

MINUTES OF THE REGULAR COUNCIL MEETING April 11, 2013

The Council Meeting was called to order at 7:00 PM by Mayor John Schaaf at the Community Meeting Room, 100 Village Center Drive, Suite 150, City of North Oaks, Minnesota. Present were Council Members Mike Egelston, Gregg Nelson, Marty Long, Bruce Ackerman., and Mayor John Schaaf. Also present were City Administrator Melinda Coleman, City Attorney David Magnuson, Recording Secretary Linda Hanson, and Videographer Kevin Scattum.

Pledge of Allegiance

Approval of Agenda

Council Member Gregg Nelson moved to approve the agenda. The motion was seconded by Council Member Bruce Ackerman and passed unanimously.

Citizen Comments

None

Consent Agenda

1. Minutes of the Regular Council Meeting of March 14th, 2013 for approval
2. Minutes of the Special Council Meeting of March 6th, 2013 for approval
3. Licenses for Approval:
 - Mechanical Contractors:** Judkins Heating & Air, Kleve & JC Mechanical LLC, Metro Gas Installers, Uptown Plumbing & Cooling
 - General Contractors:** Performance Pool & Spa, Inc.
 - Arborists:**
 - Sewer/Water Installation:**
4. Approval of Court Data Services Subscriber Amendment to CJDN Subscriber Agreement
3. Claims for Approval: Check numbers 10456-10486
City Administrator Melinda Coleman added for approval Check # 10486 for expenses paid to City Attorney David Magnuson relating to the Charley Lake Preserve review and a review with the auditor on the Lake Gilfillan Projects.

Council Member Marty Long moved to accept the Consent Agenda. The motion was seconded by Council Member Bruce Ackerman and passed unanimously.

Petitions, Requests & Communications

1. **Recognition of Nathan Torunsky's Eagle Court of Honor Award**
This item was moved to the Council Meeting on May 9th, 2013 as Mr. Torunsky was unable to attend the meeting.
2. **Cor Wilson, Executive Director, NSCC: Update on Comcast Franchise Renewal**
Ms. Wilson from the North Suburban Communications Commission wanted to

recognize the North Oaks representative, Steve Beilke, who is serving on the NSCC and is serving as Chair and President of the organization. Ms. Wilson gave an update on the franchise renewal process. In March a Rate Order was adopted. A local franchise has the authority to negotiate the lowest tier of cable service and equipment needed for this level of service. Rate forms must be submitted every year on March 1st and are good for one year.

Ms. Wilson stated that the Commission has been receiving a number of complaints regarding their service with Comcast. Most of the complaints are about customer service and the call center and the new charge for the digital transport adapters needed for each television set. Two adapters are allowed for free, but each additional adapter now costs \$1.99 a month. Comcast stated that they notified customers 30 days in advance that a charge would take place for these adapters. Those that paid on line were more apt to not see this additional charge. The 2012 rate form shows that each adapter would cost .50. The North Suburban cities are challenging the costs and Comcast has 30 days (by April 29, 2013) to appeal to the FCC. It appears that Comcast would like to settle this issue without going to the FCC.

The Franchise and Renewal process started in October of 2010 and it appears that negotiations are far apart at this time. They are proposing a much smaller capital grant payment of 44 cents per subscriber or \$159,000. This is 1/10th of what was given in the past. This would not be enough to fund the CTV programs currently being funded. Last year North Oaks received 50 hours of assistance for programming including coverage of the Hill Farm Baseball team. Over 716 community programs would be affected.

The Commission also invested over \$560,000 to connect City Halls with a fiber network. The Commission owns the equipment, but Comcast wants to manage these services for a fee. The Commission did meet with Comcast on March 15th and requested a reasonable proposal for managed services that would be longer lasting.

Since negotiations are far apart, the Franchise Renewal Committee recommended going into a formal renewal process. The Staff will send Comcast a Staff Report, a formal needs ascertainment, a request for a renewal proposal and a draft franchise. Comcast will have 60 days to respond to this renewal proposal. The Commission could deny or approve the franchise depending on how Comcast responds.

Ms. Wilson stated that many do go into a formal renewal process but few go all the way through. Only three cities in the United States have in the past and they all won in court. She stated that franchises are supposed to be unique and meet the needs of their communities.

Council Member Nelson asked when the agreement was last negotiated and was answered that it was done in 1998. Two agreements for 15 years each have been negotiated in the past and both sides have agreed to a ten year term for this agreement at this time. The Federal Communications Commission came out with an interpretation of the Federal Cable Act regarding money for operating support which is often made in a side agreement. It does not have to be required of Comcast. Currently subscribers are paying \$3.99 or about 50 cents per CTV channels. Funding also come from the Public Education Grant.

Competition in this market does not exist. In 2000 there were a few companies that tried and failed as it is expensive to build a network. Comcast currently has over 50% of the households. Century Link offers some services but uses satellite service rather than cable. Cable is needed for video streaming. As competition goes down, Comcast owns more and more of the content as well as the network and services.

Ms. Wilson stated that the Cable Commission represents ten cities in the area and the Commission has joint powers of agreement with the cities and is able to negotiate on the City's behalf.

Council Member Long asked about the distance between the two in negotiations. Ms. Wilson stated that they have had 3-4 meetings so far and that Comcast has only one person handling the franchises west of the Mississippi. The contract expires in October along with a number of other contracts throughout the region. Comcast has been slow to respond to meeting requests. The deadline can be extended by the Commission, but no operational funding will be extended. The Commission entered the formal process hoping for significant progress. If progress happens, they could easily go into informal negotiations.

Mayor Schaaf stated that this was not the time to discuss this issue with the Comcast representative as this is not a public meeting. Ms. Wilson stated that the formal process is a litigated process.

Mike Logan, Comcast Twin City Region Representative, came to the podium and stated that negotiations are far apart as well as they are far apart on what the facts are. He stated that the formal renewal process is in place to protect the provider as well; although, they prefer an informal process. The October deadline can be extended but because of some of the unique items presently in the agreement not everything will remain the same.

The Mayor stated that North Oaks is even more unique in that everything is owned 100% by the residents, not by the City and that the residents have granted Comcast the use of rights of way.

Steve Beilke, 7 Hawk Lane, came to the podium. He serves on the NSCC as the North Oaks representative and he stated he has been through this process twice when he lived in Vadnais Heights.

Unfinished Business

None

New Business

1. **Contract with Ramsey County for Re-surfacing Project on Highway 96**
City Administrator Coleman presented the proposal to accept the contract with Ramsey County for Re-surfacing a portion of Highway 96 to alleviate excess noise.

She explained that a meeting was held on March 12, 2013 with about 40 residents from the affected neighborhood. Most attendees agreed to raise the money needed to fund the re-surfacing of the pavement area creating the additional noise. To date, 17 agreements have been submitted that total \$38,500. These funds will cover the cost of the project. City Attorney Magnuson prepared a Fee Waiver that residents interested in participating in this project will sign. Once signed, if they do not pay at project completion, the City can then assess the property to recover the costs.

Ms. Coleman recommended that the Council pass the Resolution as City Attorney Magnuson has reviewed the contract and there appears to be no risk to the City because all costs will be covered by the affected residents. She also explained that in the agreement all projects for 2013 Ramsey County roads are listed, but that the Council is only agreeing to pay for the project in North Oaks and that the costs of the project may be reduced after bids are let. Engineering costs of \$3,000 will be part of the final cost. She stated that overall this was a very positive project and will benefit several residents and the Golf Club.

Council Member Ackerman asked what the total cost is estimated to be at this time and Ms. Coleman stated that currently it is \$36,700. If the cost goes up, the residents would have a chance to decide if they still would want to fund this project. Another concern was the amount of noise reduction the community could expect. City Administrator Coleman stated that the actual decimal number is not known, but Ramsey County and MnDOT both believe there will be a noticeable difference.

Council Member Nelson stated that this is another example of North Oaks residents solving problems in the community.

Council Member Long made the motion to approve Resolution 1270 Approving a Contract with Ramsey County for Highway 96 Resurfacing Project. (See Attachment 1) Council Member Egelston seconded the motion which passed unanimously.

2. NRC Appointments/Re-appointments

Council Member Long announced that there were three openings on the Natural Resource Committee due to retirements. The Committee decided to seek out a NOHOA representative as well as two new members. After forming a selection committee, twelve applicants were narrowed down to three who were interviewed. The final two selected in addition to the NOHOA representative Erich Young were Becky Orttel and Kate Winsor. Both have strong backgrounds to help with this Committee. The third candidate interviewed has been asked to serve on a sub-committee as available. Mr. Young will serve a one year term and the terms for Ms. Orttel and Ms. Winsor will later be determined. One will serve a one year term and one will serve two years.

A new Chair of the Committee will also need to be appointed as Stan Hokanson has

requested to stay on the Committee, but resign as Chair. Bob Larson who currently serves as Vice Chair of the committee is interested in this position. The NRC will elect Chair and Vice Chair positions at their next meeting.

Kate Winsor, 2 Thrush Lane, came to the podium to state that she is looking forward to serving on the Committee. She has a biology degree from Hamline University and a Masters in Wildlife Conservation from the University of Minnesota. She has also worked for the U.S. Fish & Wildlife Service.

Bob Larson, 21 Nord Circle Road, stated that the Committee will do its best efforts to protect the valuable resources of the community and is looking forward to working with the new members.

Council Member Bruce Ackerman made a motion to approve the following appointments and re-appointments: Robert Larson, Stan Hokanson, Marty Long, David White, Chris Mann, Kate Winsor, Becky Orttel, and Erich Young to the Natural Resource Committee. The motion was seconded by Council Member Gregg Nelson and passed unanimously.

Council Member Reports

1. Mike Egelston NOHOA

Council Member Egelston attended the last NOHOA meeting. At this meeting, the ASC was charged with moving forward on cleaning up the community by identifying things that are out of compliance. They intend to institute fines if necessary but will first send a letter asking for compliance. If they do not get it, they will be asking the City for help on those items that are in the Ordinances. Paul Lesieur will be heading this project. Currently four homes in North Oaks appear to be abandoned or are in foreclosure. The ASC is working to inform the owners that they need to keep their homes maintained. NOHOA would like the City to also be involved in this project especially if there are public health risks.

NOHOA also has agreed to supply to the City information on new homeowners on a monthly basis. They also are looking at traffic control issues and will come back to the City with their questions or concerns.

2. Bruce Ackerman VLAWMO

Council Member Ackerman will be attending the next VLAWMO meeting. He stated that they recently had a General Meeting at Century College to discuss the water issue especially in regards to White Bear Lake. Because many cities in the area are using ground water, it is putting pressure on the water supply. The aquifers are getting low and there will more than likely be a movement to pull more water out of the Mississippi River.

The Mayor asked Council Member Ackerman to find out if anything new is known about well head protection (which the City shares joint powers with White Bear Township and Shoreview) when he attends the next meeting.

3. Marty Long Planning Commission

The Planning Commission did not meet in March.

NRC

The NRC did not meet last month, but has finished its search for new members as reported. Kathy Laur has done a good job reporting on the work of the NRC for the North Oaks News. Council Member Long stated that they have a dynamic group and he is looking forward to working with the members.

4. Gregg Nelson Lake Johanna Fire Department

Council Member Gregg Nelson attended the March 20, 2013 LJFD Board Meeting. The Fire Department gathered bids to revamp a smaller fire truck into an emergency response vehicle. Also, they have received a large grant (\$400,000) to replace oxygen tanks.

Mayor John Schaaf

1. Mounds View School District/Mayor Meeting

Mayor Schaaf attended a meeting with the Mounds View School District including the School Board members and Mayors within the district. They discussed developments occurring within the district's boundaries. This is the second time this group has met.

In Shoreview residents have been very interested in the opening date of Trader Joe's. Currently it is on schedule to open around Labor Day. Also 100 high-end apartments are being built at Victoria Street and County Road E. This is a difficult area to re-work, but should be an improvement when completed.

In Arden Hills the interchange at 10 and 35W will be under construction starting the week of April 22nd. A by-pass will be created for businesses and homes along Highway 10. Highway 10 will eventually go over Highway 96. The hope is to have this work done by the end of 2013. However, if the bridge needs to be replaced, it could be much longer. Ramsey County and Arden Hills also are investing in the development of the old Army Ammunition Plant. They plan to develop over 1,000 acres which will involve removing contamination so residential homes will be safe on this land. Commercial buildings will also be developed on this land.

New Brighton has updated their documentation so that all Council packages and other items can now be digital and accessed on I-pads which have been given to

the Council Members as well as others. They believe this will save the City \$60,000 a year. In addition, they are re-developing both residential and commercial land on Long Lake Road and Highway 694.

It was also mentioned that Mounds View School District has a governmental purchasing consortium if anyone would like to participate and use for savings.

Businesses in the area are also expanding. In Vadnais Heights, TSI is adding 120 positions and Symantec in Roseville is hiring around 200. The Roseville Port Authority also approved a 20 million dollar bond for commercial development within Roseville. North Oaks is working with Shoreview on the completion of a sidewalk from the Good Shepherd property to the Chippewa Middle School.

All communities stated that there is considerable growth in residential and commercial building.

Council Member Ackerman asked about more information on the intersection of 96 and 35E. The Mayor stated that ramp work from 35W is done and the next item is to look at the bridge over 35E to decide if it should be replaced. Ramsey County and MnDOT have more information on their websites about this project. This is a concern to the police and fire departments as well.

2. RSC Manager Meeting

The Mayor attended the Ramsey County Sheriffs Meeting. They have replaced their police cars with Ford Taurus' and they appear to be holding up well although they lost 7 this past winter.

They are also looking at their special events calendar and staffing and are asking for cities to submit events that they would like covered so they can address their staffing needs.

They are also stepping up speed enforcement in the area as many are speeding.

The Sheriff Department appears to be on budget but would like to invest in new ballistic vests.

3. Shoreview Planning Commission Meeting

The Mayor also attended a Shoreview Planning Commission meeting which functions much like the one at North Oaks with the exception that they have an engineer on the Commission.

Administrator Report

1. 2013 Budget Planned vs. Actual to Date Expenditures

City Administrator Coleman stated that the City is in good shape in the first

quarter. The City is waiting for the first half payment of property taxes which will be approximately \$350,000. On the expense side, the City is well within the budget. Building permits are up in the first quarter as building continues in Rapp Farm and remodeling also has increased.

Council Member Ackerman asked about the progress of the deer and coyote management program. Council Member Long stated that the goal for removal of deer was met as this year was easier for tracking and was also an extended season. Expenditures on this item should now go down as the license to remove deer is expiring within days. A Deer Management report will be given to the Council soon.

2. **Review of Purpose and Authority of Planned Development Agreement**

City Administrator Coleman gave two updates before asking City Attorney David Magnuson to speak about the purpose and authority of Planned Development Agreements. First, a general contractor has been selected for the Pleasant Lake Aeration Project so the City is expecting a building permit and schedule of the work soon. Second, Ms. Coleman has had to spend time on a few emergencies in North Oaks. The first was a sink hole about 36 inches in diameter caused by a septic system pipe which broke. The second was another sink hole three days later in another part of the City. Again this was caused by a septic system problem pointing out that many septic systems in the City are ageing.

City Attorney David Magnuson discussed the purpose of a Planned Unit Development Agreement. The PUD establishes a separate zoning district. The overall Zoning Ordinance provides that a PUD permit can be granted under certain circumstances to allow the community to vary the standards to accommodate a mixed use development. It must be adopted as an ordinance and is very specific with setbacks identified, density allowed, the height of buildings and all the various conditions approved by the Planning Commission and City Council. This agreement would be enforceable in a court of law and is very specific and must be followed during the construction and all phases of the development.

The Development Contract has a number of functions. It sets forth that the project designed is obligated to follow the standards that the City Council and engineer adopted for the construction of roads and other utilities. It also obligates that the work is actually done and that the City engineer inspect all phases of development. Further it provides security in way of a promise that if the work is not done in a timely manner according to the standards set, the City after notice can complete the work and charge the developer security for the cost of this work. It provides that the work is done in a timely manner, making sure erosion is taken care of, the site is cleaned up and the environment is protected.

This agreement has a unique feature. In most areas there is a plat that is filed with the County Recorder, and each plat has names and dedication of public utilities, easements, and streets. In North Oaks registered land surveys are used. Instead of having blocks and lots, each lot has a separate land survey and number. Another

unique thing in North Oaks is that the roads and streets are not owned by the City but by the homeowners. The business of taking care of these streets long term and rebuilding the streets when they need it, must be looked at very carefully. A homeowner's association must be created and it could be merged with NOHOA in the future. The covenants are required to keep the streets, trails, water system, and sanitary system maintained and replaced when and if needed. There must be an annual budget to take care of these expenses. This is a huge issue that must be given much thought. In all other areas of North Oaks, the North Oaks Company is required to maintain and replace utilities. In this development it does not have the Company and once the development is done, Pentom will be done and will not be around. The homeowners need to recognize their obligation to keep these roads and utilities private. In some areas of the nation, when problems arise, the homeowners association has collapsed and then the City is obligated and has to take over these utilities as a default public safety entity. The City needs to make sure this does not happen. Instead, the City needs to obligate the homeowners to save from the beginning for the replacement of these utilities and it must be binding on the homeowners. Mr. Magnuson recommends that reserves be required for all homeowner's associations in the City and that they submit their budgets to the City for review.

City Attorney Magnuson stated that format of this agreement is similar to all other agreements used in North Oaks except for requiring the homeowners to save for reserves. Council Member Ackerman asked when this agreement would be up for Council approval. Mr. Magnuson stated it would depend on the applicant. Ms. Coleman stated that the draft documents are part of the preliminary plan already approved, but when Pentom comes for final approval that will be when the Council must deal with the details and deal with the ordinance. Ms. Coleman also stated that the North Oaks Company would like to change their obligation to take care of the utilities in the future so it is important to start discussions on this. Council Member Ackerman stated there is a lot to consider and that an ordinance would need to be in place before the final plan is approved. City Attorney stated that the ordinance and final approval could be made in the same meeting. City Administrator Coleman stated that Pentom is making a good faith effort to meet the City's requirements. Council Member Long stated that this would be a 90 day process at least and Ms. Coleman agreed. Also she stated that an ad hoc committee of staff, legal, Planning and Council Members would probably be formed to look at the agreement and the details before taking action on it.

The Mayor stated he has been through this process four times (three times with the company and once with a non-company entity) and that the first document is a rough draft. The developer and City will go back and forth working out the details and this will take months. Council Member Long asked if this is outside the PDA of 1998 and it is. This PDA has a start date and an end date.

Council Member Ackerman suggested that Pentom use more than one builder for variety and that architectural standards for the new homes be established. City

Attorney stated that an Architectural Control committee could be required and that the City could set the standards. Ms. Coleman stated that she did not think the City could require them to use more than one builder. City Attorney stated that the more uniformity on architectural requirements the City would require the easier it would be for them to merge with NOHOA at a later date if agreed.

Council Member Long asked about the tools for budgeting and stated that they are not that many cities that have no property and that the people have to take care of it. He asked if there were some kind of tools to help them. Ms. Coleman stated that it has been done and city engineers and staff can help them with this. City Attorney stated that standards are also in place for streets and utilities. Council Member Egelston stated that NOHOA hired an outside firm to look at the reserves needed, so there is help out there.

Council Member Long asked if there is any sense of urgency regarding looking at the North Oaks Company's obligation to keep up the utilities. City Attorney Magnuson stated that this might be the time to establish a vision for this. The Mayor stated that White Bear Township has a joint powers agreement with the North Oaks Company and the City. The Company might want the City to take this over, but the City would have to decide if they want to get into the sewer and water business of maintaining the utilities or if they would want to contract out. In some associations fees are paid to White Bear and some of that is reserved for maintenance and the Pines has a reserve fund well over \$100,000 to take care of the infrastructure of the Development. Council member Long stated that in the Charley Lake Development, the developer will eventually exit and so this has to be carefully thought out. City Administrator Coleman has been in dialog with White Bear to take over the utilities if the North Oaks Company wants to relinquish this obligation.

Council Member Mike Egelston asked if in other PUD's did the association own the roads, but Ms. Coleman stated they all roads are owned by the residents, but maintained by the association. All developments must have at least one association and most in North Oaks have two.

Council Member Ackerman asked if the documents given have anything new in them and Ms. Coleman stated they are the same and do not have anything new to look at.

City Attorney Reports

1. Report on Conflict of Interest- Council Appointments to Boards

City Attorney David Magnuson stated that he did an opinion on the conflict of interest of Council Members serving on the NOHOA ASC Committee and he did not find any conflict. Council Member Ackerman stated that his concerns are broader than a conflict of interest and deal with concerns about privacy/confidentiality. He does not want the residents or Homeowner's Association to lose any privacy.

City Attorney Magnuson stated that it may be a good idea to establish policies to keep the Homeowner's Association separate from the government. This allows for things like the roads to stay private. The Mayor stated that the Council Members have a fiduciary responsibility and are also Shareholders of the corporation and probably cannot be denied serving on NOHOA committees. He also stated that for years Council Members and NOHOA members have served on committees and he feels it serves the City well. Council Member Long states that it is important to keep the privacy. Council Member Ackerman asked if City Attorney Magnuson could look in to what took place in years past in regards to this issue.

The Mayor thanked Kathy Laur for attending the meeting as the editor of the North Oaks News. He also stated that the City Fair is June 8th and they are looking for volunteers.

Miscellaneous

Next Regularly Scheduled Planning Commission Meeting – April 25, 2013 @ 7:00 pm in the Community Meeting Room has been cancelled. The next meeting will be on May 30th, 2013.

Next Natural Resource Commission Meeting is scheduled for May 7, 2013 @ 7:00 pm. in the Community Meeting Room.

Next Regularly Scheduled City Council Meeting –May 9th, 2013 @7:00 pm in the Community Meeting Room

Adjournment

On motion duly made by Council Member Long, seconded by Council Member Nelson, and carried unanimously, the meeting was adjourned at 8:58 p.m.

Attest:

Respectfully submitted,

Mayor John Schaaf

Linda M. Hanson
Recording Secretary

(Attachment 1)

State of Minnesota)

County of Ramsey) ss

City of North Oaks)

RESOLUTION NUMBER 1270

RESOLUTION APPROVING A CONTRACT WITH RAMSEY COUNTY FOR HIGHWAY 96 RESURFACING PROJECT

WHEREAS, the City of North Oaks and Ramsey County have cooperated in reviewing the design for the costs associated with the grinding and bridge deck sealing for the land bridge located south of the North Oaks Golf Club and north of the Sucker Lake connection, and

WHEREAS, Ramsey County needs the City of North Oaks approval on said plans to submit them for the bid process, and

WHEREAS, Ramsey County has submitted a Cost Participation Summary based upon preliminary estimates and a feasibility study and that this requires the agreement of the City of North Oaks to participate before submitting the project for bids.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of North Oaks does approve the contract Agreement PW2013-12 and included as Attachment 1

PASSED BY THE COUNCIL of the City of North Oaks this 11th day of April, 2013.

APPROVED:

John Schaaf, Mayor

ATTEST:

Melinda Coleman, City Administrator