

MINUTES OF THE PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF NORTH BRANCH IN THE COUNTY OF CHISAGO AND IN THE STATE OF MINNESOTA

REGULAR SESSION

July 28, 2015

CALL TO ORDER: The North Branch City Council met in regular session and Mayor Hagen-Kennedy called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE:

ROLL CALL: Councilmembers present were Kathy Blomquist, Theresa Furman, Kirsten Hagen-Kennedy, Joyce Borchardt, and Robert Canada. Staff members present were City Administrator Konrad, Planner Roberts, Finance Director Hill and City Attorney Helmers.

PUBLIC COMMENT:

Hagen-Kennedy read a statement from Custom Headed Products regarding the transformer issue.

Doylene Voligny of 8171 St. Croix Trail expressed concern regarding the proposed round about at Grand Avenue and Highway 95. She wonders why it is needed, as it is an expensive project.

Laurie Warner of 45069 Golden Lane commented on recent headlines noting a panel of three administrative law judges fined a North Branch Planning Commissioner for violating state campaign statute. These judges explained the maximum penalty was appropriate because he was decidedly "testifying untruthfully under oath". Ms. Warner said that the judges were clear in their decision released last week and she believes that Mr. Borchardt should be removed from his position on the Planning Commission and it is the responsibility of the Council to remove him from the Planning Commission.

Elly Blamer of 4574 Oak Circle encouraged the Council to do the right thing as an elected member of the Council because the citizens deserve and expect integrity, honesty, and trust in elected officials. Ms. Blamer said that she believes that Mr. Borchardt should resign due to the legal actions and charges because that is the right thing to do.

Cindy Erickson of 6500 Maple Street pointed out that North Branch is in the headlines in every paper in the County due to corruption with an appointed official. Ms. Erickson said that a three-judge panel determined that Mr. Borchardt was guilty of violating the state campaign statute. It is time for the Council to put this matter to rest and begin moving forward.

Tom Vail of 4808 384th Court said that this is another issue where for credibility, it is time to remove Mr. Borchardt from the Planning Commission.

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Carolyn Burnoski of 8th Avenue pointed out that the North Branch City Council is the voice of the people and should govern for what the citizens want. Ms. Burnoski pointed out that there was a wink, smile and nod for the people of Countryside when they left. Ms. Burnoski asked Council to do their jobs.

CONSENT AGENDA:

- Resolution No. 047-07-28-15 – Wastewater Operator Hire – P. Lind
- Minutes – June 9, 2015 Regular Session
- ~~Minutes – June 18, 2015 Work Session~~
- ~~Minutes – June 23, 2015 Regular Session~~
- Resolution No. 048/-07-28-15 – Off Site Gambling Application – Fire Relief Association
- Mutual Aid Contract – Isanti
- Claims

Borchardt has requested that Item 5C be removed and Blomquist asked to remove Item 5D.

Motion by Blomquist, seconded by Canada, to approve the Consent Agenda as amended. All voted AYE. Motion carried.

5c Minutes – June 18, 2015

Motion by Furman, seconded by Canada, to approve the minutes of the June 18, 2015 meeting. Members voted: Ayes – 4, Nays – 0, Abstain – 1 (Borchardt). Motion carried.

5D Minutes – June 23, 2015 Regular Session

Blomquist said she was not at the meeting but asked for clarification of Furman’s comments because she heard the attorney say he would recommend not releasing the memorandum so she would like to clarify that with the attorney on the fact finding report.

Motion by Blomquist, seconded by Hagen-Kennedy, to approve the minute of the June 23, 2015 meeting. All voted AYE. Motion carried.

PUBLIC HEARINGS:

NONE

COMMITTEE/COMMISSIONS:

7a PLANNING COMMISSION

i. Meeting Update

NONE

Canada provided an update.

ii. Minutes

INFO

iii. CUP – Snow Cave – Outdoor Storage

Planner Roberts provided an overview of the proposed Conditional Use Permit for outdoor storage of motor vehicles for Snow Cave Inc. They are proposing to store up to 95 vehicles outdoors for

their automotive technical training and marketing preparation facility for testing of vehicles.

Motion by Borchardt, seconded by Canada, to approve Resolution No. 046-07-28-15, "A RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR OUTDOOR STORAGE FOR THE PROPERTY LOCATED AT 39966 GRAND AVENUE." All voted AYE. Motion carried.

7b ECONOMIC DEVELOPMENT AUTHORITY

i. Termination of Development and Assessment Agreements – Toohey

Hill explained that there is a 2004 Development Agreement and Minimum Assessment Agreement in place for the property at 39940 Grand Avenue. The business was never constructed and the conditions have not been met so the agreement should be terminated.

Motion by Hagen-Kennedy, seconded by Borchardt, to approve the termination of the 2004 Development and Minimum Assessment Agreements with Susan and Thomas Toohey.

Furman asked who would pay to file the correct documents to clear this up. Hill indicated he would consult with the City Attorney for recommendation on that.

After discussion, all voted AYE. Motion carried.

7c PARK COMMISSION **NONE**

7d WATER AND LIGHT COMMISSION

i. Meeting Update

Furman provided an update.

STAFF REPORTS:

| | | |
|-----------|---------------------------------|-------------|
| 8a | ENGINEERING/PUBLIC WORKS | NONE |
| 8b | ADMINISTRATION | NONE |
| 8c | BUILDING | NONE |
| 8d | FINANCE | NONE |
| 8e | LEGAL | NONE |
| 8f | PUBLIC SAFETY | NONE |

8g OTHER

NOTICES AND COMMUNICATIONS:

9a State Demographer's 2014 Population Estimate

Konrad noted that population has grown to 10,286 with 3,682 households.

UNFINISHED BUSINESS:

NONE

NEW BUSINESS:

NONE

MAYOR AND COUNCIL:

a. Upcoming Agendas

INFO

b. Furman – League of Minnesota Cities Conference Report

Furman provided a report.

Blomquist noted that the City has 350 likes on the Facebook page but the City does not get that many comments.

c. Hagen-Kennedy – Oakwood Sewer Refund Request

Hagen-Kennedy noted that at the February 23, 2015 meeting the Borchardts requested a reimbursement for sewer fees for Oakwood that was tabled. Councilmember Borchardt stepped down and did not participate in the discussion or vote.

Motion by Blomquist, seconded by Hagen-Kennedy, to bring the request back to the table for Council discussion. Members voted: Ayes – 3, Nays -1 (Canada). Motion carried.

Motion by Blomquist, seconded by Hagen-Kennedy, to deny the request by Borchardts for a sewer reimbursement for Oakwood Trailer Court.

After discussion, all voted AYE. Motion carried.

Councilmember Borchardt returned to the Council dais.

d. Blomquist - Planning Commissioner Borchardt Removal

Blomquist read a memo and information on the Administrative Law Judges findings in campaign literature case involving Mayor Hagen-Kennedy and the penalty imposed on Thomas Borchardt in that case. Blomquist said she believes Borchardt deserves to be removed from the Planning Commission for his actions in the illegal campaign mailing.

Hagen-Kennedy asked Borchardt to recuse herself. City Attorney Helmers indicated this is not a contractual conflict of interest but this might be something covered under the common law conflict of interest and that is something each Councilmember has to make a determination on themselves.

Generally, the standard is whether there is bias or personal interest in the outcome.

Borchardt said that back on June 1 there was a non-contractual conflict of interest when the censure was considered. Attorney Helmers indicated that would be up to the individual Councilmembers to make that decision.

Borchardt recused herself and stepped down and did not participate in the discussion or vote.

Motion by Blomquist, seconded by Hagen-Kennedy, to remove Tom Borchardt from the Planning Commission.

City Attorney Helmers stated the City Code doesn't address process for removal of Planning Commission members. He felt there were two issues: determination about process to use and if removal moves forward. He indicated that this is a murky area on removal of Planning Commission members because there is a provision in the Minnesota Constitution that refers to removal of inferior officers and it talks about malfeasance or nonfeasance in office. He indicated there is case law out there that discusses potential protections they may have and there will almost certainly be a case made for some sort of due process prior to being removed. The safest route is to provide some type of due process. It is up to the Council what that process looks like. He recommended Council consider a hearing or allowing for rebuttal, which would be up to the Council, but he would recommend determining a process before any potential removal.

Hagen-Kennedy asked if Commissioners serve at the will of the Council. City Attorney Helmers indicated that is true. Hagen-Kennedy offered Tom Borchardt the opportunity to speak on the issue.

Konrad reported that Tom Borchardt declined the opportunity to address the Council at this time.

Hagen-Kennedy asked if the City Attorney is telling the Council they could not remove a Commissioner because they don't serve at the pleasure of the Council and we have to have some type of process to remove a commissioner. City Attorney Helmers indicated that was not what he was saying. He stated that the safest approach to avoid allegations something was inappropriate, that there was a lack of due process or that there was a violation of the Minnesota Constitution would be to have a process in place and use that process. Hagen-Kennedy wanted to be clear and asked the City Attorney if by removing the Commissioner at this meeting if this action would violate the Minnesota Constitution. City Attorney Helmers indicated it absolutely didn't violation the Constitution and that it was his job to advise Council of possible risk and that argument could be made. Ultimately the

decision is up to the Council but he would advise that there is a potential risk that someone could raise the concern.

Furman asked if Mr. Borchardt was given notice he would be asked to respond. Canada expressed concern that there was no notice of the request to respond publicly to clear his name.

Hagen-Kennedy commented about the very public censure process and asked how this is different.

City Attorney Helmers indicated this is different due to the language in the Minnesota Constitution regarding inferior officers.

Furman said this is a civil penalty being discussed not a felony or misdemeanor. Furman said that there is no evidence.

After discussion members voted, Ayes – 2, Nays – 2 (Canada/Furman). Motion failed.

Blomquist said she has been looking up the definition of perjury and made comments about it. What she has been told is that the information he gave could be a lie and that would not be perjury, but if someone recants and tells the truth they could be charged with perjury. It is a double edged sword.

Councilmember Borchardt returned to the Council dias.

e. Furman – Countryside Village Sewer Refund Request

Furman said that she was not at the meeting where this item was discussed and according to the staff background information from April 28, 2015, the amount of water that flowed through the system cannot be determined. Furman provided information on the investigation conducted by Countryside Village provided at a previous work session regarding the water loss. Furman said that staff has indicated that there is no way to meter sewage but the City Engineer did indicate that it can be done if there is a lift station. Furman explained that during the period of March 2013-September 2014 their average sewer bill was over \$13,000. After repairs were made the average during October 2014-January 2015 was \$4,831.

Motion by Furman, seconded by Canada, to renew the motion for refund for Countryside Village.

Konrad stated that it is the opinion of staff that a refund should not be granted.

Blomquist said that she checked with Attorney Squires and he said that this would set precedence.

Members voted: Ayes – 3, Nays – 2 (Hagen-Kennedy/Blomquist). Motion carried.

Motion by Furman, seconded by Canada, to grant a sanitary sewer refund to Countryside Village in the amount of \$8,187.90.

Hagen-Kennedy indicated that the City Attorney Squires has stated that this will set precedence and it has not been determined where the water went. She stated there have been many people before the Council in the past for refunds that were denied.

Furman asked when a written response was received from Attorney Squires. Blomquist said it was a verbal response during office hours. Blomquist asked Furman to help understand what resident opinion is about giving this refund for those that Furman talks to. Furman asked how that was germane to the motion. No response was given.

Hagen-Kennedy asked if any elected official in the City of North Branch has had any private meetings with the owners of Countryside before this request for reimbursement was made at their residence. She then said she believes that it is important to have that on record.

Furman indicated that she has not had private meetings.

Blomquist would like the proof and the amount of how much.

After discussion members voted, Ayes – 3, Nays – 2 (Hagen-Kennedy/Blomquist). Motion carried.

Motion by Hagen-Kennedy to adjourn. All voted AYE. Motion carried.

ADJOURNED: at 8:36 p.m.

Respectfully submitted,

Bridgitte Konrad, City Administrator
jrl/TOSS