

MEDINA CITY COUNCIL MEETING MINUTES OF AUGUST 8, 2007

The City Council of Medina, Minnesota met in regular session on August 8, 2007 at 7:02 p.m. in the City Hall Chambers. Mayor Crosby presided.

I. ROLL CALL

Members present: Crosby, Cavanaugh, Smith, and Weir.

Members absent: Johnson.

Also present: City Attorney Ron Batty, City Engineer Tom Kellogg, City Planning Consultant Andrew Gitzlaff, City Administrator Chad Adams and Recording Secretary Kimberly Stoll.

II. PLEDGE OF ALLEGIANCE

III. ADDITIONS TO THE AGENDA

It was requested to add a discussion item about the illegal berm on a Parkview property to the end of the agenda.

*Moved by Weir, seconded by Cavanaugh, to approve the agenda as amended. **Motion passed unanimously.***

IV. APPROVAL OF MINUTES

A. Approval of the July 17, 2007 Special City Council Meeting Minutes

It was noted on page 1, the fourth paragraph, it should state: "There is ...because it is a loss lose it or use it..."

Moved by Weir, seconded by Cavanaugh, to approve the July 17, 2007 special City Council meeting minutes as amended.

Crosby stated that the language about the flexible spending plan was confusing.

The Council request Staff to look in to the language and the specifics of the flexible spending plan.

Motion withdrawn.

B. Approval of the July 17, 2007 Regular City Council Meeting Minutes

It was noted on page 2, the third paragraph, it should state: "Crosby noted that there is an existing easement on ~~to~~ the Sipe property."

It was noted on page 3, the sixth paragraph, it should state: "Olson explained that the Met Council powers have been expanded to set policy ~~and they are carrying out the service.~~"

It was noted on page 4, the eighth paragraph, it should state: "Smith stated that a Gramercy resident..."

It was noted on page 5, the twelfth paragraph, it should state: "Amy Alworth...consider land uses of properties ~~abiding~~ abutting..."

It was noted on page 6, the third paragraph, it should state: "Crosby stated...two Planning ~~Directors~~ Staff members..."

It was noted on page 6, the fifth paragraph, it should state: "Chris Sagsveen... He stated they have developed three options for the trail ~~and demonstrated these options~~. Option one would be an eight-foot wide paved trail from the internal trail system of Baker Park Reserve to the south edge of Ardmore Avenue. Option two would allow for an eight-foot wide paved trail only in Baker Park Reserve up to the north property line of Baker Park. Option three would incorporate an eight-foot wide paved trail in Baker Park Reserve with a six-foot wide sidewalk paid for by the City from the north property line of Baker Park to the south edge of Ardmore Avenue.

It was noted on page 7, the twelfth paragraph, it should state: "Weir...northern border ~~and the issue should be put on the agenda~~."

It was noted on page 7, the thirteenth paragraph, it should state: "Smith stated that it isn't a high priority trail in the current trail plan."

It was noted on page 9, the eleventh paragraph, it should state: "Adams stated the Council previously discussed ~~inflationary~~ funds with the TIF district based on inflationary funds for Phase 1 and 2..."

It was noted on page 10, the second paragraph, it should state: "Callister...improvements to ~~occur~~ be commenced..."

It was noted on page 10, the ninth paragraph, it should state: "Weir stated that some residents ~~would be~~ have been assessed ~~from~~ for the storm water."

It was noted on page 11, the thirteenth paragraph, it should state: "Weir stated that there is will be..."

It was noted on page 12, the tenth paragraph, it should state: "Smith...release from ~~NPCA~~ MPCA to be placed..."

It was noted on page 14, the fourteenth paragraph, it should state: "Cavanaugh inquired about the reason ~~the~~ why..."

It was noted on page 16, the fourth paragraph, it should state: "Crosby stated...when they advertise the availability of the community center."

*Moved by Weir, seconded by Cavanaugh, to approve the July 17, 2007 regular City Council meeting minutes as amended. **Motion passed unanimously.***

V. CONSENT AGENDA

A. Accept Donation of \$12,500 from Hamel Lions for Playground Equipment

- B. Resolution of Approval for Hamel Lions to Conduct Off-Site Gambling (Bingo) at the Medina Celebration Day on September 22, 2007 at 3200 Mill Drive
- C. Approve Gambling Permit for Holy Name of Jesus Fall Festival on September 15 and 16, 2007
- D. Approve Temporary On-Sale Liquor License for Holy Name of Jesus Fall Festival on September 15 and 16, 2007
- E. Accept Donations of Cameras from Target to Medina Police Department
- F. Approve Independent Contractor's Agreement for Crack Sealing Services with Bergman Co., Inc.
- G. Approve Independent Contractor's Agreement for Seal Coating Services with Pearson Bros., Inc.

Crosby asked to remove item F from the consent agenda.

*Moved by Smith, seconded by Weir, to approve the consent agenda as amended.
Motion passed unanimously.*

- F. Approve Independent Contractor's Agreement for Crack Sealing Services with Bergman Co., Inc.

Crosby stated that it appears that the contract is inconsistent with the exhibit because there are three projects in the exhibit and the City will only be doing one.

Adams stated that the exhibit shows three different items and the City will only be doing the crack sealing. He stated the City will cross off the portions of the contract in reference to the other two projects.

Moved by Weir, seconded by Smith, to approve the crack sealing services with Bergman Co., Inc. Motion passed unanimously.

VI. COMMENTS

A. Comments from Citizens on Items not on the Agenda

Richard Haberman stated he was in attendance at the previous Council meeting and will continue attending the Council meetings until there is a resolution for the truck traffic on Parkview Drive, Hamel Road, and Homestead Trail. He stated he has emailed the Council members regarding the truck traffic and would like specific information about the actions occurring and who is working on the issue.

Weir stated they asked Staff to begin inquiring about what is necessary to have those roads reclassified to become City roads.

Smith stated she thinks it would be beneficial for the residents to have a timetable to gain an understanding of the progress.

Adams stated that Staff was requested to evaluate the roads as part of the pavement management program to determine the conditions of the roads if they were turned over to the City. He stated they are working with Bob Byers of Hennepin County to receive feedback and with Bonestroo to identify the process for turning the roads over to the City.

Kellogg stated that if the City is interested in taking the roads over, it would result in an agreement with Hennepin County that would need to be negotiated. He stated he was unaware of a fixed policy for the process.

Haberman inquired if the County roads were maintained more frequently than the City roads. He stated he would guess that the County roads are built to handle a greater volume and weight than the City roads.

Kellogg stated that it depends on the community. He stated that Medina has been in the process of paving all of the roads and is beginning a paving management program.

Haberman stated that the portion of Parkview near the golf course is well maintained.

Crosby stated that it is not only a question if the road is in the condition the City would want it to be in prior to taking it over, but also if it is financially responsible for the City to take it over and how it relates to the State Aid. He stated that when the City reaches a population of 5,000 the City is entitled to State Aid to roads. He stated he would also like to have an understanding with Hennepin County truck traffic control. He stated that he thinks the issue needs further analysis.

Haberman inquired about the timeframe.

Smith stated that the Council needs to calculate the estimated timeframe for making a decision. She stated they need to understand what it means to have State Aid funding. She stated that she would like the information gathered by Staff to the Council by a set date.

Crosby stated that two meetings from now he would like to see a well-considered outline of the issues that are relevant to the decision. He stated there should also be information about the meaning of State Aid to highways and if the work already done to City roads adversely impacts it.

Smith stated that it should include a maintenance schedule.

Haberman asked about clarification on how the cost of the maintenance is split.

Smith stated that there is general maintenance, overlay, and reconstruction.

Cavanaugh stated that the residents would eventually pay for the road if the City took it back.

Adams stated there isn't a formal policy to address maintenance of roads and assessments have not been used for maintenance. He explained in order to have an assessment, a benefit must be shown to the properties. He stated they have had discussions at the work session, but there is no formal practice or policy to use assessments for maintenance.

Cavanaugh inquired about assessments to the residents for road upgrades. Adams stated that they have had assessments for upgrading a gravel road to a paved road, but not for overlay for maintenance. Adams stated the City has not had many overlay projects yet because the roads are so young.

Crosby stated they will have a discussion on September 4, 2007 about the truck traffic.

B. Park Commission

Brian Kingsley, Park Commissioner, stated they have had Sarah Wyatt from Three Rivers Park District speak to them about Baker Park Reserve. He stated they have decided on the Tuckborough Ridge Trail easement and reviewed the 2008 proposed CIP. He stated they were asked by the Hamel Athletic Association to have a liaison attend some of their board meetings. He stated the Medina Rotary Club is also looking to form a partnership with them. He stated the next meeting is August 15, 2007.

Crosby recognized Jerry Dykhoff who was recently featured in the Star Tribune.

C. Planning Commission

Gitzlaff stated the agenda for the upcoming meeting includes the MnLINC CUP application for animal-assisted therapy and the tree preservation ordinance.

VII. OLD BUSINESS

A. County Road 101 Access to Ace Properties

Kellogg stated the developer previously expressed concern about access to CR 101 from his site. He stated there was discussion about access for a right-in, a right-out, and a left-out. He stated the applicant's concern was the ability to lease the building on his site which required him to disclose the access routes. He stated Staff met and discussed the options, the applicant's primary concerns, and safety concerns. He stated Staff met with Hennepin County and the County was okay with interim access for a maximum of three years. He stated there was a design developed to accommodate the applicant's concerns. He stated the contract with Ryan Companies had a completion date for August 2006 and they are about one year beyond the completion date. Kellogg stated the County has mailed a letter agreeing to the conditions and terms. He demonstrated the location of the medians on CR 101, Clydesdale Trail, and the access to the buildings. He demonstrated the expected access routes after the work is completed. He demonstrated an alternative design allowing a right turn on to CR 101. He stated there needs to be two lanes developed to allow for right turning movements. He stated the three considerations for the design are safety; meeting the applicant's intent; and the future expense to the applicant and the risk to the City for interim access. He stated the applicant will be required to put up a financial guarantee for the cost of improvements including inflation.

Smith stated that she is concerned about allowing the traffic to turn left and inquired if they should be routed to Clydesdale without the left turn option in the interim.

Kellogg stated that he thinks the applicant has the assumption that people will become used to the intersection.

Smith inquired when the island would be put in. Kellogg stated that it should have been built last year. He demonstrated the portion that would be built now and the portion that would be built in three years under the conditions of the County agreement.

Crosby inquired about the safety of the left turn in. Kellogg stated that there are safety concerns, but the thought is that it is safer than the three year design.

Crosby stated there are three issues including a left-in turn; financial security for the City for the project; and the right-out turn. He stated he isn't concerned about the financial risk to the City. He stated he was in support of the left-in and opposed to the right-out.

Weir and Smith concurred.

Kellogg stated that the applicant is very concerned about maintaining the business.

Steve Oliver, Mohagan Architectural Group, stated the issues have been addressed. He stated the Phase 1 development included the assumption that there would be development of a road on the west side of the property that became impossible when Target was built.

Kellogg demonstrated the location of the easement that was taken by the City. He stated the expectation was that when the two properties were developed the City would have taken right-of-ways to allow access to the back of the buildings.

Crosby stated that access would have still been routed to Clydesdale.

Smith stated that the City made many concessions for the southern parcel during Phase 2.

Oliver stated the developer also made concessions in terms of 30% of the property being turned over to the City for the realignment of Clydesdale. He stated the city street access to the west side of Phase 1 has been lost. He stated the convenience of developing a customer base and a tenant base is critical. He stated that Phase 2 is 80% committed. He stated the remaining 25 square feet has an agreement pending. He stated that prospective tenants have walked away from Phase 1 because of the access issues. He stated he is unclear if the southbound right lane demonstrated by Kellogg would be a right turning lane only or two thru lanes. He stated he thinks it needs to be considered as two thru lanes until it passes Clydesdale.

Kellogg demonstrated the location of the turn lanes.

Crosby clarified that it is a designated turn lane.

Oliver stated the left turn in would be a benefit to draw in the northbound traffic. He stated that until there is a traffic light at Clydesdale it would prevent traffic from stacking.

Cavanaugh inquired if Ace Properties is willing to take the financial risk to meet the City's standards. Oliver stated that Ace Properties would be in agreement to be financially responsible for the fix of the agreed upon intermediate solution.

Cavanaugh clarified that Ace would be okay with the left-in and right-in without the right-out. Oliver stated they would really like the right-out.

Crosby stated that the applicant is working with Ryan Companies.

Kellogg stated that the agreement would be with Ace Properties and the City. He stated that Ryan Companies wants to do multiple improvements at once and needs to understand what they need to do for this improvement.

Smith stated that there appears to be a consensus to allow the left-in. She stated that she thinks the traffic should be trained to use Clydesdale. She stated she doesn't believe there are plans for a stoplight on Clydesdale.

Kellogg stated that there has been discussion about the placement of a stoplight on Clydesdale.

Oliver stated that having a left-in would alleviate the pressure at Clydesdale if there wasn't a stoplight.

Crosby stated that even if discussions were to start now for a stoplight, it probably would take 3 years and the time period would run out.

Smith stated she didn't know who would pay for the stoplight.

Oliver stated that if there would not be a right-out, the developer would like to have a longer period of time, such as three to five years.

Crosby stated that the request is noted.

Cavanaugh stated that he doesn't have a preference for the three or five years.

Kellogg stated there is an agreement from the County sent to the City stating the term is three years. He stated that if they go back to the County to renegotiate, they may not have enough time.

Cavanaugh stated that they should move forward with the plan.

Kellogg stated that the City needs to hold a permit from Hennepin County prior to the work beginning.

Moved by Cavanaugh, seconded by Weir, to approve the design for the right-in, left-in, no right-out as proposed by Staff under the terms and conditions set by Hennepin County, as requested, and to direct staff to prepare the agreement for Council approval.

Kellogg stated that he thinks it is important to note the type of guarantee that will be required by the applicant.

Crosby stated that a letter of credit or equivalent would be appropriate.

Kellogg stated that it could be a letter of credit or cash.

Batty stated it would be very good.

Adams stated that the percentage for inflation would be included in the agreement.

3 ayes (Cavanaugh, Weir, Crosby) - 1 nay Motion passed.

B. An Ordinance Related to Animal-Assisted Therapy as a Conditional Use in the Rural Residential zoning district; Amending Section 826.21; adding Section 825.07, Subdivision 106.1; adding Section 826.98, Subdivision 2 (o)

Gitzlaff stated the ordinance was previously discussed at a Council meeting and the recommendation from the Planning Commission was brought to the Council. He stated that this ordinance would allow Animal-Assisted Therapy under a CUP. He explained the changes to the ordinance since it was previously presented.

Crosby stated that the licensure and certification comment was a comment made by Smith and Weir and the comment about overnight stays was a comment made by the Planning Commission.

Gitzlaff stated he did not know if MnLINC had been able to read the ordinance. He stated that their application is scheduled for review at the Planning Commission meeting. He stated that Staff has recommended some site improvements.

Jim Lane, representative for MnLINC, stated that the prospective applicant had no comment to the ordinance language.

Cavanaugh stated that the ordinance was crafted for one specific usage. He stated that if the site they intend to use doesn't work for the applicant, there could be the potential of something similar opening on another site that wasn't originally intended. He stated he was more comfortable with ordinance requiring an 80 acre lot size.

Smith stated that she is comfortable with 15 acres and the City needs to do more to encourage home based businesses. She stated that she doesn't see this usage being a popular usage.

Cavanaugh stated that 15 acres would be the minimum and the business could be placed on 80 acres.

Batty stated that at a recent Staff meeting he understood that the Turnquist's own slightly less than 80 acres between the two parcels.

Crosby stated that with all due respect it is an irrelevant comment.

Weir stated that she is comfortable with the ordinance stating 15 acres. She stated that if anything larger came in and was non-profit, the City would lose a large amount of funding due to it's being non-taxable.

Cavanaugh stated that for it to be non-taxable, the non-profit would need to buy the acreage.

Crosby stated he is comfortable with the 15 acres and there are conditions that the Council will determine for applicants applying under this ordinance.

*Moved by Smith, seconded by Weir, to approve the Animal-Assisted Therapy as a conditional use in a rural residential zoning district as drafted, as requested. **3 ayes (Smith, Weir, Crosby) - 1 nay Motion passed.***

C. Resolution Authorizing Publication of Animal-Assisted Therapy Ordinance by Title and Summary

Moved by Smith, seconded by Weir, to approve the resolution authorizing publication of Animal-Assisted Therapy ordinance by title and summary, as requested.

Adams clarified that this resolution requires four votes.

Motion passed unanimously.

VIII. NEW BUSINESS

A. Contract for Assessing Services- Rolf Erickson, Southwest Assessing

Crosby stated that he has read the proposal and there is a double adjustment, one for additional properties in the City and the other for a two percent increase.

*Moved by Smith, seconded by Weir, to approve the 2008 Assessment Proposal, as requested. **Motion passed unanimously.***

B. Final Plat to Wetterstrom Addition

Gitzlaff stated the plat was approved on January 2, 2001 and the applicant never filed the plat. He stated the plat became null and void after 60 days and the applicant is seeking re-approval to allow the plat to be filed. He stated the proposed plat combines three lots into one lot, approximately 25 acres. He stated there was a home built on the property in 2001 under the assumption that the plat was correctly filed. He stated the City's wetland engineer reviewed the plat and recommended additional easements be applied over the wetland areas and the applicant has made the suggested changes. He stated that Staff recommends the Council authorize preparation of a resolution approving the final plat with the following conditions: the parties recognize that the property includes area within Zone A of the FEMA Flood Insurance Map; the applicant must submit a revised final plat for City review and approval prior to release of the final plat for filing; applicant shall comply with the requirements of the City Engineer; the applicant shall comply with the requirements regarding title to the Subject Property as stated in the City Attorney's plat opinion; approval is subject to the review of the Minnehaha Creek Watershed District; the applicant must pay the City an administrative fee for the cost of reviewing the application; and the applicant must file the plat with Hennepin County within 60 days of the date of the resolution.

Crosby inquired if this was considered by the Planning Commission. Gitzlaff stated that it was taken to the Planning Commission in 2001 and this plat was taken directly to the Council.

Weir inquired about the reason that there wasn't a variance since the soils weren't adequate. Gitzlaff stated the site was considered an existing lot.

Smith inquired how they could ensure that the conditions are met and the final plat is submitted. She inquired about implementing a process.

Crosby stated that the Mayor wouldn't sign it until he/she was told that everything was complete. He stated that the recording of the plat is the only piece that isn't done prior to the signature.

Adams stated that the City requests the residents to submit a receipt verifying that the plat has been recorded. He stated this process can be re-evaluated with the new Planning Director about creating a formal structure for this issue.

Smith stated the residents shouldn't be in the house.

Weir stated that there was a re-sale situation as well.

Cavanaugh stated that the residents would have been able to move in anyway.

Smith stated that there is a final permit that is signed off on for occupancy.

Crosby stated that he thinks this situation is an understandable mistake and the risk that residents incur when they don't file within 60 days is additional expenses for filing.

Cavanaugh inquired about who has been paying the property taxes on all three of the properties. Crosby stated that the ownership has been the same and they have been paying the taxes.

*Moved by Weir, seconded by Smith, to direct Staff to prepare a resolution for final plat on the Wetterstrom Addition with the recommended conditions, as requested. **Motion passed unanimously.***

Crosby stated that the other penalty is the requirement to pay all of the taxes in advance when the plat is filed.

C. Darrel A. Farr Development, Inc./Bryant Lot Line Re-arrangement- 155 &165 Hamel Road

Gitzlaff stated Darrel Farr Development and Mark Bryant have applied for a lot line rearrangement for the properties located at 155 and 165 Hamel Road. He demonstrated the location of the current and proposed lot lines.

Smith stated the lot amount would change. Gitzlaff stated that the total lot area would not change.

Gitzlaff stated that City code requires an applicant to follow platting procedure, unless an applicant is granted an exemption. He stated the applicant is seeking an exemption for the lot line rearrangement. He explained the lot standards for Uptown Hamel. He stated that Staff believes the standards were created so that existing small lots were not all made non-conforming and the ordinance wasn't crafted to create additional smaller lots. He stated that Staff is concerned about that a 27 foot wide lot would be created after the City take a 5 foot easement on each side and it would hamper the future development for 165 Hamel Road. He stated the City typically requires standard perimeter drainage and utility easements. He stated Staff recommends to authorize preparation of a resolution approving the lot line rearrangement by survey with the following conditions: parties understand that the lot size and shape of the lots as rearranged are at the request of the applicant and with their direct control; applicants shall execute a declaration of easement to convey drainage and utility easement to the City; no construction is applied for or approved at this time; applicants shall abide by all requirements of the City Engineer; and applicants must pay the City an administrative

fee in an amount necessary to reimburse the City for the cost of reviewing this application and executing necessary agreements.

Crosby inquired about the discretion the City has in doing the review. Gitzlaff stated that if the lot was deemed buildable and meets the requirements, the City would be required to approve it.

Crosby posed the scenario of liking the larger area on the frontage of Hamel Road. He inquired if they have the discretion for it to be platted.

Batty stated that Staff has determined that they qualify for the lot line realignment. He stated that Staff has been concerned about the westerly lot. He stated the applicant is not proposing development at this time. He stated that there aren't any ordinance requirements in Uptown Hamel that this lot fails to meet. However, he stated that Staff thinks it is inconsistent with the general intent of the ordinance. He stated Staff's concern is that there will be an attempt to use it as an accessory use without a principal use or an attempt to put a building on it that will require variances. He stated that it is possible to build on a 37 foot lot. He stated Staff is concerned that there will be a proposal for a use that can't be done without variances and then urge the City to grant the variances.

Smith stated that she doesn't think it is a good idea to make a lot 37 feet. She stated that accepting the lot line rearrangement would be saying it is a buildable lot and force the Council to grant variances.

Batty stated that it will be a buildable lot.

Smith stated that with the setbacks a building would be 27 feet wide. She stated that she would like the applicant to have the lot divided differently.

Mark Bryant, 155 Hamel Road and 3700 Chippewa Road, stated that Argent Parc is near the new lot and the patios face the new lot. He stated that there would be an uproar from the residents if something was placed on the new lot.

Crosby inquired who would own the westerly property. Bryant stated that it would be owned by Farr and they have discussed building a small boutique or leaving it alone.

Weir inquired about the reason that Farr would leave the lot as it is and not join it to 185 Hamel Road. Bryant stated that he couldn't speak to that issue.

Bryant stated that his present building doesn't take up the entire lot and there is room for an addition. He stated that he only needs a little bit of land to double the size of the current building and Farr bought the lot to tear down the building prior to marketing the condominiums on 185 Hamel Road. He stated that if he were to build to the west, he would be within the 10 foot setback of Hamel Road. He stated he could purchase a smaller amount if the Council wanted 165 Hamel to be larger. He stated that the discussion about parking arose when he intended to purchase the entire lot. He stated that there is an easement on 165 Hamel allowing parking on 155 Hamel.

Crosby inquired if the easement would be extinguished with this agreement. Bryant stated that it wouldn't be extinguished, but is present to allow for parking and traffic. He

stated that the easement only affects the parking lot. He estimated the parking would be 18 parking spots.

Cavanaugh inquired if the parking spots could be changed from in back of the building to the front of the building. Bryant stated that all parking is in back and that any potential addition would be to the west and it would be limited to still meet the parking code. He stated the lot line is moveable by 8 to 10 feet. Bryant stated that having extra room on the west side of his land would allow for a garden or patio area.

Weir stated that would be compatible for the condominiums next to it, but she was uncomfortable making a decision without Farr being present to discuss their intent with 165 Hamel.

Bryant stated that Farr has told them they have no plans for the property at this time.

Weir inquired about the reason Farr wouldn't adjoin it to 185 Hamel. Adams stated that it may leave Farr's options open.

Bryant stated that a small boutique or ice cream shop would look nice and be compatible with the area. He stated that it would be congruent with the neighbors on both sides.

Weir inquired if a decorative plaza could be considered a primary use and parking an accessory to that. Batty stated that he was uncertain.

Weir stated that it is almost an unbuildable lot as it is proposed and if the City wanted streetscape it would be very complementary to the condominiums.

Batty clarified that Weir was referring to it being a privately owned plaza.

Cavanaugh stated that he would speculate that Farr intends to hold on to the lot on 165 Hamel until the condominiums at 185 Hamel are sold and then sell 165 Hamel.

Weir stated that the buyer of 165 Hamel would then request variances from the City and she doesn't want to be in that situation.

Crosby stated he would grant the lot line rearrangement with additional language to include that the applicants and owners should not assume that variances will be granted for the use and improvement by reason of the lot creation. He stated he thinks they need to be very specific that there is no assumption that anything will happen going forward. He stated that he is not uncomfortable with a 37 foot lot.

Smith stated that to be marketable a building may have to be two or three stories.

Crosby stated that it would also improve 155 Hamel.

Weir inquired about the additional language suggested by Crosby and the protection from variance requests in the future.

Batty stated that they agreed on Staff level to use language as firmly as possible to not grant variances of the properties. He stated this Council can not bind a future Council, but this resolution would forewarn the owners that variances may not be granted. He

stated that they do allow zero lot setbacks, but they are going to take 5 feet for drainage and utility easements. He stated that one of Staff's concerns is that this will create a lot that is useless and the property would be abandoned.

Smith stated that this may result in them not needing to pay taxes. Batty stated that he isn't sure that it is a legal problem for the City.

Smith inquired if there is the possibility to have the lot line moved to make 165 Hamel larger. Bryant stated that he would lose the ability to build an outdoor patio or garden. He stated that if a retail expansion were to occur he would build right to the lot line; if he were to do a restaurant he wouldn't build right to the lot line and would leave an area for outdoor seating; and if he were to do a pilates studio he would leave an area for outdoor exercise.

Weir stated that she doesn't think that it is worth compromising Bryant to give a few extra feet to 165 Hamel. She stated that the Council isn't sure what Bryant's plan is, but it is potentially what they have been looking and waiting for.

Crosby stated that it is too bad that 165 Hamel couldn't be made an out lot.

Cavanaugh stated that it probably wouldn't work for Bryant because Farr is probably holding on to the small parcel until the condominiums are sold.

Smith stated that it could be a buildable lot and the language suggested by Crosby offers protection for the City.

Moved by Smith, seconded by Weir, to accept the Staff recommendation to authorize preparation of a resolution to the lot line re-arrangement with additional language to include "the applicants and owners should not assume that variances will be granted for the use and improvement of 165 Hamel Road by reason of the creation of the lot", as requested.

Cavanaugh inquired if the City could take a 10 foot easement for 165 Hamel on the west side of the property near the condos instead of a 5 foot easement on both sides. Bryant stated that the size of the building would be limited because of parking.

Smith stated that the motion doesn't include the change in an easement.

Crosby stated that he thinks it is a bad precedent to start.

Cavanaugh stated that they could be running into problems when 165 Hamel is sold.

Batty stated that this is a zero lot line district and they could build on the lot line.

Weir stated that they don't have to give an easement. She stated that a larger easement could protect the condominium owners and greenery could be planted in that space.

Adams inquired if the City could justify a 10 foot easement.

Cavanaugh stated he thinks that it would be reasonable to have a 10 foot easement on one side and no easement on the other side. He inquired if it would affect Bryant if there wasn't a 5 foot easement on that side. Bryant stated that it would not affect him.

Kellogg stated that 5 foot interior perimeter easements provide the ability to place necessary pipes in the ground. He explained that two lots side by side provide a total of 10 feet for the placement of pipes. He stated that having 5 feet between properties is tight.

Cavanaugh stated that if they lose the ability to place the pipes on 165 Hamel it would be possible to run the pipes on 185 Hamel.

Kellogg stated that the City requires the property owners to convey storm water from their property to the pond or to the rainwater park. He stated that drainage is difficult without any easement.

Smith inquired about the need to have a 10 foot easement on the west side of 155 Hamel. Kellogg stated that if the 5 foot easement on 165 Hamel was given up, he would recommend the 10 foot easement on 155 Hamel.

Crosby stated his concerns are about the necessity of having 10 feet, the departure from policy for perimeter easements, and the use of City easements as a type of land planning vehicle.

Batty stated that they are using easements for setback purposes. He stated that the Council has decided that this is a district that can have a zero lot line.

Motion passed unanimously.

D. Hamel Water Treatment Plant Change Order No. 3

Crosby noted there was a typo on the contract that states it is for Maple Plain.

Adams stated that it was clarified after the packet was sent out. He stated that Metro West didn't conduct an inspection for footings, but the Bonestroo structural engineer did sign off on the inspection. He stated that Metro West was uncomfortable issuing a certificate of occupancy until there was language or a guarantee for the City to protect them if anything were to happen to the building as a result of a faulty footing.

*Moved by Weir, seconded by Smith, to approve the Hamel Water Treatment Plant Change Order No. 3, as requested. **Motion passed unanimously.***

E. Hamel Legion Park Improvements

1. Independent Contractors Agreement with Designing Nature for Plazas and Fire Pit at Hamel Legion Park

Adams stated there are three plaza areas: an entrance plaza, memorial plaza, and a fire pit. He stated that they have received two quotes and solicited RFPs. He stated that Staff is recommending the design from Designing Nature.

Smith inquired about the reason for only receiving two quotes. Adams stated that they advertised to more than two businesses, but only received quotes from two.

Moved by Smith, seconded by Weir, to accept moving forward with Designing Nature with an understanding that the quote includes a fountain and a donation from the Kenneth Fortin family.

Crosby inquired about the difference between the cobblestone circle pavers and the borgert uni-eco stone permeable pavers. Ben Benson, Park Commissioner, stated the stone is permeable and allows for drainage.

Weir stated that there was some concern about the plaza being placed over utilities. Benson stated that it will be going over some utilities, but if there were issues the pavers could be lifted up. Benson stated that Jerry Dykhoff has also received other donations.

Jerry Dykhoff stated that the Park Commission has had discussions about receiving further commitments for donations for the fountain, benches, and picnic table. He stated that the picnic table wasn't included on the bids and it would be necessary on the entrance plaza.

Adams inquired if there would be a reason the donated benches and picnic table would affect the design. Dykhoff stated that it wouldn't.

Smith stated that the benches are included in the bid. Crosby stated that the City would pay less for the work since the benches were included.

Dykhoff stated the donations would have plaques.

Adams stated that the donations would need to be formally accepted.

Motion passed unanimously.

Weir stated that she would like to be sure that thank-you notes are written to the Kenneth Fortin family.

2. Request for Proposal (RFP) for Hamel Legion Park Playground Equipment

Adams stated that the Park Commission recommended the funds for Phase 2 for Hamel Legion Park Playground Equipment in 2008 from park dedication fees. He stated that currently the Phase 1 capital improvement was approved by the Council. He stated they have received the 50% match and are ready to move forward with Phase 1. He stated they are hoping to have the Phase 2 design to be built in 2008. He stated that he left open the possibility of a firm developing both phases and building it all at one time. He stated another component of the plan is relocating the swings.

Crosby stated he was concerned that the selection criteria neatness, completeness, and quality of submittal was awarded points and the number of points awarded for cost.

Adams stated that typically when they are in quote process they would award more merit to the cost, but because of the cost of the project there is a bidding process and defined budget, which warrants less emphasis on the cost. However, he stated the City has some discretion to not accept the lowest bid based on design criteria.

Smith stated when they did Hunter Lions Park they needed to have additional criteria. She stated that there are different types of playground add-ons that make it useful and interesting.

Weir stated she is concerned about the safety of the younger children's park being wrapped in the older children's park. She stated the bigger children run around and chase and it could get rough with the younger children in the middle.

Adams stated that the second phase for the older children is a maze/course where it is contiguous around the other playground. This is a new design concept currently in the marketplace.

Smith stated that they are interested in looking at a playground that is non-traditional.

Cavanaugh inquired about the interview stage and if the selection will be made prior to coming before the Council.

Adams stated that a review team would make a recommendation and the Council would then make the ultimate decision.

Dykhoff stated that Adams gave a good description of the playground. He stated the Park Commission is committed to building Phase 2 at the same time as Phase 1. He stated that there was discussion to switch some of the funds from the capital improvement fund to achieve it.

*Moved by Smith, seconded by Weir, to approve the RFP and direct staff solicit proposals. **Motion passed unanimously.***

Smith stated that there has been discussion to move some trees from Holy Name Park to this area.

3. Basketball Court

Adams stated they are proposing Staff facilitate the completion of this project. He stated that initially the funding was going to come from the Municipal Park fund. He stated he is doing some past coding review to find out why the fund has become depleted. He suspects that some items were pulled from this fund instead of the Park Dedication fund.

Smith stated that she doesn't think it should be an issue.

Cavanaugh inquired about the reason blacktop would be preferred over concrete. Adams stated that blacktop is preferred because it is softer on the knees and provides a better surface for playing conditions. He stated Staff will price out various types of basketball hoops.

*Moved by Smith, seconded by Weir, to approve moving forward with the basketball court with the use of park dedication funds as needed, as requested. **Motion passed unanimously.***

F. Alleged Illegal Berm on Parkview

Weir stated that she is concerned about an illegal berm built on the property in the 1990's and the only sanction was that the land owner to pay the permit after the fact.

She stated that there is now another illegal berm that is encroaching on a wetland. She stated the City doesn't want people to think it is okay to dump large quantities of earth without permits.

Batty stated he doesn't recall the details of the occurrence in the 1990's.

Adams stated that Staff was ready to issue a permit earlier today and the applicant meets the City's grading standards. He stated that the Minnehaha Watershed District has been on site and evaluated the erosion control. He stated they have been advised and involved review of the earthwork.

Weir stated that this isn't an illegal berm in that case.

Adams stated that is true.

Smith stated that it was begun illegally without a permit with no delineation of the wetlands.

Crosby inquired about available sanctions for the City. Batty stated he hasn't reviewed the situation, but the sanction that comes to mind is doubling the fees.

Adams stated these fees have been imposed and the Watershed District may also decide to impose fees. He stated that they did not pursue a stop work order or criminal conduct for the first violation even though the property owner was informed to stop grading work. A stop work order was imposed recently.

Crosby inquired about which property this was occurring on. Weir stated that it is the Druck/Leuer property.

Kellogg stated that Bonestroo hadn't had any involvement until they submitted a grading plan that didn't meet all of the standards. He stated that they are concerned with the truck grading, an approved SWPPP, and an NPDES permit. He stated there is now an acceptable grading plan, they are in the process of reviewing the SWPPP, and the applicant provided proper documentation for the NPDES permit and payment.

Smith clarified that the applicant has done this twice without a permit.

Kellogg stated that he believes there were two violations.

Smith stated that they should pursue it beyond assessing a double fine. She stated that she believes it needs to be taken more seriously.

Weir stated they need meaningful sanctions.

Kellogg stated that as of this morning the permit had not been issued.

Crosby inquired about the amount of the fee. Adams stated that he is unsure of the exact fee, but could find that if Council needs it.

Smith inquired if the permit could be held until it was reviewed and then look into the legal options available. Adams stated that it may have been issued already.

Crosby stated that the City should enforce this with more red tagging and acting promptly in stopping the work when it is happening.

Smith stated that red tagging wouldn't have stopped the work because it was already done.

Crosby inquired about going to court and if it would be misdemeanor.

Smith stated that it happened repeatedly.

Weir inquired about a true penalty that could be incurred in the future.

Crosby stated that after the work is done, it would be in compliance with current regulations and if it isn't then the City would require remediation.

Smith stated that it is unknown if damage was done to the site.

Crosby requested Staff and the City Engineer to determine if there was damage to the property as a result of the work done. He stated this would allow them to find out if there were adverse consequences to the City or the property.

Smith stated that the Council should review the ordinance and paying twice the fees isn't enough.

Crosby stated that there is usually a distinction of willful action.

IX. CITY ADMINISTRATOR REPORT

A. Public Works Facility Site Search

Adams stated the Facilities Master Plan was accepted on July 3, 2007 and Staff was directed to review options and provide a recommendation process to search for land for the public works facility. He stated the options that were reviewed include a city internal control to conduct site matrix reviews and evaluations; contacting land owners of sites to determine if land owners were interested in selling their property; using consultant leadership; realtor/broker involvement with site search/acquisition; and a hybrid approach consisting of Staff, consultant leadership, and realtor/broker. He explained the recommended process and potential funding strategies. He stated financing options/sources include issuing G.O. bonds; capital improvement bonds; establishing economic development authority; water rate or connection fee increases; sewer rate or connection fee increases; park dedication; and existing fund balances.

Cavanaugh inquired about a reverse-referendum.

Adams clarified that 5% of the general public could request a referendum if they didn't feel that capital improvement bonds or the project were appropriate.

Smith stated that the City may be able to identify a property that would accommodate a park site.

Adams stated an article was included in the City newsletter and other public awareness could be raised by local newspapers, the City website, an exhibit at the Medina celebration day, and at an open house.

Crosby stated that he didn't think the financing options should be discussed at length at this point in time. He stated they should focus on the process of moving forward.

Smith stated she likes the idea of the City review team. She stated that she would be interested in working on developing the matrix and evaluating the properties. She stated that she isn't in favor of outsourcing all of the work.

Adams stated that Staff is not recommending outsourcing all of the work.

Smith inquired about when they would begin the process. Adams clarified immediately.

The Council agreed to follow the recommended process.

Weir stated that Smith does have the interest if she wished to serve on the site selection team.

Smith stated that she has some knowledge in sustainable building sites.

Weir inquired if Crosby would be interested in doing it. Crosby stated that he would be willing.

Crosby clarified that it would be himself and Smith working on the committee.

*Moved by Weir, seconded by Smith, to approve the recommended process, as requested. **Motion passed unanimously.***

Batty stated that the financial discussions will be lengthy and need to be extremely detailed. He stated that it will be easier to make the critical decisions about how it will be financed early in the process.

Adams concurred and stated when the CIP and comprehensive plan are solidified the decisions can start to be made.

Smith stated that there are only 5 to 7 suitable properties.

Adams stated that the comprehensive plan may require a lot of infrastructure growth. He stated that it will be complex because of the changing variables with the completion of the comprehensive plan.

Crosby stated the building cost and land cost will need to be estimated.

Adams stated that the building cost and land cost can be part of the site matrix.

B. Planning Director Appointment

Adams stated that he emailed a report to the Council members identifying the process and appointment of Timothy Benetti for the Planning Director. He provided the background experiences of Benetti and the conditions for the appointment.

Weir stated that she believes this is a very strong appointment and she hopes he remains with the City for a long period of time.

*Moved by Weir, seconded by Smith, to appoint Timothy Benetti to the position of full-time Planning Director, as requested. **Motion passed unanimously.***

C. National Night Out

Adams stated that Belland wanted to express his thanks to Cavanaugh and Weir for their involvement in National Night Out.

Weir stated it was very nicely organized and coordinated.

D. Landform Contract

Adams stated that at the next Council meeting they will address the contract for Landform. He stated he received the contract from Met Council for the grant fund. He stated Staff would like to discuss with the Council the timing of the process and how it affects potential land use applications.

Weir stated that the meetings with Landform are going longer, but she didn't think they were having more meetings. Weir inquired if they were paying by the number of meetings or the length of meetings.

Adams stated that Landform has provided a couple of extra meetings already. He stated that he has been working closely with Jennifer Haskamp on contract requirements and some things have been credited. Future work and meetings may be based on hourly rates.

X. MAYOR & CITY COUNCIL REPORTS

Cavanaugh inquired if the Council read the article about lake clean-ups. He explained the process of cleaning up the algae on a lake in Eden Prairie.

Smith stated that Holy Name Lake may be a potential lake for a similar project.

Weir inquired about the reason the barley straw doesn't contribute to the problem.

Cavanaugh stated that he thinks it should be investigated further.

Crosby suggested requesting Fortin Consulting to check into the project.

Smith stated that she would like to see more prevention done.

XI. APPROVAL TO PAY THE BILLS

*Moved by Weir, seconded by Cavanaugh, to approve the bills, order check numbers 000063-000069 for \$25,264.32 and 031201-031267 for \$206,247.50, and payroll check numbers 020084-020087 and 500683-500706 for \$37,432.05. **Motion passed unanimously.***

XII. ADJOURN

*Moved by Weir, seconded by Smith, to adjourn the meeting at 10:12 p.m. **Motion passed unanimously.***

T.M. Crosby, Jr., Mayor

Attest:

Chad M. Adams, City Administrator-Clerk