

**MAHTOMEDI CITY COUNCIL
MINUTES
AUGUST 17, 2010**

Mayor Jud Marshall convened the regular City Council meeting at 7:00 p.m. with Council members Dan Soler, Richard Brainerd, Tim Mitchell and Lael Ramaley in attendance. City Administrator Scott Neilson, City Attorney Bridget Nason, City Engineer Jay Kennedy, City Planner Kelsey Johnson, Public Works Director Bruce Thielen and City Clerk Mary Solie were also in attendance.

CONSIDER APPROVAL OF AGENDA

Councilor Ramaley moved and Councilor Soler seconded the motion to approve the agenda as presented. The motion was unanimously approved.

CONSIDER APPROVAL OF CITY COUNCIL MEETING MINUTES

Councilor Brainerd moved and Councilor Ramaley seconded the motion to approve the minutes as presented. The motion was unanimously approved.

4. PRESENTATIONS

4a. Zephyr Days Update

Tracey Jones said Zephyr days will be Saturday, September 25th and it will include the Farmer's Market, which will run until 3 PM that day too. They are requesting Stillwater Road, from the Dugout to Highway 244, be closed off.

4b. Valley Branch Watershed District – Lincoln Fetcher

Lincoln Fetcher, from the Valley Branch Watershed District, provided an update on Stormwater Pond Water Level Fluctuations and Management Options being pursued for the ponds in Echo Shores. He said some of the residents have expressed concerns about the low water level in the ponds earlier this summer. However with the recent rains, the water level has come up in the ponds. He said unless there is a clear need to do something about the fluctuating water levels, he feels it is best to leave the ponds alone. He said they would monitor the ponds to see if they are actually changing. There was general council consensus to leave the ponds as is for now.

5. DISCUSSION FROM THE AUDIENCE

There was no discussion from the audience.

6. CONSENT AGENDA

Councilor Soler moved and Councilor Brainerd seconded the motion to approve the Consent Agenda as presented. The motion was unanimously approved.

a. **APPROVAL-Resolution Declaring Costs to be Assessed and Ordering Preparation of Proposed Assessments for Project 2010-01 2010 Street Rehabilitation Project**

The total cost of the project is \$285,200. The amount to be specially assessed is 21.1% or \$60,164. The other 78.9% or \$225,036 will be financed by way of general tax levy. The resolution was approved.

b. **APPROVAL-Resolution Calling for and Ratifying an Assessment Hearing with Respect to Project 2010-01 2010 Street Rehabilitation Project**

The Assessment Hearing for Project 2010-01 2010 Street Rehabilitation Project will be held on September 21, 2010 at 7:00 p.m. Notice of the hearing will be published at least once in the official newspaper at least two weeks prior to the hearing and the notice will be mailed to the owners of each parcel described in the assessment roll.

c. **APPROVAL-New Home Construction and Demolition Agreement By and Between Charles R. Haynor and Diane L. Haynor and City of Mahtomedi**

A new home construction and demolition agreement by and between Charles R. Haynor and Diane L. Haynor and City of Mahtomedi was approved. The Haynors who reside at 1050 East Avenue wish to construct a new single-family dwelling on the property, and reside in the current single-family dwelling until construction of a new single-family dwelling is completed. The Haynors intend to demolish the current single-family dwelling upon completing construction of the single family dwelling.

d. **APPROVAL-Request from Firefighter Ben Chapeau for Leave of Absence**

Firefighter Ben Chapeau requested a six month leave of absence from the fire department for personal reasons, beginning September 1, 2010.

e. **APPROVAL-Culvert Replacements at Lincolntown Ave.- South of State Highway 244**

Public Works requested and received approval to replace two culverts under Lincolntown Avenue, south of the Highway 244 intersection. The estimated cost for replacement is \$15,000 to \$20,000. Funding is available in the Storm Water Fund.

6. **CONSENT AGENDA-Continued.**

f. **APPROVAL-Purchase of Brush Chipper for Public Works**

Public Works requested and received permission to purchase a used 1996 Mobark Brush Chipper with 198 hours for a purchase price of \$12,000 plus tax from St. Joseph Equipment in Shakopee. Funding for the chipper is available in the Streets Budget.

g. **APPROVAL-Deicing Equipment Purchase for 2010-2011 Snow Season**

Public Works requested and received permission to purchase several pieces of equipment for the 2010-2011 snow season. In January 2010, the Public Works Department went from a sand salt mix to using straight calcium chloride on all City streets. This was done to both improve the snow removal process and to reduce the run off of sand going into the watershed. To further increase efficiency in the use of salt on streets, staff requested the purchase of a scale for the Case loader, spray unit to apply the liquid deicers, and a salt brine making system. The costs for these items total \$21,870 plus tax. Funds are available in the Streets budget.

7. **PUBLIC HEARINGS-None**

8. **STAFF REPORTS**

8a. **CONSIDER APPROVAL-Request from Sandra and Brock Herlick for a minor subdivision in order to divide the property at 645 Warner Avenue South into two lots, and rezone the property from RR-Rural Residential to R1-C Low Density Residential**

City Administrator Scott Neilson said the City is in receipt of an application from Sandra and Brock Herlick for the requests outlined above. The application has been reviewed by City staff and consultants and is in order for consideration at this time. The Planning Commission at their August 11, 2010 meeting recommended approval.

City Planner Kelsey Johnson said the property is surrounded to the north by RR-Rural Residential and to the south by R1-C and across the street is O.H. Anderson Elementary School. The property is connected to City sewer.

The overall property consists of 9.87 acres including right-of-way and wetlands. The minor subdivision will result in a total of two separate lots. The north lot (Parcel A) will be .76 acres (.69 acres excluding 33' of right-of-way) or 33,211 square feet (29,913 square feet excluding 33' of right-of-way). The Herlicks plan to sell the north lot for future development of a single-family dwelling to their daughter and son-in-law. The

8a. Continued.

Herlicks will retain the south 9.11 acre (8.94 excluding 33' of right-of-way) or 397,038 square feet for their existing dwelling.

The property is heavily wooded and the Applicants survey indicates that the proposed home construction would damage/remove 12 or more significant trees. The City ordinance states that the replacement is one tree for every three trees lost. The Planning Commission recommended the ratio be one tree for every two trees lost.

The Parkland Dedication Fee according to the newly adopted fee schedule requires a minimum of 10% of the fair market value of the land prior to subdivision or a fee equal to \$3,000 per new dwelling unit for single family residences. In this instance the fee would be \$3,000.

City Engineer Jay Kennedy said the proposed home as configured is reasonable from a grading and drainage standpoint. The applicant proposed to place fill material within the lot as part of the building permit process to allow for the construction of the new home. The final grading plan will be reviewed in detail as part of the building permit application.

The applicant completed a partial wetland delineation and provided it with the application materials. The Rice Creek Watershed District approved the delineation on July 7, 2009. The applicant did not complete a MnRAM/quality assessment for the wetland; therefore the requirements for a Manage 1 wetland were used to evaluate the proposed subdivision. The requirements include a 75-foot setback, as well as a 75-foot buffer area.

There are a number of easements proposed to be dedicated as part of the subdivision:

- 33-foot roadway easement for Warner Avenue
- Lot-line drainage and utility easements along all lot lines
- Drainage and utility easement over the wetland area. The easement boundary was developed in part using the wetland delineation

Sanitary sewer and water is available to the property within Warner Avenue.

Engineer Kennedy said concerns were raised at the Planning Commission Public Hearing regarding the wetland delineation. He said he has been in contact with the RCWD and DNR since that hearing. RCWD is the local governing unit and makes the final decision regarding the wetland boundary issue. RCWD, with City assistance, will develop a Level 1 wetland boundary for the non-delineated portion, which is allowed through the Wetland Conservation Act. RCWD did confirm the field delineation and the subdivision was recommended for approval.

Chuck French, 123 Puma Lane, said he is not against the applicants subdividing their property, but he has concerns with the wetland delineation. He said the information presented is incorrect and this meeting could possibly be illegal because the neighbors were not notified of the wetland issue.

City Engineer Kennedy said the easement is not the wetland boundary.

City Attorney Bridget Nason said that notification is required if there is any building in or alternations done to the wetland.

City Engineer Kennedy said there will be no building in the wetland or any alterations done to it.

Councilor Ramaley moved and Councilor Soler seconded the motion to approve Ordinance No. 2010-15 Rezoning the Property at 645 Warner Avenue South from RR-Rural Residential to R1-C Low Density Single Family Residential. The motion was approved.

Councilor Ramaley moved and Councilor Brainerd seconded the motion to approve Resolution No. 2010-23 Approving a Minor Subdivision at 645 Warner Avenue South. The motion was approved.

8b. CONSIDER APPROVAL-Ordinance Amending Section 12.03 Related to Public Nuisances

City Administrator Scott Neilson said the City of White Bear Lake Contract Code Enforcement contacted the City regarding the revised provisions related to Weed and Grass Control in Chapter 12 of the City Code. During the code revision process, Chapter 12 was revised and language regarding long grass was removed. The language establishing the nine inch height standard was deleted.

The City of White Bear Lake Contract Code Enforcement made it clear that it is much easier to enforce a grass/weed prohibition that has a definitive height standard whereby the height of the grass can be photographed with a ruler to objectively prove that the grass/weeds had been allowed to grow in violation of the City Code.

The attached Ordinance Amendment reflects adding back the nine inch high grass/weed prohibition.

Councilor Brainerd moved and Councilor Soler seconded the motion to approve Ordinance No. 2010-15 Amending Section 12.03 Related to Public Nuisances. The motion was approved.

8c. CONSIDER APPROVAL-Resolution Electing to Continue Participating in the Local Housing Incentives Account Program Under the Metropolitan Livable Communities Act for Calendar Years 2011 through 2020

City Administrator Scott Neilson said the City of Mahtomedi has received a letter from the Metropolitan Council, requesting a decision on whether or not the City would like to continue its participation in the Metropolitan Livable Communities Act Local Housing Incentives Account Program. Participation is voluntary, and it provides the City with the opportunity to compete for grants and loans to support activities that help the City meet its affordable and life-cycle housing goals.

The Metropolitan Council has outlined fair share numbers for affordable housing needs and life cycle housing needs in the City for 2011-2020. If the City elects to continue participation, it must establish new affordable and life-cycle housing goals. These goals are to be included in a Housing Action Plan to be submitted to the Metropolitan Council by December 1, 2010.

Councilor Soler moved and Councilor Brainerd seconded the motion to approve Resolution No. 2010-20 Electing to Continue Participating in the Local Housing Incentives Account Program Under the Metropolitan Livable Communities Act. The motion was approved.

8d. CONSIDER APPROVAL- Ordinance Authorizing the Installation of Traffic Control Devices (Stop Signs) Pursuant to Minnesota Statutes, Chapter 412 and Chapter 169

City Administrator Scott Neilson said the City received a request for installation of a stop sign at the intersection of Summit Avenue and Kale Street.

The City Engineer has evaluated this intersection and is recommending the installation of a stop sign at this intersection.

Councilor Brainerd moved and Councilor Soler seconded the motion to approve Ordinance No. 2010-17 Authorizing the Installation of Traffic Control Devices (Stop Signs). The motion was approved.

Councilor Soler asked if we could make an ordinance which covers all traffic control items that could be approved by resolution instead of an ordinance.

Staff will prepare an ordinance which will allow traffic control items to be approved by resolution instead of ordinance.

8e. CONSIDER APPROVAL-Amendment to Chapter 11, Section 11.01, Subdivision 11.28: PB – Public Building Zoning District, to allow Wind Energy Conversion Systems (WECS) as a Conditional Use

This item has been reviewed by City staff and consultants and is in order for consideration at this time. The Planning Commission at their August 11, 2010, meeting recommended approval.

City Planner Johnson said on June 16, 2009, the City Council approved an ordinance amendment to allow Wind Energy Conservation Systems in the City of Mahtomedi with the issuance of a conditional use permit in the PB-Public Building Zoning District. However an ordinance amendment to the PB-Public Building Zoning District to allow a wind energy conversion system as a conditional use permit in the PB District did not occur.

Councilor Mitchell moved and Councilor Brainerd seconded the motion to approve Ordinance No. 2010-18 Amending Chapter 11 Pertaining to the PB Public Building Zoning District. The motion was approved.

8f. DISCUSSION-Recent Minnesota State Supreme Court Case Regarding Granting of Variances

City Planner Kelsey Johnson updated the City Council on a recent State Supreme Court ruling regarding the granting of variances. The Supreme Court ruled that a city's authority to issue variances is limited to those very rare cases where the property cannot be put to "a reasonable use" without the issuance of a variance.

She said, at this time, it appears risky for the City to grant variances; however where the City believes that the granting of a variance is appropriate, the City should make detailed findings describing why the granting of the variance was necessary.

She said the League of MN Cities is calling for a legislative response and will support a change to provide cities with greater flexibility.

There was general consensus from the Council to see what develops with this ruling.

8g. CONSIDER APPROVAL-Bill List

Councilor Ramaley moved and Councilor Brainerd seconded the motion to approve the bills as presented. The motion was unanimously approved.

9. COMMENTS FROM THE CITY COUNCIL

City Administrator Neilson said the GreenCorp application was successful and the GreenCorp member will be starting in September.

He also said MNDOT had given their approval for St. Jude of the Lake Church to plant a permanent tree in Triangle Park to be used for the Tree of Lights event every year.

10. CLOSED SESSION-None

11. ADJOURNMENT

Councilor Soler moved and Councilor Brainerd seconded the motion to adjourn the meeting at 8:35 p.m. The motion was unanimously approved.

ATTESTED:

APPROVED:

MARY SOLIE, CITY CLERK

JUD MARSHALL, MAYOR