

CITY OF APPLE VALLEY
Dakota County, Minnesota
February 24, 2011

Minutes of the regular meeting of the City Council of Apple Valley, Dakota County, Minnesota, held February 24th, 2011, at 8:00 o'clock p.m., at Apple Valley Municipal Center.

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

ABSENT: Councilmember Bergman.

City staff members present were: City Administrator Lawell, City Clerk Gackstetter, City Attorney Hills, Public Works Director Blomstrom, Associate City Planner Bodmer, Assistant City Administrator Grawe, Finance Director Hedberg, City Planner Lovelace, City Engineer Manson, Police Captain Marben, and Community Development Director Nordquist.

Mayor Hamann-Roland called the meeting to order at 8:01 p.m. Everyone took part in the Pledge of Allegiance to the flag.

APPROVAL OF AGENDA

MOTION: of Grendahl, seconded by Goodwin, adding item 4.N - Approve State Gambling Exempt Permit for Minnesota Darkhouse & Angling Association to the consent agenda, moving item 4.G - Adopt Resolution Accepting Dakota County Transitway Implementation Plan Update to the regular agenda, and approving the agenda for tonight's meeting, as amended. 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 Hooppaw, seconded by Goodwin, approving all items on the consent agenda with no exceptions. Ayes - 4 - Nays - 0.

CONSENT AGENDA ITEMS

MOTION: of Hooppaw, seconded by Goodwin, approving the minutes of the regular meeting of February 10, 2011, as written. Ayes - 3 - Nays - 0 - Abstain - 1 (Hamann-Roland).

MOTION: of Hooppaw, seconded by Goodwin, approving a change in officer for Wadsworth Old Chicago, Inc., d/b/a Old Chicago in connection with On-Sale Intoxicating Liquor License and Special License for Sunday Liquor Sales at 14998 Glazier

Avenue, naming Henry Allen Corey as President and CEO; as described in the City Clerk's memo dated February 18, 2011. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, approving the Special Outdoor Promotion/Temporary Sign Permit for placement of signage on City property from March 5, 2011, through April 2, 2011, in connection with the 2011 Home & Garden Expo, as described in the application. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, adopting **Resolution No. 2011-26** approving amendments to the Apple Valley Firefighters Relief Association's Bylaws. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, adopting **Resolution No. 2011-27** amending 2010 and 2011 budgets for uncompleted 2010 projects. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, adopting **Resolution No. 2011-28** writing off \$6,463.41 of non-sufficient fund checks, invoices, and uncollectible debts against operations of affected funds owed to the City. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, adopting **Resolution No. 2011-30** supporting the application to Minnesota Department of Natural Resources for a trail grant for construction of Johnny Cake Ridge Road Trail from 140th Street to 147th Street. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, approving the Memo of Understanding with American Institute of Architects (AIA) for participation in Sustainable Design Assessment Team (SDAT) Community Assistance Project. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, authorizing payment of \$5,000.00 from Livable Communities Demonstration Account (LCDA) grant funds for Cedar Avenue Master Transit Oriented Design (TOD) Development Plan project for the Sustainable Design Assessment Team (SDAT) Community Assistance Project. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, adopting **Resolution No. 2011-31** approving Settlement Agreement and Release documents for ponding easements. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, adopting **Resolution No. 2011-32** accepting payment and satisfaction of assessments on Assessment Roll No. 588 for PID 01-23695-030-02. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, setting a special informal City Council meeting, at 9:00 a.m., on April 8, 2011, at Camp Sacajawea Lodge, 5121 McAndrews Road, for the purpose of discussing goals with City staff. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, approving hiring the seasonal employees and resignation of employees, as listed in the Personnel Report dated February 24, 2011. Ayes - 4 - Nays - 0.

MOTION: of Hooppaw, seconded by Goodwin, approving issuance of a lawful gambling exempt permit, by the State Gambling Control Board, to Minnesota Darkhouse & Angling Association, for use on March 12, 2011, at the Apple Valley American Legion, 14521 Granada Drive, and waiving any waiting period for State approval. Ayes - 4 - Nays - 0.

END OF CONSENT AGENDA

DAKOTA COUNTY TRANSITWAY IMPLEMENTATION PLAN UPDATE

Ms. Bodmer said Dakota County has asked cities along the Cedar Avenue corridor to review the Cedar Avenue Transitway Implementation Plan Update Final Report and provide resolutions of support. Included in the Council packet is a resolution accepting the findings and highlighting some of the outstanding issues. She then reviewed the findings and recommendations as listed in the 2010 Cedar Avenue Transitway Implementation Plan Update Final Report presentation.

Mr. Nordquist reviewed Apple Valley's four comments and concerns listed in the report as well as Dakota County's response. He then summarized comments received from 11 businesses. He read the observations listed on the second page of the resolution.

Councilmember Goodwin stated he has tremendous concerns regarding parking, especially at 147th Street. He added that even a few cars parking in the parking lot at 147th Street could hurt the businesses. He noted it is already difficult to find parking during the middle of the day when all the businesses are open. Cedar Avenue is a County road and the improvement project is a joint effort by the county, state, and federal government. As a result, the City Council is only serving in an advisory capacity. He felt it was important the public understand the City is not the deciding authority on this issue.

Mayor Hamann-Roland said the entire Council shares those concerns. She also expressed concern for the neighborhood at 140th Street.

Councilmember Grendahl commented on the large boarding numbers for the walk-up stations at the 140th and 147th Street Stations and questioned the methodology of the research. She said she lives in this neighborhood and does not see walk-up traffic like this. She stated she also has serious concerns.

Ms. Sam O'Connell, Dakota County Transit Specialist, explained how the ridership numbers in the report were developed.

Councilmember Grendahl asked about the destination of the ridership.

Ms. O'Connell explained various findings in the modeling and the connections to light rail.

Councilmember Grendahl said the report shows \$3.5 million for each station. She would rather take the \$7 million from the walk-up stations and add to the existing park and ride facility that is already full.

Councilmember Hooppaw echoed Councilmember Goodwin's concern for the businesses and property owners along the proposed walk-up stations. He does not want to lose sight of this issue as the project moves forward.

Councilmember Goodwin said the ridership numbers may be realistic in the middle of summer when kids are out of school and they want to go to the Mall of America or in 2030 when the price of gas is much higher, but they are much too high for the dead of winter.

Councilmember Grendahl commented on the moveable lane that is being considered for 140th Street and asked if that was taken into account. She noted the resolution states the report "confirms ridership demand". She does not believe the numbers presented are realistic and, therefore, cannot support its approval.

Ms. Bodmer recommended changing the language in the resolution from "confirms ridership demand" to "states ridership demand".

The Council directed staff to strengthen and/or modify the resolution language to address the concerns expressed by Council.

MOTION: of Goodwin, seconded by Grendahl, authorizing staff to modify the resolution as previously discussed and adopting **Resolution No. 2011-29** accepting Dakota County's 2010 Cedar Avenue Transitway Implementation Plan Update as amended. Ayes - 4 - Nays - 0.

ORDINANCE ADDING CHAPTER 123 REGARDING MASSAGE THERAPY

Police Captain Marben gave the first reading of the proposed ordinance amending Title XI of the City Code entitled "Business Regulations" by adding Chapter 123 entitled "Massage Therapy Business and Massage Therapist Licenses". He stated the ordinance would require massage therapy businesses and massage therapists to be licensed with the City. It provides definitions and describes the licensing process, license eligibility, and regulations governing the licensees. No Council action is required.

Mayor Hamann-Roland noted this item was also discussed at the informal meeting earlier this evening.

Councilmember Hooppaw asked how critical it is to have the 90-day residency requirement for massage therapists.

Captain Marben said the Police Department believes it is critical that the requirement be included in the ordinance. He believes the 90-day requirement will help prevent human trafficking.

Mayor Hamann-Roland noted members of the business community expressed concern with that requirement because it prevents them from hiring therapists who are coming from other states.

Councilmember Goodwin said he is also concerned with the 90-day residency requirement. He said he wants additional clarification from the City Attorney on that requirement.

The Council thanked staff for their efforts in preparing the massage therapy ordinances and for listening and responding to citizen concerns.

Councilmember Grendahl said it was suggested at the informal meeting that Apple Valley's ordinance is the most restrictive. She asked if other communities have the 90-day residency requirement.

Captain Marben said other communities have a similar requirement. He offered to provide the Council a list of those communities.

The Council requested said list.

Mayor Hamann-Roland suggested staff coordinate another public meeting to receive input. She said she would also be available for the meeting. She talked about the importance of passing an ordinance that is balanced; one that stops prostitution but allows massage therapists and massage therapy businesses to be healthy.

The Council accepted the first reading.

ORDINANCE ADDING MASSAGE THERAPY FEES

Ms. Gackstetter gave the first reading of the proposed ordinance amending the Fee Schedule Appendix of Title III of the City Code by establishing certain fees and charges related to massage therapy businesses and massage therapists. Although this is a new ordinance, it is the third time this item has come before the Council. Based on comments staff has received, the fees for a massage therapist license have been revised. She noted staff considered the results of the fee study completed in December 2008 by PFM Group. She added that the proposed fees are lower than the City's actual costs. She stated no formal action is required.

Mayor Hamann-Roland commented on the compromise made on the rate for the massage therapist license.

Councilmember Goodwin commented on the massage therapist renewal fee for the City of Eagan, noting it was probably a fee set several years ago that has not been looked at recently.

Ms. Roxanne Beseman, 6380 131st Street Court, asked when the application for a Massage Therapist license is due.

Mr. Gackstetter explained the due date is likely to change to coincide with the passing of the ordinance. If the massage therapist ordinance is passed in March, the applications will likely be due the middle of May.

The Council accepted the first reading.

REAPPOINT COMMISSION & COMMITTEE MEMBERS

Mayor Hamann-Roland reviewed the City Clerk's memo dated February 18, 2011, regarding the reappointment of Commissioners and Committee Members with terms expiring March 1, 2011. She noted all members have indicated their interest in serving an additional term.

MOTION: of Goodwin, seconded by Grendahl, adopting **Resolution No. 2011-33** reappointing Nancy Anderson, David Brueshoff, and Alan Kohls to the Cemetery Advisory Committee for a term expiring March 1, 2014

MOTION: of Hooppaw, seconded by Goodwin, adopting **Resolution No. 2011-34** reappointing Lee Strom and Patrick Sullivan, Jr., to the Parks and Recreation Advisory Committee for a term expiring March 1, 2014. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Goodwin, adopting **Resolution No. 2011-35** reappointing Keith Diekmann, David Schindler, and the vacant position to the Planning Commission for a term expiring March 1, 2014. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, adopting **Resolution No. 2011-36** reappointing Dale Rodell and David Westbrook to the Telecommunications Advisory Committee for a term expiring March 1, 2014. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Hooppaw, adopting **Resolution No. 2011-37** reappointing Jon Rechtzigel and Arthur Zimmerman to the Traffic Safety Advisory Committee for a term expiring March 1, 2014. Ayes - 4 - Nays - 0.

MOTION: of Grendahl, seconded by Goodwin, adopting **Resolution No. 2011-38** reappointing Pamela Sohlberg and Earl Wilson to the Urban Affairs Advisory Committee for a term expiring March 1, 2014. Ayes - 4 - Nays - 0.

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

CALENDAR OF UPCOMING EVENTS

MOTION: of Goodwin, seconded by Grendahl, approving the calendar of upcoming events as included in the City Clerk's memo dated February 18, 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 Grendahl, seconded by Hooppaw, to pay the claims and bills, check registers dated February 16, 2011, in the amount of \$391,838.95; and February 23, 2011, in the amount of \$623,262.84. Ayes - 4 - Nays - 0.

CLOSED 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 claims involving Valley Auto dealership and Suwan Ko and litigation involving Jorge Allen, et al, regarding ponding.

MOTION: of Grendahl, seconded by Hooppaw, to close the regular meeting and convene in closed session to discuss with the City Attorney claims involving Valley Auto dealership and Suwan Ko and litigation involving Jorge Allen, et al, regarding ponding. Ayes - 4 - Nays - 0.

The meeting was closed at 8:57 p.m. and Mayor Hamann-Roland and Councilmembers Goodwin, Grendahl, and Hooppaw convened in the Regent Conference Room, at 9:05 p.m., along with City Attorney Hills, City Administrator Lawell, City Clerk Gackstetter, Public Works Director Blomstrom, and City Engineer Manson. Ms. Hills 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 claims involving Valley Auto dealership and Suwan Ko and the litigation involving Jorge Allen, et al, relative to ponding.

The Council reconvened in open session at 9:49 p.m.

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

The meeting was adjourned at 9:50 o'clock p.m.

Respectfully Submitted,

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

Approved by the Apple Valley City Council on 3-24-11.