



**200 Center Avenue South  
Montrose, Minnesota 55363**

## **CITY COUNCIL MINUTES**

**March 9, 2009**

Pursuant to call and notice the Montrose City Council met in regular session on Monday, March 9, 2009, at 7:00p.m. Those present were Mayor Andy Kauffman, Council Members Ryan Andreae, Scott Jensen, Sharon Knodel and Jeff Petersen. Also present were Kyle Hartnett, city attorney, Brad DeWolf, city engineer, Bob Kirmis, city planner, Sean Diercks, public works director, Wendy Manson, deputy clerk and Barb Swanson, city administrator.

Mayor Kauffman read a statement.  
Council Member Jensen read a statement.

### **Open Forum**

Jennifer Simmons, Evan Siljander and Bob Chantland spoke during open forum there was no action taken.

### **Agenda**

Motion by Knodel, seconded by Petersen, to approve the amended agenda which included the addition of Garfield Avenue Easement Agreement and an addition to the accounts payable for \$25,713.75 to Johnson, Larson, Peterson and Matt. Carried 5-0.

### **Consent Agenda**

Motion by Petersen, seconded by Jensen to approve the consent agenda which included:

- A. Minutes: February 9, 2009
- B. Accounts Payable: March 9, 2009, \$140,223.82, plus \$25,713.75  
Fire Department: March 9, 2009: \$2,961.88
- C. Request for council Action Policy: change to form
- D. February utility adjustments
- E. Closed session 2/9/09: Statement regarding Barb Swanson performance review.

F. Garfield Avenue Easement Agreement  
Carried 5 – 0.

### **2009 City Council Goals**

Motion by Andreae, seconded by Knodel to adopt Resolution 2009-06 Adopting the 2009 Ongoing, External and internal Goals and to amend ongoing goals to say "more with less". Carried 5-0.

### **2009 Data Request Summary**

Swanson prepared a report at the request of the city council summarizing the 2009 data requests. This report will be updated monthly.

### **Federal Stimulus**

Brad DeWolf, city engineer, discussed the federal stimulus package. The Minnesota Public Facilities Authority has received funds for drinking water projects including funds for well houses and wells which are of particular interest to Montrose. At this time it is not known if there will be funds for water tower repair.

### **Safe Routes to School**

DeWolf also discussed the grant the city received to extend trails along US Highway 12 and MN 25 South. Right of way along MN 25S is still an issue. DeWolf has been working with Mn/DOT to find a resolution to the problem. Mn/DOT would like curb and gutter installed along MN 25 South. There is a Local Initiative Program that provides up to \$1,000,000.00 in grant dollars that could be used for curb and gutter. Those funds will not be available until 2010.

Mn/DOT is aware of the problems related to the project. The timeline related to the Safe Routes to School grant of \$175,000.00 is not a concern at this time.

### **Fire Department**

Mike Marketon, Fire Chief, reported that the department received 7 more calls this year-to-date than in 2008, a total of 19 calls.

The 800 MHz radios have been ordered and expected to be delivered by the end of March 2009.

The Fire Department received a \$66,000.00 FEMA grant that will be used to purchase 14 air packets; complete units with masks.

The Montrose Fire Department has received a total of \$135,072 in grants from January 1, 2008 through March 2009.

Marketon spoke to remarks regarding the Firemen's Relief Associations' raffle for a 4-wheeler. Marketon won the 4-wheeler. He purchased raffle tickets and was

not involved in the raffle. Kyle Hartnett, city attorney, emphasized that there were not any ethical violations.

### **Park Commission**

Mayor Kauffman updated the city council on park activities. On May 30<sup>th</sup> the Park Commission working with the Community Pride Committee will be sponsoring a city-wide garage sale and a plant swap and sale at Veterans Park

The Park Commission will be working with the Public Works Department to build volleyball courts in Northridge Park this summer.

### **Meadow Brook Cottages**

The Planning & Zoning Commission held a public hearing on February 18, 2009 to address a request to amend the Planned Unit Development (PUD) for Meadow Brook Cottages. City Planner, Bob Kirmis, presented the report:

<b>MEMORANDUM</b>
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**TO:** Montrose Mayor and City Council  
**FROM:** Bob Kirmis, City Planner  
**SUBJECT:** Meadow Brook Cottages PUD Amendment  
**DATE:** February 19, 2009

### **INTRODUCTION**

At the February 18, 2009 meeting of the Planning Commission, a public hearing was held to consider a Planned Unit Development (PUD) amendment application of Hirsch Investments to allow a modification to the previously approved development plan for the "Meadow Brook Cottages" project.

The "Meadow Brook Cottages" project was approved by the City Council in the winter of 2006. The approved project consists of a 48 senior housing units upon a 10 acre site located north of the Burlington Northern - Santa Fe rail line and east of Clementa Avenue. Specifically, the approved development is comprised of 16 single unit "villas", one eight-unit townhouse and 24 assisted living units (within a single building).

At this time, the applicants wish to amend the PUD to allow a nine bedroom advanced care facility to occupy that area of the site originally planned for an eight unit townhome building (in the northwest corner of the site along Clementa Avenue). The care facility would occupy the same general building footprint as the previously approved townhome

building. No other substantial modifications to the previously approved plans are proposed.

Background information related to this application is provided in our office's planning report dated January 27, 2009. Additional comments are provided in the City Engineer's memorandum dated January 27, 2009.

## **DISCUSSION**

Public testimony at the Planning Commission meeting was limited to one area resident who is not in favor of the PUD amendment application. The area resident questioned whether all the conditions of the previously approved PUD had been satisfied, particularly in regard to landscaping. The resident also maintained that her property values have been negatively impacted by the project.

The Planning Commission posed several questions for the applicant. Specific information was requested in regard to the following:

- Traffic/care facility deliveries
- Resident qualifications
- Resident supervision
- Emergency exits
- Job creation

Based on the provided background information, the recommendation of City staff and the evidence received at the meeting, the Planning Commission has recommended approval of the PUD amendment subject to the following conditions as amended from our office's planning report dated January 27, 2009 (changes from the referenced report are highlighted):

1. A maximum of ten care facility residents shall be allowed.
2. The care facility should be staffed on a 24 hour basis.
3. The previously approved site plan (which encompasses the entire site) be modified to reference the proposed nine bedroom advanced care facility.
4. On-street parking along the adjacent private drive (north of the care facility) is prohibited.
5. The building elevations be modified specify building color. The building color (or colors) shall be compatible with other site structures as determined by the City.

6. The applicant clarifies whether brick, cultured stone, or both are to be utilized as building finish materials.
7. The building is provided an entrance canopy as illustrated on the submitted site plan and building elevations (identified as “alternative entry”).
8. The site plan is modified to illustrate a specific trash handling area. If trash is to be stored outdoors, the receptacle shall be screened from view of Clementa Avenue and neighboring properties in a manner consistent with ordinance requirements.
9. The applicant address property maintenance responsibilities to the satisfaction of the City. This issue shall be subject to further comment by the City Attorney.
10. Either the distance between the proposed spruce trees and care facility building be increased (to accommodate full growth) or alternative plantings be substituted.
11. Plantings be provided on the west side of the building, particularly the southwest corner of the building to enhance the appearance of the building from adjacent Clementa Avenue.
12. All signage comply with applicable provisions of the City’s sign ordinance.
13. The City Engineer provide comment and recommendation in regard to grading, drainage and utility issues.
14. The applicant enter into a PUD amendment agreement with the City and post all the necessary securities required by it. This issue shall be subject to further comment by the City Attorney.
15. **Prior to building permit issuance, the conditions of the original PUD approval (2006) are determined to be satisfied.**

### **ACTION REQUESTED**

Approval of the requested PUD amendment subject to the preceding conditions.

Swanson presented information responding to the questions asked during the public hearing held on February 18, 2009 by the Planning & Zoning Commission.

### **Montrose City Council**

Meeting Date:        March 9, 2009

Subject: Meadow Brook Cottages  
Prepared by: Barb Swanson, administrator

At the February 18, 2009 Planning & Zoning Meeting a public hearing was held regarding a Planned Unit Development Amendment for Meadow Brook Cottages.

During the public comment portion of the hearing the following questions were raised:

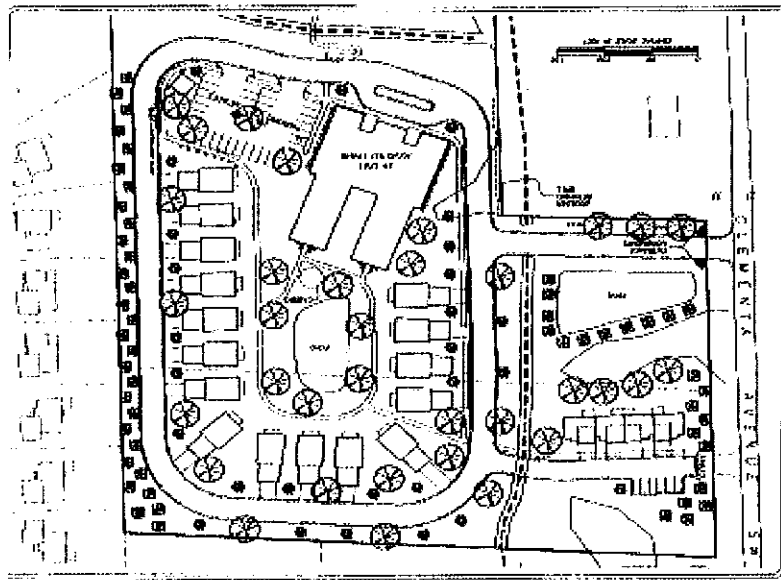
1. Is Hirsch Investment LLP in default of the Meadow Brook Cottages Developer Agreement dated August 22, 2006?

*7. Time of Performance. The Developer shall install all required public improvements, by November 1, 2007 with the final lift of bituminous pavement to be installed by October 15, 2008 or when approved by the City Engineer for installation. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and the extended completion date.*

The city engineer has confirmed that the public improvements have been completed.

2. Is the finished landscaping the same as the submitted and approved plan.

*25. Landscaping. The landscaping on the plat shall be installed in accordance with the City approved Landscaping Plan, "Plan D". The minimum tree size shall be two (2) inches caliper, either bare root in season, or balled and wrapped in burlap. The trees may not be planted in the boulevard. The Developer, builder, or lot owner shall provide not less than six (6) inches of topsoil in required front yards or side yards abutting public rights-of-way. The Developer shall sod or seed all yards on every lot. Where slopes lie in excess of ten (10) percent, sod (staked) shall be required. Weather permitting, the trees, grass seed, and sod shall be planted within 30 days after a Certificate of Occupancy has been issued for a lot. All grass seed shall be maintained such that turf is established within one (1) year of planting. Before a building permit is issued a cash escrow of \$1,500.00 per lot, or such other amount as may be determined by the City from time to time, shall be furnished the City to guarantee compliance with the landscaping requirements. If the landscaping is not timely completed, the City may enter the lot, perform the work, and apply the cash escrow toward the cost. Upon satisfactory completion of the landscaping the escrow funds, without interest, less any draw made by the city, shall be returned to the person who deposited the funds with the City.*



While the landscape plan may not have been followed exactly as it was proposed Hirsch Investments have planted 28 trees in a single line, not a staggered line, along the back property line. The trees are planted along the top of a boulder retaining wall providing greater privacy for the adjacent residents than the original plan with the trees at driveway level.

The landscape plan calls for 52 evergreens over 60 have been planted. The remaining plantings which include shrubs, ornamental trees and over-story trees will be completed as construction of the cottages, 24 unit building and the proposed 9 bed unit are completed.

**3. Is the developer in default of Article III of the Development Agreement related to tax increment financing?**

## ARTICLE III

### UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1 Site Improvements and Project. The parties agree that the Site Improvements to be constructed by the Developer are essential to the successful completion of the Project. The costs of the Development Property and the construction of Site Improvements and the Project shall be paid by the Developer. The City shall reimburse the Developer for the lesser of \$1,192,500 or costs of the Development Property and the construction of Site Improvements and the Project actually incurred and paid by the Developer (the "Reimbursement Amount"), as further provided in Section 3.2 hereof. The Developer has deposited \$10,000 with the City to pay Legal and Administrative Expenses.

Section 3.2 Reimbursement: Tax Increment Revenue Note. The City shall reimburse the payments made by the Developer under Section 3.1 for costs of the Development Property and the construction of Site Improvements and the Project through the issuance of the City's Tax Increment Revenue Note in substantially the form attached to this Agreement as Exhibit B, subject to the following conditions:

(1) The Note shall be dated, issued and delivered when the Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the construction of the Site Improvements and the Project has been completed and that the Developer has incurred and paid all costs of the Development Property and the construction of Site Improvements and the Project, as described in and limited by Section 3.1 and shall have submitted a settlement statement for the Development Property paid invoices for the costs of construction of the Site Improvements and the Project in an amount not less than the Reimbursement Amount.

(2) No interest shall be paid on the Note. Principal shall mature as provided in the Note.

(3) The principal amounts of the Note shall be payable solely from the Tax Increments.

(4) The payment dates of the Note shall be the Note Payment Dates. The Developer shall submit a statement to the City on or before each January 1 and July 1, commencing on July 1, 2008, setting forth the principal amount of the Note due on the following February 1 or August 1 as appropriate, shall include with the statement a Compliance Certificate covering a period commencing on June 1 of the immediately preceding calendar year and ending no later than December 1 of the same year or December 1 of the immediately preceding calendar year and ending no later than June 1 of the current year (whichever is the most recent date prior to submission of the statement), and executed by the Developer. On each Note Payment Date and subject to the provisions of the Note, the City shall pay, against the principal then due on the Note, any Tax Increments received by the City during the preceding 6 months.

(5) Notwithstanding anything herein or in the Note to the contrary, the City shall be under no obligation to apply or pay the Tax Increments to the payment of the Note any earlier than 30 days after it has received the Developer's statement required by paragraph (4) above.

Failure of the Developer to submit the Developer's statement in the time frame required by paragraph (4) above shall not prevent the Developer from obtaining the payment from the City upon eventual submission of the required documents.

(6) The Note shall be a special and limited obligation of the City and not a general obligation of the City, and only Tax Increments shall be used to pay the principal of the Note.

(7) The City's obligation to make payments on the Note on any Note Payment Date or any date thereafter shall be conditioned upon the requirement that (A) there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement and (B) this Agreement shall not have been rescinded pursuant to Section 4.2(2).

(8) The Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the Note and the terms of this Section 3.2, the terms of the Note shall govern. The issuance of the Note pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as bond counsel for the Note may require in connection therewith, are hereby authorized and approved by the City.

### Section 3.3 Compliance with Low and Moderate Income Requirements.

(1) The City and the Developer understand and agree that the Tax Increment District will constitute a "housing district" under Section 469.174, Subd. 11 of the Tax Increment Act. Accordingly, in compliance with Section 469.1761, Subd. 3 of the Tax Increment Act, the Developer agrees that the Project must satisfy, or be treated as satisfying, the income requirements for a qualified residential rental project as defined in Section 142(d) of the Internal Revenue Code. The parties further agree that no more than 20% of the square footage of the Project (which are the only buildings receiving assistance from Tax Increments) may consist of commercial, retail, or other nonresidential uses. The Developer must meet the above requirements as follows:

(A) At least 20% of the residential units in the Project must be occupied or available for occupancy by persons whose incomes do not exceed 50% of the County median income; and

(B) At least 60% of the residential units in the Project must be occupied or available for occupancy to persons whose incomes do not exceed 120% of the County median income.

(C) The limits described in clauses (A) and (B) must be satisfied through the Termination Date. Income for occupants of units described in clause (A) shall be adjusted for family size in accordance with Section 142(d) of the Internal Revenue Code and related regulations.

(2) On or before each January 1 and July 1, commencing on January 1, 2008, the Developer or an agent of the Developer must deliver or cause to be delivered to the City written evidence satisfactory to the City of compliance with the covenants in this Section. This evidence

The city has not distributed any Tax Increment Financing funds to Hirsch Investment LLP.

Motion by Petersen, seconded by Jensen, to approve the PUD amendment with the conditions presented by the Planning Commission. Carried 5-0.

### **Identity Theft Program**

Sean Diercks reviewed the Identity Theft Program. There was brief discussion to add instruction about redacting personal data.

Motion by Kauffman, seconded by Jensen, to adopt the Identity Theft Program and adding No. 33 redact personnel data before dissemination. Carried 5-0.

### **MPCA Certificate of Commendation**

Sean Diercks and Dan Remer, on behalf of the City of Montrose, received a Certificate of Commendation from Minnesota Pollution Control Agency for the period of October 1, 2007 through September 30, 2008.

### **Complaints against city staff**

Kyle Hartnett has received numerous complaints against city staff. In 2008 a policy was developed to handle these types of complaints. The policy does not suit the number of complaints received, therefore, Hartnett requested that the policy be reviewed.

Motion by Jensen, seconded by Kauffman, to table all complaints against city council and administrator. Carried 5-0.

This item will be continued at the next council meeting.

### **Highway 12 Redevelopment Committee**

Mary McCarty and Sylvia Henry updated the city council on the activities of the Highway 12 Redevelopment Committee. The committee requested proposals focusing on long term planning, development and aesthetics along the highway 12 corridor. They will make their final selection at the next meeting of the Highway 12 Redevelopment Committee



March 4, 2009

Mayor Kauffman, Members of the City Council  
Barb Swanson, City Administrator  
City of Montrose  
311 Buffalo Ave S.  
PO Box 25  
Montrose MN 55363

**Re: Highway 12 Task Force Update**

Dear Mayor Kauffman, Members of the City Council and Administrator Swanson:

The purpose of this letter is to provide the Council with an update on the status of activities and plans of the Highway 12 Task Force and present two requests from the Task Force.

I am enjoying working with this 13-member volunteer committee which has been working on the development of a Highway 12 Redevelopment Plan since March 28, 2008. Following is a summary of activities completed during the past year:

- Conducted meetings with the City Engineer to gain understanding on the future plans for Highway 12 including future widths, future traffic control, typical light spacing, scope of the Safe Routes to School grant, etc.
- Conducted meetings with two streetlight companies to gain an understanding on various types of ornamental streetlights, lighting options (high pressure sodium, metal halide, LED), types of poles, and on-going maintenance concerns.
- Obtained lighting standards from MnDOT for future lighting and information relating to MnDOT's lack of financial participation due to the age of the existing lights.
- Obtained cost estimates of \$2.4 million from Xcel Energy to bury overhead powerlines along Highway 12.
- Identified the physical boundary of Phase I of the Highway 12 project as the area between Zephyr Avenue and Garfield Avenue.
- Sent a letter to all Montrose businesses informing them of the Highway 12 Task Force's mission and desire to improve the aesthetics of the Highway 12 corridor.
- Met with a MnDOT representative, submitted an application and received verbal approval for a grant request to MnDOT's Cooperative Landscape Partnership program for landscape architect services for the areas with the Highway 12 MnDOT right-of-way. A cooperative agreement is anticipated for Council action later this month.
- Identified the physical components desired for the future Highway 12 plan including ornamental streetlights (if/when powerlines are buried), flower pots/hanging baskets, specialized seating areas, water fountains or features, trees, sidewalks with decorative accents and redevelopment areas. Committee members researched each of these categories.
- Obtained input from 14 individuals as a part of the community "Visual Preference Survey" meeting. An additional 18 surveys were submitted since this January 17, 2009 meeting.
- Prepared and distributed a Request for Proposals for urban design services to assist with the completion of the Highway 12 plan. Received and ranked 12 proposals and interviewed four (4) firms. The Task Force is recommending engaging the services of

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[www.municipaldevelopmentgroup.com](http://www.municipaldevelopmentgroup.com) \* [staff@municipaldevelopmentgroup.com](mailto:staff@municipaldevelopmentgroup.com)

one of the firms at the March 9, 2009 EDA meeting. Reference checks are being completed at this time.

The Task Force believes it has provided opportunities for community input during the past year, along with input previously received by the EDA at business meetings, and has researched the various physical components of the plan. Over the next three months, the Task Force will be compiling this information into a draft "Highway 12 Redevelopment Plan" and hopefully (if funded) including visual representations of the Task Force's vision, along with proposed form-based zoning standards.

**Requests:**

1. **Code Enforcement:** The Task Force discussed the City Council's 2008 request for the Task Force to assist in encouraging compliance with city codes such as outdoor storages, etc. A letter was sent to businesses in 2008; however, at the Task Force's request, it was a "soft approach" to requesting assistance with Highway 12 efforts. The Highway 12 Task Force discussed this topic at their February, 2009 meeting and noted they did not feel code enforcement fit within their mission or purpose. The goal is "To enhance the Highway 12 Corridor by creating a unique identity for Montrose that promotes community pride and economic development". The Task Force feels this can not be effectively accomplished with stakeholder support if they are playing the role of an enforcement body. They respectfully request the enforcement be addressed by the City Council or another body.

2. **Urban Design Services.** The Task Force would like to engage the services of an urban design firm. They are requesting \$2500 in funding from the HCP Steering Committee and additional funding from the EDA. The Task Force respectfully requests the support of their recommendation and request for this expenditure, from the City Council. Interviews were conducted on March 3, 2009. Since reference checks are being completed and the final fee being negotiated, the Task Force will present their recommendation at the EDA and Council meetings on March 9, 2009, following completion these items.

If you have any questions relating to the Highway 12 Task Force activities or requests, please feel free to contact me at: 952-758-7399 ext. 1 or [jfoust@municipaldevelopmentgroup.com](mailto:jfoust@municipaldevelopmentgroup.com)

Best regards,

Joanne Foust  
MDG, Inc.

**June Council Meeting**

By consensus the city council changed the June meeting date to Monday, June 15, 2009.

**Great Northern Bar & Grill**

The Great Northern has paid their liquor violation fee, signed the waiver and provided certification that their staff has received training for serving liquor.

**Liquor Violation**

Hartnett recommended amending the liquor ordinance to add a penalty when a fine is not paid within the allotted time. This item will be continued to the April council meeting.

### **Utility Bill Adjustments**

There were two requests for utility bill adjustments by Doug Voerding and Jeff Anderson.

Motion by Petersen, seconded by Jensen to adjust the utility bills for Voerding and Anderson per their requests. Carried 5-0.

Staff was directed to prepare a written policy for utility bill adjustment for the April council meeting.

### **Personnel Committee**

Motion by Knodel, seconded by Petersen, to appoint Scott Jensen to the Personnel Committee and Jeff Petersen to the Highway 12 Redevelopment Committee. Carried 5-0.

The Personnel Committee members are Andy Kauffman, Scott Jensen and Barb Swanson. They will review the policies related to personnel.

### **Landscape Partnership Program**

Motion by Knodel, seconded by Jensen, to adopt Resolution 2009-07 entering into an agreement with Mn/DOT No. 94118 to share in the cost of landscape materials along Trunk Highway No. 12 at the east and west entrance signs. Carried 5-0.

### **Golf Cart Use in Montrose**

Swanson will prepare an ordinance amendment for council discussion and action at the April council meeting.

### **Clean Up Day**

Clean up Day will be held on Saturday, May 2, 2009, at Montrose City Hall from 8:00a.m. until noon.

### **Acknowledgements**

- \$500.00 donation from J & B Meats for National Night Out
- Fire Department for the rescue at Untiedts
- Fire Department for the FEMA grant
- Public Works for the MPCA Certificate of Commendation
- Highway 12 Committee
- Montrose Days Committee for holding a Fish Fry
- Montrose Chiropractic Clinic for holding the Family Healthy Fair

**Adjournment**

Motion by Petersen, seconded by Andreae to adjourn at 8:55p.m. Carried 5-0.

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Mayor Andrew Kauffman

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Barbara C. Thwing-Swanson  
Administrator/Clerk/Treasurer