

**COUNCIL MEETING
MARCH 11, 2008
7:00 P.M.
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**CITY OF DAYTON, MINNESOTA
12260 S. DIAMOND LAKE ROAD
HENNEPIN/WRIGHT COUNTIES**

PRESENT: Acting Mayor/Council member Scott Hoke; Council members Phil Forseth, J. Kevin Anderson, and Tim McNeil

ABSENT: Mayor Doug Anderson

ALSO PRESENT: Administrator Samantha Orduno, City Clerk Sandra Borders, Assistant to Administrator Erin Stwora, Public Works Superintendent Rick Hass, City Engineer Mark Hanson, City Attorney George Hoff, and Administrative Assistant/minute-taker Debbie Maveus

CALL TO ORDER - 7:00 p.m.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Acting Mayor Hoke suggested changing the order of Items G and H, since a presenter for the Hemlock Lane Project would arrive later. Attorney Hoff requested the adding of a Closed Executive Session under the Attorney/Client Privilege, exception to the Open Meeting Law, to discuss the Dayton Holding/Wicht Industrial Park Assessment Challenges that are currently in litigation, at the end of the Council Meeting.

MOTION: Motion made by McNeil, seconded by K. Anderson, to approve the Agenda of the March 11, 2008 Regular Council Meeting, as amended.

Ayes: Forseth, Hoke, K. Anderson, McNeil

Nays: none

MOTION DECLARED PASSED.

CONSENT AGENDA:

- A.** Approval of Council Meeting minutes of February 26, 2008
- B.** Approval of Council Work Session minutes of February 26, 2008
- C.** Payment of Claims – February 26, 2008
- D.** Approval of Dayton Fire Department General Meeting minutes-January 17, 2008
- E.** Consideration to Accept Low Quote for Soccer Field Bleachers with donation money from CDAA **S.R.#34-2008**

MOTION: Motion made by Forseth, seconded by McNeil, to approve the Consent Agenda of March 11, 2008.

Ayes: Forseth, Hoke, K. Anderson, McNeil

Nays: none

MOTION DECLARED PASSED.

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PRESENTATION

ITEM F -- NEXT STEPS REGARDING DIAMOND LAKE BOAT LAUNCH
-- PARK CHAIR DOUG BAINES

Park Chair Doug Baines came forward to review his letter dated March 11, 2008 he handed out, regarding his update on the DNR Landing on Diamond Lake. He reviewed the information he presented at the November 2007 Council Meeting, and the Council's request to continue pursuing the moving of the landing east with a small turnaround and parking east of the landing, with present landing then being closed. Baines reported that the DNR would work with the City to increase the safety at the landing, and he mentioned his work with developer Bob Engstrom and his part of selling some of the land and maintaining control of the buffers on both sides of the Diamond Lake Outlet, as part of his wetland banding permit. He requested the Council now take the next step of contacting the neighborhood around the lake and requesting the DNR place the project on their list for funding.

The Council discussed concerns of volumes of boat traffic increasing on the lake and Mr. Baines responded that there were no concerns, but a win/win situation both for the DNR and City. With regards to the parking, there was discussion of possibly putting up no parking signs and educating the lake shore owners, which was addressed in the process, it was relayed. It was confirmed that the DNR would maintain and pay for the plans discussed.

MOTION: Motion made by Forseth, seconded by McNeil, to proceed to the next step, as discussed.

Ayes: Forseth, Hoke, K. Anderson, McNeil
MOTION DECLARED PASSED.

Nays: none

PUBLIC HEARINGS:

ITEM H -- PARK DEDICATION ORDINANCE PUBLIC HEARING -- AMENDING SECTION
1002.07, SUBDIVISION 6, OF THE DAYTON CITY CODE RE: DEDICATION OF
LAND OR CASH CONTRIBUTION FOR PUBLIC PURPOSE, BY REPEALING &
REPLACING THE CURRENT LANGUAGE
-- ORDINANCE #2008-08 **S.R.#36-2008**

Assistant to the Administrator Stwora reviewed that it was a recommendation of Dayton's Parks, Trails and Open Space (PTOS) Plan that the City revise its Park and Land Dedication Ordinance. The Council reviewed Ordinance #2008-08 at their previous meeting and set the Public Hearing for this evening, where they also requested information on costs of parks maintenance from neighboring communities. Stwora presented a summary of information from the Cities of Anoka, Maple Grove, and Otsego, with approximate Annual Costs for Maintenance/Personnel ranging from \$1,200 - \$1,666 per acre. It was confirmed that the amount included trail maintenance, as well.

Council member Forseth mentioned Dayton's acreage in comparison to the other cities and his concern of over \$2.5 million per year for the proposed 1,732 acres of Dayton Parks/Trails/Open Space, at full buildout. Acting Mayor Hoke relayed the ordinance would not deal with fees, but that would be on the agenda for discussion at their March 25th Council Meeting. Acting Mayor Hoke opened the Public Hearing and the following came forward:

- 1) *Resident/developer Tom Dehn* wanted clarification between Open Space and park space and trails, and Staff relayed that the 1,700+ acres proposed included trails, parks, open space or active parkland. He cautioned the Council about Anoka, and concerns of them having too many parks to maintain. He suggested complementing the Three Rivers Park District, and the use of their amenities - maybe partnering with them. Assistant to the Administrator Stwora explained the Park's restrictions, noting most of the developable acreage was in the Maple Grove and Champlin portion of the Park. The Council mentioned the 12 miles of trails not calculated that are in the Park, and Staff explained how the PTOS Plan complimented and coordinated with the Park. The Council discussed the national average bench mark numbers, for park acreage, and it was noted Dayton is way below average, because they do have the Park District. Mr. Dehn mentioned the costs, the rural flair suggested, and leaving some open to possibly lower the costs to the City. It was reported that associated/maintained parks were not a part of the equation, since private parks would be charged to the residents benefiting.
- 2) *Park Chair Doug Baines* informed he had read other cities Park Ordinances and complimented Staff on how well this one was done, in comparison. He recommended approving it as presented by Staff, planning for the best place for people to come to live, as well as the funding mechanism.
- 3) *Planning Commissioner Steve Fowler* stated his agreement with Mr. Baines, and also thanked Staff, as well as the qualified consultant, including Bonestroo, who did all the background work. He encouraged the Council's approval.

The Public Hearing was closed.

MOTION: Motion made by Forseth, seconded by McNeil, to waive the reading and adopt Ordinance #2008-08, as presented, amending Section 1002.07, Subdivision 6, of the Dayton City Code regarding Dedication of Land or Cash Contribution, for the public purpose, by repealing and replacing the current language.

Ayes: Forseth, Hoke, K. Anderson, McNeil
MOTION DECLARED PASSED.

Nays: none

ITEM G – HEMLOCK LANE STREET & UTILITY IMPROVEMENTS PUBLIC HEARING
S.R.#35-2008

Engineer Hanson reviewed that the Council, at their February 12th Meeting, approved the Feasibility Report and scheduled the Public Hearing for the Hemlock Lane Street and Utility Improvements project for this evening. He presented a PowerPoint of the Report, date March 11, 2008, which identified sanitary sewer, water, storm sewer and street improvements project costs and preliminary assessments to serve the properties located north and south of South Diamond Lake Road, along 134th Avenue and Hemlock Lane. He reviewed the Location Plan, the two subdivision plats – Nicole Lachinski Addition (1988) and Dayton Highlands 3rd Addition (1993) and the overlays presented at that time, displaying 17 overlay lots for the first and 31 lots for the second.

Engineer Hanson reported on the Typical Road Sections, Assessment Limits, Resident Survey Results, Estimated Project Costs of \$824,700 and Assessment Rate – similar to NE Dayton Project estimated at \$29,013 for 1.0 LE, \$36,266 for 1.25 LE, and \$43,520 for 1.5 LE (2.0 acre and greater). He reviewed Assessment Comparison and LE Credit option possibility, Method of Payment, Revenue – including deficit of \$131,186, and Schedule - if approved, plans could be approved in June, Assessment Hearing August, Substantial Completion end of October, first payment due Spring 2009, and final completion end of June 2009.

The Council discussed if the project did not move forward, about \$6,000 for fees to date, would come from the General Fund. Engineer Hanson relayed he had not received any more information/communication from residents. Acting Mayor Hoke opened the Public Hearing and the following came forward:

1. *Craig Trombley, 13581 Hemlock Lane*, from Nicole Lachinski Addition, mentioned the \$43,000 for his assessment and wondered about the costs 10 years from now, put off. Engineer Hanson reviewed the only cases when improvements are proposed, and estimated a 3-4% increase for construction per year, for an additional 40-60% increase. There was explanation of the good interest rates currently, construction/economy allowing for low than estimated costs, suggesting good timing now for the project, economically. Trombley had questions regarding selling in the future and splitting off his lot and Assistant to the Administrator Stwora reviewed the process and timing. He stated he was in favor of it.
2. *Chris Reese, 13511 Hemlock*, on the west side, had questions of if the drainage easements on two sides of his property would change, but Engineer Hanson explained it would not.
3. *Tom Sanders, 13541 Hemlock Lane*, questioned the difference in July estimates of \$26,000 - \$33,950 when \$43,000 assessment was proposed currently, and Engineer Hanson explained the frontage difference and inclusion of other properties on Hemlock causing replacement of

the entire road. It was noted that the roads are 15 and 20 years old. The Council discussed the advantages and the possible changing of ribbon curb to bituminous, if the residents desired, which Hanson informed could save up to \$60,000. He stated the upgrade was suggested to be consistent with rest of the NE Dayton Project and he reminded that the City picks up 50% of the street cost, so \$1,000 or \$2,000 less, possibly, per assessment. There was discussion of how the urban curb is easier to cleanup and looks better and Hanson explained some of the bonuses for the concrete/nicer street.

4. *Sean Mazzei, 11701 – 134th Avenue North*, questioned if his property, and others, where half of it is holding area for overflow, would be adjusted accordingly for the assessment costs, since it can not be built on, because of an easement. Engineer Hanson and the Council explained the usual assessment process based on front footage, not subtracting for easements.
5. *Donald Day, 13570 Hemlock Lane*, asked if the \$43,000 assessment would be the only cost, or they split the lot there would be another assessment for them to pay for hooking up to sewer and water. Engineer Hanson relayed that an additional service stub would be needed, and an additional lot equivalent (LE) that would be based on the size of the lot, probably the 1.0 LE rate (\$29,013), not for street, but the utilities. Council member Anderson commented on the increased value to his property in the Historic Village since the utilities went in.

The Public Hearing was closed.

Staff recommended the Council review the information presented at the Public Hearing, and Engineer Hanson reviewed the possible options. If approved, he recommended they authorize the preparation of plans and specifications. Acting Mayor Hoke recommended that once the Plans and Specs were done, an Open House would take place for the residents. Hanson relayed he would keep everyone informed, and it was suggested information be posted on the Dayton Website.

MOTION: Motion made by Forseth, seconded by McNeil, to approve the Hemlock Lane Street & Utility Improvements Project, and authorize the preparation of plans and specifications.

Ayes: Forseth, Hoke, K. Anderson, McNeil

Nays: none

MOTION DECLARED PASSED.

OPEN FORUM

No one was present for Open Forum.

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COUNCIL BUSINESS

ITEM I – PENALTIES FOR NON-PAYMENT OF ADDITIONAL UTILITY SERVICE STUBS
(tabled from February 26th) **S.R.#37-2008**

Administrator Orduno reviewed that the Staff Report from their February 26th Council Meeting described the background of the issue of penalties for non-payment for residents' request for additional utility service stubs. At that meeting, the Council asked Staff to bring back their recommendation regarding the amount of penalty to be charged. She informed that the City's Adopted Fee Schedule indicates a 10% per year charge to escrow accounts that are not paid within the required 30 days. Currently, the City does not have a penalty for non-payment of money owed. Orduno mentioned some of the Council discussion regarding possible options, including charging the interest rate charged for the assessments, which she suggested would not agree with the City's policy. The interest rate for the bonds was set by the market and does not include the amount of Staff time and City resources used to collect from residents using City funds for private expenditures, by not paying. Orduno also reviewed the discussion of a penalty, in addition to the interest charge, if legally viable, for failing to comply with the City's policies/laws.

It was relayed that Engineer Hanson and his staff have contacted the property owners of 13121 & 12929 Deerwood Lane, and 14060 Pineview Lane, numerous times regarding payment, including a formal letter from the City. The Agreement signed or agreed to verbally and received, stated the payment was due within 30 days of installation of the additional service. Administrator Orduno relayed it was unacceptable for residents to pay after the project was completed, which was requested by one.

Attorney Hoff was present to discuss the possibility of penalties charged for failure to pay. The Council questioned if the 10% interest per year was broad enough for these type of charges, and Hoff responded that the Fee Schedule could need amending. He reviewed a few options, recommending the use of the broad State Statute 444.075 for Availability Charge that can be imposed for a one time payment and if not paid it would be certified to the taxes in the fall, including a penalty. He commented that it would not get the City their money tomorrow, but it could spur payment, but with how efficient and inexpensive the option was, he suggested it could be applied to any similar issue. The Council suggested the interest and penalty requirement be worked on so that it will apply to any non-payment to the City.

There was **CONSENSUS** by the Council to direct Staff to proceed and draft the appropriate documents to put the interest and penalty in place for non-payment for additional Utility Service Stubs requested, as presented by Staff.

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**ITEM J – HISTORIC VILLAGE DISCUSSION REGARDING NON-COMPLIANCE WITH
ORDINANCE REQUIREMENTS (WATER/SEWER CONNECTIONS S.R.#38 -2008
- ORDINANCE #2008-09**

Assistant to the Administrator Stwora reviewed that Ordinances #2000-08 and #2001-02 were approved in 2000/2001, stating that properties in the Historic Village Sewer and Water Project area must connect to the system within five years, which was April 8, 2006. Letters were sent to the nine addresses not hooked up in August 2005 and May 2007. In June, the Council authorized a letter be sent from the City Attorney stating that the connection must be made by October 1, 2007. As of October 18th, six still had not connected. Stwora mentioned that there were no explicit penalties, other than criminal misdemeanor charges, in either of the approved ordinances.

Ordinance #2008-09, Amending Sections 409 & 410 of the Dayton Code regarding Availability Charge for Property Not Connecting to City Water and Sanitary Sewer, was handed out by Staff. They recommended a \$100 per month penalty, effective immediately for those who have been notified and have not hooked up to the municipal sewer and water, per the ordinance approved time frame. They suggested a time limit for the hookup, before initiating options of the City hooking up and assessing the resident or filing criminal charges. Staff informed they had already implemented minimum sewer and water charges during the last billing cycle.

Attorney Hoff was present to discuss the options and recommended, again, as the prior item, to use the Availability Charge option – Section 444. The Council discussed whether it was necessary at this time to inform of the City hookup option and if weather would be an issue. Staff suggested it would not, since there was no previous contact by any of those residents in question. This ordinance would apply to any and all sewer and water projects and the five year limit, Staff noted.

The Council and Staff discussed the language of the two sections in the ordinance, suggesting “shall be charged” remain, instead of “may” and deleting the “not connecting” language. They mentioned financial reasoning versus desire to not do it as possible issues of criteria. It was relayed if there was economic hardship, there are always financial assistance options. Attorney Hoff clarified that a penalty is an Availability Charge, and he informed that a resolution would be needed to certify the properties to their taxes in the fall. The penalty would start as of the approval date of the ordinance, he relayed. Staff explained how this ordinance would allow the City to be proactive for the other 500 lots being connected to City utilities, making them aware of the Availability Charge. There was discussion of a May 1st charge date, instead of today, but Staff recommended a final letter, with a copy of the ordinance being sent by Staff, with a date of April 1st put in ground, or penalty would begin.

MOTION: Motion made by McNeil, seconded by K. Anderson, to waive the reading and adopt Ordinance #2008-09, amending Sections 409 & 410 of the Dayton City Code regarding an Availability Charge for property not connecting to City water and sanitary sewer, deleting the words

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“not connecting” in both sections and making it effective June 1, 2008, in Section 3.

Ayes: Forseth, Hoke, K. Anderson, McNeil
MOTION DECLARED PASSED.

Nays: none

**ITEM K – REVIEW OF ADDITIONAL BONESTROO CHARGES RELATING TO
COMPREHENSIVE PLAN UPDATE**

S.R.#39-2008

Assistant to the Administrator Stwora reviewed that in February 2007, the City contracted with Bonestroo to complete the 2008 Comprehensive Plan Update. She relayed that the project has incurred some additional costs, first being an additional Task Force Meeting held that was not part of the scope of the project, regarding allowing large lot subdivisions in the proposed Urban Reserve area. The developing of drawings and handouts was necessary, and Stwora relayed that she and Bonestroo staff agreed on \$846.00 for the time spent preparing and the meeting itself only. Secondly, Stwora relayed that the Comprehensive Sanitary Sewer Plan (Tier II - an unfunded mandate) was completed in 2005 and approved by the Metropolitan Council in early 2007, but the population and land use projections used were from the last Comprehensive Plan, dated 2001, which was not acceptable to them. The text and appendices must be updated, and Bonestroo’s estimated cost is \$8,000 - \$2,690.50 of which has been billed. The total cost, then, is \$8,846.00.

Engineer Hanson explained how all the land use changes, sewer flows, pipe, alignments, are connected and the language stating such in the document, and that the Met Council will not approve the Comp Plan Update until it is changed. Staff informed that these changes were just relayed to cities by the Met Council, requesting the land uses in the Sewer Plan be consistent with the new Comp Plan Update. The Council reviewed the outline of the Met Council’s requirements and the RFP and Bonestroo’s timeline and meeting numbers of the scope and there was discussion of all the unplanned expense items coming before them. Hanson mentioned the revisions could be \$6,000 - \$7,000 and informed that his company has already logged a lot of time that has not been charged, which Staff confirmed. There was **CONSENSUS** by the Council to direct Staff to draft a letter to the Met Council Commissioner from the City Council, stating their unanimous formal objection to this.

MOTION: Motion made by McNeil, seconded by Forseth, to approve the additional charges and direct Staff to make payment of the invoices, as presented.

Ayes: Forseth, Hoke, K. Anderson, McNeil
MOTION DECLARED PASSED.

Nays: none

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**ITEM L – AGREEMENT BETWEEN CITY OF DAYTON & CEMSTONE PRODUCTS
COMPANY REGARDING REPLACEMENT OF LETTER OF CREDIT &
CERTIFICATE OF OCCUPANCY** **S.R.#40-2008**

Administrator Orduno reported that Cemstone Properties are nearing the completion of their processing plant on Territorial Road, near CSAH 81. Although not a part of the assessment appeal by the owner of Wicht Industrial Park, Dayton Holding, and VF-13 (Mn RV), they desire settlement, since their business may be financially impacted by the final settlement (possible change in assessment amount). They also desire to obtain their Certificate of Occupancy (CO) and approval for full operations at their plant.

The Agreement has been drafted by the City's and Cemstone's Attorneys, to conclude the actions needed and protect the City's interests with regards to the Water Availability Charge (WAC). The current "Letter of Credit" is in the amount of \$ 674,394.40 -- 40% of the Company's utility/street assessments. The Agreement provides for its released and replacement with a \$64,896.00 Letter of Credit for the total amount of WAC owed by the Company. Cemstone wants to delay the WAC payment until after the issuance of the CO and continue their role in the negotiations regarding the assessment appeal. The Agreement guarantees the WAC payment will be made, even if the Assessment Appeal is not negotiated. It was mentioned that the City remains in litigation, so questions specific to the appeal can not be discussed.

The Council wanted to know any benefit to the City, which was reviewed by Attorney Hoff, as getting the plant up and running. He recommended approval of the agreement.

MOTION: Motion made by McNeil, seconded by K. Anderson, to waive the reading and approve the Agreement with Cemstone Products Company, as presented, authorizing the Acting Mayor to execute it.

Ayes: Forseth, Hoke, K. Anderson, McNeil
MOTION DECLARED PASSED.

Nays: none

REPORT OF OFFICERS

COUNCIL UPDATES

Acting Mayor/Council member Hoke reported that he had been *lobbying the City of Champlin for reconstruction of their portion of South Diamond Lake Road*, but not getting very far. Hoke also requested the *Department Heads attend at least one Council Meeting per month*, or send representatives, if not available.

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Council member Forseth informed that he would like the Council to consider looking at the *Temporary Sign Ordinance*, as tax exempt/charities are being charged \$25 per sign. He suggested, as other communities do, that there be a permit, but no charge for them. Attorney Hoff mentioned his concerns and stated he could check into it, and report back to the Council. There was discussion whether election signs were included, and it was relayed that Champlin does not charge for non-profit.

CITY ADMINISTRATOR

Administrator Orduno reported that Monday, March 17 would be the *Joint Meeting with Rogers and Hassan on the Draft Transportation Study Plan* at Dayton City Hall, and Monday, March 24th, the *Council Comprehensive Plan Meeting*.

ASSISTANT TO ADMINISTRATOR

Assistant to the Administrator Stwora reported that the *Comprehensive Plan Meeting* was this Thursday, March 13th. She asked if the Council was in approval of not reprinting the two sections for the 24th, but that they would bring their copies to the meeting. There was **CONSENSUS**.

CITY ATTORNEY

Attorney Hoff had added the item of a Closed Executive Session, pursuant to the exception of the Open Meeting Law, which allows for attorney/client discussions, for confidentiality for litigation strategy regarding the *Dayton Holding/Wicht Industrial Park Assessment Appeals*.

ADJOURNMENT

MOTION: Motion made by Forseth, seconded by McNeil, to adjourn to an Executive Closed Session to discuss the current litigation between the City and Dayton Holding/Wicht Industrial Park Assessment Appeals, as recommended by Attorney Hoff.

Ayes: Forseth, Hoke, K. Anderson, McNeil

Nays: none

MOTION DECLARED PASSED.

APPROVED: March 25, 2008 ATTEST: _____