

MINUTES OF THE REGULAR COUNCIL MEETING

March 8, 2012

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, Bruce Ackerman, Tim Dunleavy and Mayor John Schaaf. Also present were City Administrator Melinda Coleman, City Attorney Dave 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 Tim Dunleavy and passed unanimously.

Citizen Comments

None

Consent Agenda

1. Minutes of the Regular Council Meeting of February 9, 2012 for approval.
2. Minutes of the Regular Planning Commission Meeting of February 23, 2012 for approval.
3. Licenses for Approval:
 - Mechanical Contractors:** Carter Custom Construction & Fireplaces, Inc, Corval Construction, Inc., Gallagher Heating & Air Conditioning, Kline Corp (Practical Systems), Knight Heating & Air Conditioning, Inc., Larson Plumbing & Heating
 - Plumbing & Heating:**
 - General Contractors:**
 - Arborists:** Roger's Tree Service
 - Sewer/Water Installation** T & J Concrete & Masonry, Inc.
5. Claims for Approval: Check # 9911-9940

Council Member Ackerman moved to accept the agenda and claims for Checks #9911-9940.

The motion was seconded by Council Member Dunleavy and passed unanimously.

Petitions, Requests & Communications

1. White Bear Lake School District #624 Superintendent: Dr. Michael Lovett

The Mayor introduced White Bear Lake Superintendent, Dr. Michael Lovett. He began his report by stating that the residents approved the six year renewal referendum with 73% in favor and 27% opposed. The messages they wanted to send out before this referendum were the following:

1. The school board asked for additional resources and they kept their promises.

2. The district had the greatest rise in test scores including math, writing, science and reading of any east metropolitan area school district.
3. They were honored for stewardship of financial resources for the past eleven years. In October they again received an AA bond rating.
4. He acknowledged some of the ways they were able to achieve results without increasing the budget with partnerships with the YMCA, White Bear Center of the Arts, Tamarac Nature Center, and Vadnais Heights Sport Center.

This referendum provides stability over the next six years.

The White Bear Schools strategic plan consists of six areas:

1. Challenging all students to be academically successful is the first area. This includes having all students meet proficiency standards in reading and mathematics by grade four and every grade level after. Second, every student will graduate from high school and be ready for college. Students can choose from 30 college credit courses today: 15 Advanced Placement, 11 College in the Schools and 5 Project Lead the Way classes.
2. The second strategy is global partnerships. Middle school students can choose from Spanish, German, French and now Chinese. The high school students have a third year of sign language as well as the other language choices. White Bear Schools are committed to having all elementary students grades K-5 have an opportunity to learn a world language. A proposal for this will go to the School Board soon.
3. A commitment to improve some of the facilities is the third strategy. Two elementary schools service North Oaks: Matoska International IS World School and Otter Lake. Matoska International has added a gymnasium and performing arts center and redesigned the space. Otter Lake will also get an update. By refinancing the debt with low interest rates, the school district is able to pay for these upgrades.
4. The fourth strategy is creating a culture of innovation where all students are inspired. More information will be coming on this.
5. The next strategy is about partnerships. Dr. Lovett believes there are more opportunities to find partnerships.
6. Creating a culture that is respectful for all students is the last strategy they are working on in White Bear Schools.

Council Member Dunleavy asked about the graduation rates. Dr. Lovett said that the White Bear graduation rate is 97%. He also stated that White Bear Schools were only one of three out of thirteen in the East metro area who met the standards for No Child Left Behind last year including all the subgroups. He stated that it is important for all elementary students to realize progress each and every year. They are very committed to early education in the first three grades. If students have success early on, they usually continue to have success. Students also have to be able to dream. Currently they have over 70 students who weekly mentor 5th graders at two schools.

Council Member Marty Long congratulated Dr. Lovett on his success and for making the

community stronger. Mayor John Schaaf stated that the City owes a great deal of gratitude to Dr. Lovett for coming to this community. He stated that the Superintendent has the heart of the students in mind and that he is a good mentor to his teachers as well. He also expressed that the people know him in this school district. The Mayor stated that perhaps others from the school district might want to visit with the Council in the future.

Unfinished Business

1. Pleasant Lake Oxygenation Project with SPRWA Update

City Administrator Melinda Coleman pointed out the memorandum from City Attorney Dave Magnuson included in the Red Folder. She stated it is the City's intent to reactivate the committee in late April or early May.

City Attorney Magnuson showed a drawing of the current location of the brick pump house. The parcel of land E is what is of concern. The proposal is to tear down the building and then install an oxygenation system in the center of this parcel. The attorney is looking in to the zoning regulations or controls of this parcel. NOHOA has other issues about the rights of the easement over the property. The Zoning Ordinance shows that it is zoned R/recreation. The permitted use is very strict with passive recreational uses, botanical or other ornamental uses, and historic sites. The original brick building was not consistent with any of the permitted uses. Records show that there was a conditional use permit for this building. It should not have been granted based on the permitted uses for this parcel this would be considered a use variance and is not allowed under state statutes. The zoning ordinance should have been changed to allow certain public utility uses with a conditional use permit when the structure was built. Mr. Magnuson looked into whether this parcel had the rights of nonconforming use. In 1882 the easements were granted to the Water Authority. The use of the parcel by the Water Board as a municipal water source seems to have predated the establishment of the City of North Oaks and any zoning ordinances. The District (R/Recreation) was created in 1976 and had similar language in 1991 when the Conditional Use Permit was granted. The legislature expanded the rights of the nonconforming use to include repair, replace, restore, maintain, or improve. In 1955 the law stated that the uses are the type and manner that were in effect at the time of the zoning ordinance enactment. It is Mr. Magnuson's opinion that any sort of use connected with operation and maintenance of a water utility would be permitted. For new structures the City could require that they be located within the setback and observe the fire code as well.

Council Member Ackerman questioned the statute and mentioned that in Mr. Magnuson's summary he left out the words that stated that the statute did not include expansion. He stated that removing the brick building and putting in the oxygenation system was not repair, but more of an expansion. He also stated that other regulations besides the road easement setbacks were not mentioned. He questioned the setbacks on the side of the property as well. Mr. Magnuson stated

that the placement of the new equipment would not affect the setbacks on the sides. Mr. Ackerman stated that it appears to be larger and may be closer to the East than shown on the drawing. In his opinion, Mr. Magnusson believed that the Water Board would have to follow the setbacks. City Administrator Coleman explained that in 1991 the requirements were only for the road regulations. She stated that if they now moved the structure into another area, they would have to meet the current requirements.

Council Member Ackerman continued to question the expansion of this project. Mr. Magnusson stated that in his opinion this is not an expansion. Mr. Ackerman is concerned about the size of the new equipment. He stated that a previous committee was formed to look at this and he would like to see it start up again. He would like to see more research on this project and would not like to see another mistake made on this property. His concern is on the changes of the appearance of this parcel.

Mayor Schaaf stated that he would not encourage three members to meet outside the Council as this violates State law. He agreed that this is a major issue for residents, but has heard from many residents who would like to see this system in. At this time, he has heard from only one other resident who was concerned about the appearance. He believes a committee may need to be reconvened but it would need to be published as a potential quorum of the City Council.

Ms. Coleman stated that it appears that the suggestion to have a meeting might be getting ahead of what should be done because at this point as no formal proposal has been made. She is willing to discuss timing of convening the meeting/committee with the Water Board. Ms. Coleman stated that right now the information is just a concept so there is no need to meet. Council Member Ackerman felt that it is being disingenuous by acting like the Council has no idea of what will be proposed. Mayor Schaaf stated that he did not feel that the Council was in any way being disingenuous and that no action would be needed at this time. In his opinion, once a proposal is in, then it would be appropriate to meet. Three members of the Council cannot meet without all Council Members being notified. The Water Authority, NOHOA, residents on the Lake, the City Council and the NRA are all interested in this process and will need to be part of the process. Mr. Ackerman felt that an appointed committee was already in place and he wanted to meet with the other two Council Members on this committee to be proactive. It is his belief that the Water Authority is moving forward. City Administrator Coleman stated that it is hard to have a committee meeting without a proposal from them.

City Attorney Magnusson stated that first the Council would have to determine if this project is an expansion, so a plan should be proposed before a committee is convened.

Council Member Nelson stated that he saw no need to meet at this time and made a motion to table the discussion. The motion failed for lack of a second.

Council Member Long mentioned that this is not a public utility, but does supply drinking water. He asked if there were any special regulations for this situation. Mr. Magnuson said the rights of a non-conforming use do prevail over an ordinance to the contrary. Mr. Magnuson stated that a new structure should follow any setbacks that are currently in the City's ordinances.

Mayor Schaaf stated that Mr. Long was incorrect in that the St. Paul Regional Water Authority is a public utility and does have rights as a public utility. It also has eminent domain authority. This would give them the right to acquire the land for an easement if needed.

Council Member Ackerman stated that this eminent domain does not give the Water Board the right to build whatever they want and not follow our setback regulations. The City Attorney agreed that the right of eminent domain gave the St. Paul Regional Water Services power only with respect to the power of acquisition over NOHOA property. It did not give the SPRWS authority to build and avoid setbacks. He agreed that if a building was moved or a new structure was built, the city ordinances apply.

New Business

1. Variance 11-14, 15 Island Road, Mark and Jenna Lobanoff

City Administrator Coleman explained that the applicant is applying for a variance to allow construction of a new home which is greater than the height of 35 feet as stated in the building code. The Planning Commission looked at a request at their January meeting and at that time the application included a variance for both height and floor area ratio. The application was withdrawn and the original plan was revised to reduce the floor area ratio which now meets the FAR requirement of .12. Also, since the original plan was presented, the site grading plan was revised for grading and drainage. City Building Official Greg Schmit worked with the builder to make this home design work on the parcel. This lot has a very challenging situation with a severe slope and excessive setbacks as well as the need to site an ISTS system. Both homes on each side of the projected home have heights that exceed 35 feet. The height variance is for only one section on the front of the home. It is the Staff's opinion that this variance should be granted based on the dramatic slope, unusual shape and large setbacks and it meets the requirements of practical difficulties.

In addition, the original plan was altered to address neighbor's concerns about drainage. The City's consulting engineer gave suggestions to minimize run-off by creating a swale and having drainage from the driveway directed to the low area on the east side of the lot to alleviate additional run-off. He suggested an increase to 2% slope for the driveway and that a silt fence be placed at the site during construction.

The Planning Commission recommended approval of this variance at their February, 23, 2012 meeting. Mr. Bob Moser, the builder, addressed the Council and stated that all changes recommended would be done. He also stated that his company tries to minimize asking for any exceptions and tries to limit what is needed for a variance.

Council Member Ackerman stated that both Mr. Moser and the Staff did an excellent job with this variance request. Council Member Dunleavy asked if excessive hurdles were required to obtain the variance. Mr. Moser stated that he tries to request few variances if any, and the City Staff was very helpful in facilitating the process.

Council Member Nelson thanked Mr. Moser for working on this as this was the first time the Planning Commission had to work with the new language of practical difficulties.

Council Member Dunleavy made the motion to approve Variance #11-14 for 15 Island Road with the following conditions:

1. Building to be constructed according to the site plan and building elevations dated 2/07/2012, and 2/09/2012, respectively.
2. Lot grading and swale be amended as recommended by the Consultant Engineer, including compliance with Sections 151 and 153 of the Code of Ordinances.
3. That the applicant reimburses the City for the costs of the Consultant Engineer Review.
4. That the completion date be 18 months from approval.

The motion was seconded by Council Member Long and it passed unanimously

2. Amendment to VLAWMO JPA

City Administrator Coleman brought a request for an update for the Vadnais Heights Lake Area Water Management Organization Joint Powers Agreement. This involves an extension of the Joint Powers Agreement through December 31, 2016. Ms. Coleman gave a short history of the background for VLAWMO. Staff recommended that the Council pass the amendment.

Council Member Ackerman made the motion, seconded by Council Member Nelson, and it passed unanimously.

Council Member Reports

1. Tim Dunleavy

Finance Committee:

Council Member Dunleavy attended the regularly scheduled Finance Committee meeting. More will be discussed during the City Administrator Report. The City is continuing to close out the 2011 books.

Lake Johanna Fire Board:

Council Member Dunleavy included a list of this month's calls.

2. Bruce Ackerman

NOHOA:

Council Member Ackerman attended the March 1, 2012 NOHOA meeting. Under Sheriff George Altendorfer, Evening Shift Supervisor Todd Thompson, and the Administrative Officer for North Oaks Jack Serier made a presentation. Ramsey County works for seven contract cities with service to 75,000 to 80,000 people. They discussed crime and mentioned that there is not much crime in North Oaks. Ninety nine percent of their calls are false alarms. The main animal issue is barking dogs. Trespassing came up and it is necessary to know how many people trespass and show that one is making steps to stop it in order for the streets to remain private. More trespassing citations appear to have been issued in the past. Burglaries are mostly in the day time and the numbers are low. Markus Bieber stated that the City did not have to spend an additional \$800,000 on entrance security and Carol Bergeson seconded his comment. The Sheriff was clear that a reduction in hours for the Sheriff's presence is not advisable.

They also discussed revising the by-laws in regards to enforcing deed restrictions and ASC violations and policies. They needed to delay the consideration of this as the NOHOA attorney has asked for more time. There are 17 declarations, 8 deeds plus Deer Hills, amounting to 26 separate documents that need to be looked at. The Board expressed some reluctance to authorize more money for attorney fees. This action was postponed.

They then discussed the delinquent dues policy. This often comes up in foreclosures. They adopted a resolution which allows someone in the office to authorize to wave 50% of the homeowner's delinquent dues without getting Board Member or Officer approval.

NOHOA will now have an on-line registration for dues and recreation fees.

They discussed the West Rec Center improvements. President Azman felt that they could not rely on contributions only and that NOHOA would have to make a commitment. There was a discussion on how to proceed, what the scope of the project should be and whether there should be a fixed budget or find out what could be attained at various price levels. NOHOA needs to tie this in with their reserve analysis, entrance committee costs, and the EAB costs. They do have \$600,000 in reserves for the West Rec Center at this time.

The topic of trespassing came up again and a question about what records the City currently has on trespassing. Ms. Coleman explained that the City does not keep records except for citations issued by Ramsey County Sheriff. The Safety and Security Committee in the past has twice a year done a VIP

event to check for current stickers. The CSO cannot issue a citation for trespassing, but he can call in the Ramsey County Sheriff. Council Member Dunleavy stated that Ramsey County Sheriff's Department has done additional patrols to look for trespassing. NOHOA has requested that the City get involved at some times especially around special events. Member Ackerman questioned why there are fewer citations at this time. The Mayor stated that he was unsure if this was true. Ms. Coleman explained that she believed that having a full time CSO on board does appear to have an impact on trespassing. The CSO does ask those who do not belong to leave. City Attorney Magnuson explained that the City is best to not tolerate public access to keep the streets private rather than public.

They also discussed the front entrance and Council Member Ackerman explained that the land at the entrance is owned by the North Oaks Company. An additional cost to purchase the land would occur if NOHOA wanted to make changes on this land. The North Oaks Company at this time is not sure what they might want to do with this parcel. Resident Joan Brainard stated that the land is a 501C Charitable Organization and so only essential uses would be allowed.

Commission Member George Rux made a statement about roles of communication with members and about sending emails and being respectful. Also conflict of interest was mentioned.

3. Marty Long

NRC:

The NRC did not meet the past month, but was meeting the following Tuesday. They are working on a more consistent date for the meetings and it is under discussion to televise the meetings. Commissioner Jack MacKenzie retired from the Commission and it has not yet been decided to replace his position. The monthly article did not get published the last month but hopefully will be starting in the next issue. The first one is on deer feeding and ticks.

VLAWMO:

VLAWMO also did not meet. They will be meeting the following Monday. Road restrictions are now in place. No vehicles over 3 tons are allowed except those approved by the City for trash hauling, transporting students, providing safety, etc. Concerns about excessive damage could occur if large vehicles were allowed. Signs are posted about the restrictions.

4. Gregg Nelson

PLANNING COMMISSION:

The Planning Commission met and discussed the Variance that was acted upon at their February meeting.

They also discussed the upcoming meeting with Pemtom in regards to the Home of the Good Shepherd property. The meeting will take place on March 27, 2012 at Waverly Gardens (7:00 pm). The City Council, Planning Commission, NOHOA and the Architectural Supervisory Committee are invited to attend this meeting.

The North Oaks Housing tour is scheduled for the upcoming Saturday and the same members have been invited to take a look at the current condition of housing.

Mayor John Schaaf

The Mayor stated that a meeting was taking place at the same time as the Council Meeting for those who live on the ponds. Residents are meeting to see if there is an interest to pursue a similar path as to the Lake Gilfillan project to bring more water to the ponds. Residents Foley and VanDeWalker will report back if interest is there.

The Mayor also mentioned that the City tour is scheduled for March 10, 2012 at 9:00 AM.

Administrator Reports

1. Upcoming Community Tour and Meeting on the Good Shepherd Property

Ms. Coleman stated that the tour would take about 1.5 hours and 22 people have expressed an interest in attending.

The Pemtom Project

Ms. Coleman will be meeting with a representative from Pemtom and the City of Shoreview on Tuesday, March 13, 2012 to discuss installation of utilities.

Pemtom requested that in addition to the City Council, Planning Commission, NOHOA, and ASC that also residents within 350 feet of the property be invited to attend the meeting on March 27, 2012 at 7:00 PM at Waverly Gardens. Ms. Coleman gave them the labels for residents within this area.

Council Member Dunleavy asked about the work on Hodgson Road and if any residents have called the City. Ms. Coleman had sent out letters in regards to this project and has heard from only one resident.

2. Audit in Progress Report-2011 Budget Closure

The auditors have completed their work. The financial statements were addressed to reformat them so that upcoming projects will have their own line item and not affect the overall budget reports.

The draft audit report should be done within two weeks. Ms. Coleman will make copies of the report and the Council will have ten days to respond followed by a

formal presentation at an upcoming Council Meeting. This will probably take place in May. On the 2011 budget, it appears that the City is over budget by approximately \$34,000 due to the payments that were not made for taxes in 2011 that were expected. This year the building permits are picking up and Ms. Coleman is hopeful that 2012 will be a better year.

Council Member Dunleavy asked if the City will again have the issue with a reduction of tax payments in the future. Ms. Coleman stated that the City will be informed in the future as requests for tax reductions are paid on the same schedule as first half tax payments are due.

Council Member Ackerman requested that the Monthly Expenditure vs. Actual Expense report be given to the Council Members earlier. City Administrator Coleman explained that the report was just completed and normally the reports would have been sent out. This was due to the Auditor's being in the office last week.

3. 2012 Budget vs. Actual

No comments were given, but an update of the budget status was submitted to each Council Member.

4. LGWA Project Update Report

The project is basically done except for some minor spring items. The pumps will be tested this spring and water will be turned on. Once it is on, the residents will be notified of the assessment hearings. Residents will be allowed to prepay the assessment and Ms. Coleman anticipates that many will probably consider this. The Mayor mentioned that it will take three years to fill the Lake, but in June or July public hearings will be held and then Ramsey County will be notified of the cost to taxpayers in that area.

Ms. Coleman stated that there will be some additional administrative costs that will need to be addressed at a later date. Expenses for a maintenance contract and water costs will need to be addressed at a later date. The residents in this area will have an annual expense for maintenance.

5. LGWA Decision on legal and administrative expense reimbursements 2011

Ms. Coleman stated that after talking to Abdo (the accounting firm) she was informed that the legal and administrative expenses for the LGWA cannot be credited to 2011. It is suggested that the City wait until all expenses are in and then pay back the City in 2012.

US Bank will hold the bonds, but they could be sold in the future.

Council Member Dunleavy asked if the re-payment policy for the Lake Gilfillan Project could be submitted in writing from the accounting firm. Ms. Coleman stated that this would be done.

The Mayor asked that City Attorney Dave Magnuson go back through the timeline set last year for the remaining work needing to be done and update the Council on this at the next meeting.

6. Keith Benker scheduled for April City Council Meeting

Keith Benker will be at the April Council meeting to address the Highway 96 Contamination clean-up actions. Residents will be notified and more information will be on the website.

7. 2011 Ramsey County Employee Recognition Awards

Ms. Coleman mentioned that she attended the 2011 Ramsey County Sheriffs Employee Recognition Awards at the Vadnais Heights Commons on County Road F. They honored Commander Joe Paget who was given a Distinguished Service Medal Award. He was one of five who received this award for demonstrating consistent and superior performance in a variety of assigned duties. Ms. Coleman wanted to commend him for this award and state that she has enjoyed working with him in the past on various projects.

Council Member Dunleavy made a motion to draft a resolution to commend Commander Joe Paget for his good work and Council Member Nelson seconded the motion. The motion carried unanimously.

City Attorney Reports

1. Pool Lawsuit Hearing Update

City Attorney Dave Magnuson gave a quick update on the pending litigation. A hearing is scheduled for May 14th at 2:00 PM at Ramsey County Courthouse, Room 1470. He stated that it was not necessary to attend this hearing as the lawyers will be arguing the case. Pierre Regnier from the League of MN Cities will be representing the City. Ms. Coleman stated that he does a great work. Ms. Coleman will be attending this hearing.

Miscellaneous

Next Regularly Scheduled Council Meeting – Thursday, April 12, 2012 @ 7:00 pm in the Community Meeting Room

Next Natural Resource Commission Meeting – Tuesday, March 13, 2012 @ 7:00 pm. in the Community Meeting Room

Next Planning Commission Meeting – Thursday, March 29, 2012 @ 7:00 pm in the Community Meeting Room

Adjournment

On motion duly made by Council Member Long and seconded by Council Member Ackerman and carried unanimously, the meeting was adjourned at 8:55 p.m.

Attest:

Respectfully submitted,

Mayor John Schaaf

Linda M. Hanson
Recording Secretary