

CITY OF NEW HOPE
4401 XYLON AVENUE NORTH
NEW HOPE, MINNESOTA 55428

City Council Minutes
Regular Meeting

November 8, 2010
City Hall, 7:00 p.m.

CALL TO ORDER

The New Hope City Council met in regular session pursuant to due call and notice thereof; Mayor Hemken called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The City Council and all present stood for the Pledge of Allegiance to the Flag.

ROLL CALL

Council present: Kathi Hemken, Mayor
John Elder, Council Member
Eric Lammle, Council Member
Daniel Stauner, Council Member

Council absent: Andy Hoffe, Council Member

Staff present: Kirk McDonald, City Manager
Curtis Jacobsen, Director of Community Development
Guy Johnson, Director of Public Works
Valerie Leone, City Clerk
Gary Link, Director of Police
Jason Quisberg, City Engineer
Steve Sondrall, City Attorney

ORDER OF AGENDA

Motion was made by Council Member Elder, seconded by Council Member Stauner, **to consider Item 9.1 after taking action on the Consent Agenda.** Voting in favor: Hemken, Elder, Lammle, Stauner; Voting against: None; Absent: Hoffe; Abstained: None. Motion carried.

APPROVAL OF MINUTES

Motion was made by Council Member Stauner, seconded by Council Member Elder, **to approve regular meeting minutes of October 25, 2010.** Voting in favor: Hemken, Elder, Lammle, Stauner; Voting against: None; Absent: Hoffe; Abstained: None. Motion carried.

OPEN FORUM

There was no one present to address the Council for the Open Forum.

ROTATING VOTES

Please note that votes taken on each agenda item are called by the secretary on a rotating basis; however, the written minutes always list the Mayor's name first followed by the Council Members in alphabetical order.

CONSENT AGENDA

Mayor Hemken introduced the consent items as listed for consideration and stated that all items will be enacted by one motion unless requested that an item be removed for discussion.

**MOTION
Consent Items**

Motion was made by Council Member Elder, seconded by Council Member Stauner, **to approve the Consent items.** Voting in favor: Hemken, Elder, Lammle, Stauner; Voting against: None; Absent: Hoffe; Abstained: None.
Motion carried.

**FINANCIAL CLAIMS
Item 6.2**

Approval of financial claims through November 8, 2010.

**RESOLUTION 2010-153
Item 6.4**

Resolution approving service contract with Beth C.W. Nelson & Associates, Inc. to perform all planning/organizing functions for the 2011 Northwest Suburban Remodeling Fair.

**RESOLUTION 2010-154
Item 6.5**

Resolution accepting the 2010 crack repair and seal coat project and approving the final payment request (improvement project no. 864).

**RESOLUTION 2010-155
Item 6.6**

Resolution approving a change order for the Northwood Lake west inlet cleaning project (improvement project 806).

**RESOLUTION 2010-156
Item 6.7**

Resolution accepting easements for installation of pedestrian lighting facility along Bass Lake Road (city project no. 861).

**PERMIT TO EXCEED
LIMITATIONS OF
ANIMALS
Item 9.1**

Mayor Hemken introduced for discussion Item 9.1, Consideration of request for "permit to exceed limitations on the keeping of animals" at 3807 Independence Avenue North.

Mr. Kirk McDonald, city manager, explained the request made by Jean Marksteiner of 3807 Independence Avenue North to keep five dogs at the property. He stated the property has been inspected by the city's animal control officer.

Council Member Elder commented on Animal Control Officer Mahan's report and recommendation for granting the permit.

Council Member Stauner asked for clarification on whether the request is for a kennel license.

Mr. Steve Sondrall, city attorney, acknowledged the ordinance is somewhat confusing and the request for a permit to have more than three dogs at the property. He noted kennel licenses are only allowed in industrial zoning districts.

Council Member Stauner commented that there does not appear to be a compelling reason to grant the request.

Council Member Lammle noted the two written objections both cite barking as a reason for denial. He pointed out the city employs an animal control officer 40 hours per week and there are no noise complaints on record.

Mayor Hemken asked the petitioner to address the Council and to explain how

she acquired five dogs.

Ms. Jean Marksteiner, 3807 Independence Avenue North, stated she owns two of the dogs and her boyfriend has three. She indicated her boyfriend may move in and then they would have five dogs. She spoke of medical conditions of two of the dogs and noted they would not be accepted into an animal shelter.

Mr. Greg McWhorter (friend of Ms. Marksteiner) commented that all the dogs are well behaved. He pointed out that Crystal has 32 residences with more than three dogs. He stated the dogs' size range from 30 to 60 lbs. He noted the dogs are indoors when he and Jean are not home.

Council Member Stauner asked Ms. Marksteiner to share the two incidents of dog bites and explain why the dogs were not licensed.

Ms. Marksteiner commented that Gypsey did nick a neighbor's hand when she reached over the fence to pet Gypsey. She stated the neighbor is in the audience tonight. Ms. Marksteiner reported the other incident involved a different dog that was attacked by another dog and that dog's owner was bitten while trying to separate the dogs. She indicated she had not previously licensed Marley due to his health condition. She also stated Gypsey was previously licensed, but the license expired last December.

Mayor Hemken opened the floor to comments from the audience.

Mr. Kenneth Kaiser, 3816 Jordan Avenue North, spoke in favor of the permit. He stated Jean installed a privacy fence and immediately attends to the dogs' needs when they bark. He also pointed out prior to receipt of the notice, he was unaware that there were five dogs at the property.

Ms. Deb Campion, 3801 Independence Avenue North, stated she lives next door to the petitioner and supports the permit. She commented they have a system of turning on an exterior light to notify one another when their dogs are outdoors. She stated Jean is a good housekeeper.

Mr. Paul Simon, 3825 Independence Avenue North, recalled the 1960s when the animal ordinance was adopted and a great amount of time was expended to reach the decision regarding a maximum of three dogs per property. He acknowledged it is admirable that the property owner is willing to care for animals in need but consideration must also be given to established guidelines. He expressed his opinion that if a permit to exceed is granted and problems arise, the city could be held liable.

The city attorney was consulted regarding the city's liability. Mr. Steve Sondrall, city attorney, stated he would need to consult the League of Minnesota Cities Insurance Trust that insures the city to make a definitive statement. He expressed his doubt that the city would incur any additional liability if the permit to exceed were granted as the dogs are not classified as dangerous animals.

Council Member Lammle inquired whether a decision to approve the permit would set a precedent.

Mr. Sondrall, city attorney, indicated it would not be a precedent as the ordinance allows the Council to grant a “permit to exceed” on a case-by-case basis. He noted the animal control officer does not believe there is a safety or public nuisance issue by granting the request. He stated the bite incidents were isolated, and the dogs are not classified as dangerous dogs. He also pointed out the permit is subject to annual renewal and any problems would likely result in non-renewal or revocation of the permit.

Mayor Hemken acknowledged the older age of two of the dogs. She stated the Council could include a condition that the permit is only for the existing five dogs on the premises (new/replacement dogs would not be allowed). She also commented that a deadline could be established to reduce the number of dogs to three.

Council Member Stauner commented that a precedent is set any time a decision is made. He noted the chicken issue (permit to exceed) had extenuating circumstances. He expressed empathy to the dog owners but pointed out the ordinance is in place for the good of the community.

Discussion ensued regarding the potential liability issue. Council agreed to postpone action on the item to allow the city attorney time to consult the city’s insurance company. Council Member Lammle informed the applicant that it would be helpful to hear from all the petitioner’s neighbors to learn if they are for or against the request.

Council Member Stauner recommended obtaining information regarding the applicant’s insurance coverage. City Attorney Sondrall noted the homeowner’s insurance typically covers them from any damage claims.

Mr. Paul Simon stated only the person who is named on the policy as the party insured will be covered in any claim.

Mayor Hemken invited the applicant to the November 22nd Council Meeting.

MOTION
Item 9.1

Motion was made by Council Member Elder, seconded by Council Member Lammle, **to postpone action regarding the request to the November 22, 2010, Council Meeting.** Voting in favor: Hemken, Elder, Lammle, Stauner; Voting against: None; Absent: Hoffe; Abstained: None. Motion carried.

BUSINESS AWARD
Item 8.1

Mayor Hemken introduced for discussion Item 8.1, Discussion regarding the recipient of the Fall 2010 New Hope Outstanding Business Award.

Mr. Curtis Jacobsen, director of community development, reviewed the program and announced the nomination submitted by John Del Toro for Applebee’s at 4203 Winnetka Avenue North. Council unanimously supported

the nomination. Mr. Jacobsen indicated a representative of Applebee's will be invited to the November 22 Council Meeting for acceptance of the award.

MOTION

Item 8.1

Motion was made by Council Member Lammle, seconded by Council Member Elder, to **select Applebee's as the recipient of the Fall 2010 New Hope Outstanding Business Award.** Voting in favor: Hemken, Elder, Lammle, Stauner; Voting against: None; Absent: Hoffe; Abstained: None. Motion carried.

IMP. PROJECT 855

Item 8.2

Mayor Hemken introduced for discussion Item 8.2, Resolution awarding a contract to Minnesota Dirt Works Inc. in the amount of \$93,670 for improvements to the 45th Avenue regional pond (improvement project 855).

Mr. Jason Quisberg, city engineer, illustrated the project location near 45th Avenue west of Winnetka Avenue. He stated 13 bids were received, and the low bid was submitted by Minnesota Dirt Works, Inc. for \$93,670. He reviewed the estimated project cost of \$217,100 based on the construction cost of \$93,670, mitigation banking \$80,000, and 25% indirect costs of \$43,420. Mr. Quisberg stated the revenue sources include a \$160,000 grant from the Board of Water and Soil Resources, \$54,300 from Shingle Creek Water Management Organization, and approximately \$2,800 from city funds or state aid. He indicated construction could begin this winter with completion in early summer of 2011.

Council Member Lammle inquired of the company's history with the city. Mr. Quisberg stated Bonestroo has little experience working with Minnesota Dirt Works, but there is no reason to believe they would be unable to fulfill the contract. He noted the company provided the required bonds and has adequate references.

Council Member Elder inquired whether the project will alleviate the street flooding in the area.

Mr. Quisberg stated the project considered by Council at this time only improves the regional water quality pond. He confirmed that storm water improvements along 45th Avenue will be coordinated with a future infrastructure project near 45th and Xylon avenues.

RESOLUTION 2010-157

Item 8.2

Council Member Stauner introduced the following resolution and moved its adoption: **"RESOLUTION AWARDED A CONTRACT TO MINNESOTA DIRT WORKS INC. IN THE AMOUNT OF \$93,670 FOR IMPROVEMENTS TO THE 45TH AVENUE REGIONAL POND (IMPROVEMENT PROJECT 855)."** The motion for the adoption of the foregoing resolution was seconded by Council Member Elder, and upon vote being taken thereon, the following voted in favor thereof: Hemken, Elder, Lammle, Stauner; and the following voted against the same: None; Abstained: None; Absent: Hoffe; whereupon the resolution was declared duly passed and adopted, signed by the mayor which was attested to by the city clerk.

IMP. PROJECT 883
Item 8.3

Mayor Hemken introduced for discussion Item 8.3, Motion authorizing the preparation of a feasibility report for construction of a Boone Avenue infrastructure project (improvement project 883).

Mr. Jason Quisberg, city engineer, reviewed the project area of Boone Avenue between 42nd Avenue and the 5100 block. He stated the pavement condition in this region warrants improvements and was previously identified for inclusion in the 2013 street project.

Mr. Quisberg reviewed the city's current state aid fund balance of \$1,110,000 and explained that failure to keep the balance under \$1.5 million results in a penalty. He stated the city typically receives a state aid allotment of \$440,000 annually.

Mr. Quisberg reviewed the project components including street reclamation and spot repairs and replacement of curb/sidewalk, water main, storm sewer, and sanitary sewer. He stated the preliminary estimate of the project is \$1.8 million, and the city could utilize \$1.6 million in state aid and approximately \$170,000 of city funds. He stated if Council authorizes preparation of the feasibility report, the plans could be developed in February or March with construction beginning in the summer of 2011. He noted there are a small number of tax exempt properties in the area that would require assessments. Mr. Quisberg also pointed out the report would be prepared with the improvements divided into phases to allow the scope of the project to be modified to fit the city's budget.

A brief discussion was held regarding the state's deficit and whether the state could borrow against the state aid account. Mr. Quisberg stated the state has never taken such action. Mr. Guy Johnson, director of public works, expressed doubt that the state would borrow against state aid fund. However, he advised the city that it can borrow against future state aid allotments.

Mr. Kirk McDonald, city manager, indicated the city will have more information available in the spring regarding its state aid balance.

MOTION
Item 8.3

Motion was made by Council Member Elder, seconded by Council Member Lammle, **to authorize the preparation of a feasibility report for construction of a Boone Avenue infrastructure project (improvement project 883)**. Voting in favor: Hemken, Elder, Lammle, Stauner; Voting against: None; Absent: Hoffe; Abstained: None. Motion carried.

IMP. PROJECT 886
Item 8.4

Mayor Hemken introduced for discussion Item 8.4, Motion authorizing preparation of plans and specifications for the proposed cleaning of the Northwood wetland (improvement project 886).

Mr. Jason Quisberg, city engineer, illustrated the channel of the Northwood wetland area and explained the proposal to remove vegetation and sediment to prevent property damage and erosion around Northwood Lake. He stated a preliminary estimate of the construction cost is \$100,000. He stated revenue

resources include the city's storm water fund and possibly the Bassett Creek channel maintenance fund. Mr. Quisberg indicated if Council approves the preparation of plans and specifications for the project, the work could be completed this winter.

Mr. Kirk McDonald, city manager, asked the city engineer to report on the PAH findings. Mr. Quisberg explained that the city is not eligible for state grant funds due to the insufficient amount of PAHs (polycyclic aromatic hydrocarbons) in the wetland soils. He stated PAHs can be released to the surface water from the use of coal tar driveway and parking lot sealants. He noted although the city would not be eligible for grant funds, the low amount of PAHs is good news since removal cost is expensive.

Council Member Elder inquired whether the DNR had been consulted. Mr. Quisberg indicated the normal permit process will be followed. He stated the DNR may categorize the project as a maintenance issue.

Council Member Stauner questioned the channel maintenance fund balance through Bassett Creek Water Management Organization. Mr. Quisberg responded the account presently has \$16,400 and future channel maintenance funds can be earmarked to refund any city's costs toward the project.

MOTION
Item 8.4

Motion was made by Council Member Stauner, seconded by Council Member Elder, **to authorize preparation of plans and specifications for the proposed cleaning of the Northwood wetland (improvement project 886)**. Voting in favor: Hemken, Elder, Lammle, Stauner; Voting against: None; Absent: Hoffe; Abstained: None. Motion carried.

IMP. PROJECT 882
Item 8.5

Mayor Hemken introduced for discussion Item 8.5, Resolution awarding a contract to Excel Roofing Inc. for replacement of the Public Works Facility's cold storage roof for \$85,500 (improvement project no. 882).

Mr. Guy Johnson, director of public works, explained the cold storage addition to the Public Works facility occurred in 1991 and the existing roof is experiencing minor leaks which could damage the underlying metal roof decking. He stated three bids were received for the project, and the low bidder was Excel Roofing Inc. for \$85,500. He explained the bid includes installation of additional insulation.

Council Member Elder inquired of the city's experience with Excel Roofing. Mr. Johnson indicated they have made repairs to city facility roofs in the past and are a reputable company.

Mr. Kirk McDonald, city manager, commented on the favorable bid of \$85,500, and noted the CIP contains \$120,000 for this expenditure.

Mayor Hemken inquired of the project timeframe. Mr. Johnson indicated the work would likely begin before the end of November.

RESOLUTION 2010-158
Item 8.5

Council Member Lammle introduced the following resolution and moved its adoption: **“RESOLUTION AWARDING A CONTRACT TO EXCEL ROOFING INC. FOR REPLACEMENT OF THE PUBLIC WORKS FACILITY’S COLD STORAGE ROOF FOR \$85,500 (IMPROVEMENT PROJECT NO. 882).”** The motion for the adoption of the foregoing resolution was seconded by Council Member Stauner, and upon vote being taken thereon, the following voted in favor thereof: Hemken, Elder, Lammle, Stauner; and the following voted against the same: None; Abstained: None; Absent: Hoffe; whereupon the resolution was declared duly passed and adopted, signed by the mayor which was attested to by the city clerk.

CANCEL COUNCIL MEETING
Item 10.1

Mayor Hemken introduced for discussion Item 10.1, Resolution canceling regular council meeting scheduled for December 27, 2010.

Mr. Kirk McDonald, city manager, recommended cancellation of the second meeting in December as there are no pressing matters for the December 27 Council Meeting. He stated the December 20 work session would be the last meeting of the year.

RESOLUTION 2010-159
Item 10.1

Council Member Stauner introduced the following resolution and moved its adoption: **“RESOLUTION CANCELING REGULAR COUNCIL MEETING SCHEDULED FOR DECEMBER 27, 2010.”** The motion for the adoption of the foregoing resolution was seconded by Council Member Lammle, and upon vote being taken thereon, the following voted in favor thereof: Hemken, Elder, Lammle, Stauner; and the following voted against the same: None; Abstained: None; Absent: Hoffe; whereupon the resolution was declared duly passed and adopted, signed by the mayor which was attested to by the city clerk.

EXCHANGE OF COMMUNICATION
Item 12.1

Mayor Hemken introduced for discussion Item 12.1, Exchange of communication between members of the City Council.

Mayor Hemken

- Reported on upcoming events:
 - Nov. 9
 - District 281 Government Advisory Council (7:30 a.m.)
 - Citizens Advisory Commission (7 p.m.)
 - Nov. 11
 - Veteran’s Day – city offices are closed
 - Nov. 15
 - Council work session (6:30 pm)
 - Nov. 17
 - West Metro Fire-Rescue Fire Board (6 p.m.); rescheduled from Nov. 10
 - Nov. 18
 - Northwest Cable Commission (7:30 a.m.)
 - Twin West Business Council @ LDI (7:30 a.m.)
 - Bassett Creek Watershed (11:30 a.m.)
 - Nov. 22
 - City Council meeting (7:00 p.m.)
 - Nov. 25-26
 - Thanksgiving holiday – city offices are closed
 - Nov. 29
 - Public hearing on 2011 budget (7:00 p.m.)

City Manager McDonald

- Noted the next meeting of the New Hope Business Forum is November 10 at 8 am at TC Craft Beer & Wine

Council Member Elder

- Reported the Community Farmers Market Board of Directors will hold its season wrap up meeting on Saturday, November 13 from noon to 3 (location TBD)

ADJOURNMENT

Motion was made by Council Member Lammle, seconded by Council Member Stauner, **to adjourn the meeting, as there was no further business to come before the Council.** Voting in favor: Hemken, Elder, Lammle, Stauner; Voting against: None; Absent: Hoffe; Abstained: None. Motion carried. The New Hope City Council adjourned at 8:40 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Valerie Leone".

Valerie Leone, City Clerk