

**COUNCIL MEETING
MARCH 10, 2009
7:00 P.M.
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**CITY OF DAYTON, MINNESOTA
12260 S. DIAMOND LAKE ROAD
HENNEPIN/WRIGHT COUNTIES**

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

ABSENT: none

ALSO PRESENT: Administrator Samantha Orduno, Police Chief Richard Pietrzak, City Clerk Sandra Borders, Assistant to the Administrator Erin Stwora, Finance Director Julie Linnihan, City Engineer Mark Hanson, and City Attorney George Hoff

CALL TO ORDER - 7:00 p.m.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Administrator Orduno added to the agenda, under Item F, West French Lake Utility Improvements #2 - Resolution 09-2009; extending the time limit for the letting of all or part of the West French Lake Utility Improvement Project.

MOTION: Motion made by Forseth, seconded by McNeil, to approve the agenda of March 10, 2009, as amended.

Ayes: D. Anderson, Hoke, K. Anderson, Forseth, McNeil

Nays: none

MOTION DECLARED PASSED

CONSENT AGENDA:

- A. Approval of Council Meeting minutes of February 24, 2009
- B. Approval of Council Work Session minutes of February 24, 2009
- C. Payment of Claims – March 10, 2009
- D. Fire Department Meeting minutes of January 15, 2009
- E. Set-up Liquor License for Dehn's Country Manor

Council member Forseth asked that Items A & B be removed from the Consent agenda, because of his absence from the meeting. Council member Forseth also had a question regarding Item C and the payment to Qwest Communications. It was explained that the payment was for the installation of computer equipment at Well House #2.

MOTION: Motion made by McNeil, seconded by K. Anderson, to approve the consent agenda as amended with the removal of Items A & B.

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

Nays: none

MOTION: Motion made by McNeil, seconded by K. Anderson, to approve Items A & B from the Consent Agenda

Ayes: D. Anderson, Hoke, K. Anderson, McNeil
Nays: none

Abstention: Forseth
MOTION DECLARED PASSED

OPEN FORUM:

Bob and Jackie O'Brien, 13880 Kingview Lane, spoke to the Council regarding the Restrictive Covenant on their property. The O'Briens have asked to the Planning Department about the possibility of splitting their property into two parcels, one 5 acre parcel and one about 15 acres in size. The parcels were combined in 1994 to create one parcel for tax purposes. The City agreed to a Restrictive Covenant on the property that would allow the O'Briens to split the property back into two parcels without further City approval, if they removed the outbuilding on the second parcel.

At the current time they keep horses on the five acre parcel. They have been told by the City that the covenant no longer applies. Council member McNeil and Forseth asked why the covenant would no longer apply. Attorney Hoff mentioned that, as he understood it, there is one parcel and a building on 19+ acres and the request is that a subdivision be allowed splitting the property into a 5 acre and a 14 acre parcel. Mr. Hoff mentioned that, in terms of process, an application should come from the O'Briens stating that they would like to subdivide a 5 acre parcel, and then there would be a review by the Planning Commission. Mr. Hoff noted that he would like to research the document and get back to the City Council with an answer to the question.

Mr. O'Brien doesn't want to split the property today, but would like to know if it is a possibility in the future. Council member Forseth stated that he thought that the City Council should be able to decide the matter and not have it referred back to the Planning Commission. Council member Forseth also mentioned that the City had had the agreement drawn up and agreed to the covenant several years ago. Council members McNeil and K. Anderson also agreed that they thought the covenant should apply. Mr. O'Brien noted he would not want to split the property until he has a buyer for a portion of it. The intent of the covenant was to allow the property split at a later date.

MOTION: Motion was made by McNeil, seconded by K. Anderson, to have the City Attorney look at the history, the City's current legal position, and then assuming the decision of the Council that the intent of the covenant is to allow a five acre split in the future at Mr. O'Briens discretion. This is direction from the City Council to the City Attorney and the City would absorb the cost of the investigation.

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

Nays: none

ITEM F: WEST FRENCH LAKE UTILITY IMPROVEMENTS:

2. Resolution 09-2009: Setting time limit for the letting of all or part of the West French Lake Utility Improvement Project:

Attorney Hoff informed the Council that the improvement hearing on the project was held in January of 2008. The Improvement Hearing ordered the improvement and the State Statutes Section 429.01 is for one year, unless there is an extension within the resolution which allows the contract to be let later than one year. Attorney Hoff's recommendation to the Council is to amend the resolution and send it out to the property owners before the adoption of the assessment roll.

MOTION: Motion was made by McNeil, seconded by Forseth, to approve Resolution 09-2009, extending the time limit for the letting of all or part of the West French Lake Utility Improvement Project.

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

Nays: none

1. CONSIDERATION OF FINAL ASSESSMENT ROLL: S.R. #38-2009

Figures 1-3b for Option 1-3b and the Special Assessment for each option are attached. The project cost, revenue, balance, and assessment to the Adesa Property for each option are summarized below:

	Option 1	Option 2	Option 3	Option 3A
Project Cost	\$4,251,180	\$3,109,393	\$3,927,800	\$4,005,540
Revenue	\$4,771,327*	\$2,824,960	\$3,891,719	\$4,036,066
Balance	\$520,147	(\$284,433) *	(\$36,081)	\$ 30,526

Project deficit includes indirect costs for Part 1 (Territorial Road)

	Option 1	Option 2	Option 3A	Option 3B
Adesa Assessment	\$1,355,173 **	\$0	\$525,335	\$669,682

** does not include \$200,000 street credit

Mark Hanson presented the Assessment to the Council. Adesa has informed the City that they would accept the assessment for \$525,335. At the March 24th meeting, the City could adopt the assessment roll. Staff asked the Council to proceed with Option 3A – the reduced project which would extent

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the Sewer / Water along Territorial Road, and the water would stop at K-Manufacturing and the sewer would extend through the Adesa property. The Adesa Assessment will change from \$1,335,173 to \$525,335. Attorney Hoff will be in contact with Adesa about a formal withdrawal of the Assessment Appeal.

The City will need an agreement for the purchase of the easement from the owners of the Reamer property. Option 3A and the next step would be to begin negotiations with Reamer for the easement. The easement costs have been factored into the Dayton Park Property and the ICA assessments. Council member K. Anderson asked if the current real estate values would be considered. Attorney Hoff mentioned that the valuation would be based on the date condemnation would take place if an agreement could not be reached. The City would also need to know the status of the easement before the contracts would be awarded.

Engineer Hanson outlined a time table as follows:

- March 24 – approve plans and specs for bidding the project
- March 24 – Adoption of the Assessment Roll with Option 3A
- April 16 – Receive bids on the project
- April 28 – Consider the contract award
- April 28 – Consider the Bond amount; assuming the contract is awarded. The bond would be for the West French Lake and the Hemlock Lane projects

The estimated cost of the West French Lake Project, Option 3A, is approximately \$3,900,000 and the projected project revenue is \$3,891,000, which would leave a project deficit of about \$36,000. The \$3.9 million would include the costs that the City had already spent.

MOTION: Motion made by McNeil, seconded by Forseth, to *TABLE* the final assessment roll until March 24, 2009.

Ayes: D. Anderson, Hoke, K. Anderson, McNeil, Forseth

Nays: none

MOTION DECLARED PASSED

ITEMG: CONSIDERATION OF PURCHASE OF DIGITAL COLOR COPIER FOR CITY HALL S.R.# 39-2009

Administrator Orduno informed the Council that staff has been researching and testing color copiers since August of 2008. Staff has tested four machines and looked at several others, and has chosen the Toshiba 5520C as the machine. The current copier has just over 1 million copies on it and was purchased in 2003. If the purchase is approved, staff will continue to use the old copier as a backup unit and as a secondary unit at the front desk.

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All of the companies were asked to provide a price for copiers with the following items:

- Minimum of 55 print pages per minute
- Saddle finisher
- Hole punch, Sorter
- Duplexer
- fax capability
- scanning ability
- Copier would be networked with the individual PC

The quotes received from the different companies were based on a state contract price, either the State of Minnesota or the University of Minnesota pricing. The 2009 General Fund Budget did include \$21,000 for a color copier. The total cost of the digital color copier from Toshiba Business Solution with the rewrite, and Metascan software is \$15,837.62, including Minnesota State Sales Tax. Administrator Orduno mentioned that there are a couple of issues that need to be resolved; one would be to resolve the color issue and the second is the machine's ability to produce booklets.

MOTION: Motion made by McNeil, seconded Forseth, to approve the purchase of the digital color copier from Toshiba Business Solution in the amount of \$15,837.62 including the Rewrite, and Metascan software.

Ayes: D. Anderson, Hoke, Forseth, K. Anderson, and McNeil

Nays: none

MOTION DECLARED PASSED.

ITEM H: ORDINANCE NO. 2009-05: AMENDING THE CITY CODE SECTION 701 REGARDING TRAFFIC AND MOTOR VEHICLES INCLUDING PROHIBITING PARKING ON STREETS BETWEEN 2:00 AM AND 6:00 AM S.R.# 40-2009

The Public Safety Commission has discussed the need for having parking restrictions on the streets of Dayton as a way to keep the streets clear and safe, but it can be a tool in solving crimes. Cars that are parked on the street after hours would be tagged, and in some cases, towed. Police can then use this information to determine who is in a particular area at a particular time. Research was done by looking at neighboring city ordinances and talking to the Police Departments to come up with the best solutions. The Public Safety Commission agreed that adding "no parking on the streets of Dayton between the hours of 2 am and 6 am" should be added to the current ordinance.

The second issue was requiring residents to contact the Police Department in the event of a large gathering where more than 10 extra vehicles will be parked at their residence. This requirement not only notifies the Police Department of a large gathering, but also allows the police to discuss parking

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rules with the homeowner. It was mentioned that if there are cars parked on both sides of the street, emergency vehicles may not be able to pass down the street between them. Current practice has been to inform residents who call to notify the police department of a large gathering that they need to have their guests park on one side of the street. The Public Safety Commission also recommended removing the original 701.02, as it is not necessary.

The Council had questions about the amount of off-street properties within the city. There was discussion about exceptions for the streets that do not have off-street parking. The residents would also need to call the Police Department if there is going to be large gatherings at their residence.

Mayor Anderson did not feel that it is a big problem within the City. He, at this time, was not in favor of the parking ordinance and believed it to be premature for the City. Council member McNeil discussed having permits in the vehicles to inform the police that would need to park vehicle on the streets.

Council member Hoke stated he also would not support the changes if there was a need to install numerous signs along the roads. Signage could be part of subdivision plat application. There was discussion regarding placement of the signs at the entrance to the city.

MOTION: Motion made by McNeil, seconded by Hoke, to refer the Ordinance back to the Public Safety Committee for 90 days for further discussion regarding the permitting process.

Ayes: D. Anderson, Hoke, K. Anderson, Forseth, and McNeil

Nays: none

MOTION DECLARED PASSED

ITEM: L: CONSIDERATION AND DISCUSSION REGARDING LEGAL SERVICES
S.R. #41-2009

The City typically requests proposals for qualified firms for all consultant services within the City (legal, engineering, prosecution), every three years. Both Legal and Engineering services were due for review in 2008; however, due to the complexities of the NE Dayton project and the City Engineer and Attorney's involvement, the City Council directed staff to wait until 2009. In February 2009, the City Council approved a Request for Proposal (RFP) for legal services. City Staff published the RFP on both the City's and the League of Minnesota Cities websites. Four proposals were received from the following firms:

1. Koll, Morrison, Charpentier & Hagstrom
2. Flaherty & Hood P.A.
3. Meagher & Geer PLLP
4. Hoff, Barry & Kozar, P.A. (current City Attorney)

Administrator Orduno suggested that the Human Resources portion of the services could continue on a per hour instead of a retainer. Council member Hoke was surprised by the number of hours for the City Attorney. Council member Hoke asked the number of hours spent on employment hours. The general law retainer was based on the number of hours that was spent on problems in the past year. The retainer has not been increased in a number of years. The development issues would be billed on a per hour basis.

Staff recommended not having interviews and is recommending a three year contract with Hoff, Barry, Kozar, and negotiating the retainer consideration. Three of the firms did not meet the minimum qualifications of the RFP.

MOTION: Motion made by McNeil, seconded by Forseth, to refer the contract back to staff for negotiations and bring the contract back to Council for consideration on March 24, 2009.

Ayes: D. Anderson, Hoke, K. Anderson, Forseth, and McNeil

Nays: none

MOTION DECLARED PASSED

REPORT OF OFFICERS

1. **COUNCIL UPDATE:** Council member McNeil had a question regarding the letter from a resident and the electrical problems at her home. The problem was not caused by the improvement, but by a rodent chewing into the line.
2. Council member Forseth asked about the traffic study on County Road 121. Engineer Hanson reported that the traffic counts have been done, but the traffic study has not been completed. He also stated that the study can take 15-18 months to complete.
3. Council member Hoke asked about changing the classification for the fire ratings for insurance purposes. Administrator Orduno will check into the fire rate changes.
4. **Administrator Report:** Administrator Orduno announced that the City is currently engaged in discussion with the AFSME Union, who represents the City's clerical and public works employees. As of yesterday afternoon, it appears that the discussions are leading toward an adversarial arbitration. Given the nature of the decision, there is a need for confidential advice from legal counsel.

Attorney Hoff advised that the City go into a closed City Attorney/client session pursuant to the authority under 13D.05, Subd. 3, which allows for attorney/client matter when it is deemed necessary, that the need for confidentiality outweighs the interest in it being open to the public. This will be after the E.D.A. meeting.

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5. **Asst. to Administrator Report:** Stwora mentioned the Business Recognition Program and has received a very good response to the letter. This could start the first meeting in April. The Facilities Master Plan will be discussed at the Planning Meeting on April 2nd. Gold Nugget Preliminary Plat will be on the meeting agenda. Cedarcrest will be meeting with Administrator Orduno and Asst. to Administrator Stwora regarding the plan. She wanted to thank Doug Baines for his work with the DNR regarding the boat landing on Diamond Lake.

ADJOURNMENT

MOTION: Motion made by Forseth, seconded by McNeil, to the EDA meeting, subject to reconvene of the Council meeting after the adjournment of the EDA.

MOTION: Motion made by Forseth, seconded by McNeil, to adjourn.

Ayes: D. Anderson, Hoke, Forseth, K. Anderson, McNeil

Nays: none

MOTION DECLARED PASSED.

APPROVED: _____ ATTEST: _____