

**MINUTES
OF THE REGULAR MEETING OF THE
EDINA CITY COUNCIL
HELD AT CITY HALL
FEBRUARY 19, 2013
7:07 P.M.**

I. CALL TO ORDER

Mayor Hovland called the meeting to order at 7:07 p.m.

II. ROLL CALL

Answering rollcall 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 as amended to add Item VIII.B., Construction Management Plan.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

IV. CONSENT AGENDA ADOPTED

Member Swenson made a motion, seconded by Member Sprague, approving the consent agenda as submitted:

IV.A. Approve regular, work session, and closed meeting minutes of February 5, 2013

IV.B. Receive payment of the following claims as shown in detail on the Check Register dated February 7, 2013, and consisting of 25 pages; General Fund \$110,120.64; Police Special Revenue \$216.89; PIR Debt Service Fund \$400.00; Working Capital Fund \$63,794.72; Art Center Fund \$1,046.38; Golf Dome Fund \$278.80; Golf Course Fund \$8,301.50; Ice Arena Fund \$73,003.55; Edinborough Park Fund \$5,641.70; Centennial Lakes Park Fund \$4,259.25; Liquor Fund \$223,431.78; Utility Fund \$47,443.64; Storm Sewer Fund \$5,668.78; Centennial TIF District \$609,184.39; Payroll Fund \$3,462.36; **TOTAL \$1,156,254.38** and for approval of payment of claims dated February 14, 2013, and consisting of 31 pages; General Fund \$129,514.21; Police Special Revenue \$4,085.92; Working Capital Fund \$27,031.03; Equipment Replacement Fund \$2,850.36; Art Center Fund \$2,906.35; Golf Dome Fund \$1,200.43; Aquatic Center Fund \$618.87; Golf Course Fund \$14,354.98; Ice Arena Fund \$7,763.36; Edinborough Park Fund \$7,771.09; Centennial Lakes Park Fund \$1,801.68; Liquor Fund \$189,005.72; Utility Fund \$473,381.75; Storm Sewer Fund \$10,450.03; PSTF Agency Fund \$13,415.91; **TOTAL \$886,151.69**

IV.C. Approve Change Order No 1 – Braemar Public Works Site Lead Abatement

IV.D. Adopt Resolution No. 2013-22, authorizing Metropolitan Council Sewer Rehabilitation Grant Agreement

IV.E. Request for Purchase, Contract No. PW 13-1 Public Works Building Demolition & Disposal, awarding the bid to the recommended low bidder, Jay Johnson Construction at \$98,700.00

IV.F. Approve Special Assessment Agreements – Richmond Hills Park

IV.G. Request for Purchase, Two 2013 Chevrolet Silverado 2500 4WD Vehicles, Public Works – Parks, awarding the bid to the recommended low bidder, Thane Hawkins Polar Chevrolet at \$47,794.62

IV.H. Request for Purchase, 2013 Ford F350 4WD Vehicle, Public Works – Parks, awarding the bid to the recommended low bidder, Midway Commercial Ford at \$25,716.48

IV.I. Request for Purchase, 2013 Ford F550 Vehicle, Public Works - Utilities, awarding the bid to the recommended low bidder, Midway Commercial Ford at \$36,509.48

IV.J. Request for Purchase, Emergency Repair Well 11, Public Works - Utilities, awarding the bid to the recommended low bidder, E.H. Renner & Sons at \$27,151.25

IV.K. Request for Purchase, 2013 Bobcat X770 Skid Loader, Public Works - Streets, awarding the bid to the recommended low bidder, Lano Equipment, Inc. at \$54,887.79

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IV.L. Adopt Resolution No. 2013-23 naming the Metropolitan Council as a Permitted Designee of the Transit Easement at Southdale Center

IV.M. Approve Temporary 3.2 Beer License Our Lady of Grace Church

IV.N. Adopt Resolution No. 2013-24 Lot Division, 5809 and 5813 Tingdale Avenue

IV.O. Approve Reappointments Human Rights & Relations Commission

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

V. SPECIAL RECOGNITIONS AND PRESENTATIONS

V.A. JOHN GUNYOU – THREE RIVERS PARK DISTRICT PRESENTATION

John Gunyou, Three Rivers Park District Chair, introduced himself as Edina’s representative to the Three Rivers Park District, described Three Rivers Park District park and trail facilities, and provided an update on the trail segment planned in Edina. Mr. Gunyou indicated Three Rivers hoped to secure funding for the western trail segment with construction of the entire Edina trail in 2015 and 2016, noting it would include creek restoration and complete a missing link in the District’s trail system. Mr. Gunyou described his support for additional outreach, in particular with seniors and students, and the District’s desire to better coordinate with the City of Edina.

Mr. Gunyou answered questions of the Council relating to funding options to advance the project, consideration of whether The District will need to charge for vehicle parking at a park (as opposed to an enterprise property), and neighborhood-based process to assure opportunity for input. It was noted the construction of this trail segment would coincide with construction of the southwest light rail so the City would need to address spur connections from the trail. Mr. Gunyou concurred and indicated the District was cognizant of that need.

V.B. SOUTH VIEW MIDDLE SCHOOL CULTURAL CELEBRATION ANNOUNCED

Gregory Banko, Academic Supervisor for Student Support, and Jason Dockter, Assistant Principal at South View Middle School, described the School’s diversity and invited all to attend the March 21, 2013, Cultural Celebration.

V.C. EDINA NOISE OVERSIGHT COMMITTEE (NOC) MEMBERSHIP DISCUSSED

Chad Leqve, Metropolitan Airport Commission (MAC) Staff Member, described the purpose of the 12-member Noise Oversight Committee (NOC) to advise on noise related topics at the Minneapolis/St. Paul International Airport. He indicated NOC had directed staff to modify its bylaws to include the City of Edina as one of its at-large members. Those bylaw modifications would be addressed at the March 20, 2013, NOC meeting. Mr. Leqve summarized the resources and information relating to noise that were available to the public including a website www.macnoise.com offering the option to receive automated updates and hosting quarterly public meetings. Mr. Leqve presented the February 1, 2013, letter of Jeff Hamiel, MAC CEO and General Manager, to the Federal Aviation Administration (FAA) relating to Area Navigation (RNAV) departure procedure implementation that addressed timing, local FAA leadership as a critical component, need for holistic outreach, importance of early coordination with local community leaders, and adequate resource allocation.

Mr. Leqve responded to the Council’s questions relating to municipalities with NOC membership (Minneapolis, Richfield, Eagan, Mendota Heights, and Bloomington) and stated each were within or “touched” by a specific noise contour. He stated the MAC had no permanent noise monitors within the City of Edina and the noise contours were developed by a computer integrated noise model.

The Council stressed the importance for NOC to assure a process for contact with Edina’s staff to provide information. Mr. Leqve agreed with that need and described how the process, that had origins in 2007,

had quickly unfolded and resulted in a limited timeframe to implement public education on RNAV procedure implementation and receive testimony.

The Council acknowledged the benefits of RNAV, a satellite based navigation method, to conserve fuel and assure accuracy; however, it was concerned that RNAV was being coupled with concentration of flight track. Mr. Leqve explained there were still multiple flight paths since wind introduces variability but agreed that if RNAV was implemented, it would tighten those paths. Member Bennett noted that the FAA representative had acknowledged in testimony before the MAC at its November meeting that RNAV had not been implemented in full at any airport in the United States. The Council noted there were concentrated areas of residential housing under the flight paths and expressed support to advance discussion with the FAA for partial RNAV implementation that would add, spread out, or alternate tracks. Mr. Leqve indicated partial RNAV implementation keeps departure operations over Edina the same so there would be no permanent reduction in flights over Edina, with or without RNAV.

With regard to creating a measure for a noise baseline, Mr. Leqve explained the approach used in the last discussion that focused on an integrated noise model and developing noise contours consistent with the process given by the FAA to quantify noise related to any proposed action. Member Bennett noted that while other communities had decades in which to plan and rezone properties to accommodate this issue, Edina's residential properties were built down to the freeways and there was no possible way to develop concentrated flight paths that do not impact residential neighborhoods.

The Council asked Mr. Leqve to assure follow up with City staff as to the FAA's response to Mr. Hamiel's letter. Mr. Leqve stated the website would be used to get out information, as well as a newsletter, and he hoped City staff would attend future NOC meetings.

John Bergman, Apple Valley Councilmember and NOC member representing all at-large cities, introduced himself and stated when this situation arose, he felt it was his duty to bring Edina into NOC at-large membership. He assured the Council that Edina would have the best representation, its voice would be heard, and information made available.

Mr. Bergman answered questions of the Council relating to his representation of at-large cities. He explained if the at-large cities did not unanimously support a position, a vote would be taken and that decision forwarded to NOC. However, it had always been a unanimous decision so such a vote had not been needed. Mr. Bergman assured the Council that Edina's voice would be heard.

The Council credited Mr. Leqve and Mr. Hamiel for being reactive to the City's concerns and unprecedented action by the FAA to delay RNAV implementation over northwest 30 left and 30 right runways. The Council supported use of RNAV to assure efficiency and safety but with diffused flight patterns instead of concentrated tracks, and faster climb rates. MAC was encouraged to proceed slowly, consider both outreach and input of impacted communities, to look through the "lens of humanity" prior to decision making, and to assure staff contact at a City level.

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

VI.A. 2013 COMMUNITY DEVELOPMENT BLOCK GRANT – RESOLUTION NO. 2013-19 – ADOPTED

Associate Planner Presentation

Associate Planner Repya described the Community Development Block Grant (CDBG) Program and recommended allocation of Edina's 2013 allotment of \$110,285 as follows: Public Services-Senior Community Services (H.O.M.E-Housing and Outdoor Maintenance for the Elderly) of \$9,618, Community Action Partnership for Suburban Hennepin (CAPSH) of \$4,700, and HomeLine \$2,225 (equaling \$16,543 or 15% of total); and, Community Development-Rehabilitation of Private Property Program of \$41,491, West Hennepin Affordable Housing Land Trust (WHAHLT) for its Homes Within Reach Program of \$52,521 (equaling \$93,742 or 85% of total). Ms. Repya reviewed the methods used to advertise the CDBG Program.

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Ms. Repya answered questions of the Council related to the lower number of seniors served since 2011 by Senior Community Services and described avenues of outreach to alert seniors of services available.

Mayor Hovland opened the public hearing at 8:07 p.m.

Public Testimony

Kitty Engle, HOME Senior Community Services Program Director, described the services provided to 90 Edina seniors on a sliding scale to help them live independently as long as possible and improve the City's housing stock. She explained the number of seniors served in 2012 was lower due to smaller snowfalls and fewer calls for service.

Dana Slimmer, Community Action Partnership for Suburban Hennepin (CAPSH), reported on the services provided to Edina residents in 2012 and thanked the Council for its long-standing support. She answered questions of the Council related to their work with clients experiencing foreclosure and with lenders on prevention strategies.

Member Brindle stated she was recently appointed and looked forward to serving on the CAPSH Board.

Beth Kodluboy, Executive Director of HomeLine, summarized the tenant advocacy services provided and goal to give Edina's residents the tools needed to solve problems.

Janet Lindbo, Executive Director of the West Hennepin Affordable Housing Land Trust (WHAHLT), described the services provided by Homes within Reach to purchase, rehab, and resell homes while maintaining ownership of the property to make housing more affordable to qualified buyers. She answered questions of the Council related to HUD income guidelines and demographic profile of Edina residents who made use of their services.

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

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

Member Swenson introduced and moved adoption of Resolution No. 2013-19, approving proposed use of 2013 Urban Hennepin County Community Development Block Grant Program Funds and authorizing execution of subrecipient agreement with Hennepin County and any third party agreements. Member Bennett seconded the motion.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VI.B. VACATION APPEAL, 5801 CRESCENT TERRACE – RESOLUTION NO. 2013-20 – ADOPTED

Assistant Planning Presentation

Assistant Planner Aaker presented the appeal by Kevin Gilligan of the request by Nicole Sunberg for a 25.85-foot front yard setback variance to construct a new two-story Mediterranean-style home at 5801 Crescent Terrace. She advised that in this case, the average front yard setback would be 77.75 feet. Ms. Aaker presented the proposed site plan and indicated that on December 12, 2012, the Planning Commission had recommended, on a 7 to 1 vote, approval of a 25.85-foot front yard setback variance that would have placed the new home at the same 51.9-foot nonconforming front yard setback as the existing home on the site built in 1953. Subsequent to that recommendation, an appeal was filed by Kevin Gilligan, a neighbor to the north of the subject site. On February 13, 2013, the City Clerk received a notice of conditional settlement of the variance appeal indicating the appellant would withdraw the pending appeal provided the Council approved and ratified all of the terms and conditions of the proposed reduced variance as agreed upon by the applicant Nicole Sunberg and the appellant Kevin Gilligan. Ms. Aaker

noted under this agreement, the garage would be shifted to the other side of the site and the pool would be located on the western portion of the property. She reviewed the conditions of the reduced variance of 9.75 feet, and recommended approval.

Appellant Presentation

Kevin Gilligan, 5804 Crescent Terrace, thanked the Council for listening to the concerns he and his immediate neighbors had voiced, which had been a good experience. Mr. Gilligan stated he found the Planning Department and Planning Commission had not been interested in addressing the concerns of the neighborhood until an appeal was filed that resulted in significant legal expense. He suggested this appeal process would not have been necessary had the Planning Department and Planning Commission taken a different approach.

Mayor Hovland asked whether the outcome had been satisfactory to adjoining property owners. Mr. Gilligan answered in the affirmative. Mayor Hovland noted the structured agreement had not included the proposed landscaping between the driveway and street as depicted in the preliminary site plan dated February 11, 2013. Mr. Gilligan stated that issue was not currently a specified condition but he would not object to making it one.

Proponent Presentation

Nate Wissink, Streeter & Associates, Inc., representing the proponent, stated the documents update the inaccurate calculation of the front yard setback at 68 feet. He stated they were appreciative of the appellant's efforts to work with them subsequent to the Planning Commission's recommendation. Mr. Wissink advised the structure of the agreement as it related to the immediate neighbors of 5801 Crescent Terrace was satisfactory to the Sunbergs.

Mayor Hovland opened the public hearing at 9:00 p.m.

Public Testimony

Marcus Mollison, Lindquist and Vennum, representing appellant Kevin Gilligan, addressed the Council and indicated the site plan should be part of the agreement as it identified the actual building footprint.

Mr. Wissink stated his concurrence.

Tim Grande, 5701 Dale Avenue, representing Brad and Susan Baker, neighbors to the southeast of this site, addressed the Council.

With regard to the survey discrepancy, Attorney Knutson advised the City had no part in deciding location of property lines and it would not impact the granting of this variance.

Ann Bentdahl, 4905 Rolling Green Parkway, read a letter on behalf of Suzanne and Kip Knelman of 4812 Rolling Green Parkway.

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

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

With regard to the survey discrepancy, Mr. Wissink stated they relied on the Woodrow Brown survey dated November 25, 2012, that had been submitted with the application. He explained the Moen Estate conducted a survey with Herb LaMere in April of 2006 when the Baker's pool was installed that included a south property line discrepancy. Mr. Wissink stated they had been in touch with Messrs. LaMere and Brown relating to the survey discrepancy noting, however, that it had no impact on the variance outcome.

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Ms. Aaker presented the City's standards for determining an average setback and variance issuance as well as staff's rationale for recommending approval as detailed in the report.

The Council discussed the appeal and terms of the settlement agreement and asked questions of Attorney Knutson related to the grandfathering concept. He explained a subsequent property owner had a period of one year in which to tear down and rebuild but could not expand the nonconformity. With regard to process, Attorney Knutson explained that upon appeal, the Council could refer it to the Planning Commission should a settlement expand the request.

The Council considered what aspects were the most significant when addressing massing: the neighborhood; the lot; or, the house design. Member Bennett read the Comprehensive Plan description of the Interlachen area (Rolling Green and Hilldale) as a Garden Suburb with "mature trees, regular building setbacks and massing" and "characterized by larger lots, larger homes and proportionally more green space." She stated that the Site Location map in the Staff Report depicted seven or more similarly configured curved and pie-shaped lots. It was noted the appeal and settlement agreement reduced the approved and granted front yard setback variance from 25.85 feet to 9.75 feet. Support was expressed to add a condition addressing the preliminary site plan and revised setback information. **Member Sprague introduced and moved adoption of Resolution No. 2013-20, approving a Front Yard Setback Variance at 5801 Crescent Terrace based on the following findings:**

- 1. The proposal would meet the required standards for a variance, because:**
 - a. The proposed use of the property is reasonable; as the proposed home will uphold the established front setback pattern already existing on the block.**
 - b. The practical difficulties in complying with the ordinance include the triangular shape of the lot and resulting amount of front yard that must be maintained given the required setback and the imposition of a deeper front yard setback given that the lot has always had a home located closer to the street than neighboring properties.**
- 2. With the exception of the variance requested, the proposal would meet the required standards and ordinances for the R-1, Single Dwelling Unit District.**
- 3. The proposed use of the property is reasonable; as it is consistent with the Comprehensive Guide Plan.**
- 4. The proposal is in harmony with the intent of the ordinance since it will allow replacement of a home that had occupied the lot in the past and was originally located closer to the street.**

And subject to the following conditions:

- 1. The front street setback variance to be granted shall be reduced to 9.75 feet.**
- 2. The home and garage to be constructed on the property shall be built within the boundaries specified on the applicant's approved revised plans date stamped by the City on February 11, 2013.**
- 3. The garage to be constructed on the property shall not exceed a single story in height.**
- 4. The plans shall not contain, nor shall applicant permit the construction or installation of, any large driveway turnaround depicted on the original site plans that the applicant submitted to the City in connection with the original variance application.**
- 5. The home to be constructed shall be according to the preliminary site plan updated on February 19, 2013, with revised setback information dated February 19, 2013.**

Member Swenson seconded the motion.

Member Brindle stated her intent to vote against the motion because she found the practical difficulty did not reside with the property but, rather, was self-created by the potential property owner in trying to fit a pre-designed house onto this lot. Attorney Knutson advised the variance terminology was difficult and recently changed. The term "undue hardship" was no longer a statute term and the substituted term was "practical difficulties." Consideration was whether the property owner proposed to use the property in a reasonable manner not permitted by zoning ordinances and the plight of the land owners was due to circumstances unique to the property and not created by the land owner.

Member Bennett stated while she appreciated the work of staff and residents engaging in productive discussions to reach an agreement, after considering all materials before the Council and testimony, she could not find the standards for a variance had been satisfied and would vote against the motion.

Members Swenson, Sprague, and Mayor Hovland advocated in support of the motion, finding practical difficulties were created by the road curvature, lot configuration, and the City's "elastic" setback.

Ayes: Sprague, Swenson, Hovland

Nays: Bennett, Brindle

Motion carried.

VII. COMMUNITY COMMENT

No one appeared to comment.

VIII. REPORTS / RECOMMENDATIONS

VIII.A. RESOLUTION NO. 2013-21 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 Bennett introduced and moved adoption of Resolution No. 2013-21 accepting various donations. Member Swenson seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VIII.B. CONSTRUCTION MANAGEMENT PLAN – DIRECTION GIVEN

The Council discussed concerns related to adverse impacts from residential home demolition and reconstruction. Support was voiced to direct Attorney Knutson to review and determine elements missing from ordinances to adequately address construction management issues and provide a recommendation on whether ordinance amendments or a new ordinance should be considered. Issues of concern included ability to enforce the Construction Management Plan, creation of a penalty matrix that incorporated escalating fines and issuance of a stop work order until compliance was gained, excess consumption of City services; method of creating foundations and requirement for bracing; requirement of bonding for excavation projects; asbestos and lead paint abatement to assure protection of the environment and surrounding neighbors; cross filing complaints by date, address, and builder; and, prohibition of leaving household items such as appliances outdoors.

Attorney Knutson advised that violation of City ordinance was a misdemeanor with fines imposed by the court system. However, in certain categories of offenses, the court could consider and impose a City fine without the requirement of a court date. In that case, the fine could be appealed to the court, if desired. Attorney Knutson stated he would research the State Building Code to determine the opportunity to issue a stop work order for violation.

The Council asked whether the City could institute a civil matrix penalty system and Construction Board of Appeals to consider a decision to impose a civil penalty. Attorney Knutson advised there was not specific statutory authority to allow such a system.

Community Development Director Teague explained that the Construction Management Plan requirement went into effect six weeks ago so any construction project since that date required the builder to sign the Construction Management Plan, which was handled on a complaint basis by building inspectors.

Manager Neal indicated staff would be addressing the management of this issue, which might require a staff member dedicated to only that issue. In addition, there might be need for additional regulatory considerations such as fencing the lot during redevelopment projects. He stated another option was to

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consider increasing the demolition permit fee to cover additional public costs. The Council indicated support to consider additional staffing hours to assure complaints on residential construction projects were properly addressed.

The Council directed staff to review the questions posed relating to the Construction Management Plan and provide a report and recommendation at the March 5, 2013 Council meeting. The Council also asked staff to address the complaint received relating to trash left outdoors at a home under reconstruction on 59th and St. Johns.

IX. CORRESPONDENCE AND PETITIONS

IX.A. CORRESPONDENCE

Mayor Hovland acknowledged the Council's receipt of various correspondence.

IX.B. MINUTES:

- 1. PARK BOARD, JANUARY 8, 2013**
- 2. ART CENTER BOARD, JANUARY 24, 2013**
- 3. EDINA TRANSPORTATION COMMISSION, DECEMBER 20, 2012**

Informational; no action required.

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 10:15 p.m.

Respectfully submitted,

Debra A. Mangen, City Clerk

Minutes approved by Edina City Council, March 5, 2013.

James B. Hovland, Mayor

Video Copy of the February 19, 2013, meeting available.