

CITY OF APPLE VALLEY
Dakota County, Minnesota
February 25, 2010

Minutes of the regular meeting of the City Council of Apple Valley, Dakota County, Minnesota, held February 25th, 2010, at 8:00 o'clock p.m., at Apple Valley Municipal Center.

PRESENT: Mayor Hamann-Roland; Councilmembers Bergman, Goodwin, Grendahl, and LaComb.

ABSENT: None.

City staff members present were: City Administrator Lawell, City Clerk Gackstetter, City Attorney Hills, City Engineer Manson, Public Works Director Blomstrom, Associate City Planner Bodmer, Assistant City Administrator Grawe, Finance Director Hedberg, Parks and Recreation Director Johnson, City Planner Lovelace, Police Captain Marben, Community Development Director Nordquist, Human Resources Manager Strauss, and Fire Chief Thompson.

Mayor Hamann-Roland called the meeting to order at 8:00 p.m. Everyone took part in the Pledge of Allegiance to the flag.

APPROVAL OF AGENDA

MOTION: of LaComb, seconded by Bergman, removing item 4.J.1 – Resolution Awarding Contract for EECBG Grant Ice Arena Boiler Replacement Project, from the agenda, and approving the agenda for tonight's meeting as amended. Ayes - 5 - Nays - 0.

AUDIENCE

Mayor Hamann-Roland asked if anyone was present to address the Council, at this time, on any item not on this meeting's agenda. No one requested to speak.

CONSENT AGENDA

Acting Mayor Goodwin asked if the Council or anyone in the audience wished to pull any item from the consent agenda. There were no requests.

MOTION: of LaComb, seconded by Bergman, approving all items on the consent agenda with no exceptions. Ayes - 5 - Nays - 0.

CONSENT AGENDA ITEMS

MOTION: of LaComb, seconded by Bergman, approving the minutes of the regular meeting of February 11, 2010, as written. Ayes - 4 - Nays - 0 - Abstain - 1 (Grendahl).

MOTION: of LaComb, seconded by Bergman, approving issuance of a lawful gambling permit to conduct excluded bingo, by the State Gambling Control Board, to

Eastview Lightning Touchdown Club, for use on March 14, 2010. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, approving renewal of the City's property, liability, workers' compensation, and umbrella insurance coverage for March 1, 2010, through March 1, 2011, with the League of Minnesota Cities Insurance Trust at a total premium of \$832,214.00, including the non-waiver of statutory liability limits for the City's insurance, as recommended in the Finance Director's memo dated February 21, 2010. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, adopting **Resolution No. 2010-34** approving amendments to the Apple Valley Firefighters Relief Association's Bylaws. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, receiving the Cemetery Advisory Committee's 2009 annual report. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, approving the Special Outdoor Promotion/Temporary Sign Permit for placement of signage on City property from March 13, 2010, through April 10, 2010, in connection with the 2010 Home & Garden Expo, as described in the application. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, adopting **Resolution No. 2010-35** consenting to the Economic Development Authority (EDA) resolution authorizing reimbursements to Fischer Market Place, LLP. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, approving a variance of 4-feet from the front yard building setback to allow construction of a front entry addition on Lot 3, Block 4, Greenleaf Sixth Addition (5760 138th Street Court W.) to within 26 feet, as recommended by the Planning Commission. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, adopting **Resolution No. 2010-36** approving specifications for AV Project 2010-106, Chlorine Gas Containment System for Two (2) 1-Ton Chlorine Cylinders, and authorizing advertising for receipt of bids, at 10:00 a.m., on March 30, 2010. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, adopting **Resolution No. 2010-37** awarding the contract for Two-Year Lease for Eleven 72-Inch Mowers to M.T.I. Distributing, Inc., the lowest responsible bidder, in the amount of \$117,750.74. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, approving the Agreement for Tree Planting – Spring 2010, with Friedges Landscaping, in the amount of \$28,350.00, and authorizing the Mayor and City Clerk to sign the same. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, accepting Apple Valley Community Center Surveillance System, as final and authorizing final payment on the contract with Silent Knight Security Systems of Minnesota, Inc., in the amount of \$10,355.00. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, accepting Hayes Community and Senior Center Surveillance System, as final and authorizing final payment on the contract with Silent Knight Security Systems of Minnesota, Inc., in the amount of \$7,945.00. Ayes - 5 - Nays - 0.

MOTION: of LaComb, seconded by Bergman, approving hiring the seasonal employees listed in the Personnel Report dated February 25, 2010. Ayes - 5 - Nays - 0.

END OF CONSENT AGENDA

APPLE VALLEY GOLF COURSE ON-SALE 3.2 PERCENT MALT LIQUOR LICENSE

Ms. Gackstetter reviewed her memo regarding the renewal of an On-Sale 3.2 Percent Malt Liquor License for Joel Watrud d/b/a Apple Valley Golf Course, located at 8661 140th Street W. Necessary checks of police and tax records were conducted and indicate nothing which would preclude renewing the license.

Mayor Hamann-Roland called the public hearing to order at 8:04 p.m. to consider renewal of the On-Sale 3.2 Percent Malt Liquor License for Joel Watrud d/b/a Apple Valley Golf Course for 2010, and noted receipt of the affidavit of publication of the hearing notice. The Mayor asked for questions or comments from the Council and the audience. There were none and the hearing was declared closed at 8:05 p.m.

MOTION: of Goodwin, seconded by Bergman, approving renewal and issuance of an On-Sale 3.2 Percent Malt Liquor License for Joel Watrud d/b/a Apple Valley Golf Course, located at 8661 140th Street W., for 2010. Ayes - 5 - Nays - 0.

ORDINANCE AMENDING CHAPTER 115 REGARDING FENCING MATERIALS

Ms. Bodmer gave the first reading of an ordinance amending Section 115.351(C) of the City Code regulating fencing materials. The City received an inquiry last fall as to whether hex-netting wire fencing, commonly referred to as chicken wire, is a permitted material for fencing along a property line. The Code states temporary fencing may not be used, but does not specifically identify allowable fencing materials. This ordinance clarifies which materials are permitted. It also addresses temporary fencing and prohibited fencing materials and calls out various exceptions. The Planning Commission reviewed the ordinance amendment at its meeting on February 17, 2010, and voted unanimously to recommend approval.

Councilmember Bergman questioned the 10-foot setback requirement for fences constructed of temporary materials that are proposed as prohibited. He stated fences constructed of approved materials can be placed within inches of the property line. He believes that if a hex wire fence is properly constructed with footings, heavy posts, and support rails, and it is being used to support grapevines, rose shrubs, or other natural barriers it should not have to be placed 10 feet from the property line.

Ms. Bodmer said the reason fences constructed of temporary fencing materials includes a 10-foot setback requirement is to ensure enough space around both sides of the fence to maintain and care for it.

Councilmember Bergman stated he did not see a difference between a cyclone fence covered with ivy or a properly constructed hex wire or welded wire fence covered with ivy.

Ms. Bodmer said the difference is the use of a less sturdy material which may not make a very good neighbor if it is not properly maintained.

Councilmember Bergman said he thinks a 10-foot setback may be excessive for something that is done decoratively or nicely.

Councilmember Grendahl said she also has concerns about the 10-foot setback.

Ms. Bodmer asked the Council if there was a distance with which they may be more comfortable.

Councilmember Goodwin said he can understand why the Planning Commission recommended the ordinance as it is written. Heavy fence is heavy fence and chicken wire is chicken wire. He noted that the discussion is centered around whether or not the construction of the fence is done properly and questioned who would make the determination as to whether it was constructed properly.

The Council discussed various options for amending the ordinance.

Councilmember Grendahl said considering there has only been one inquiry it may not be necessary to put that many restrictions in the ordinance right now.

Mayor Hamann-Roland suggested staff take another look at the ordinance and that this review be treated as a first reading with a second reading to follow.

Councilmember Bergman suggested the matter go back to the Planning Commission. He recommended staff show the Planning Commission examples of how various materials are suitable when properly constructed. He stated chain link fence that does not have a top and bottom support can also blow in the wind. He indicated he is fine with the other aspects of the ordinance.

After further discussion, the Council accepted the first reading.

CEMETERY ADVISORY COMMITTEE VACANCY

Ms. Gackstetter stated Committee Member Robert Harvey notified staff regarding his resignation from the Cemetery Advisory Committee. She recommended the Council formally accept Mr. Harvey's resignation and invite citizens interested in applying for this vacancy to submit an application to the City Clerk by March 31, 2010.

Mayor Hamann-Roland thanked Mr. Harvey for his service on the Cemetery Advisory Committee.

MOTION: of Goodwin, seconded by LaComb, accepting the resignation from Cemetery Advisory Committee Member Robert Harvey, and thanking him for his dedicated service to the City of Apple Valley. Ayes - 5 - Nays - 0.

MOTION: of Grendahl, seconded by Bergman, authorizing the City Clerk to accept applications from citizens interested in serving on the Cemetery Advisory Committee through March 31, 2010. Ayes - 5 - Nays - 0.

ESTABLISH COMMISSION AND COMMITTEES

Ms. Gackstetter reviewed her memo dated February 22, 2010, regarding establishing committees. The Code states the Council may create commissions and boards to assist and advise the Council. It further states that commissions and boards not established by the City Code shall be established by resolution and the resolutions shall set forth the purpose and duties of the commission or board. The City currently has six standing committees; they are the Cemetery Advisory Committee, the Parks and Recreation Advisory Committee, the Planning Commission, the Telecommunications Advisory Committee, the Traffic Safety Advisory Committee, and the Urban Affairs Advisory Committee. In addition to calling out the purpose and duty of each committee, the resolutions clarify the number of members, terms of appointment, required qualifications of the members, frequency of the meetings, and other data specific to the particular commission or board.

MOTION: of LaComb, seconded by Bergman, establishing the purpose, duties, and membership terms by adopting **Resolution No. 2010-38** for the Cemetery Advisory Committee, **No. 2010-39** for the Parks and Recreation Advisory Committee, **No. 2010-40** for the Planning Commission, **No 2010-41** for the Telecommunications Advisory Committee, **No. 2010-42** for the Traffic Safety Advisory Committee, and **No. 2009-43** for the Urban Affairs Advisory Committee. Ayes - 5 - Nays - 0.

REAPPOINT COMMISSION & COMMITTEE MEMBERS

Ms. Gackstetter reviewed her memo dated February 22, 2010, regarding the reappointment of Commissioners and Committee Members with terms expiring March 1, 2010, and those whose term has been revised as a result of the implementation of staggering terms. All members have indicated interest in serving an additional term.

MOTION: of Goodwin, seconded by LaComb, adopting **Resolution No. 2010-44** reappointing Paula Moore to the Cemetery Advisory Committee for a term expiring March 1, 2013; **No. 2010-45** reappointing to the Parks and Recreation Advisory Committee Russell Defauw, Cindy Hart, and Matthew Mittelsteadt (Youth Representative) for a term expiring March 1, 2013; Tina Rankin and Darrell Retka for a term expiring March 1, 2012; and Lee Strom and Patrick Sullivan, Jr., for a term expiring March 1, 2011; **No. 2010-46** reappointing Tim Burke and Paul Scanlan to the Planning Commission for a term expiring March 1, 2013; **No. 2010-47** reappointing to the Telecommunications Advisory Committee Rollin Bible and Jerry Brown for a term expiring March 1, 2013; Scott Hugstad-Vaa and John Magnusson for a term expiring March 1, 2012; and Dale Rodell and David Westbrook for a term expiring March 1, 2011; **No. 2010-48** reappointing to the Traffic Safety Advisory Committee Richard Asleson, Todd Blomstrom, and Linda Dolan for a term expiring March 1, 2013; Harald Eriksen and Charles Grawe for a term expiring March 1, 2012; and Jon Rechtzigel and Arthur Zimmerman for a term expiring March 1, 2011; and **No. 2009-49** reappointing to the Urban Affairs Advisory Committee Barry Berg, Sandy Breuer, and Shirley Doering for a term expiring March 1, 2013; Edwin Holmes and Sharon Schwartz for a term expiring March 1, 2012; and Pamela Sohlberg and Earl Wilson for a term expiring March 1, 2011. Ayes - 5 - Nays - 0.

The Council congratulated the reappointees and extended thanks to all Commissioners and Committee Members for their invaluable services.

CALENDAR OF UPCOMING EVENTS

MOTION: of Grendahl, seconded by Goodwin, approving the calendar of upcoming events as included in the City Clerk's memo dated February 22, 2010, and noting that each event listed is hereby deemed a Special Meeting of the City Council. Ayes - 5 - Nays - 0.

CLAIMS AND BILLS

MOTION: of Bergman, seconded by Grendahl, to pay the claims and bills, check registers dated February 17, 2010, in the amount of \$542,796.83; and February 24, 2010, in the amount of \$1,608,517.02. Ayes - 5 - Nays - 0.

CLOSE MEETING - ATTORNEY-CLIENT PRIVILEGE

Ms. Hills asked the City Council to convene in a closed session, under the provisions of M.S. 471.705, to discuss litigation involving Jorge Allen, et al, regarding ponding.

MOTION: of Bergman, seconded by Goodwin, to close the regular meeting and convene in closed session to discuss with the City Attorney litigation involving Jorge Allen, et al, regarding ponding. Ayes - 5 - Nays - 0.

The meeting was closed at 8:27 p.m. and Mayor Hamann-Roland and Councilmembers Bergman, Goodwin, Grendahl, and LaComb convened in the Regent Conference Room, at 8:32 p.m., along with City Attorney Hills, Mr. Monte Mills, of Greene Espel, City Administrator Lawell, City Clerk Gackstetter, and Public Works Director Blomstrom. Mr. Mills advised the Council that its discussion must be limited to matters for which the meeting was closed and if issues are discussed outside of this meeting the attorney-client privilege will be lost. Discussion followed regarding the litigation involving Jorge Allen, et al, relative to ponding.

The Council reconvened in open session at 8:58 p.m.

MOTION: of LaComb, seconded by Grendahl, to adjourn. Ayes - 5 - Nays - 0.

The meeting was adjourned at 8:59 o'clock p.m.

Respectfully Submitted,

/s/ Pamela J. Gackstetter
Pamela J. Gackstetter, City Clerk

Approved by the Apple Valley City Council on 3-11-10.