

**MINUTES
OF THE REGULAR MEETING OF THE
EDINA CITY COUNCIL
HELD AT CITY HALL
FEBRUARY 6, 2012
7:00 P.M.**

I. CALL TO ORDER

Mayor Hovland called the meeting to order at 7:08 p.m.

II. ROLL CALL

Answering roll call were Members Bennett, Brindle, Sprague, Swenson and Mayor Hovland.

III. MEETING AGENDA APPROVED

Member Bennett made a motion, seconded by Member Swenson, approving the meeting agenda.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

IV. CONSENT AGENDA ADOPTED

Member Brindle made a motion, seconded by Member Sprague, approving the consent agenda as revised to remove Item IV.D., Prosecutor Contract 2012-2015; and, Item IV.E., Resolution No. 2012-23, approving lot division of 5239 Highwood Drive, 6008 and 6000 Pine Grove Road, as follows:

IV.A. Approve regular and work session meeting minutes of January 17, 2012, and Work Session of January 23, 2012

IV.B. Receive payment of the following claims as shown in detail on the Check Register dated January 19, 2012, and consisting of 27 pages; General Fund \$191,069.41; Communications Fund \$18,226.00; Police Special Revenue \$262.44; General Debt Service Fund \$2,000.00; City Hall Debt Service \$2,100.00; Working Capital Fund \$7,035.90; Equipment Replacement Fund \$15,466.16; Art Center Fund \$2,063.89; Golf Dome Fund \$16,950.07; Aquatic Center Fund \$198.00; Golf Course Fund \$11,168.11; Ice Arena Fund \$6,384.47; Edinborough/Centennial Lakes Fund \$1,582.02; Edinborough Park Fund \$2,751.29; Centennial Lakes Park Fund \$1,973.64; Liquor Fund \$130,410.98; Utility Fund \$64,532.84; Recycling Fund \$38,820.60; PSTF Agency Fund \$1,960.47; Payroll Fund \$1,702.35; TOTAL \$516,658.64 and for approval of payment of claims dated January 26, 2012, and consisting of 25 pages; General Fund \$430,281.38; Communications Fund \$7,965.69; Police Special Revenue \$614.96; Working Capital Fund \$14,632.61; Construction Fund \$341.00; Art Center Fund \$2,170.19; Golf Dome Fund \$2,667.19; Aquatic Center Fund \$45.96; Golf Course Fund \$440.53; Ice Arena Fund \$2,531.71; Edinborough/Centennial Lakes Fund \$18,586.88; Edinborough Park Fund \$11,774.30; Centennial Lakes Park Fund \$1,272.24; Liquor Fund \$133,207.40; Utility Fund \$30,839.80; Storm Sewer Fund \$7,362.81; PSTF Agency Fund \$30,362.59; Payroll Fund \$5,034.25; TOTAL \$700,131.49; and, for approval of payment of claims dated February 2, 2012, and consisting of 28 pages; General Fund \$392,550.74; Communications Fund \$2,669.08; Police Special Revenue \$23,007.49; PIR Debt Service Fund \$3,000.00; Working Capital Fund \$68,202.72; Equipment Replacement Fund \$9,981.15; Construction Fund \$3,878.62; Art Center Fund \$4,392.29; Golf Dome Fund \$32.36; Aquatic Center Fund \$455,243.49; Golf Course Fund \$21,770.36; Ice Arena Fund \$2,788.94; Edinborough/Centennial Lakes Fund \$556.47; Edinborough Park Fund \$6,640.43; Centennial Lakes Park Fund \$771.37; Liquor Fund \$131,788.12; Utility Fund \$1,786,383.49; Storm Sewer Fund \$30,181.66; Recycling Fund \$66.29; PSTF Agency Fund \$1,490.62; TOTAL \$2,945,395.69.

IV.C. Waive Second Reading Adopting Ordinance No. 2012-03 Amending Section 905 Open House Parties

~~**IV.D. Prosecutor Contract 2012-2015**~~

~~**IV.E. Resolution No. 2012-23, approving lot division of 5239 Highwood Drive, 6008 and 6000 Pine Grove Road**~~

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- IV.F. Request for Purchase, Job Evaluation/Classification Consultant Project, awarding the bid to the recommended low bidder, TruSight, Inc. at \$40,972.50.
- IV.G. Request for Purchase, Millwork Supply, Edina Liquor York Remodel, awarding the bid to the recommended low bidder, Aaron Carlson at \$32,756.40.
- IV.H. Request for Purchase, Resilient Flooring and Carpeting, Edina Liquor York Remodel, awarding the bid to the recommended low bidder, MCI (Multiple Concepts Interiors) at \$34,200.00
- IV.I. Request for Purchase, Electrical Work, Edina Liquor York Remodel, awarding the bid to the recommended low bidder, Burnsville Electric at \$29,100.00
- IV.J. Approve Temporary On-Sale 3.2 Beer License Our Lady of Grace Church for their Lenten Fish Fry on March 23, 2012
- IV.K. Request for Purchase, Street Sweeper, awarding the bid to the recommended low bidder, MacQueen Equipment, Inc. at \$181,333.00
- IV.L. Request for Purchase, Survey Equipment, awarding the bid to the recommended low bidder, Leica Geosystems at \$25,398.50
- IV.M. Adopt Resolution 2012-24 correcting Resolution No. 2010-58 – designating bicycle lanes on West 58th Street between France Avenue and Xerxes Avenue and designating a 25 mph speed limit
- IV.N. Waive First Reading Ordinance No. 2012-04, amending the Edina City Code concerning the use of tobacco in City parks
- IV.O. Adopt Resolution 2012-25, changing public hearing date to March 6, 2012, Tracy Avenue Roadway Reconstruction BA-368
- IV.P. Approve Edina Emerald Energy Program (EEEP)
Rollcall:
Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

ITEMS REMOVED FROM THE CONSENT AGENDA

IV.D. PROSECUTOR CONTRACT 2012-2015 APPROVED AS AMENDED

Manager Neal stated he had every confidence in the decorum and skill of the prosecuting attorney, having personally seen his work in court. Mr. Neal stated that Mr. Leach handled a tremendous workload with skill and respect. The Council acknowledged the City's prosecuting attorney was the "face of Edina." **Member Swenson made a motion, seconded by Member Sprague, approving prosecutor contract 2012-2015, amending Section 3c to reflect the postage was 50 cents per mailing piece and Section 4 to indicate: "The Attorney will purchase and maintain sufficient insurance to protect Attorney against claims for malpractice and provide evidence of the same to the City."**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

IV.E. RESOLUTION NO. 2012-23 ADOPTED – APPROVING LOT DIVISION OF 5239 HIGHWOOD DRIVE, 6008 AND 6000 PINE GROVE ROAD

Planning Director Teague indicated the drainage and utility easements would remain in the property owner's back yard. **Member Swenson introduced and moved adoption of Resolution No. 2012-23, approving a lot division of 5239 Highwood Drive, 6008 and 6000 Pine Grove Road, with correction to the compliance chart relating to lot width, both existing and proposed of 5329 Highwood Drive, from 181 feet to 60 feet.** Member Bennett seconded the motion.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

V. SPECIAL RECOGNITIONS AND PRESENTATIONS

None.

VI. PUBLIC HEARINGS HELD – Affidavits of Notice presented and ordered placed on file.

VI.A. PRELIMINARY PLAT AND VARIANCES, REFINED LLC, 6109 OAKLAWN AVENUE – DENIAL FINDINGS OF FACT ORDERED

Planning Director Presentation

Planning Director Teague presented the request of Refined LLC to subdivide the property at 6109 Oaklawn Avenue into two lots; lot width variances from 75 feet to 50 feet for each lot; and, lot area variances from 9,000 square feet to 6,699 and 6,693 sq. ft. The existing single-family home would be torn down and two new single-family homes would be built on the new lots. The result would be turning the lot into two 50-foot lots as it was originally platted. In 1951 the ordinance was amended to require new lots to be 75 feet in width and a minimum of 9,000 sq. ft. in lot size but this lot had been platted prior to that amendment. In this area, the median lot width was 50 feet and the median lot size was 6,701 sq. ft. so the two proposed lots would be just under the lot size median. The primary issue considered by staff and the Planning Commission was if the variance findings were met in this instance. Mr. Teague presented each of the required variance findings and the Planning Commission's determination on which its recommendation for approval was based. A map was displayed depicting two locations where similar lot subdivisions had already been approved. Mr. Teague advised the Planning Commission, at its January 11, 2012, meeting recommended approval of the preliminary plat and variances on a 6 to 3 vote subject to the findings and conditions as detailed in the staff report dated January 11, 2012.

Proponent Presentation

Andy Porter, Refined LLC, representing the property owner, stated the proponents were pleased to have received staff support and the Planning Commission's logical conclusion to overwhelmingly support this proposal. He clarified it was their preference and plan to market the opportunity to build a new home to individuals and families; however, it was not yet known who that client would be or the type of home the client would prefer. Mr. Porter indicated the proponent would abide by Edina's massing ordinances, one of the most restrictive in the metro area. He addressed the issue of tree impact, noting the City currently does not have a tree ordinance in place so any property owner had the right to trim, remove, or plant trees on their property. Mr. Porter believed that creating two lots would match the flow of this neighborhood's established lotscape that had been intentionally platted as two 50-foot lots.

Mayor Hovland opened the public hearing at 7:25 p.m.

Public Testimony

Janey Westin, 6136 Brookview Avenue, addressed the Council.

James Durr, 6100 Oaklawn Avenue, addressed the Council.

Mark Petersen, Petersen, PLC, 228 East Chestnut Street, Suite 3, Stillwater, Minnesota, representing Sawbill Strategic, Inc. (SSI), addressed the Council.

In response to the question of ownership raised by Mr. Petersen, Attorney Knetsch advised the City's ordinance did not specify who had to sign the application so the fact that SSI had not joined the application did not result in an incomplete application. Under Minnesota statute, ownership interest was not extinguished because of a Sheriff's sale and the property owner of record retained the ability to redeem the property for a period of six months. The City's determination was whether the variance standards were met and the involvement of SSI and Mr. Bohlander (property owner of record) would not factor into that determination. The City had 120 days to take action on the subdivision application, once deemed complete.

The Council discussed the ownership situation and whether the application should be withdrawn until an agreement was reached between the two parties. Mr. Porter stated he was part of the application and it was his understanding that Mr. Bolander (property owner of record) had a redemption period so Mr. Petersen's signature was not required to file for subdivision. Before the subdivision was filed the

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proponent would close on the property, allowing Mr. Bolander to redeem with his lenders. The redemption period does not expire until May.

Mr. Bolander, applicant and property owner of record, stated that was also his understanding of the process and that he had the right to redeem the property. He believed Refined, LLC had properly handled the application and would do what was right for the property and neighborhood. If the subdivision was approved, the closing with Refined LLC, would occur prior to expiration of the redemption period and he would be able to redeem the property.

Kathy McGuire, 6104 Oaklawn, addressed the Council.

Mickie Turk, 6141 Brookview Avenue, addressed the Council.

Dick Whitbeck, 6128 Brookview Avenue, addressed the Council.

Bill Landgren, 6104 Brookview Avenue, addressed the Council.

Jackie Whitbeck, 6128 Brookview Avenue, addressed the Council.

Member Brindle made a motion, seconded by Member Swenson, to close the public hearing.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

The Council and Mr. Teague addressed questions raised during public testimony. Mr. Teague indicated the required side yard setback on a 50-foot wide lot was 5 feet compared with a required side yard setback of 10 feet on a 100-foot wide lot and an additional 6 inches of setback was added for every foot above 15 feet in building height. The maximum height was 35 feet (measured from existing grade), bay windows were not exempt from required setbacks, the front yard setback was the average of homes on either side (not average setback of the entire block), a detached garage could be constructed within three feet of the property line, and the allowable lot coverage on a 50-foot lot was 2,250 sq. ft. (which could result in a 4,400 sq. ft. home). The Council discussed setbacks resulting from different building heights and required first floor elevation.

It was noted the City of Minneapolis' zoning code measured floor area ratio limiting it to 50% of lot area, which was more restrictive than Edina's ordinance. Mr. Teague stated Edina had considered a floor area ratio but it was not approved. The Council noted there was about a two-foot elevation difference between the two lots, if approved. Mr. Teague indicated the building height would be measured from the existing grade and the first floor elevation could not exceed the first floor elevation of the existing home.

The Council discussed whether a condition could be placed that closing occur prior to expiration of the redemption period. Mr. Knetsch indicated such a condition was not viable as it was not enforceable and Mr. Bolander was correct that if the property was redeemed it would extinguish the interest of SSI and eliminate the need for their consent to file the plat.

The Council acknowledged the Zoning Code did not allow the ability to require design review. It was pointed out that this neighborhood was originally platted, including Pamela Park, into 50-foot lots but was actually developed with varied lot widths, 50-foot, 60-foot, 70-foot, 100-foot, and even wider lots. The Code was amended in 1951 to require a minimum lot width of 75 feet and area of 9,000 sq. ft. Staff was asked whether there had been a downward departure defined or formula specified in the Code. Mr. Teague indicated there was not except for lots in excess of 75 feet in width or 9,000 sq. ft. in area.

Mr. Teague clarified that practical difficulties was not self created because the applicant had not created the 100-foot lot. The practical difficulty was that everyone else on the block had a 50-foot wide lot and if this application was not approved, this property owner would be denied a property use that all other property owners on the block enjoyed.

With regard to drainage, Public Works Director/City Engineer Houle advised the grades would be reviewed. In this neighborhood of smaller lots and difficult infiltration soils, the applicant would be required to direct drainage from at least 50% of the area towards the street and connect downspouts and sump pumps to the drain tiles at the curb.

Member Bennett indicated she does not find a practical difficulty with this application because the owner had the same right to live on, develop, and redevelop the property as any other lot owner, regardless of lot width, and economic considerations alone would not constitute practical difficulties. In addition, the Code required a 75-foot lot width and does not contemplate, prescribe, or regulate a departure downward; the City was required to find that a variance was consistent with Comprehensive Plan; the proposal would result in impacts to neighboring privacy, and approval would break faith with existing neighborhood residents who had purchased their property in reliance on the zoning code.

Mr. Teague noted this was a 100-foot lot of record as opposed to a 50-foot lot of record as every other lot on the block. He indicated another consideration was the "reasonable use" standard and if the application was denied, it would deny the use previously granted to a property owner a block away. With regard to consistency with the Comprehensive Plan, Mr. Teague explained the application was not in harmony with the Code, resulting in the request for the variances. In terms of the Comprehensive Plan it does not prescribe zoning ordinance requirements. The site was guided for single-family homes, as being proposed by the applicant.

Member Brindle indicated she would not support the application because she felt the existing 100-foot lot created more benefit to the neighborhood than the creation of two 50-foot lots. She stated the existing 100-foot lot contained three landmark oak trees, provided an aesthetic, an area of relief in a neighborhood of 50-foot lots, and swale to collect water. In addition, she would not want the City to become involved in the legal battle between the two property owners during the redemption period.

Member Sprague stated his intention to support the application since this request was similar to previously approved subdivisions and the same findings should result in the same conclusion. He believed new development would not preclude quality of life and noted the house to be built was controlled by the Zoning Code relating to setbacks and the market would dictate housing style.

With regard to the finding of practical difficulties, Mr. Knetsch supported Mr. Teague's comments and indicated the property owner cannot enjoy a 50-foot wide lot like others on the block, which was a distinction.

Member Swenson stated she would not support the application because while this street might have all 50-foot lots, the block does not and contained three very large lots.

Member Sprague introduced and moved adoption of Resolution No. 2012-27, approving a preliminary plat with variances at 6109 Oaklawn Avenue based on the following findings as noted in the written document. Mayor Hovland seconded the motion.

Ayes: Sprague, Hovland

Nays: Bennett, Brindle, Swenson

Motion failed.

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Member Swenson made a motion, seconded by Member Brindle, directing staff and the City Attorney to prepare written findings of fact for denial of the requested preliminary plat with variances at 6109 Oaklawn Avenue for consideration at the February 21, 2012, Council meeting.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VI.B. SITE PLAN – PRIMROSE SCHOOL OF EDINA, MINNESOTA/CHILDEN’S DESIGN GROUP, 7401 METRO BOULEVARD – RESOLUTION NO. 2012-28 ADOPTED

Planning Director Presentation

Planning Director Teague presented the request of Children’s Design Group for a site plan review to develop the recently created lot at 7401 Metro Boulevard with a Primrose Day Care Center. He indicated the project meets all minimum zoning standards. This use would have 20 employees and 180 children, at a maximum, so 480 parking stalls would be required. The site plan identified 485 stalls and proof of parking to 506 stalls on the site. The parking study indicated 309 stalls would adequately serve these two uses and the existing roadway system could support the project. The Planning Commission, at its January 11, 2012, meeting recommended approval of the site plan subject to the findings and conditions as detailed in the staff report dated January 11, 2012.

The Council discussed the shared parking arrangement between the proposed use and office use and drainage of the parking lot. Mr. Houle stated the property was required to have an infiltration system that retained the first inch of any storm event.

Proponent Presentation

Michael Brandt, 2676 Whitehurst Road, Deland, Florida, representing the applicant, stated this was a new facility with an existing franchisee for a second school. He clarified there would be 22 employees and children as young as six weeks. He indicated the proposal met State mandates relating to number of employees and square footage and peak timing for drop-off and pick-up of students.

The Council discussed the application including setbacks, building height and coverage, drive aisles, and parking.

Mayor Hovland opened the public hearing at 8:55 p.m.

Public Testimony

No one appeared to comment.

Member Sprague made a motion, seconded by Member Bennett, to close the public hearing.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

Member Brindle introduced and moved adoption of Resolution No. 2012-28, approving a site plan for 7401 Metro Boulevard, based on the following findings:

- 1. The proposal would meet the required standards and ordinances for a Site Plan.**
- 2. Spack Consulting conducted a traffic impact and parking study, and concluded that the existing roadway system could support the proposed project, and there would be more than enough parking.**

And subject to the following conditions:

- 1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:**
 - Site plan date stamped November 28, 2011**
 - Grading plan date stamped November 28, 2011**
 - Landscaping plans date stamped November 28, 2011 and January 5, 2012**

- Building elevations date stamped November 28, 2011 and January 6, 2012
 - Building materials board including colors as presented at the Planning Commission and City Council meeting.
2. Prior to issuance of a building permit, a final landscape plan must be submitted, subject to staff approval. Additionally, a performance bond, letter-of-credit, or cash deposit must be submitted for one and one-half times the cost amount for completing the required landscape, screening, or erosion control measures.
 3. Before issuance of a building permit, a shared parking arrangement with the southern lot must be executed.
 4. The property owner was responsible for replacing any required landscaping that dies.
 5. Submit a copy of the Nine Mile Creek Watershed District permit. The City may require revisions to the approved plans to meet the District's requirements.
 6. A construction management plan will be required for the construction of the new building.
 7. Compliance with the conditions required by the City Engineer in his memo dated January 5, 2012.

Member Swenson seconded the motion.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VII. COMMUNITY COMMENT

No one appeared to comment.

VIII. REPORTS / RECOMMENDATIONS

VIII.A. RESOLUTION NO. 2012-22 ADOPTED – ACCEPTING VARIOUS DONATIONS

Mayor Hovland explained that in order to comply with State Statutes; all donations to the City must be adopted by Resolution and approved by four favorable votes of the Council accepting the donations.

Member Brindle introduced and moved adoption of Resolution No. 2012-22 accepting various donations. Member Sprague seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VIII.B. APPOINTMENTS MADE TO VARIOUS BOARDS, COMMISSIONS, AND COMMITTEES

Member Swenson thanked Clerk Mangan for her support during the interview process and presented the recommended slate of appointments and reappointments. **Member Swenson made a motion, seconded by Member Bennett, approving the following new appointing with a term ending February 1, 2015 unless noted differently: Art Center Board: Marsha Buchok and Ray Meifert; Board of Appeal & Equalization: Steven Suckow; Community Health Committee: Nancy Ott-Pinckaers, M.D.; Construction Board of Appeals: Scott Busyn; Energy & Environment Commission: John Heer and Tim Rudnicki; Heritage Preservation Board: Jennifer Christiaansen, Joyce Mellom, and Peter Sussman; Human Rights and Relations Commission: Ron Erhardt; Park Board: Daniel Geiseke and Kathryn Peterson and School Board Representative Cathy Cella with a term ending February 1, 2013; and, Transportation Commission: Surya Iyer, Tom LaForce, and Courtney Whited.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

Member Swenson made a motion, seconded by Member Brindle, approving the following reappointments: Art Center Board: Colin Nelson with a term ending February 1, 2014; Community Health Committee: Adnan Qureshi, M.D. with a term ending February 1, 2014; Human Rights & Relations Commission: John Cashmore with a term ending February 1, 2013; Park Board: David Deeds with a term ending February 1, 2014; and Planning Commission: Michael Schroeder with a term ending February 1, 2015.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

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Motion carried.

VIII.C. ENERGY IMPROVEMENT – GRANDVIEW TIRE AND AUTO, 5415 WEST 70TH STREET – RESOLUTION NO. 2012-26 ADOPTED

Utility Engineer Struve presented the request of Grandview Tire and Auto, 5415 70th Street, requesting \$31,686 from the Edina Emerald Energy Program (EEEP) to be a special assessment against the property. This was a portion of the \$131,375 construction costs to install solar panels on top of its facility, which would reduce energy consumption. It was noted that per City policy, capitalized interest would be added to the amount requested to bring the total assessment levied against the property to \$34,030. Staff recommended approval.

The Council discussed and agreed to waive the 2% overhead proposed to be charged above the loan interest rate of 7% since the City had received a \$10,000 grant to defray the City's costs to start this pilot program. Mr. Struve stated the attorney had agreed to cap legal costs for drafting the forms and agreements at \$10,000 (the grant amount). The Council discussed the benefit of securing lower cost financing to assure the project/program was successful since it served the public purpose of energy savings. Mr. Neal indicated this had been a pilot project, treated as such, and administrative costs to administer the debt would be nominal.

Rick Murphy, Grandview Tire and Auto, stated if the 2% overhead was waived, he would make application to the PACE for a loan of \$31,686. He stated 7% interest was higher than market rate but it was an investment on their behalf to make the program work.

It was noted that even if the City did not charge 2% overhead above the bond rate, the full cost of the bonds would be repaid by the assessment to the applicant. The Council acknowledged a similar conduit financing had been used with Fairview Southdale Hospital and the Volunteers of America and the public purpose was environmental benefit. **Member Swenson introduced and moved adoption of Resolution No. 2012-26, approving agreement and adopting assessment, waiving the 2% overhead charge since the City received a grant to defray legal costs.** Member Brindle seconded the motion.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

IX. CORRESPONDENCE AND PETITIONS – Mayor Hovland acknowledged the Council's receipt of various correspondence.

X. MAYOR AND COUNCIL COMMENTS – Received

XI. MANAGER'S COMMENTS – Received

XII. ADJOURNMENT

There being no further business on the Council Agenda, Mayor Hovland declared the meeting adjourned at 10:20 p.m.

Respectfully submitted,

Debra A. Mangen, City Clerk

Minutes approved by Edina City Council, February 21, 2012.

James B. Hovland, Mayor

Video Copy of the February 6, 2012, meeting available.