

CITY OF EXCELSIOR
Hennepin County, Minnesota

MINUTES

City Council Work Session
Monday, September 27, 2010

5:30 p.m.

1. Call to Order/Roll Call

Mayor Ruehl called the meeting to order at 5:32 p.m. Council members present: Berghorst (arrived at 5:34 p.m.), Caron, Fulkerson, Miller, and Mayor Ruehl. Also present: City Manager Luger, City Attorney Staunton (arrived at 6:18 p.m.), Public Works Superintendent Wisdorf (left at 5:40 p.m.), and City Clerk Johnson.

2. Agenda Approval

Luger asked the Council to add 2010 Street Improvement Project to the agenda ahead of Item 3.

Miller moved, Fulkerson seconded, to approve the agenda as amended. Motion carried 4/0.

3. 2010 Street Improvement Project

Wisdorf reported that as the contractor was working on Linwood Avenue on Friday, September 17, 2010, he found a stormwater manhole that was not on City records. The stormwater line was cleaned, televised, and smoke tested to determine what connections to the pipe still functioned. There were blockages at the 213 foot mark and again at the 340 foot mark. There also does not appear to be any access for serving the pipe at the inlet.

Wisdorf said with the reconstruction of Courtland Street and Linwood Avenue, staff would propose to add a catch basin structure on Courtland, a manhole structure on Linwood, and a new stormwater pipe installed from that manhole to the one that is scheduled to be installed for the two existing catch basins on Linwood. Using the bid prices from the contract, the cost for this work is estimated to be \$18,626 and the cost of this work would be assigned to the Stormwater Utility segment of the project.

If there is a consensus from the Council to move forward, staff would secure a change order for the work and place it on the October 4, 2010 Council agenda for approval. The Council directed staff to move forward with the change order.

4. Special Events

Fulkerson said that Excelsior has become the location for so many different events, races, triathlons, etc. throughout the year and they are inconveniencing residents. There have been times when residents aren't able to leave their neighborhoods because of road closures. This past year during the Fourth of July event there were people coming into the City from other areas and parking wherever they wanted to including on the lawns of residents. She thinks this is something that the Council should discuss. There needs to be more control over the events or the number of events needs to be reduced.

Mayor Ruehl said one issue is the idea of controlling the events and the other is the number and type of events. He noted that there has been interest expressed in having more events, such as more concerts in The Commons. Over the years, there has been a higher intensity of use of The Commons.

Berghorst said that she thinks it's an honor that the City hosts the events and it's part of what makes the City unique. The events bring a wide variety of visitors and families to Excelsior, and people look forward to the events. She said she hasn't heard any complaints. The City has been looking into how to use its facilities more and to generate more revenues. The question should be how to manage the events; they should look at specific complaints and decide how to deal with them.

Caron said with all of the events going on, there are going to be some issues. She likes the events and that the City is known for their entertainment. The Fourth of July event is never going to be perfect. She does not want the City to cut back on their events, but she thinks they should be careful with adding any future events so the City is not overburdening people. She agrees with Berghorst that the City should register all complaints and work through those issues.

Chris McCormick, Spring Park, said that he assists with some of the events in the City. He suggested that flyers be distributed to residents who may be affected by traffic being blocked by an event so they can be prepared.

Ross Roney, 780 Pleasant Street, said he organizes the Lake Minnetonka Triathlon and he delivered flyers to residents along the race route four days before the event. He said that this was the first year for the new route for the Half Marathon and residents probably didn't receive notification.

4. Special Events – (Continued)

Linda Murrell, Executive Director, South Lake-Excelsior Chamber of Commerce, said she understands the concerns and frustrations with the Fourth of July Event. She said the Chamber does send communications to the residents prior to the event.

Fulkerson said that there were people parking on both sides of Bell Street on July 4th and it would have been impossible for emergency vehicles to get down that street if there had been an emergency.

The Council directed staff to work closely with public safety on the events and keep a log of complaints that are received and work on solutions to any issues that arise.

5. Policy for Hanging Decorations, Banners, and Flags on City Streetlights

Luger said that at the June 7th City Council meeting, Diane Bolles of the Excelsior Downtown Business Group expressed concern and disapproval with the number of items that the City had hanging from the decorative streetlights in the downtown area. The Council agreed to discuss this topic at a future Work Session.

Caron said that she's noticed that the historic streetlights are becoming rusty on the bottom and look like they need to be painted again. She said that the City should establish a policy on the use of the City's light poles for signage. She said that she would be willing to work on a policy with a small committee and bring something back for the Council to consider.

Berghorst and Fulkerson said they also agreed with Diane Bolles.

Linda Murrell, Executive Director, South Lake-Excelsior Chamber of Commerce, said that the Chamber had just purchased new banners for Art on the Lake and installed new silver brackets for hanging the banners. She noted that the Chamber had agreed to paint the bands if people were unhappy with the silver color. Last year the Chamber was only able to purchase 20 Art on the Lake banners and hopes to add more banners in 2011. She said the banners are an important aspect for the Art on the Lake event and she would hate to have them disallowed.

5. Policy for Hanging Decorations, Banners, and Flags on City Streetlights – (Continued)

Caron said she envisions the policy addressing how many items can be hung at one time, what color the bands need to be, standards for brackets, and the number of brackets allowed.

Bob Bolles, 229 George Street, said that there are too many different types of brackets on the streetlights. The City needs to decide what brackets are used and then people will need to use those brackets. Any future displays should have to be adapted to the existing brackets. The poles will deteriorate with all of the drilling and tapping from installing the brackets. He noted that some of the bands around the bottom of the streetlight poles are aluminum.

Diane Bolles, 229 George Street, said that the policy should also address design criteria for the banner or flag.

Caron said she would like to look at this during the months of November and December and bring something back to the Council to review in January. It was suggested that the subcommittee include a representative from the South Lake-Excelsior Chamber and the Public Works Superintendent.

6. Advisory Commissions

Luger said in 2008 she had recommended that the City Council develop a commission policy to establish standard operating procedures for all of the commissions. The Council agreed with the recommendation, but then things got busy and a policy was never written. The City has had issues with all of the advisory commissions over the years. With the recent complaints, it has become apparent that a commission policy needs to be created. She said that the City had adopted a policy on November 4, 2002 but it was repealed when the new Code of Ethics was adopted on May 21, 2007.

Miller said that in 2007 when the Council reviewed the Code of Conduct, the Council realized that many of the items in the Code of Conduct were already covered under Minnesota State Statutes so they changed the policy.

Mayor Ruehl said there was a lot of discussion regarding freedom of speech. He said the Code of Conduct was just for commissioners and did not include the Council. He said the City has had a number of issues and there have been commissioners resigning due to treatment received from other commissioners.

6. Advisory Commissions – (Continued)

Mayor Ruehl introduced Bob Shaffer, who is from Foundation Architects, and is a Golden Valley Councilmember, whom he's known for a number of years. Mr. Shaffer had an application for a project that had to go through the Planning Commission and the Heritage Preservation Commission (HPC). Mr. Shaffer had shared some thoughts with him after going through Excelsior's process. He had asked Mr. Shaffer to come this evening to share some thoughts on the process with the Council.

Mayor Ruehl said it is difficult to define behaviors, but it's not uncommon. He said that many of the cities have policies on behaviors. He said the advisory commissioners are representatives of Excelsior and it's important to treat everyone with respect.

Fulkerson asked if there is any training available for advisory commissioners through the League of Minnesota Cities. Luger said most cities conduct their own training. She had conducted one training for the Park & Recreation Commission earlier this year and that she liked the policy that Maplewood had developed. Caron and Berghorst said they also liked Maplewood's policy.

Berghorst said the City needs to engage the citizens. The City has a responsibility to provide training and support to the advisory commissioners. Miller said the City should modify the current policy rather than starting from scratch again.

Caron said there are other issues that should be discussed. The Council no longer has liaisons to the advisory commissions and all of the advisory commissions have requested liaisons. She has also heard from commissioners that they feel cut off from the Council. Currently the only exposure that the advisory commissioners have with the Council is the annual potluck. There is a desire for more connection with the Council. The Council also needs to discuss staff's role with the advisory commissions. The City has also had difficulty finding people to serve on the advisory commissions, so the Council has had to do a fair amount of recruitment.

Mayor Ruehl said he agrees with all of these items. The role and relationship of the advisory commissioner is very important and the work needs to be meaningful and respectful. The Council's role when attending an advisory commission meeting is to observe and not influence the commissions. Some

6. Advisory Commissions – (Continued)

of the sample policies address some of the issues they've experienced. He would like the Council to address the main issues which have been attitude, proper process, and behavioral, to make sure everyone is representing the City properly.

Bob Shaffer, Foundation Architects, Golden Valley Councilmember, said prior to serving on the City Council he had served on the Planning Commission and was liaison to the Board of Zoning Appeals. He said he has been involved with the City of Golden Valley in some capacity for 19 years. He said he had presented a small project that went before the Planning Commission, Heritage Preservation Commission, and City Council. After receiving approval for his project, he had shared some of his concerns with Mayor Ruehl.

Bob Shaffer said that he pressed to Mayor Ruehl that he had some concern with the HPC and their lack of knowledge. He would expect the commissioners on the HPC to know styles of architecture, be able to identify what elements should be preserved, and identify what criteria was being applied in making their decision. It appeared that not all of the commissioners had visited the site prior to the meeting. There also seemed to be a disconnect between the commissioners. The HPC originally denied the project, but he came back to the HPC a second time and received approval without making any changes to the original project.

Shaffer said that the concern with the Planning Commission's process was more of a procedural issue. There were only 4 commissioners present and the votes on the motions continued to be 2/2. They were there for two hours while they tried to come to a decision on another application.

Fulkerson asked Shaffer if he felt like he was treated disrespectfully. Mr. Shaffer said not with the Planning Commission. He had more of an issue with the approach that the HPC had taken. He thought the HPC would understand architecture more thoroughly, but that knowledge base did not seem to be there. The second time he was before the HPC, the Chair was in attendance and she had to explain to members what they were voting on and why.

Caron said she wants to caution the Council that they are hearing one opinion. The Council recently heard from Mr. Burdick who said the process went well. She noted that the Chair of the HPC was a very strong voice on the commission.

6. Advisory Commissions – (Continued)

At times rather than educating she overwhelmed the other perspectives. More often than not, there can be one or two strong voices on a commission who tend to dominate. She said it was interesting to hear Mr. Shaffer's perspective.

Caron said Excelsior is a small town and it struggles to find commissioners. The City also doesn't have the resources to help the commissioners. Excelsior is less formal than other cities. Excelsior is a very vocal and passionate city. Shaffer said he doesn't compare so much with the city he serves; he tends to compare to lots of cities within the state and he doesn't really look at the formality.

Luger said she had attended one of the HPC meetings when Shaffer's project was on the agenda. She said at that meeting there were two commissioners who said they didn't like the dentil work so they weren't going to approve the project, but they didn't give a reason why using any standards.

Caron said it important to define the advisory commissioner's roles and responsibilities and get them to the point where they understand the position.

Fulkerson said some people have commented to her how rude some commissioners have been. Caron said there are also personalities to deal with. It's important for commissioners to help out and let other commissioners know if they've crossed the line.

Miller said that the Council previously served as liaisons. He agrees that it's clearly wrong for a commissioner to attack a presenter versus attacking a project. Typically when he's been at meetings and someone said they didn't like something, then the Chair or staff person has stepped in and asked what the findings are. He's heard from applicants that have been in front of the Planning Commission that have said they've been attacked by commissioners.

Miller said the Council struggles with whether they should be able to remove a commissioner. It is difficult to do unless there is a statutory reason to remove someone. There needs to be criteria so it doesn't become political. Miller asked Mr. Shaffer if Golden Valley had a removal clause. Mr. Shaffer said only for lack of attendance. If there is an issue with a commissioner, the Council typically will not reappoint that individual during the appointment process.

6. Advisory Commissions – (Continued)

Mr. Shaffer said one issue he's seen with Council liaisons over the years is that they tend to have too much involvement in the discussion and start functioning more as a commissioner. Caron said she doesn't think Excelsior has had that problem.

Mayor Ruehl said as he reviewed the 2002 version of the Code of Conduct, he noticed the first point under "Conduct" where it discusses not committing to a position on an issue until a complete application has been submitted before an advisory body or the Council. He said the City Attorney has conducted training on this issue, but the City has still had a couple of instances where people have written letters to the editor before the process was completed on an application, which can put the City in a vulnerable position. This point needs to be incorporated into the ordinance and by-laws. The City doesn't want conversations among commissioners, correspondence, etc. about a project while a project is being considered. How can the City address this so the Council can enforce it?

Staunton said one issue is the legal tract. You want to make sure the City doesn't create a scenario where a disappointed applicant can say they weren't treated properly and someone had a predisposed decision. The other is the Open Meeting Law. Staunton said he spent some time training commissioners on those issues. On the predisposition notion, a person should not make a decision until all of the evidence and input is received. This item can be codified into the ordinance and by-laws, and they can also conduct more training on this issue. All of this has to do with quasi-judicial decision making, where someone is coming before the City and asking permission for something, and the City is applying the rules that are in place.

Another issue is ex parte communication. This is where one lawyer can't go talk to the judge without the other lawyer being present. Some communities take a strong stance on someone meeting with just one commissioner prior to the application coming before the commission. This is difficult to monitor and handle. It's not a meeting of a quorum of the governmental body. The Open Meeting Law handles this.

Staunton said it is important to have a written process in place that is uniform and every single application follows the same process.

6. Advisory Commissions – (Continued)

Staunton said the final issue is the softer things that aren't really legal. With the exception of when people don't treat others respectfully, then it can become legal. It is important for commissioners to be civil to one another and treat applicants like they are guests in their house.

Berghorst said that the chairs of the advisory commissions need to have a clear understanding of the rules and be able to handle the meeting, which goes back to what training the City is providing and what is expected.

Miller said rather than have a removal clause, he would prefer not reappointing an individual during the appointment process. He noted that it might be good to include language in the ordinance and/or by-laws about being respectful to other commissioners and applicants.

Mayor Ruehl said how does the City deal with enforcement if the Council is aware of issues that are not appropriate? In some of the sample documents it is very clear that staff deals with the commissions. Would he be overstepping his bounds if he spoke to an individual one-on-one if he became aware of an issue? There isn't a mechanism in place to deal with some of these issues. If it is staff, then commissioners need to know they'll need to answer to staff.

Staunton said he doesn't think it disqualifies the Mayor or a Councilmember from speaking with someone if they are aware of an issue. It's easier to discuss and deal with during the appointment process. The main objective would be to make sure a process is followed and someone isn't announcing their decision before receiving all of the information. Miller said this is something that needs to be put into the ordinance and by-laws.

Staunton said this shouldn't preclude people from discussing something. The important point is not to make up your mind before the process is completed.

Miller said the attendance policy should be consistent in all of the by-laws, and the requirements for serving as chair and their role should also be in each of the by-laws. The Council should also address the liaison issue again. The Council also needs to develop an appointment and resignation process for the commissions.

6. Advisory Commissions – (Continued)

Fulkerson said she doesn't know if it's appropriate for people to serve on more than one commission and/or the City Council at the same time.

Berghorst said there needs to be orientation and training for advisory commissioners. The City may find that there are more people willing to get involved if they know their roles and expectations. She said accountability is also important.

Caron said she agrees with Berghorst. There also needs to be more support for the chairs and the chairs need to provide more support to the commissioners.

The Council was asked to forward any other comments or suggestions to Luger so she can incorporate the suggestions into the current ordinance and by-laws and bring them back to the Council to review.

7. Other

None.

8. Adjournment

Berghorst moved, Caron seconded, to adjourn the meeting at 7:37 p.m.
Motion carried 5/0.

Respectfully submitted,

Cheri Johnson
City Clerk