

Adopted Minutes Regular City Council Meeting January 27, 2015

Mayor Slavik called a Regular Meeting of the Plymouth City Council to order at 7:00 p.m. in the Council Chambers of City Hall, 3400 Plymouth Boulevard, on January 27, 2015. Mayor Slavik asked that everyone keep their friends and colleagues at the City of New Hope in their thoughts and prayers.

Council Present: Mayor Slavik, Councilmembers Willis, Carroll, Johnson, Beard, and Prom.

Council Absent: Councilmember Wosje.

Staff Present: City Manager Callister, Administrative Services Director Fischer, Community Development Director Juetten, Public Works Director Cote, Park and Recreation Director Evans, Deputy Fire Chief Springer, Police Chief Goldstein, City Attorney Mattick, Finance Manager Bursheim, Water Resources Manager Asche, Community Relations Officer Long, Recreation Supervisors Lauer and Krumholz, and City Clerk Engdahl.

Plymouth Forum

No one came appeared before the Council.

Presentations and Public Information Announcements

(4.01) Fire and Ice on February 7

Recreation Supervisors Lauer and Krumholz announced Fire and Ice at Parkers Lake on February 7th and Skate with the Mayor on January 30 at Parkers Lake.

Mayor Slavik acknowledged Deputy Fire Chief Springer for the past six years of employment with the City and wished him well at the City of Eagan. Deputy Fire Chief Springer thanked the Council for their support.

Approval of Agenda

Motion was made by Councilmember Johnson, and seconded by Councilmember Prom, to approve the agenda. With all members voting in favor, the motion carried.

Consent Agenda

Motion was made by Councilmember Prom, and seconded by Councilmember Willis, to approve the consent agenda that include the following items:

- (6.01) Council minutes from Regular Meeting of January 13.
- (6.02) Resolution Approving Disbursements ending January 17 (Res2015-025).
- (6.03) Resolution Approving Application of the Plymouth Lions for a Temporary Liquor License for events on February 13-14, 2015 (Res2015-026).
- (6.04) Resolution Accepting Donation from the Plymouth Crime and Fire Prevention Fund to Support Police K9 training (Res2015-027).
- (6.05) Resolution Approving Submission of Department of Employment and Economic Development Job Creation Fund Program Application for Smith's Medical ASD, Inc. (Res2015-028).
- (6.06) Resolution Adopting 2015 Goals and Legislative Priorities (Res2015-029).
- (6.07) Resolution Approving Renewal of Liquor Licenses for 2015 (Res2015-030).
- (6.08) Resolution Authorizing Payment of the 2015 Membership Dues for Bassett Creek, Elm Creek and Shingle Creek Watershed Management Commissions (Res2015-031).
- (6.09) Resolution Supporting a Name Change at the Minnesota Department of Natural Resources for Kreatz Lake, Snyder Lake, and an Unnamed Basin (Res2015-032).
- (6.10) Resolution Approving 2015 Pay Equity Report (Res2015-033).
- (6.11) Resolution Approving Purchase of a Replacement Tandem Axle Truck Cab and Chassis (Res2014-034).

With all members voting in favor, the motion carried.

Public Hearings

(7.01) Renewal of On-Sale Liquor and Sunday Liquor License for The After Midnight Group III, Inc. d/b/a Cowboy Jack's, 4120 Berkshire Lane North

Police Chief Goldstein reported on the renewal applications of on-sale liquor and Sunday liquor licenses for Cowboy Jack's, 4120 Berkshire Lane North. He stated that staff supports the renewals, but with conditions noted in the staff report and resolution. He explained that while

the Police Department has maintained a good relationship with the licensee, their attempts to reduce calls for service have not worked. He summarized statistics noted in the staff report from the Place of Last Drink Program (POLD), where since February 2014, the Police Department has document 57 place of last drink events from bar and restaurants in Plymouth and Cowboy Jack's accounts for 43 of those events. The blood alcohol concentration is significantly higher with those events than other establishments. He noted that Cowboy Jack's also didn't pass their compliance check in December 2014.

He noted that the Police Department met with the licensee on December 30, 2014 outlining the department's concerns, and since that meeting, there have been three incidents inside the establishment where patrons were so intoxicated they needed to be hospitalized. He stated there have been several calls for people lying in snow banks, someone crawling on Rockford Road, and several car crashes. He stated the condition of approval in the resolution should be considered a starting point as staff is unsure if it is the answer. He stated just recently, the department had a very productive meeting with the licensee, and they would like to commend Cowboy Jack's for being attentive and responsive.

Councilmember Johnson suggested to the licensee that they keep their kitchen open later. She asked about training for the wait staff. Police Chief Goldstein replied the licensee trains their staff, and the majority of the incidents are occurring later in the evening.

Councilmember Carroll inquired how the number of five POLD events in a three-month consecutive period was determined as part of the condition noted in the resolution. Police Chief Goldstein replied it's arbitrary and it's a starting point. There are fines that could be instituted, suspensions and revocations, but staff believes in progressive discipline. The number of allowed incidents is open for discussion.

Mayor Slavik opened the public hearing.

Dennis Johnson, attorney for the licensee, advised he recently got involved in the issue. The licensee's food to liquor ratio is 50% which was audited by a certified public accountant. There is a full menu until midnight and pizza is served from midnight to 2 a.m. They use instructor Bob Poplin for staff training. He does courses for underage drinking and over serving. He understands there is still an issue and they would like to work with the City. He is not sure that five POLD incidents in a three-month consecutive period are manageable. The system sounds good, but it is very subjective to use as a benchmark to revoke a liquor license. They would like to figure out what they can do better to solve the problem and to provide input.

Councilmember Prom asked about their current policy and procedures for over serving. Brian Asmus, owner/manager, addressed the Council regarding over service. The managers and security get involved once the servers believe someone is overly intoxicated. They try and keep them in the establishment, give them water and food, or call for a taxicab.

Councilmember Prom inquired if that is a written policy. Mr. Asmus replied yes. They average from two to nine customers over a weekend that become overly intoxicated. However, it's a fine

line because the patron looked O.K. when they came in the door, but had been drinking heavily before or using other substances.

Councilmember Prom inquired if they utilize a breathalyzer. Mr. Asmus replied no. Mayor Slavik cautioned against using licensees using their own breathalyzers, because they aren't the same type the Police Department uses. In addition, they might not be accurate which could cause many other problems if people think they can drive when they shouldn't be.

Councilmember Johnson asked for suggestions from Mr. Asmus on how to improve their practices. Mr. Asmus replied that their average BAC was .17 on the report, but they can only go by how someone is acting or behaving. It's not always clear how intoxicated someone is. However, they can do a better job, and they'll begin to work closely with the Police Department.

Mr. Johnson stated he hadn't heard about the POLD program until last Wednesday nor did he see the proposed resolution until then. He needs more time to look into the program and resolution.

Councilmember Johnson asked Mr. Johnson what Council action they're requesting this evening. Mr. Johnson replied the licenses be issued with no condition, and they would work with the City to change things. He's troubled with the number of allowable incidents in the condition.

City Attorney Mattick stated when the licenses are renewed tonight, the Council needs to approve any conditions at that time. If the threshold is met in the proposed condition, the licensee would come back to the Council. The condition doesn't state that there would be an automatic punishment or revocation.

Councilmember Willis feels there are management problems. He hopes someone doesn't get killed. He thinks the condition of five incidents is too many.

Councilmember Beard asked if any comments were received from residents and businesses from the notice of hearing that was sent. Rick Plessner, the landlord for Inland Real Estate and Cowboy Jack's, stated they only received the notice of hearing. They didn't receive the proposed resolution with the condition.

Police Chief Goldstein stated they didn't include complaints from neighbors regarding traffic and noise in the incidents count provided in the report. They couldn't assign that just to Cowboy Jack's as it is a commercial area.

Councilmember Carroll asked Mr. Asmus to explain the type of atmosphere at Cowboy Jack's. Mr. Asmus stated it's a hometown bar and restaurant with a comfortable and inviting setting. They see a lot of the same people.

Councilmember Carroll asked why the kitchen closes at midnight. Mr. Asmus replied that they do not see a lot of big food orders after midnight.

Mayor Slavik inquired if bartenders are still on top of the bar pouring alcohol into mouths. Mr. Asmus advised they have not done that for three years. The drink that was previously used to pour into mouths was 95% watered down and it was about having fun, not getting drunk.

Councilmember Johnson inquired if he has shot girls. Mr. Asmus replied no.

Councilmember Johnson inquired about their happy hours. Mr. Asmus replied they have an early happy hour from 3 p.m.-6 p.m. and a late one from 10 p.m.-midnight which includes \$2 domestics, \$2 rails and half priced appetizers.

Sheila Nesbitt, 917 Ludwig Avenue North, Champlin, provided information on the POLD project. The purpose of the program is to address impaired driving in the community. They worked with local police departments to develop the system and currently it's being used in 10 police departments in Minnesota. She thanked Plymouth for being a leader with the project.

Mr. Plessner stated Cowboy Jack's is a main anchor in that commercial area as sales for all his tenants increased when they opened. He requested removing the condition in the resolution and replacing it with a condition to work together with the Police Department and Cowboy Jack's to address the issues.

Mayor Slavik closed the public hearing.

Councilmember Carroll asked what condition the licensee would prefer. Mr. Johnson replied they would like a condition that states they should meet again in three months.

Motion was by Councilmember Willis, and seconded by Mayor Slavik to adopt a Resolution approving the renewal of on-sale and Sunday liquor licenses for The After Midnight Group III, Inc. d/b/a as Cowboy Jack's at 4120 Berkshire Lane North (Res2015-035).

Mayor Slavik clarified that staff reports, resolutions, etc., are not included with public hearing notices.

Councilmember Carroll asked the licensee if they have an alternative to the condition. Mr. Johnson replied he would need to discuss with his client, but he would prefer a condition that states they have a goal of not more than five incidents in three consecutive months, and they come back to the City after three months to discuss.

An amendment motion was made to the motion by Councilmember Willis, and seconded by Mayor Slavik, to amend the last sentence in the condition in the resolution to state, "no more than *three* occasions within any consecutive three month period."

Mayor Slavik feels Cowboy Jack's is getting a lot more of the City's resources by the Police Department by having to respond to so many calls. She doesn't want the Police Chief to essentially babysit this business. She stated the Police Chief just met with the licensee in

December and since then, there have been two incidents with someone being transported to detoxification facility and another to Hennepin County Medial Center.

Councilmember Johnson inquired what happens if they have four occasions within the first two months, will they come back to Council right away or after the three month period. Police Chief Goldstein replied it would be after the entire three month period per the City Attorney.

Councilmember Johnson stated she's concerned that the licensee won't be calling the police when they need assistance as they don't want incidents recorded against them. Police Chief Goldstein stated that staff will review the incidents, be reasonable, and exclude calls that are beyond the licensee's control.

Motion was made by Councilmember Johnson, seconded by Councilmember Willis to add language to the condition to state, "If calls for assistance are initiated by the licensee in order for them to accomplish their goals to operate a successful business, the Police Department will review the incidents and exercise their discretion in whether the incidents would be counted against the licensee."

The Council voted on the amendments to the main motion and with all members voting in favor, the motion carried.

Councilmember Prom stated he would like to view the written procedures on over serving of customers from the licensee.

The Council voted on the amended main motion and with all members voting in favor, the motion carried.

(7.02) Easement Vacation of a Drainage and Utility Easement on Lot 9, Block 1, The Willows Second Addition and Lot 2, Block 1, The Willows Third Addition

Public Works Director Cote reported that the request is for a portion of a drainage and utility easement in The Willows development. Staff didn't receive this request through the normal process but rather through a complaint from one neighbor about another neighbor parking his boat in the easement. Staff doesn't have a recommendation on this item. The applicant resides on Lot 9 of Block 1 in the Second Addition of The Willows. The property to the east was developed and sanitary sewer was extended and they platted an easement over the entire remaining portion. The property line was adjusted between the homeowners and the easement runs near the property line. Parking on an easement is not permitted by the City Code, and the resident was requested to move the boat. The owner submitted a request to vacate the easement so they could park their boat there. They received no objections from the utility companies and the staff has no objections. Staff has no compelling reason to retain the easement and they find no reason that the vacation would only benefit one resident.

Councilmember Willis inquired if the easement is paved. Public Works Director Cote replied there was a gravel access road to service the manhole in the southeast corner of the property, but

since that time, the property owner has paved it along with a large area of their backyard. Community Development Director Juetten added there are no impervious surface maximums outside of the shore land area.

Mayor Slavik opened the public hearing.

Dmitry Shtulman, applicant, stated the grade of the hill was steep because of the erosion that was occurring and the rain water washed out the gravel road. They took it upon themselves to improve the area and pave it. The neighbor that issued the complaint regarding the parking of his boat, has recently sold their house and relocated.

Mayor Slavik declared the public hearing closed.

Motion was made by Councilmember Willis, seconded by Councilmember Prom to adopt a Resolution Approving the Vacation of a Drainage and Utility Easement within Lot 9, Block 1, The Willows Second Addition and Lot 2, Block 1, the Willows Third Addition (Res2015-036). With all members voting in favor, the motion carried.

General Business

(8.01) Ordinance Amending Section 1015.33 of the City Code regarding Water, Sanitary Sewer, Water Resources, and Solid Waste Fees

(8.01A) Ordinance Amending Section 1015.19 of the City Code regarding Water and Sewer Area and Connection (REC) Charges

Finance Manager Bursheim reported on the Utility Rate Study and the Utility Trunk Study with rate adjustment recommendations.

Motion was made by Councilmember Willis, second by Councilmember Prom to adopt an Ordinances Amending Section 1015 of the City Code Concerning Utility Fees (Ord2015-05 and Ord2015-06) and a Resolution Approving Utility Rate Increases and Elimination of Future Enrollment to the Senior Sewer Discounted Rate Program (Res2015-037). With all members voting in favor, the motion carried.

(8.02) Proposal from Wenck Associates, Inc. for Medicine Lake Water Level Study

Water Resources Manager Asche reported Wenck Associates would conduct a study on water levels in Medicine Lake. The watershed has tried to provide some reports and statistics; however, those reports do not address the concern. The cities of Medicine Lake and Plymouth would share the cost of the study. He noted there is no funding source identified for the City's share of the study.

Councilmember Johnson asked what they are ultimately working towards. Water Resource Manager Asche stated the study would give insight into if they are able to provide for recreation in the summer months on the lake. The dam is owned by Hennepin County and in the mid 1990's it was agreed upon that it would be their responsibility to maintain.

Councilmember Johnson inquired if the Three Rivers Park District is involved. Water Resources Manager Asche replied he didn't receive a response from them.

Mayor Slavik asked why the City would be involved with this project when the City doesn't do improvements for recreation issues, just water quality issues. This could set a precedent for the City to eventually conduct studies on all the lakes in the community, and she doesn't support using water quality funds for recreation issues.

Water Resources Manager Asche advised that more than 50% of the residents residing on Medicine Lake would need to approve an application and 100% of the owners would need to agree to a change. Mayor Slavik added that based on correspondence she has received, there is an expectation that something will be done, but that is not the intent tonight.

Water Resources Manager Asche advised modifying the outlet to Medicine Lake is one of the seven components. Staff would add that raising water levels on the lake can create infrastructure issues.

Councilmember Carroll asked about historical trends on the water level of Medicine Lake. Water Resources Manager Asche stated the trend for Medicine Lake is that it discharges in April, May, and June, and what adds to the recreation problem is the lake is very shallow on the edges and a 12" drop that creates an issue.

Councilmember Prom noted they have spent a lot of money to try and meet the water clarity and treating curly leaf. Addressing this issue will also help with water quality. Everyone is focused on it being a recreational issue but there is a lot of cross over between water clarity and recreation. If there is a way there could be same level of water flowing, the water clarity will be much better. Therefore, he supports the study.

Councilmember Beard stated that she supports the study as it looks at a number of solutions, not just one.

Councilmember Carroll inquired if other parties were interested in being included with the study. Water Resources Manager Asche replied the options would be different for different stakeholders.

Councilmember Johnson inquired if everyone agrees on the issue. Water Resources Manager Asche replied the component of having 100% of the owners in agreement creates a near impossibility.

Councilmember Prom feels the issue is late season evaporation and this study would give them the most cost effective means to address the issue. It would help recreation, but also provide clean up late in the season.

Water Resources Manager Asche stated that Parkers Lake is connected and feeds into Medicine Lake. Ponds discharge to the creeks and the creeks into the lakes. Once it stops raining the ponds and creeks stop discharging. His concern is that the ponds that are adjacent to the lake will become less effective the higher the water is in Medicine Lake.

Councilmember Johnson stated the City will then receive complaints from the people near the wetlands that those water levels have gone down.

Councilmember Carroll stated it seems the study is a solution in search of a problem.

Mayor Slavik feels this study would be a policy shift. She suggested the Council have a study session on this item.

Councilmember Willis suggested the funding for the study come from the 2014 general fund surplus, but if Councilmembers desire additional time to review it, he supports scheduling a study session.

Gary Holter, Mayor of Medicine Lake, stated he agrees with the comments expressed this evening, and he encouraged the Council's support of the project.

Len Biggs 10920 32nd Avenue North, stated he is a stakeholder and they would like to maintain the level, not raise it. Everyone has mentioned it is a recreational issue, but when that lake level goes down, the lake smells.

Russ Andrews, 10508 South Shore Drive, urged the Council to support the study.

Pamela Haselbring, 10420 South Shore Drive, stated she lives right where Basset Creek begins and she feels that maintaining the lake level a great solution. Over the years the lake levels have decreased. Swimmers get swimmers itch from the lake, there are a lot of duck droppings, and last year there were approximately 200 dead fish on the other side of the creek. She supports a cleaner lake.

Eric Moe, 10340 South Shore Drive, advised the dead fish are a problem and once the lake stops flowing into Basset Creek, the fish die. He feels it is a quality of life issue. The lake in the later part of the year is unusable with the dead fish, swimmers itch and algae. He would like to see the level maintained, not risen.

Greg Wagner, 2534 West Medicine Lake Drive, agreed that they want to maintain the level of the lake.

Motion was made by Mayor Slavik, and seconded by Councilmember Johnson, to place this item on the set future study session list. With all members voting in favor in the motion carried.

(8.03) Vacancy on the Planning Commission

The Council directed staff to advertise the unexpired term of an At Large seat on the Planning Commission.

Reports and Staff Recommendations

The Council received a brief legislative update from City Manager Callister. He provided the schedule for the meetings with the legislative delegation on January 28.

Adjournment

Mayor Slavik adjourned the meeting at 10:22 p.m.



Sandra R. Engdahl, City Clerk