case since he and the City Administrator were in attendance when they met. The Supreme Court held the meeting at Hamline University Law School. There were about 100 law students there observing. The City attorney thought they seemed to collectively come to the view that it's the settled law in Minnesota that the city is not liable to a property owner if they issue a permit by mistake. He shared a case against the City of St. Paul where someone built a building on a public right of way through a mistake of a City employee. The ruling was that the City is not liable and that building had to come down.

2. Hodgson Road

He updated the Council on the two structures on Hodgson Road. The Fire Marshall will be checking with the residents next week to see if the sited deficiencies have been fixed.

Miscellaneous

1. Next Council Meeting – Thursday, March, 10, 2011
2. Natural Resource Commission Meeting - Thursday, February 17, 2011
Community Meeting Room @ 7:00 pm
3. Next Planning Commission Meeting – Thursday, February 24, 2011

Adjournment

On motion duly made, seconded and carried unanimously, the meeting was adjourned at 9:10 p.m.

Attest:

Respectfully submitted,

John Schaaf, Mayor

Donna Osterbauer
Recording Secretary