

MINUTES  
OF THE REGULAR MEETING OF THE  
EDINA CITY COUNCIL  
HELD AT CITY HALL  
AUGUST 16, 2011  
7:00 P.M.

**I. CALL TO ORDER**

Mayor Hovland called the meeting to order at 7:10 p.m.

**II. ROLL CALL**

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

**III. MEETING AGENDA APPROVED**

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

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

**IV. CONSENT AGENDA ADOPTED**

**Member Swenson made a motion, seconded by Member Bennett, approving the consent agenda with the exception of Item IV.E., Request for Purchase, Hydraulic Rescue Tools, Fire Department, as follows:**

**IV.A. Approve regular meeting minutes of August 16, 2011, and work session meeting minutes of August 3, 2011**

**IV.B. Receive payment of the following claims as shown in detail on the Check Register dated August 4, 2011, and consisting of 37 pages; General Fund \$131,230.26; Communications Fund \$14,914.09; Police Special Revenue \$2,182.85; Working Capital Fund \$336,242.85; Equipment Replacement Fund \$102,336.78; Art Center Fund \$28,819.56; Aquatic Center Fund \$4,722.81; Golf Course Fund \$44,275.57; Ice Arena Fund \$13,884.00; Edinborough/Centennial Lakes Fund \$34,524.54; Liquor Fund \$164,672.76; Utility Fund \$237,285.07; Storm Sewer Fund \$237,871.96; PSTF Agency Fund \$10,169.55; TOTAL \$1,363,132.65 and for approval of payment of claims dated August 11, 2011, and consisting of 30 pages; General Fund \$162,193.83; Communications Fund \$781.50; Police Special Revenue \$1,487.08; Working Capital Fund \$11,032.17; Equipment Replacement Fund \$7,442.01; Art Center Fund \$3,004.51; Golf Dome Fund \$1,331.26; Aquatic Center Fund \$10,671.64; Golf Course Fund \$32,103.15; Ice Arena Fund \$34,303.31; Edinborough/Centennial Lakes Fund \$26,175.97; Liquor Fund \$224,076.19; Utility Fund \$412,888.18; Storm Sewer Fund \$6,372.99; Recycling Fund \$38,820.60; PSTF Agency Fund \$4,949.90; TOTAL \$977,634.29; and, Credit Card Transactions dated June 27 – July 25, 2011; TOTAL \$10,935.36.**

**IV.C. Adopt Resolution No. 2011-77 Authorizing JPA for Internet Crimes against Children Task Force**

**IV.D. Adopt Resolution No. 2011-78 JPA establishing a Minnesota Structural/Technical Rescue Task Force organization**

~~**IV.E. Request for Purchase – Hydraulic Rescue Tools, Fire Department**~~

**IV.F. Accept West 44<sup>th</sup> Street Sidewalk Recommendation**

**IV.G. Approve New On-Sale Wine and Beer License, Biryani Restaurant, 7078 Amundson Avenue**

**IV.H. Adopt Resolution No. 2011-81 Authorizing Worthless Check Diversion Agreement**

Roll call:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

**ITEMS REMOVED FROM THE CONSENT AGENDA**

**IV.E. REQUEST FOR PURCHASE – HYDRAULIC RESCUE TOOLS, FIRE DEPARTMENT – APPROVED**

Fire Chief Scheerer summarized the purchase request for two “jaws of life” that would be paid primarily by a federal grant. The Council congratulated staff on receipt of the federal grant, noting this equipment would save lives. **Member Sprague made a motion, seconded by Member Brindle, approving request to purchase hydraulic rescue tools, Fire Department, to the low bidder, Alex Air Apparatus, Inc., at \$50,303.75.**

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

**V. SPECIAL RECOGNITIONS AND PRESENTATIONS**

**V.A. PRESENTATION OF IMAGES OF EDINA PHOTO CONTEST WINNERS**

Communications Coordinator Gilgenbach introduced the Images of Edina Photo Contest parameters and Sarah Baumann, *Edina Magazine* Editor, described the magazine's content and its successful collaborative efforts with the contest. Mr. Gilgenbach announced the award winners as follows: "The Final Step" by Matthew Casey in the "Living: People" category; "Courting Canada Geese on Minnehaha Creek" by Martin Freeman in the "Living: Plants/Wildlife" category; "Planting Spring" by Rebecca Schmoll in the "Learning" category; "Chain Link Chomper" by Lindsey Koch in the "Raising Families" category; "Happy Customers" by Rebecca Schmoll in the "Doing Business" category; and, "Red Fox in Pamela Park" by Britt Rogers in the "Readers' Choice" category. Mr. Gilgenbach also announced the "Best of Show" category was awarded to "Happy Customers" by Rebecca Schmoll. Mayor Hovland presented the awards and congratulated each recipient.

**VI. PUBLIC HEARING HELD**

**VI.A. PRELIMINARY PLAT WITH LOT WIDTH AND LOT AREA VARIANCES AT 5829 BROOKVIEW AVENUE FOR KIRBY HERMAN – RESOLUTION NO. 2011-79 ADOPTED**

Affidavits of Notice presented and ordered placed on file.

Planning Director Presentation

Planning Director Teague stated the subject property was located at 5829 Brookview Avenue. The applicant was proposing to demolish his existing home and divide the 100-foot wide lot into two 50-foot wide lots. This request required a preliminary plat and variances for lot width from 75 feet to 50 feet for each lot and lot area variances from 9,000 square feet to 6,703 and 6,702 square feet for each lot. It was noted this area was originally platted as 50-foot lots but as it developed, some lots were combined prior to construction of single-family homes, resulting in varied lot widths in this neighborhood.

Mr. Teague explained that in 1951, the City established requirements for 75-foot lot widths and 9,000 square foot lot areas. At that time, the subject property became non-conforming. He noted staff found the findings were not met because reasonable use existed with the current single-family home and had recommended denial of the subdivision and variance requests to the Planning Commission based on the rationale and findings detailed in the staff report. Mr. Teague reviewed the lot sizes in this neighborhood, noting there were 50-foot lots along the block but others were wider at 100 feet and 75 feet. Staff found that the circumstances were self-created by the proponent to subdivide the property.

Mr. Teague indicated the proponent argued that the City had approved a similar subdivision request on Oaklawn Avenue several years ago. He used a map to identify the 5900 block of Oaklawn Avenue and explained that staff found a distinction could be made because the subject neighborhood contained a mixture of lot sizes, but the 5900 block of Oaklawn Avenue contained all 50-foot wide lots. It was noted that staff and the Planning Commission agreed the third variance criteria was met because the variances would not alter the essential character of the neighborhood since there were existing 50-foot lots in the block.

Mr. Teague summarized that staff had recommended denial of the subdivision and lot width and area variances with findings outlined in the staff report. However, the Planning Commission recommended, on a 4-3 vote, to approve the subdivision request and variances for lot width and area.

The Council discussed the subdivision and variance requests and asked questions of Mr. Teague. Mr. Teague advised that median lot widths and lot sizes in the neighborhood would not be taken into consideration here because the proposed lots would be smaller than the minimum required by code; neighborhood medians were used to help determine how much larger than code minimums a lot should be

The Council discussed the issue of affordability and concluded that the homes built on this property, whether a 50-foot or a 100-foot wide lot would not be considered affordable or starter homes. Mr. Teague concurred and noted the houses constructed on Oaklawn Avenue and Brookview Avenue sold for over \$800,000. He estimated the maximum house sizes that could be constructed on a 50-foot lot would be 2,000 square feet per level and on a 100-foot lot 3,000 square feet per level would be allowed under code. It was noted that park dedication had been collected on both lots since it was originally platted as two 50-foot lots.

Proponent Presentation

Kirby Herman, 5829 Brookview Avenue, explained that to avoid the controversy that resulted on the south end of Brookview Avenue, he decided to talk with all of his neighbors to explain his subdivision proposal and get their signatures of approval. He indicated he was attuned to the Oaklawn Avenue subdivision request that was approved, noting it was the same thing he was proposing. Mr. Herman stated he was a builder with a background in real estate and purchased the subject property as investment in 2006. The lot had been platted in the 1940s as two 50-foot lots, as was all of Fairfax Addition, and designed for two homes. Mr. Herman described the existing home as being obsolete and noted the lots in this block maintain an additional 30-foot boulevard to the rear facing Pamela Park, which makes the lots feel much larger. Mr. Herman claimed that of the 21 lots on the block, 16 have widths of 50 feet or less and five have widths of 75 feet or more. Mr. Herman stated he sent letters to 60 homes within that 500-foot radius and only one had an objection to this subdivision.

Mr. Herman said that the proposed subdivision was 100% conforming to lot width and depth of the Fairfax Addition plat, the use was consistent with surrounding land uses, and the Edina Guide Plan. He noted a significant portion of east Edina had 50-foot lots that hosted obsolete housing stock and could be redeveloped in this proposed fashion if not for the ordinance creating a practical difficulty by making 50-foot lots nonconforming. Mr. Herman assured the Council that the house constructed would be reasonable and spur redevelopment, not a "McMansion."

Mr. Herman referenced the staff report relating to the size of lots on his block of Brookview. He stated there was currently one house, to the west, located on a 100-foot lot. Mr. Herman claimed that two 75-foot lots on the east side of the street resulted when a storm sewer easement was split between the two abutting lots. The southernmost lot on the east side of the street gained 30 additional feet in width when 59th Street was vacated. The owners used the additional footage for access to their garage

In summary, Mr. Herman asserted that the desire for modern standards was not being satisfied by the obsolete 1941 structure, which had outlived its useful life. He stated there was a need for City leadership to send a message that it was safe to invest in Edina. Mr. Herman asked the Council to support his application, noting if this subdivision was not allowed, the City could not deny someone from building a large home on a 100-foot lot.

The Council referenced the petition, noting 11 households were represented out of 21 households on the street. Mr. Herman stated he does not have signatures for the other households, but none had voiced opposition to his request. He clarified that the one neighbor who objected lived on Oaklawn Avenue.

The Council asked the proponent to articulate the practical difficulties faced in complying with the Code. Mr. Herman stated the practical difficulty was with the size of the lot; he wanted to do what his neighbors had been allowed to do, which was to build on 50-foot lots.

Attorney Knutson advised that "practical difficulty" now means the property owner proposes to use the property in a reasonable manner. He indicated the Council needed to determine if the proponent was proposing to use the property in a reasonable manner, if the practical difficulty was created by the proponent's action, and if there was something unique with the property.

Mayor Hovland opened the public hearing at 7:43 p.m.

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### Public Testimony

Leslee Ann Sullivan, 5845 Brookview Avenue, addressed the Council in support.

Tom Hurley, 5837 Brookview Avenue, addressed the Council in support.

**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. 2011-79, approving a preliminary plat with variances at 5829 Brookview Avenue based on the following rationale:**

- 1. The vast majority of the parcels on this block and in the neighborhood are made up of 50-foot wide lots.**
- 2. A practical difficulty is caused the applicant by requiring a 100-foot lot, and not allowing 50-foot lots, which was the character of the neighborhood.**
- 3. The circumstance unique to the property is that the property was originally platted as two 50-foot lots, long before the applicant owned the property. In denying the application, the property owner would be denied a use of his property, a 50-foot wide lot, which is common to the area.**
- 4. The variance does not alter the essential character of the neighborhood. The exceptions to the neighborhood are oversized lots including lots with unique circumstances including one that has obtained land from a vacated right-of-way and the other due to utility lines and easements that run along the side lot lines.**

**And subject to the following condition:**

- 1. The final plat must be filed within one year of City Council approval.**

Member Sprague seconded the motion.

The Council acknowledged that it had not unanimously supported the Oaklawn Avenue subdivision; however, the Council noted that residents in the neighborhood had stated they benefitted from construction of the new house. It also noted that the larger-sized lots in the proponent's neighborhood were created due to a utility easement and a street vacation. The Council discussed the benefit of constructing two smaller-sized houses on 50-foot lots rather than one very large home on a 100-foot lot. The benefit of neighborhood revitalization was raised and the need for the City to be responsive in providing housing for families.

The majority of the Council indicated support for the application based on a finding that it was a reasonable use, the practical difficulties resulted in complying with the Code in its present formation, the circumstances were not created by the landowner, and there would be no alteration of the essential character by virtue of the variances being granted. It was noted that the subdivision would restore the essential character of this segment of the neighborhood, which had originally been subdivided as 50-foot lots. Concern was expressed, however, that the two homes needed to balance green space and enhance the neighborhood.

Member Bennett stated she had voted against the Oaklawn Avenue subdivision and would vote against the proposed subdivision and variance requests for the same reasons. She read staff's findings and recommendation for denial, noting it was clear that the practical difficulty was created by the proponent. Member Bennett indicated the desirability of the neighborhood was evident by the school district's increased enrollment and she believed the City needed starter homes for young families. However, the two homes as proposed would not be affordable housing. Member Bennett indicated she feared that through incentives and disincentives, relatively affordable neighborhoods would disappear.

Ayes: Brindle, Sprague, Swenson, Hovland

Nays: Bennett

Motion carried.

## **VII. COMMUNITY COMMENT**

Ron Rich, 7008 West Shore Drive, expressed concern that reconstruction of West 70<sup>th</sup> Street does not conform to agreed-upon specifications. The Council referred this matter to staff.

**VIII. REPORTS / RECOMMENDATIONS**

**VIII.A. RESOLUTION NO. 2011-80 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 Swenson introduced and moved adoption of Resolution No. 2011-80 accepting various donations.** Member Sprague seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

**VIII.B. PACE ENERGY EFFICIENCY PROJECT FINANCING RECOMMENDED**

Manager Neal stated staff and the Energy and Environment Commission (EEC) have looked at the Property Assessed Clean Energy (PACE) financing option and recommended the Council formally direct preparation of a program that complied with State statutes.

Former District 40 Minnesota State Senator John Doll stated he was the chief author of this bill in the Senate. He explained the purpose was to stimulate energy conservation programs by providing an alternate private funding vehicle that allowed property owners to make energy improvements and repurpose energy savings to pay for that improvement. The cost for the improvement would be assessed to the property rather than the property owner to obtain a longer term. He indicated the greatest potential was in the commercial sector but could also be made available for residential. Mr. Doll noted the statute followed best practices currently in use by the federal Department of Energy and provided a lot of flexibility and discretion to the City in formulating its program.

The Council discussed the potential program benefits and asked questions of Mr. Doll. It was suggested that the Council could discuss the PACE program at its September work session with the EEC.

Lynn Hinkle, Policy Director with Minnesota Solar Energy Industries, complimented the City on its recognition of a possible mechanism beyond public bonding to allow private third-party financing for energy projects with no public financial liability. He explained one reason this had been moved forward was the interest of Rick Murphy, Grandview Tire and Auto, to install a solar array on the business roof with the cost assessed to the property taxes.

**Member Swenson made a motion, seconded by Member Sprague, directing staff, under the guidance of the Energy & Environment Commission, to prepare a PACE program that complied with requirements of Minnesota Statutes 216C.436.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

**VIII.C. SOLAR PANEL PROJECT APPROVED**

Manager Neal introduced the item, grant funding, and indicated the project had been rebid with significantly better results.

Greg Ackerson, Development Director of McKinstry, explained McKinstry was a consultant, not a vendor, and reviewed its clientele and the process used to repurpose energy savings to pay for an investment in the property. He described their evaluation of the City's proposed solar panel project, finding that the best solution was TenKSolar because there would be no out-of-pocket costs to the City. In addition, they would propose improvements to lighting, sealing the building envelope, and retuning existing water fixtures. Mr. Ackerman presented estimated costs, grant funding, and payback period for each energy-saving measure, noting the

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resulting positive cash flow with debt service paid at the end of ten years. Benefits included providing a local stimulus, decreasing the City's carbon footprint by 770 metric tons per year, and providing a unique demonstration project.

Mr. Ackerman answered the Council's questions relating to recommended energy improvement to interior lighting, which could be used as a pilot project, and options for energy efficient exterior lighting. He clarified that rebidding the project resulted in significantly reduced costs, so the City's out-of-pocket costs were reduced to zero over five years. This zero expense to the City would be achieved through rebates and energy grants realized during an approximate five-year span, but initially about \$60,000 of the \$200,000 would need to be paid by the City to get the project underway.

Surya Iyer, Energy and Environment Commissioner, thanked staff and consultants for working on this project to reduce vendor cost and make the project more viable. He reviewed the role of the EEC to successfully write the grant and presented the advantages of the proposed project to lower the City's carbon footprint. Mr. Iyer said the opportunity for tremendous cost savings, creating a demonstration/evaluation resource and benchmark, achieving goals of the GreenStep Cities, and demonstrating the City of Edina's leadership in embracing innovation as part of a comprehensive energy/environment strategy were important reasons for the City to move forward with the proposed improvements. Mr. Iyer concluded his remarks by describing benefits of renewable energy and presenting the EEC's recommendation for approval.

The Council thanked the EEC and EEC Working Group for its tenacity in pursuing this project.

**Member Swenson made a motion, seconded by Member Sprague, accepting the recommendation of the Energy and Environment Commission to proceed with the proposed Solar Panel Project at City Hall.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

Bill Glahn, 6634 Normandale Road, member of the EEC Working Group, stated his concern that the return on the solar panels would not recoup the \$80,000 grant or the balance of the payment coming from Excel's Renewable Energy Fund that was billed back to rate payers. He urged the Council to be responsible stewards of society's resources and consider whether this investment was good from a societal standpoint. The Council acknowledged the benefit of having a range of opinions on its Boards and Commissions and thanked Mr. Glahn for his comments.

**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 9:52 p.m.

Respectfully submitted,

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Debra A. Mangen, City Clerk

Minutes approved by Edina City Council, September 6, 2011.

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James B. Hovland, Mayor

Video Copy of the August 16, 2011, meeting available.