

CITY OF GRANT
MINUTES

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DATE : June 2, 2015
TIME STARTED : 7:08 p.m.
TIME ENDED : 9:45 p.m.
MEMBERS PRESENT : Councilmember Sederstrom, Lobin, Huber,
Lanoux and Mayor Carr
MEMBERS ABSENT : None

Staff members present: City Attorney, Nick Vivian; City Engineer, Phil Olson; City Planner, Jennifer Haskamp; City Treasurer, Sharon Schwarze; and Administrator/Clerk, Kim Points

CALL TO ORDER

Mayor Carr called the meeting to order at 7:08 p.m.

PUBLIC INPUT

- (1) Bob Tufty, Jasmine Ave. – Commented on trees that need trimming along Jasmine..
- (2) Jim Dross, 8682 Jamaca Avenue – Commented on Council staying on topic during discussions and disrespect to City staff.

PLEDGE OF ALLEGIANCE

SETTING THE AGENDA

Council Member Huber moved to approve the agenda, as presented. Council Member Lobin seconded the motion. Motion carried with Council Member Lanoux and Sederstrom voting nay.

CONSENT AGENDA

May 5, 2015 City Council Meeting Minutes	Approved
Bill List, \$41,938.76	Approved
Brochman Blacktopping, Pothole Repair, \$12,038.50	Approved
Kline Bros. Excavating, Road Work, \$24,540.00	Approved
Authorization of MS4 Permit Application	Approved

1 **Council Member Lanoux moved to approve the consent agenda with the removal of Item 4A,**
2 **May 5, 2015 City Council Meeting Minutes and Item 4E, Authorization of MS4 Permit**
3 **Application. Council Member Sederstrom seconded the motion. Motion failed with Council**
4 **Members Lobin, Huber and Mayor Carr voting nay.**

5
6 **Council Member Huber moved to approve the consent agenda, as presented. Council Member**
7 **Lobin seconded the motion. Motion carried with Council Member Lanoux and Sederstrom**
8 **voting nay.**

9
10 **STAFF AGENDA ITEMS**

11
12 **City Engineer, Phil Olson**

13
14 **Consideration of Resolution No. 2015-12 TH 96 & CSAH 15 Roundabout Project** – City
15 Engineer Olson advised Washington County is requesting municipal consent to install a roundabout at
16 the intersection of Trunk Highway 96 (TH 96) and County State Aid Highway 15 (CSAH 15). The
17 project includes replacing the existing 4-way stop intersection and with a new a single lane
18 roundabout with trails. A figure of the roundabout improvements was included in the packet for
19 review.

20
21 City Engineer Olson advised there is no City money involved with the project and the single lane
22 proposal is based on traffic volumes.

23
24 **Council Member Lanoux moved to table the request and ask the County to take back**
25 **McKusick as part of the approval for municipal consent. Council Member Sederstrom**
26 **seconded the motion. Motion failed with Council Members Lobin, Huber and Mayor Carr**
27 **voting nay.**

28
29 Council Member Huber stated he understands the theory of leverage but not at this point. McKusick
30 is and issue and a solution to that problem should be discussed at a future meeting. He stated he will
31 not hold up a County project and there are no City dollars involved.

32
33 It was the consensus of the Council to approach the County regarding McKusick and discuss options
34 for that road at the next regular Council meeting.

35
36 **Council Member Huber moved to adopt Resolution No. 2015-12, as presented. Council**
37 **Member Lobin seconded the motion. Motion carried with Council Member Lanoux and**
38 **Sederstrom voting nay.**

39
40 **Road Presentation** – City Engineer Olson advised at the last City Council meeting, Council directed
41 engineering staff to provide a roadway presentation to initiate discussion about the City's current road
42 policy. He provided a power point presentation relating to the City's current road policy and current
43 road conditions within the City.

1 Council Member Sederstrom stated the City is in emergency planning mode and something has to be
2 done with the roads.

3
4 Council Member Huber requested a grading system for the roads be put in place.
5

6 **Council Member Lanoux moved to put together a volunteer road committee made up of**
7 **residents of Grant to develop a new road policy for the City. Council Member Sederstrom**
8 **seconded the motion.**

9
10 Council Member Huber stated the City is everyone here at those watching. Three-hundred feet of
11 frontage for everyone makes it unaffordable for residents to pay for roads or tax them additional
12 dollars for taxes.

13
14 Council Member Sederstrom stated the City roads are public roads and they need to be upgraded.
15 Increasing taxes a bit and the City can get that done.

16
17 Council Member Lanoux stated most cities have a comprehensive road plan. Previously in the City,
18 there was a road committee and they had funding in place for roads. Those dollars were put back into
19 the General fund.

20
21 **Motion failed with Council Members Lobin, Huber and Mayor Carr voting nay.**

22
23 Mayor Carr noted the City/residents should look at doing more overlay/patching on the roads as
24 opposed to road reconstruction.

25
26 **City Planner, Jennifer Haskamp**

27
28 **Consideration of Ordinance No. 2015-41, Land Use Definitions** – City Planner Haskamp advised a
29 public hearing was held on February 3, 2015 to consider amendments and additions to the Land Use
30 Definitions including: Golf Courses, Home Occupations, and Recreation Areas. In conjunction with
31 that ordinance, the City Council determined that performance standards related to Recreation Areas
32 should be considered to ensure that the appropriate standards were in place to review any future
33 applications. During the course of the discussion related to the performance standards the City
34 Council determined that Indoor Commercial Recreation Areas were not consistent with the character,
35 goals and land uses of the city and should be changed from permitted or conditionally permitted to not
36 permitted. As such, the updated the draft ordinance to reflect the change was included in the packet
37 for your review.

38
39 **Consideration of Ordinance No. 2015-42, Performance Standards for Commercial Recreation** –
40 City Planner Haskamp advised at the May City Council meeting staff presented a draft ordinance
41 regarding performance standards for commercial outdoor recreational uses. Based upon the comments
42 received, the following modifications were made:

- 43
44
 - Number of Buildings and Square footage allowed: The draft language has been modified
45 indicating clearly that the City Council will have discretion when considering the number and

1 square footage of accessory buildings associated with a proposed application. See ordinance
2 language attached.

3
4 The following changes that were presented to the Council at the May City Council meeting were not
5 revised from the draft provided. If no changes are suggested this evening the following standards will
6 be included in the draft ordinance at the public hearing:

- 7
- 8 ■ The *Commercial, recreation (indoor)* use has been eliminated from the performance
9 standards. This is shown as a strikethrough in the attached draft ordinance.
- 10 ■ The draft ordinance requires *Commercial, Recreation (outdoor)* uses in the A1 and A2 zoning
11 districts be accessory to a principal residential use. The same requirement does not apply in
12 the GB zoning district.
- 13 ■ Occupancy - The maximum occupancy is identified as 500 people.
- 14 ■ Setbacks – The draft ordinance identifies a side yard setback of 100-feet.
- 15 ■ Storm shelter – language related to storm shelters is included in the draft ordinance.

16
17 Staff is recommending that the City Council consider the following land use definitions in the next
18 round:

19
20 Business – Seasonal
21 Café and Restaurant
22 Clubs or Lodges
23 Greenhouses (commercial production only)
24

25 City Planner Haskamp stated staff is not looking for action on the land use definitions considered in
26 Group 1 at the February public hearing. Instead, staff would recommend waiting and processing
27 Groups 1 and 2 of the definitions together in an effort to be more efficient and save on some of the
28 associated expenses. Additionally, since the performance standards related to the commercial
29 recreation use were established after the public hearing in February, a public hearing will need to be
30 held to consider the proposed performance standard additions. As such, staff would recommend
31 holding the public hearing for the performance standards at the same time as Group 2 of the land use
32 definitions in an effort to reduce expenses.

33 Staff is looking for direction and authorization related to Group 2 of the land use definitions. If the
34 City Council agrees to the proposed land use definitions contained in Group 2, staff will begin
35 drafting proposed definitions for consideration at a future Council meeting.

36 It was the consensus of the Council to move forward with the recommended next four definitions.

37 Council Member lanoux stated grandfathered properties have not yet been addressed and the Planning
38 Commission should be reviewing this.

39 City Attorney Vivian advised there is an entire division in the City's Zoning Code that relates to non
40 conforming lots, uses and structures.

41 City Planner Haskamp added the February Planning report addressed non conforming lots and uses.

1 **Garage Sizes Per City Ordinance** – City Planner Haskamp advised at the regular May City Council
2 meeting council members Sederstrom and Huber expressed concern over a provision within the City’s
3 Zoning Ordinance related to accessory buildings. Upon their direction staff has prepared the
4 following information for your review and consideration.

5
6 The ordinance section of concern is contained within *Section 32-313 Accessory buildings and other*
7 *non-dwelling structures* and is identified below:

8
9 (f) *Accessory building as part of principal building.* An accessory building shall be considered as
10 an integral part of the principal building if it is located six feet or less from the principal building. The
11 exterior design and color shall be the same as that of the principal building or be of an earthen tone;
12 the height shall not exceed the height of the principal structure unless more restrictive portions of this
13 chapter prevail.

14
15 Some of the potential issues that staff is concerned with related to this section are as follows:

- 16
17 ▪ *Accessory building as part of principal building:* Staff is concerned with the section title
18 because it basically allows for an applicant to bypass all the standards contained within
19 Section 32-313 as long as the structure is within 6-feet of the principal building.
- 20 ▪ *Accessory building is the broadest term:* The ordinance defines Accessory Building types as,
21 “storage or tool sheds; detached residential garages; detached rural storage buildings; detached
22 domesticated farm animal buildings; agricultural farm buildings; non-accessory, non-dwelling
23 structures.” This provision would mean that any of these types of buildings could potentially
24 be excluded from the standards of Section 32-313 provided the building was within 6-feet of
25 the principal structure.
- 26 ▪ *No square footage limitations:* This provision allows a property owner to construct an
27 accessory building with no size limitations regardless of the parcel/lot size as long as the
28 structure is within 6-feet of the principal structure.
- 29 ▪ *No location specified:* Other provisions within Section 32-313 require a Certificate of
30 Compliance (COC) if an accessory building is to be located in front of a principal structure.
31 However, this provision essentially says that the accessory building is the principal building,
32 and therefore the standards would not apply and no permitting beyond a building permit
33 would be required.
- 34 • *Design standards:* The language, “exterior design and color shall be the same as that of the
35 principal building **or** be of an earthen tone” is vague, particularly when an applicant is given
36 an option to simply paint the structure an earthen tone. Staff would be concerned that a pole
37 barn could be painted brown and meet this standard, while having no relationship in design
38 and character to the principal building.
- 39 ▪ *...unless more restrictive portions of this chapter prevail:* This language is confusing and
40 unclear what it relates to. There are very few standards for architecture and size related to
41 principal buildings contained within the code.

1
2 Staff would recommend that as a starting point for the discussion, the City Council consider the
3 following questions:

- 4
- 5 ▪ Are there any circumstances where an accessory building should be considered part of the
6 principal structure?
 - 7 ○ If yes, when? What accessory building types? Should some types be excluded?
 - 8 ○ Is 6-feet the right distance? Should it be more or less, or stay the same? Are there any
9 building code concerns? (i.e. firewalls, etc.)
 - 10 ○ Should the accessory structure have size restrictions? If yes, how?
 - 11 ▪ Based on lot size?
 - 12 ▪ Based upon the size of the principal structure (i.e. no more than 50% of the
13 FAR of the principal)?
 - 14 ▪ Not-to-exceed size?
 - 15 ▪ Based on accessory building type?
 - 16 ○ Should there be architectural standards? (i.e. must match materials, colors, etc.)
 - 17 ○ Should there be a permitting process? COC? CUP?
- 18

19 City Planner Haskamp advised staff is looking for your comments on the above items and direction
20 regarding next steps.

21 Mayor Carr stated this has been abused in the City. He suggested a detached garage limit of 720
22 square feet but did express concern regarding people that already have this and would be non
23 conforming. The City needs to be cogniscent of this and maybe just have a garage size maximum of
24 1,000 square feet.

25 Council Member Sederstrom stated he wants something included in the revised ordinance that
26 addresses similar architecture.

27 Council Member Huber stated design standards need to be better defined. Non conforming uses
28 would not be allowed to rebuild but there is a big problem with the current ordinance.

29 It was the consensus of the Council to have staff come back with a recommendation relating to the
30 ordinance as well as design standards.

31

32 **City Attorney, Nick Vivian**

33 **Road Contractor** – City Attorney Vivian advised at the Council’s April meeting, a proposed
34 Independent Contractor Agreement between the City of Grant and KEJ Enterprises, Inc. (“KEJ”) was
35 presented for the Council’s consideration. In an effort to manage the City’s contract roadway
36 expenditures and respond more efficiently to roadway complaints, City staff discussed combining
37 several of the City’s roadway maintenance tasks under one single contract. The single contract would
38 require one contractor to actively manage work on the City’s roads and would task the contractor with
39 making recommendations to the City Council for roadway expenditures. Engaging a single contractor

1 to manage the City's roadway work allows the City to have a single resource for contact regarding
2 resident questions and complaints.

3
4 In April, the Council approved the Independent Contractor Agreement with KEJ Enterprises, Inc.
5 subject to review and approval of the City Attorney. I have reviewed the Agreement and have
6 incorporated a number of redline changes to fully effectuate the Council's intentions of engaging KEJ
7 to manage the City's roadway work. A copy of the redline draft is attached for the Council's review
8 and consideration.

9
10 City Attorney Vivian indicated it is his understanding that the City currently has contracts in place
11 with a number of contractors which have performed roadway work for the City in prior years. Per the
12 understanding of the City's intentions, KEJ will manage the work required on the City's roadways,
13 serve as the City's primary contact for roadway related matters and utilize the services of these
14 contractors to complete various projects and respond to resident complaints. In this regard, the
15 Independent Contractor Agreement required strengthening to make clear that management of the
16 work and the associated contractors is a significant component of the undertaking of KEJ.

17
18 Questions have been raised as to whether the Independent Contractor Agreement is subject to
19 Minnesota's competitive bidding law. The competitive bidding law applies to 1.) contracts for the
20 sale, purchase, or rental of supplies, materials, or equipment and 2.) contracts for the construction,
21 alternation, repair or maintenance of real or personal property. Minn. Stat. 471.345 subd. 2.

22
23 Cities are not required to follow the competitive bidding process when contracting for professional
24 services requiring technical, scientific or professional training. Additionally, services like refuse
25 hauling and cleaning have been deemed not to require adherence to Minnesota's competitive bidding
26 requirements.

27
28 Here, it is anticipated all roadway maintenance tasks will be the responsibility of a single contractor,
29 KEJ. Of the tasks listed on Page 1 of the City Engineer's April 27, 2015 Memorandum, Garbage &
30 Animal Pickup, Sign Replacement, Responding to Roadway Questions and Complaints, Coordination
31 of Dust Control and Coordination of Culvert & Grading Work clearly do not require competitive
32 bidding. Subtracting the allocations for these tasks leaves a projected contract cost of \$101,000.00.
33 Accordingly, further examination of the remaining contract tasks is required.

34
35 The Minnesota Supreme Court has expressly determined that management agreements are not a
36 contract for maintenance of real property within the meaning of the competitive bidding statute. *R.E.*
37 *Short Co. v. City of Minneapolis*, 269 N.W.2d 331 (Minn. 1978). In reaching this conclusion, the
38 Court stated, "[i]n light of the restrictive interpretation given by courts to competitive bidding statutes
39 and the ease with which the legislature could have included such management agreement [within the
40 competitive bidding statute], we do not believe that the legislature intended the statute to cover this
41 type of public contract." *Id.* at 343.

42
43 City Attorney Vivian stated that as he understands from the discussion at the Council's April meeting,
44 KEJ will coordinate all of the road work and may use any number of different contractors to complete
45 the Scope of Work contained within the Independent Contractor Agreement. The contractors remain

1 under agreement with the City and are readily available for use by KEJ in performing contract work
2 for the City.

3
4 Additionally, given the management component of the relationship with KEJ, at least some payment
5 must be allocated to the overall time spent managing the contractors actually completing the work.
6 With more than \$1,000 allocated toward management, the contract falls below the \$100,000
7 competitive bid threshold.

8
9 Finally, the Minnesota Attorney General has opined that a contract between town and county for
10 removal of snow from town roads is not subject to requirements of Uniform Municipal Contracting
11 Law, Minn. Stat. § 471.345. Op. Atty. Gen. 707a ([March 5, 1986](#)).

12
13 City Attorney Vivian stated it is his conclusion that the Independent Contractor Agreement with KEJ
14 Enterprises, Inc. does not require competitive bidding for five reasons. First, many of the services
15 provided by KEJ Enterprises, Inc. are considered professional in nature and are not subject to
16 competitive bidding requirements. Second, with the professional services removed from the
17 estimated contract amount and even a modest amount of payment allocated toward the management
18 of roadway services, the contract is not estimated to exceed \$100,000. Third, KEJ Enterprises, Inc.
19 will be managing the completion of the projects and will likely not be completing all of the work
20 itself. Accordingly, the contract, in its entirety, should be viewed as a management agreement which
21 the Minnesota Supreme Court has determined management agreements are not required to be
22 publically bid. Fourth, it is estimated that KEJ Enterprises, Inc. will not be completing \$100,000 in
23 work because tasks will be subcontracted to other companies already under contract with the City of
24 Grant. Fifth, the Minnesota Attorney General has concluded that agreements of this type are not
25 subject Minnesota's competitive bidding requirements.

26
27 Council Member Sederstrom stated that the case does not apply because it was between
28 municipalities and not private contractors.

29
30 Council Member Lanoux stated the State Auditor has the opinion that the contract is subject to
31 obtaining bids.

32
33 **Council Member Huber moved to approve the Road Contractor Contract as redlined. Council**
34 **Member Lobin seconded the motion. Motion carried with Council Member Lanoux and**
35 **Sederstrom voting nay.**

36 37 NEW BUSINESS

38
39 **Acceptance of 2014 Audit, Sharon Schwarze** – City Treasurer Schwarze advised the 2014 Audit
40 was not in the Council packets. It was finalized two weeks ago and then finalized again in the same
41 form. All issues have been discussed with the State Auditor and private auditor. Because the Council
42 had no review time, the City should schedule a special meeting to accept the audit.

43
44 Council Member Lanoux stated his concern with the audit is the Treasurer had indicated a Code of
45 Conduct had to be signed by the Council.

1
2 City Treasurer Schwarze stated the 2014 Audit has been issued and everything is in order.
3
4 Council Member Lanoux stated he wanted resignations from the City Treasurer and Clerk because the
5 Code of Conduct issue was a lie.
6
7 City Treasurer Schwarze stated the Council can discuss that issue at the special meeting. A Code of
8 Conduct for any City is a policy for the City and is being proactive. The policy itself was voted on
9 and approved by the Council.
10
11 Council Member Huber stated he had to sign the same thing at the Cable Commission. Twenty-five
12 people signed it with no problem. Council Member Lanoux also had a problem with the gravel credit
13 in 2014 under the previous Road Commissioner. All of those issues can be discussed at the special
14 meeting.
15
16 A special City Council meeting was scheduled on Wednesday, June 17, 6:30 p.m. at Town Hall.
17
18 **Schedule 2016 Budget Work Session, Sharon Schwarze** – A 2016 Budget Work Session was
19 scheduled for Monday, July 13, 6:00 p.m. at Town Hall.
20
21 **Pressurized Water within the City of Grant, Jeff Huber** – Council Member Huber provided
22 background on this issue and then requested Council Member Lanoux explains his proposal on this.
23
24 **Council Member Lanoux moved to draft a resolution that opposes legislation of developing a**
25 **waste water treatment plant. Council Member Sederstrom seconded the motion. Motion failed**
26 **with Council Members Lobin, Huber and Mayor Carr voting nay.**
27
28 Council Member Huber explained Council Member Lanoux’s proposed plan to bring water into the
29 City along the DNR trail and golf courses that would replenish the aquifer and level and White Bear
30 Lake. The plan brings water into the city and puts the golf courses out of business. He read from the
31 City’s Comprehensive Plan relating to land use and city water, sewer and other utilities. He read the
32 draft Charter regarding pressurized water. He stated Council Member Lanoux’s proposal completely
33 goes against and is in conflict with the City’s Comprehensive Plan.
34
35 Council Member Lanoux stated he is talking about a pressurized water line and he is opposed to a
36 waste water treatment plant. He advised he has spoken at the legislature as well as the Metropolitan
37 Council proposing this idea.
38
39 Council Member Huber reviewed an application to the Metropolitan Council submitted by Council
40 Member Lanoux.
41
42 **Waste Water Treatment Plant, Jeff Huber** – This item was discussed during the previous agenda
43 item.
44

1 **Final “Draft” of City Charter, Mayor Carr** – Mayor Carr stated he wanted to bring the final draft
2 Charter forward and noted at some point the Council may take some comments on the document. He
3 asked the Council about the education piece put together by a Charter Commissioner and posting it on
4 the City website.

5 The majority of the Council agreed the education piece should be posted on the City website.
6

7 City Attorney Vivian advised there is a statutory process for submitting the Charter and the
8 Commission should speak to an attorney regarding that process. Coordination with the City is
9 appropriate and it is the intent of the Charter Commission to have the Charter on the ballot at the next
10 general election.
11

12 **UNFINISHED BUSINESS**

13
14 **Roles and Responsibilities of City of Grant Planning Commission** – Mayor Carr stated the
15 Council needs to go through this. The Planning Commission is an advisory committee and the need
16 to get back to being a Planning Commission and be structured properly and be clear about their
17 responsibilities.
18

19 Council member Huber requested clarification regarding amendments to the Comprehensive Plan and
20 updates to the Comprehensive Plan in terms of the Planning Commission itself.
21

22 Council Member Lanoux stated Planning Commission duties are already spelled out in the City
23 ordinance.
24

25 **Council Member Sederstrom moved to keep the City ordinance relating to the Planning**
26 **Commission as is. Council Member Lanoux seconded the motion. Motion failed with Council**
27 **Members Lobin, Huber and Mayor Carr voting nay.**
28

29 It was noted the roles and responsibilities provided to the Council are not in conflict with the City
30 ordinance relating to the Planning Commission.
31

32 It was the consensus of the Council that next month terms of the Planning Commission would be
33 discussed.
34

35 **DISCUSSION ITEMS**

36 **City Council Reports:**

37
38
39 There were no Council reports.
40

41 **Staff Updates:**

42
43 **Sunnybrook Lake** – City Engineer Olson updated the Council on the Sunnybrook flood issue and
44 advised he will be coming back with more information.
45

1 **COMMUNITY CALENDAR JUNE 3 THROUGH JUNE 30, 2015:**
2

3 **Mahtomedi Public Schools Board Meeting, Thursday, June 11th and 28th, 2015, Mahtomedi**
4 **District Education Center, 7:00 p.m.**

5 **Stillwater Public Schools Board Meeting, Thursday, June 11th, 2015, Stillwater City Hall, 7:00**
6 **p.m.**

7 **Charter Commission Meeting, Thursday, June 18th, 2015, Mahtomedi City Hall, 7:00 p.m.**

8 **Washington County Commissioners Meeting, Tuesdays, Government Center, 9:00 a.m.**
9

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11

12 These minutes were considered and approved at the regular Council Meeting July 7, 2015.
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Kim Points, Administrator/Clerk

Tom Carr, Mayor

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19