

CITY OF APPLE VALLEY
Dakota County, Minnesota
August 25, 2011

Minutes of the regular meeting of the City Council of Apple Valley, Dakota County, Minnesota, held August 25, 2011, at 8:00 o'clock p.m., at Apple Valley Municipal Center.

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

ABSENT: Councilmember Goodwin.

City staff members present were: City Administrator Lawell, Deputy City Clerk Murphy, City Attorney Dougherty, Public Works Director Blomstrom, Associate City Planner Bodmer, Assistant City Administrator Grawe, Finance Director Hedberg, Parks and Recreation Director Johnson, Police Chief Johnson, City Engineer Manson, Community Development Director Nordquist, 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 led by Boy Scouts Perry Abdulkadir, John Barrington, Garrett Bromer, Ian Elliott, Greg Gearing, Matt Harrington, and Tyler Steen from Troop 292.

APPROVAL OF AGENDA

MOTION: of Grendahl, seconded by Bergman, approving the agenda for tonight's meeting, as presented. Ayes - 4 - 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

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

MOTION: of Grendahl, seconded by Hooppaw, approving all items on the consent agenda with no exceptions. Ayes - 4 - Nays - 0.

CONSENT AGENDA ITEMS

MOTION: of Grendahl, seconded by Hooppaw, approving the minutes of the regular meeting of August 11, 2011, as written. Ayes - 3 - Nays - 0 - Abstain - 1 (Hamann-Roland).

MOTION: of Grendahl, seconded by Hooppaw, adopting **Resolution No. 2011-120** amending the 2011 On-Sale Intoxicating Liquor License and Special License for Sunday Liquor Sales for Blazing Wings, Inc., d/b/a Buffalo Wild Wings Grill & Bar, at

14658 Cedar Avenue, Suite. D, by extending the licensed premises. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, adopting **Resolution No. 2011-121** setting a public hearing, at 8:00 p.m., on September 22, 2011, on the application for On-Sale Intoxicating Liquor and Special License for Sunday Liquor Salesby Spoon, Inc., d/b/a Spoon, at 14871 Granada Avenue. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, approving the installation of two additional street lights along 14200 and 14300 blocks of Hemlock Court, funded from the Street Light Utility Fund. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, approving the Agreement with CFT Developments, LLC, for Installing Storm Sewer, Repairing Intersection, and Adjusting Grade of Driveway on Pennock Avenue, as attached to the Public Works Director's memo dated August 25, 2011, and authorizing the Mayor and City Clerk to sign the same. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, approving the Agreement with Tom-Don Real Estate Holdings, Inc., for Installing Storm Sewer, Repairing Intersection, and Adjusting Grade of Driveway on Pennock Avenue, as attached to the Public Works Director's memo dated August 25, 2011, and authorizing the Mayor and City Clerk to sign the same. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, adopting **Resolution No. 2011-122** amending the 2030 Comprehensive Plan and Land Use Map adding a temporary sand and gravel overlay. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, waiving the procedure for a second reading and passing **Ordinance No. 925** amending Chapter 150 of the City Code regulating completion deadlines for exterior work. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, adopting **Resolution No. 2011-123** setting a public hearing, at 8:00 p.m., on September 22, 2011, to consider vacating a portion of utility easement on Lot 1, Block 16, Cedar Knolls. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, adopting **Resolution No. 2011-124** awarding the contract for AV Project 2011-104, 2011 Utility Improvements, to McNamara Contracting, Inc., the lowest responsible bidder, in the amount of \$354,677.50. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, approving Change Order No. 1 to the contract with Geislinger and Sons, Inc., for AV Project 2011-108, Sanitary Lift Station 2 Replacement, in the amount of an additional \$9,228.69. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, accepting Sports Arena Rubber Flooring at Apple Valley Sports Arena as complete and authorizing final payment on the agreement with Arena Systems, in the amount of \$24,850.00. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, approving hiring the seasonal and part-time employees, as listed in the Personnel Report and Addendum dated August 25, 2011. Ayes - 4 - Nays - 0.

END OF CONSENT AGENDA

MCNAMARA CONTRACTING PROPERTIES

Ms. Bodmer introduced a request from McNamara Contracting Properties, LLC, and the City of Apple Valley as co-applicants. This request is asking for consideration of a Comprehensive Plan Amendment from "LD" (Low Density Residential) to "IND" (Industrial), rezoning from "SG" (Sand & Gravel) to "I-1" (Limited Industrial), preliminary plat of McNamara Addition and vacation of various easements. The existing McNamara site consists of two parcels totaling 10.4-acres. The properties are currently guided for "LD" (Low Density Residential) development and zoned "SG" (Sand and Gravel).

The City is working with McNamara Contracting Properties, LLC, to obtain the necessary right-of-way to extend Flagstaff Avenue south to 147th Street West. The McNamara property is encumbered with a number of pipeline and utility easements which make development of the property difficult. The City will be purchasing the southern parcel in order to complete the Flagstaff Avenue project because a large portion of the southern property was needed to accommodate the Flagstaff Avenue alignment and the large easements left the remaining property nearly unbuildable.

The property owner wishes to rezone the property to an industrial designation to allow the existing use of the property to remain as it is today as an office/warehouse building. The petitioner has no plans at this time to redevelop the property.

Ms. Bodmer reviewed the questions and concerns raised at the public hearings for the McNamara project held on August 3, 2011, and August 17, 2011, Planning Commission meetings.

She stated the Planning Commission asked staff to prepare a drawing not only displaying the easements on the property but also the set-backs because there are larger than typical set-backs. The parcel is quite constraint. There is other land available in the City zoned industrial so it is not likely someone will choose this site for redevelopment when other sites are available.

Councilmember Bergman asked if Footbridge Way would butt up to Flagstaff Avenue.

Ms. Bodmer replied no and that it would only butt up to the west property line.

Councilmember Bergman asked why the two streets would not be connected. He asked for clarification as to why there would be green space between them.

Ms. Bodmer stated that based on the information collected at the public hearing the neighborhood is very concerned about cut through traffic to Eastview High School if Footbridge Way were to be extended. If the City could go without extending Footbridge Way, that would be the preference of the neighborhood residents.

Councilmember Bergman asked if there was concern from residents regarding traffic and noise with Flagstaff Avenue being extended.

Mr. Blomstrom answered that typically the City tries to tie projects together that would produce a financial advantage. If there are challenges in extending Footbridge Way that would be advantageous to the City to address now, that would rise to a higher level in the City's consideration. The terrain is fairly flat to the south so there is not a cost advantage to extending Footbridge Way at this time but could tie it to another project in the future. Regarding noise, there is a terrain difference to the west with the land rising up from 6 feet to 12 or 15 feet and then it drops back down into the Cedar Isles development. He feels that really is the best way at minimizing noise. Some of the land farther south is under the city's control and would allow the City to plant screening in the future.

Mayor Hamann-Roland asked for clarification if there would be connectivity by bike and foot traffic but not by auto between Footbridge Way and Flagstaff Avenue.

Ms. Bodmer said the City is exploring as to install a path from Footbridge Way to Flagstaff Avenue and that would provide pedestrian and bicycle access to the high school as well as to Johnny Cake Ridge Park.

She stated the City would be installing a 6-foot high privacy fence on the west and south sides of the property of Lot 1. This fence would provide a buffer between the land use and the neighborhood in addition to the natural buffer of the berm discussed by Mr. Blomstrom.

Mayor Hamann-Roland asked if the planned fence would be constructed at the top of the berm.

Mr. Blomstrom answered that the proposed fence would be placed along the west line of the north parcel which would be the building on the McNamara property. The fence would be located on the top of the berm and would be a solid wood fence and not the chain linked fence as there is today.

The Planning Commission voted unanimously to recommend approval at their August 17, 2011, meeting. Recommended actions would be to adopt the resolution authorizing the submission of the comprehensive plan amendment from "LD" Low Density Residential to "IND" (Industrial) to the Metropolitan Council, withholding action on the rezoning and preliminary plat until the Met Council acts on the Comp Plan amendment request, and adopting a resolution setting the public hearing to consider vacation of various easements at the September 22, 2011, City Council meeting.

Councilmember Grendahl asked for a historical perspective on the property. She questions if the McNamara property is in compliance now.

Ms. Bodmer confirmed that they are not.

Councilmember Grendahl stated that the City has had issues with the property owner in the past. She questioned if the City is complying with them instead of them complying with the City.

Ms. Bodmer said the issue in 2006 and prior that the property owner did approach a developer to see if they could lay out the property for low density development. They found that because of the small size of the property as well as the easements, they found that residential developers were not interested in the property.

Councilmember Grendahl stated she has had phone calls on this property since 1997 that the property owners are not in compliance with what the zoning is. She takes issue with the fact that there has never been compliance from the property owner. She asked why the City would be paying for the fence.

Mr. Blomstrom answered that if the City would be paying for the fence it would allow the City to make the decision on what kind of fence to install. The City would want a fence installed that is good quality, low maintenance, and will stand up over the years. He said as part of the negotiation process the City agreed to pay for the fence.

Councilmember Grendahl questioned if the City is negotiating with the property owner now when they are not in compliance with the land use. She stated the City is paying for fences and buying property and questioned what the City is getting out of this.

Mr. Lawell stated that one of the issues the City has been dealing with that dates back to the 1990s was not when the property was in its current condition but when it was occupied by Tri-State Machinery. That property in the older times was a problem property. There were rusting parts from the old sand and gravel operations in that quadrant of the City. As the sand and gravel left the materials accumulated. Past complaints were why was this property allowed to exist in an industrial state long after sand and gravel had departed that part of the City. The site was cleaned up when Tri-State Machinery moved out. The City is dealing with a different set of circumstances today than when it received those complaints. As the building is occupied currently, he does not believe there is any type of industrial use going on. Some office space is now used in the building. What has prompted this is Council's direction to get Flagstaff Avenue running north and south across that property connecting from 140th Street down into downtown as well as getting 147th Street extended to the east.

Councilmember Grendahl questioned why Flagstaff Avenue could not be extended without rezoning. She stated roads are put through in other areas of the City and asked why it is an issue now.

Mr. Lawell stated the lot is an odd configuration. The south parcel wraps around the east side and the north side. It is not a clean situation to go in there and secure property for a road. Also, the southern property is really unbuildable due to the size and shape.

Councilmember Grendahl asked how much the City is paying for the property and how much the fence will cost.

Mr. Blomstrom stated it is based on an appraisal and approximately \$240,000.00 to purchase the southern half of the property and about \$3,000.00 to build the fence.

Councilmember Grendahl stated that if the property is worth \$240,000.00 it is obviously not worthless property. She questioned if it is considered unbuildable how it could be worth \$240,000.00. She asked what kind of comps are used in today's standards.

Mr. Blomstrom stated that the real challenge is with the appraised value of the parcel as it sits today. The challenge is to acquire the right-of-way for Flagstaff Avenue and that the parcel is severed by the pipeline and acquiring the land because Flagstaff Avenue curves through the southern parcel has really attributed to the southern portion not being buildable.

Councilmember Grendahl questioned if we had an estimate for acquiring just the property for the road.

Mr. Blomstrom stated the appraisal was not broken down by just the square footage for the right-of-way. He said the challenge is when you look at a parcel to acquire right-of-way and only a corner is clipped, you look at things on a per square footage.

Mayor Hamann-Roland commented that the southeast corner of the parcel will remain green space. She feels the neighborhood will benefit from this green space because this area will not be developed.

Mr. Blomstrom agreed but from an appraisal standpoint you question if the City is doing a total take on a property because it has taken so much land.

Councilmember Grendahl asked when the 60 days is up and if we are under a deadline this evening.

Ms. Bodmer stated the City has submitted a letter to the property owner notifying them the City is exercising the option to extend another 60 days.

Councilmember Grendahl questioned how many votes it would take to approve submittal of the Comp Plan amendment if she did not feel comfortable voting on it this evening.

Ms. Bodmer clarified that the authorization to submit to the Met Council is a simple majority. Once it comes back from the Met Council then a super majority is needed for approval on

the Comprehensive Plan amendment. She stated the application was made July 1, 2011, and the 120 days would be up the end of October.

Councilmember Grendahl inquired with the extension if the City really does have until November.

Mr. Dougherty stated that in terms of a land use item, the 60-day clock got extended by the letter from the City and because the Met Council is involved it also stops the clock. There will be an additional extension based on the length of time the Met Council has to make this decision.

Councilmember Hooppaw asked for clarification if staff considered acquiring the space needed for the roadway versus acquiring the entire Outlot A.

Mr. Blomstrom stated that when the City met with the owners of the southern parcel and we showed them the amount of land needed for the right-of-way, they reached the conclusion that the taking of that easement does not leave enough land to make anything of the southern parcel. We always just appraise the total value from the beginning.

Councilmember Hooppaw asked if the \$240,000.00 is the cost for the right-of-way for the road and Outlot A.

Mr. Blomstrom confirmed it was. He said he does not have the purchase agreement with him this evening but can provide that information later.

Councilmember Bergman inquired if the City had any discussion with the Met Council on this.

Mr. Nordquist answered that whenever there is a change or request to shift from Low Density Residential to Industrial that will raise attention at the Met Council but it should not raise concern from them. He feels the Met Council will give it their due consideration but does not believe it is of exceptional concern.

Mayor Hamann-Roland asked Councilmember Grendahl if she was comfortable sending the request to the Met Council.

Councilmember Grendahl stated the City just turned in the Comprehensive Plan last year. She inquired what happened from last year to this year.

Ms. Bodmer stated there were a number of properties that were inconsistent with each other and the McNamara Property was one of those identified. When the City initiated the interest of rezoning the property to Low Density the owners were opposed to it. They wanted to sit down and work with the City on it.

Councilmember Grendahl asked if this could be postponed for two weeks.

Mr. Blomstrom stated if Council felt they needed two weeks we could manage with that.

Motion: of Grendahl to table for two weeks. Motion died for lack of a second.

Councilmember Bergman said to Councilmember Grendahl that this will only be going to the Met Council for approval. He then asked Mr. Blomstrom if we were in a project deadline.

Mr. Blomstrom stated the City's goal was to try have this project under contract this fall yet or perhaps get some preliminary work done and then the majority of the construction in 2012 so it is completed in that year. Negotiations and the process has pushed that back. We would still like to move as quickly as we can so it is complete by 2012. He said they can make adjustments for two weeks if needed but to keep the process moving with all the things in play, review from Met Council, acquisitions, and the closing on the purchase of the property, we are trying to keep everything running parallel to the extent that we can.

Councilmember Bergman questioned if the Met Council had a time frame they had to get back to us.

Ms. Bodmer stated the City's expectation is that this would be a minor plan amendment so they could do that on a staff level rather than have the full Met Council review it. She feels if it is minor amendment it could take 4-6 weeks for them to process.

Councilmember Bergman asked if we delay for two more weeks then we could be looking out to December 2011.

Mr. Blomstrom stated we would have then lost the construction season for 2011. He said the City is trying to synchronize this project because there are a number of projects on the schedule for 2012. He said any degree we can keep this project moving is an advantage to the City.

Mayor Hamann-Roland stated with the time frame she feels Council needs to move on it tonight.

MOTION: of Hooppaw, seconded by Bergman, adopting **Resolution 2011-125** approving an amendment to the Land Use Map of the 2030 Comprehensive Plan from "LD" (Low Density Residential, 3-6 units/acre) to "IND" (Industrial), and authorizing submittal to the Metropolitan Council. Ayes - 3 - Nays - 1 (Grendahl).

MOTION: of Bergman, seconded by Hooppaw, adopting **Resolution 2011-126** setting a public hearing, at 8:00 p.m., on September 22, 2011, to consider vacating easements on the McNamara property in accordance with the attachments. Ayes - 4 - Nays - 0.

STAFF COMMUNICATION

Mr. Blomstrom provided an update on the Cedar Avenue transitway construction project.

Mr. Thompson announced that the 34th Annual Booya will be held at Fire Station No. 1 on September 17, 2011. There will be bingo and raffles with prizes donated from the community.

Mr. Johnson publicized the final dance in the summer concert series at Kelley Park will be held on September 17, 2011, from 5:00 to 7:00 p.m.

Mr. Lawell informed everyone that Beyond the Yellow Ribbon Campaign kicks off at the Apple Valley American Legion on September 19, 2011, at 6:30 p.m.

COUNCIL COMMUNICATIONS

Councilmember Grendahl said that on August 29, 2011, the Apple Valley American Legion will be hosting the Four Corners event which has the potential of approximately 5,000 people.

Councilmember Grendahl shared that she and Councilmember Hooppaw attended the disaster training exercise on August 13, 2011, and it was a great experience.

CALENDAR OF UPCOMING EVENTS

MOTION: of Hooppaw, seconded by Grendahl, approving the calendar of upcoming events as included in the City Clerk's memo dated August 22, 2011, 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 Bergman, seconded by Grendahl, to pay the claims and bills, check registers dated August 17, 2011, in the amount of \$735,833.06; and August 24, 2011, in the amount of \$951,859.82. Ayes - 4 - Nays - 0.

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

The meeting was adjourned at 9:15 o'clock p.m.

Respectfully Submitted,

/s/ Joanne Murphy
Joanne Murphy, Deputy City Clerk

Approved by the Apple Valley City Council on 9-6-11