

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

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

PRESENT: Acting Mayor Goodwin; Councilmembers Bergman, Grendahl, and LaComb.

ABSENT: Mayor Hamann-Roland.

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

Acting Mayor Goodwin called the meeting to order at 8:00 p.m. Everyone took part in the Pledge of Allegiance led by Boy Scouts Brandon Hildebrand, Peter Micholic, and Tommy Micholic from Troop 292.

APPROVAL OF AGENDA

MOTION: of Grendahl, seconded by Bergman, moving consideration of items 4.F. 1-8 – Approve Various Agreements to the regular agenda, and approving the agenda for tonight's meeting as amended. Ayes - 4 - Nays - 0.

AUDIENCE

Acting Mayor Goodwin 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. A member of the audience requested item 4.G be moved to the regular agenda.

MOTION: of Grendahl, seconded by LaComb, moving consideration of item 4.G – Adopt Resolution Awarding Contract for AV Project No. 2010-101, 2010 Street Maintenance Project, to the regular agenda, and approving all remaining items on the consent agenda. Ayes - 4 - Nays - 0.

CONSENT AGENDA ITEMS

MOTION: of Grendahl, seconded by LaComb, approving the minutes of the regular meeting of March 11, 2010, as written. Ayes - 4 - Nays - 0.

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MOTION: of Grendahl, seconded by LaComb, approving a change in manager for Rich Management, Inc., d/b/a Apple Place, in connection with the On-Sale Intoxicating Liquor License and Special License for Sunday Liquor Sales at 14917 Garrett Avenue, naming Shonda Sauter as General Manager; as described in the City Clerk's memo dated March 22, 2010. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, adopting **Resolution No. 2010-63** establishing City change/petty cash funds at Hayes Community and Senior Center in the amount of \$50.00. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, adopting **Resolution No. 2010-64** authorizing participation in the Dakota County All Hazard Mitigation planning process. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, adopting **Resolution No. 2010-65** supporting City's response to Google's request for information for construction of ultra-high speed open access broadband network, and authorizing the City Administrator to act as the point of contact. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, accepting Senior Center Project # 0833 – Coiling Doors/Grills as complete and authorizing final payment on the agreement with Hufcor Minnesota, LLC, in the amount of \$2,937.70. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, accepting Senior Center Project # 0950 – Acoustical Ceilings as complete and authorizing final payment on the agreement with Kirk Acoustics, Inc., in the amount of \$2,082.50. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, accepting Senior Center Project # 0330 – Cast-in-Place Concrete as complete and authorizing final payment on the agreement with Steenberg-Watrud Construction, in the amount of \$6,875.70. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, accepting Senior Center Project # 2305 – Testing and Balancing for HVAC as complete and authorizing final payment on the agreement with Systems Management & Balancing of Minnesota, in the amount of \$550.00. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, adopting **Resolution No. 2010-66** approving HIPAA Business Associate Addendum Agreement with Delta Dental, and authorizing the Human Resources Manager to sign the agreement. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, adopting **Resolution No. 2010-67** approving Business Associate Agreement with Total Administrative Services Corporation (TASC), and authorizing the Human Resources Manager to sign the agreement. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, adopting **Resolution No. 2010-68** amending the 2010 Employee Pay and Benefit Plan. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, approving the promotion of employee, hiring the part-time and seasonal employees, and resignation of employees as listed in the Personnel Report dated March 25, 2010. Ayes - 4 - Nays - 0.

END OF CONSENT AGENDA

APPROVE VARIOUS AGREEMENTS

Councilmember Bergman stated he does not have concern with items 4.F.3, the agreement with Frontier Communications, or 4.F.4, the agreement with Jirik Sod Farm, but requested additional discussion at a work session on items 4.F.1, 4.F.2, 4.F.5, 4.F.6, 4.F.7, and 4.F.8, which are for approval of agreements for playground and sun shade structures at various parks.

Councilmember Grendahl indicated she also has questions on the same items.

Acting Mayor Goodwin inquired if there was a timeline that needed to be met or if these items could wait for action until after they were discussed at an informal meeting.

Mr. Johnson indicated there was time.

MOTION: of Bergman, seconded by Grendahl, approving the Agreement for 36-Month PRI Telecommunications Services, with Frontier Communications, in the average monthly amount of \$1,142.58, subject to minor modifications as approved by the City Administrator and City Attorney, and authorizing the City Administrator to sign the same. Ayes - 4 - Nays - 0.

MOTION: of Bergman, seconded by Grendahl, approving the Agreement for AV Project 2010-113, 2010 Sod Replacement Services, with Jirik Sod Farm, Inc., in an amount not to exceed 9,500.00, and authorizing the Mayor and City Clerk to sign the same. Ayes - 4 - Nays - 0.

MOTION: of Bergman, seconded by Grendahl, removing the following items from the agenda: Agreement with BCI Burke Company for Playground Structure – Faith Park, Agreement with BCI Burke Company for Playground Structure – Galaxie Park, Agreement with PlayPower LT, Inc., for Playground Structure – Quarry Point Park, Agreement with PlayPower LT, Inc., for Playground Structure –

Wallace Park, Agreement with PlayPower LT, Inc., for Quarry Point Park Sun Shade Structure, and Agreement with St. Croix Recreation Company, Inc., for Playground Structure – Alimagnet Park. Ayes - 4 - Nays - 0.

2010 STREET MAINTENANCE PROJECT

Mr. Lawell introduced the item.

Mr. Blomstrom said on February 11, 2010, the Council approved plans and specifications and authorized advertising for bids for the 2010 Street Maintenance Project. The bid opening was held March 18, 2010. Five bids were received and their totals were read aloud. During the bidding process two irregularities were encountered. The issues were turned over to the City Attorney for review. The City Attorney reviewed the items and prepared a summary of fact which is included in the agenda packet.

Mr. Dougherty reviewed the facts regarding the irregularities and his opinion as described in his memo dated March 24, 2010. Based on his understanding of the facts, he does not believe either issue creates a material legal impediment to awarding the contract.

On the second issue which has to do with the submission of a single sheet of paper being turned in after the gavel was struck, Mr. Dougherty noted the receipt of the missing page is a conforming “mere irregularity” that conferred no substantial benefit to the bidder not enjoyed by the other bidders. It is his opinion that it is a “mere irregularity”. If the City Council determines by the facts that there is no benefit that can be obtained to the contractor that made that bid, that there is no disadvantage to any other contractor, and that there is nothing to show that as a result of that irregularity the bidder received preferential treatment from the City Council, the Council may waive it as a “mere irregularity” in the consequences of the bid. The Council must determine whether it finds that it is a “mere irregularity”. In the packet is a draft resolution awarding the contract to McNamara Contracting, as the low bidder. The resolution indicates the incident is a “mere regularity”.

Councilmember Grendahl asked if the amount of the total base bid and Alternate 1 were received in the sealed bid envelope.

Mr. Blomstrom confirmed that the totals were received in the sealed bid prior to the gavel being struck. The intermediate page which was missing added up to the totals which were received in the sealed bid envelope.

Mr. Brent Carron, of Valley Paving, said he was present at the bid opening and also bid on this project. He agreed that the events at the bid opening are consistent with what was presented in the memorandum in the agenda packet. He commented about language referenced in the City’s instructions to bidders, specifically, Article 15 regarding submittal of the bid and Article 17 regarding opening of bids. He stated he is upset the City is not willing to adhere to these bidding procedures.

Councilmember Bergman noted this is the first irregularity on a bid that he recalls since he has been on the City Council.

Mr. Blomstrom said the City has been doing bids for years and it is rather unusual. The key point from staff's perspective is that once the first envelope is opened, the situation is radically changed.

Acting Mayor Goodwin asked the City Attorney to further explain the matter for the public's benefit as well as address the issues brought up by Mr. Carron.

Mr. Dougherty did as requested noting some of these issues are also addressed in page 3 of his memo.

Councilmember Grendahl asked what information was included on page 5.

Mr. Blomstrom presented the entire bid proposal form to the Council, including page 5. He noted that when the unit prices listed on page 5 were entered into the spreadsheet used to confirm calculations, the amount of the total base bid was the same as the amount included in the sealed bid.

Councilmember Grendahl asked if Valley Paving was the next lowest bidder and what their bid was.

Mr. Blomstrom confirmed Valley Paving was the second lowest bidder and their total base bid was approximately \$135,000 more than the lowest base bid.

Councilmember Grendahl stated she does not appreciate irregularities; however, she noted the numbers submitted by the lowest bidder add up to the total amounts received under sealed bid.

MOTION: of Grendahl, seconded by LaComb, adopting **Resolution No. 2010-69** awarding the contract for AV Project 2010-101, 2010 Street Maintenance Project, including Alternate No. 1, to McNamara Contracting, Inc., the lowest responsible bidder, in the amount of \$1,694,423.43. Ayes - 4 - Nays - 0.

THINK BANK

Mr. Lovelace reviewed the request by South Shore Development and HTG Architects for rezoning of Lot 2, Block 1, Cobblestone Lake Commercial 3rd Addition, from PD-703/Zone 8 to PD-703/Zone 6; subdivision of approximately 84 acres into 2 lots and 15 outlots; and a site plan/building permit authorization for construction of a 5,070 square foot bank on a 1.57-acre lot. In addition, staff and the Planning Commission are recommending the rezoning of several outlots from PD-703/Zone 8 to PD-703/Zone 7.

The petitioner is proposing to dedicate 85 feet of right-of-way for Pilot Knob Road and 33 to 50 feet of right-of-way for 160th Street which will meet the requirements in the most recent "Dakota County Road Plat Review Needs Map". However, the County has raised an issue regarding the possible need for additional right-of-way based on a study recently completed by Dakota County and the Cities of Apple Valley and Lakeville. As a result, an agreement between the City and Dakota County will need to be prepared that identifies what improvements can and cannot be placed in the 25 foot area which may be needed for additional right-of-way. The agreement should be executed prior to final plat approval.

Mr. Lovelace reviewed the accesses, grading plan, and landscaping plan. He then reviewed the elevation drawings noting the primary concern of the Planning Commission was the appearance or plainness of the rear of the building which will face Pilot Knob Road. He further reviewed the requests by the Planning Commission and subsequent design modifications provided by the petitioner. After seeing the designs, the Planning Commission recommended the petitioner work with staff on possible changes that would include an all metal trellis or the inclusion of metal banding to the exterior finish. Mr. Lovelace presented the revised elevation drawings reflecting the recommendations proposed by the Planning Commission. He added that the Planning Commission voted unanimously to recommend approval of the rezoning, preliminary plat, and site plan/building permit authorization.

Councilmember Bergman said earlier today he contacted Mr. Lovelace to ask if there is a landscape guideline for Cobblestone Lake. He asked Mr. Lovelace to share that answer with the rest of the Council.

Mr. Lovelace said there is nothing within the planned development ordinance that specifically addresses the types of landscaping species or materials that must be used. He added that the Natural Resources Coordinator reviews the landscape plan to ensure there is a variety of materials and that the plantings can survive in the soil types that are present.

Councilmember Bergman said he likes the building but feels the landscaping is missing something. He would prefer a rural, craftsman type landscaping. He believes there are a lot of techy arborvitaes in the plan. He thinks it is missing the country, urban feel that is prevalent in the rest of the Cobblestone Lake development.

Acting Mayor Goodwin asked for clarification regarding the Planning Commission's recommendation.

Mr. Lovelace responded that there may not have been a true consensus on what they wanted, but noted they were adverse to the trellis with stone. He stated the last two designs were not presented to the Planning Commission. They acknowledged the building had a stark look and were hoping the final design option punched it up just a bit. He thinks the Planning Commission may have embraced the banding option had they seen it.

Councilmember Grendahl asked if any residents attended the Planning Commission meeting and commented about the design.

Mr. Lovelace stated a couple residents did attend the meeting and those that spoke were positive about the building.

Councilmember LaComb commented about the process and the recommendation coming from the Planning Commission, and noted that the recommendation feels luke warm.

Mr. Lovelace said he did not mean to relay that impression and added that he believes the Planning Commission was excited about the project. The struggle was fitting the design in with the existing theme. He said one Commissioner commented about how Cobblestone Lake is unique and each building has its own identity. The Think Bank building also has its own identity. He felt the Planning Commission embraced that thought.

The Council commented on the fact it is unusual for the Planning Commission to leave the decision up to the Council. They reviewed and discussed the final two elevation drawings, noting the back of the building does appear somewhat plain.

Mr. Lovelace described enhancements applied to other buildings in the area. He stated the back of the Think Bank building is only 60 feet and the trash enclosure on the back of the building provides some depth. He indicated four-sided architecture requires use of the same materials on all four sides of the building and believes the petitioner accomplished that goal.

The Council continued discussion regarding the design.

Mr. Jacob Fick, of South Shore Development, said they are happy to be before the Council with this design. He said the front of the building is customer and pedestrian friendly to Cobblestone Lake, whereas the rear of the building faces Pilot Knob Road where there is primarily car traffic. He said their first concern was that it is a first-class building that it is tastefully done. Hearing the Planning Commission's and staff's comments, the architect tried to come up with designs that would give some pop and movement to the back of the building. As the developer, they are comfortable with either application. They realize the architecture is different from the rest of Cobblestone Lake but believe the design will fit nicely within the community.

Mr. Jeff Pfipsen, of HTG Architects, presented a picture of the bank. He said they believe the design is clean and simple. He said they will continue to work with staff to develop a landscape plan that has more of the country, urban feel as requested by Councilmember Bergman. He thinks there are some things that can be done with the landscaping to enhance the back of the building and recommended keeping the original design of the building.

Councilmember Grendahl asked if the petitioner was ready to dig.

Mr. Pfipsen said they are ready.

Councilmember Grendahl asked if they are willing to work with staff.

Mr. Pfipsen said yes, they are willing to work with staff, and believed that was also the Planning Commission's recommendation.

MOTION: of Grendahl, seconded by Bergman, passing **Ordinance No. 883** rezoning Lot 2, Block 1, Cobblestone Lake Commercial 3rd Addition, from Planned Development No. 703/Zone 8 to Planned Development No. 703/Zone 6, as recommended by the Planning Commission. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, passing **Ordinance No. 884** rezoning Outlots A, D, G, J, L, and N, Cobblestone Lake Commercial 3rd Addition, from Planned Development No. 703/Zone 8 to Planned Development No. 703/Zone 7, as recommended by the Planning Commission. Ayes - 4 - Nays - 0.

MOTION: of Bergman, seconded by Grendahl, adopting **Resolution No. 2010-70** approving the preliminary plat of Cobblestone Lake Commercial 3rd Addition, with conditions as recommended by the Planning Commission. Ayes - 4 - Nays - 0.

Mr. Pfipsen presented samples of various materials proposed for the building.

The Council resumed discussion regarding the design and the need for the petitioner to continue to work with staff on the landscaping.

MOTION: of Grendahl, seconded by LaComb, amending the resolution to include a condition which requires revisions to the landscape plan consistent with the existing landscaping in Cobblestone Lake Commercial development to be approved by City staff and adopting **Resolution No. 2010-71** approving the site plan and authorizing issuance of a building permit for construction of a 5,070 square foot building with 4 drive-up window lanes on Lot 2, Block 1, Cobblestone Lake Commercial 3rd Addition, with conditions.

Mr. Lawell said staff would appreciate more direction. If it is just working with the petitioner on landscaping that is fairly clear cut. If Council would like staff to work with the petitioner regarding the design, additional thoughts and comments would be appreciated. He asked if there was a way to extend the broader aluminum band across the rear of the building.

After additional discussion by the Council regarding the design, the architects presented a new design which depicts a prefinished metal overhang at the northwest corner of the building.

MOTION: of Grendahl, seconded by LaComb, amending the foregoing motion to further amend the resolution to reference construction shall occur in conformance with the elevation plan submitted at the March 25, 2010, Council meeting, which depicts a prefinished metal overhang at the northwest corner of the building, and the elimination of the metal banding. Ayes - 4- Nays - 0.

Councilmember Grendahl asked staff to update the Council as to the final landscape plan.

Vote was taken on the motion as amended: Ayes - 4 - Nays - 0.

APPLE VALLEY GRILL, LLC, D/B/A WILD BILL'S SPORTS SALOON

Mr. Lovelace reviewed the request by Apple Valley Grill, LLC, d/b/a Wild Bill's Sports Saloon for approval of a site plan/building permit authorization for a 3,137 square foot outdoor dining area in conjunction with a Class I restaurant located at 15020 Glazier Avenue. The applicant is proposing constructing the outside dining area on the south side of the building. It will be approximately 108 feet wide by 30 feet long and will seat approximately 88 people. It will be bordered with a split-rail fence on the east, west, and south sides. The Planning Commission reviewed this item on March 17, 2010, and voted unanimously to recommend approval of the site plan/building permit authorization.

Councilmember Bergman questioned if signage would be allowed on the covered portion of the bar.

Mr. Lovelace indicated no additional signage advertising the premises would be allowed on the bar roof.

Councilmember Bergman commented about the need for sufficient parking to accommodate both the outdoor and indoor guests. He stated Mr. Lovelace indicated parking is adequate. When he drove by the restaurant earlier tonight, he noted two additional parking spaces were lost due to a trash dumpster being stored outside of the two enclosed areas specified for dumpsters. He asked for assurance that the third dumpster will be enclosed and that the doors are kept closed.

Mr. Mike Tuppa, of Wild Bill's Sports Saloon, said this was brought to his attention at the Planning Commission meeting last week. Because one of the corrals had one large door the dumpster was not able to fit in the space. This week he hired a fencing company to replace the large door with two swinging doors so that the dumpster could fit inside the corral. Their refuse hauler has been notified that the correction has been made. The next time the dumpster is emptied, the hauler will place the dumpster into the corral so it will no longer be outside the enclosed area.

Councilmember Bergman asked Mr. Lovelace to stay on top of this matter.

Acting Mayor Goodwin said he likes the modified design which keeps the trees and results in the space being further away from County Road 42.

MOTION: of Grendahl, seconded by Bergman, adopting **Resolution No. 2010-72** approving a site plan for 3,137 square foot outdoor dining area in conjunction with a Class I restaurant located on Lot 2, Block 1, Apple Valley Commercial Addition (15020 Glazier Avenue), subject to conditions as recommended by the Planning Commission. Ayes - 4 - Nays - 0.

MOTION: of LaComb, seconded by Grendahl, adopting **Resolution No. 2010-73** amending the On-Sale Liquor and Special License for Sunday Liquor Sales issued to Apple Valley Grill, LLC, d/b/a Wild Bill's Sports Saloon, at 15020 Glazier Avenue, to include the outdoor seating area, identified on Exhibit A, as part of the licensed premises. Ayes - 4 - Nays - 0.

ORDINANCE AMENDMENTS

Police Chief Johnson gave the first reading of three ordinances amending Chapters 10, 70, 71, 91, 93, 94, 95, and 96 of the City Code regarding misdemeanor and petty misdemeanor penalties, the adoption of certain statutes, and defining certain offenses as petty misdemeanor penalties. The Council accepted the first readings. The second readings will be April 8, 2010.

STAFF COMMUNICATIONS

Mr. Nordquist provided a brief update and reminder to residents to complete the 2010 census form.

Acting Mayor Goodwin added that the State, County, and City are reimbursed with Federal dollars. Many of the formulas for reimbursement factor in population. As a result, communities that do a better job of counting all their citizens will receive more of a per capita share of Federal dollars under some programs. He also commented about the importance of the census as it relates to maintaining a Federal Congressional seat.

Councilmember Grendahl noted she received a call today regarding the census and asked what questions must be answered.

Mr. Nordquist responded that only the questions on the census form arriving via mail must be answered. Questions being asked via the telephone or other methods are not part of the census.

COUNCIL COMMUNICATIONS

Councilmember Grendahl stated she heard the MVTA is stopping service along Pennock Avenue. She asked Councilmember LaComb if there was anything the Council could do to support her in preventing this.

Councilmember LaComb said at this point the City Administrator and she are checking into the proposed changes.

Mr. Lawell said representatives from MVTA are doing the background and will help prepare a letter of response to the one phone call received.

Acting Mayor Goodwin invited the public to the Home and Garden Expo on April 10, 2010, from 9:00 a.m. to 3:00 p.m. at the Western Service Center and on April 11, 2010, the Apple Valley Arts Foundation will hold its annual "Celebration of Spring" from noon to 6:00 p.m. at the Apple Valley High School.

CALENDAR OF UPCOMING EVENTS

MOTION: of Bergman, seconded by Grendahl, approving the calendar of upcoming events as included in the City Clerk's memo dated March 22, 2010, and noting that each event listed is hereby deemed a Special Meeting of the City Council. Ayes - 4 - Nays - 0.

CLAIMS AND BILLS

MOTION: of Grendahl, seconded by Bergman, to pay the claims and bills, check registers dated March 19, 2010, in the amount of \$276,187.84; and March 26, 2010, in the amount of \$1,097,757.65. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by LaComb, to adjourn. Ayes - 4 - Nays - 0.

The meeting was adjourned at 9:53 o'clock p.m.

Respectfully Submitted,

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

Approved by the Apple Valley City Council on 4-8-10.