

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, JULY 10, 2007, 7:30 P.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Johnson at 7:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL.

PRESENT: Mayor Johnson, Council Members Fisher, Betts, Gyllenblad, Wenck.

STAFF: Clerk-Administrator Hirsch, Attorney Vose.

VISITORS: Herman Quaas, Tom Emmer, Bruce Bester, Jim Coleman, John Utley from Kennedy & Graven, LuAnn Brenno, Steve and Cynthia Erickson, Lisa Phillips, Jim Smith.

4. CONSENT AGENDA. APPROVE:

- June 26 Council Minutes.
- July 2007 Accounts Payable.
- One-day Liquor License for Twin City Polo Club.
- Resolution No. 07-0710-01 approving plans and specifications and ordering advertisements for bids for Sunset Lane between Town Line Road and Lake Sarah Heights Drive, Lake Sarah Heights Drive between Sunset Lane and Lake Sarah Heights Circle, and Pagenkopf Road between Independence Road and Becker Road of bituminous overlay and leveling.

Motion by Fisher, second by Wenck to approve the consent agenda. All present voted aye. MOTION CARRIED.

5. SET AGENDA. ANYONE NOT ON THE AGENDA MAY BE PLACED UNDER OPEN/MISCELLANEOUS.

Herman Quass re. Highway 12.

6. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF.

Wenck: LMC Conference in Duluth.

Betts: Sensible Land Use.

Fisher: Sensible Land Use, Planning Commission.

Mayor; Big 3 LMC Executive Committee with Exec. Committee for School Board and County Associations., Highway 55 Coalition, Finance Committee meeting for CAPSH, conference meetings for WECAN, Greater Lakes Food Bank Board meeting, budget meeting for Metro Waste Commission, Delano Senior Center 25-year Anniversary luncheon and Saturday pancake breakfast, City budget meeting, Land Use Advisory Committee for Met Council, met with Clerk Hirsch, Earl Taylor, Jim Dillman from Medina, Historical Society looking for suggestions for dealing with mold in our old Town Hall building, the free concert in the park at Pioneer Creek Park, Met Council meeting re. history of the organization, LMC Conference in Duluth including the Personnel meeting, Board meeting, and Governance Committee meeting, went to Sound of Music at Rockford by Orono and Rockford Community Ed., Delano Independence Day Parade, WECAN Board meeting, Orono School Board meeting, LMC Committee on Improving Local Economies.

Clerk Hirsch: MN Historical Society, LMC Conference in Duluth.

7. APPROVE RESOLUTION NO. 07-0710-02 AUTHORIZING THE ISSUANCE AND SALE OF A FACILITY REVENUE NOTE, SERIES 2007, IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,300,000 AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS AND DIRECTING DELIVERY THEREOF AND PROVIDING FOR THE SECURITY, RIGHTS AND REMEDIES OF THE HOLDERS OF THE FACILITY REVENUE NOTE.

Mayor Johnson stated that we had the public hearing on this at the last council meeting. Gyllenblad would like the funds we receive from this to be designated to the Parks Fund.

Motion by Betts, second by Fisher to approve

RESOLUTION NO. 07-0710-02

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF A FACILITY REVENUE NOTE (OPPORTUNITY PARTNERS PROJECT), SERIES 2007, IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,300,000; AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS AND DIRECTING DELIVERY THEREOF; AND PROVIDING FOR THE SECURITY, RIGHTS, AND REMEDIES OF THE HOLDERS OF THE FACILITY REVENUE NOTE.

BE IT RESOLVED by the City Council of the City of Independence, Minnesota (the "City"), as follows:

1. The City has received a proposal from Opportunity Partners, Inc., a Minnesota nonprofit corporation (the "Borrower"), that the City undertake to finance the Project described herein pursuant to Minnesota Statutes, Sections 469.152 to 469.165, as amended (the "Act"), through the issuance by the City of its Facility Revenue Note (Opportunity Partners Project), Series 2007 (the "Note"), in the original aggregate principal amount of \$3,300,000.

2. The proposed project consists generally of the renovation of an existing 100,000 - square foot office, training and production facility and the construction of a 7,500 - square foot addition to the facility (the "Project"), located at 5500 Opportunity Court in the City of Minnetonka, Minnesota (the "City of Minnetonka"). The Project will be owned and operated by the Borrower. Pursuant to the requirements of the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the City Council of the City of Minnetonka conducted a public hearing on the Project on June 25, 2007. Following the public hearing, the City Council of the City of Minnetonka adopted a resolution approving the issuance of the Note by the City to finance the Project. Pursuant to the requirements of the Act and Section 147(f) of the Code, the City Council of the City conducted a public hearing on the Project and the issuance of the Note on June 26, 2007.

3. The Note is hereby authorized to be issued by the City, in the original aggregate principal amount of \$3,300,000, and sold to Wells Fargo Bank, National Association (the "Lender"), upon the terms and conditions set forth in this resolution and in the Note.

4. It is proposed that, pursuant to a Loan Agreement, dated as of June 1, 2007, between the City and the Borrower (the "Loan Agreement"), the City will lend the proceeds derived from the sale of the Note to the Borrower to finance the costs of the Project and to pay a portion of the costs of issuance of the Note. The loan repayments to be made by the Borrower under the Loan Agreement are fixed so as to produce revenues sufficient to pay the principal of, premium, if any, and interest on the Note when due. It is further proposed that the City assign its rights to the loan repayments and certain other rights under the Loan Agreement to the Lender as security for payment of the Note under the terms of an Assignment of Loan Agreement, dated as of June 1, 2007 (the "Assignment of Loan Agreement"), between the City, the Lender, and the Borrower. The Note, the Loan Agreement, and the Assignment of

Loan Agreement shall be substantially in the forms on file with the City, which are hereby approved, with such necessary and appropriate variations, omissions, and insertions as do not materially change the substance thereof, or as the Mayor of the City (the "Mayor") and Clerk-Administrator of the City (the "Clerk-Administrator"), in their discretion, shall determine, and the execution and delivery thereof by the Mayor and Clerk-Administrator shall be conclusive evidence of such determination.

5. The City Council of the City hereby finds, determines, and declares the following.

(a) Under Section 469.155, subdivision 9, of the Act, two or more municipalities may enter into an agreement whereby one municipality issues its revenue bonds in behalf of one or more other municipalities pursuant to revenue agreements with the same or different contracting parties. Under the terms of a Cooperation Agreement, dated as of June 1, 2007, between the City and the City of Minnetonka (the "Cooperation Agreement"), the City and the City of Minnetonka will agree that the City shall issue the Note in behalf of the City of Minnetonka to finance the properties, real or personal, comprising the Project that are to be used or useful in connection with a revenue producing enterprise.

(b) The Loan Agreement provides that the Borrower is required to pay loan repayments which are fixed to produce revenues sufficient to provide for the prompt payment of principal of, premium, if any, and interest on the Note when due, and all expenses of the operation and maintenance of the Project, including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and all taxes and special assessments levied upon or with respect to the Project and payable during the term of the Loan Agreement.

(c) Under the provisions of the Act, and as provided in the Loan Agreement, the Note is not to be payable from or charged upon any funds other than the revenues pledged to the payment thereof. The City and the City of Minnetonka are not subject to any pecuniary liability thereon and no holder of the Note shall ever have the right to compel any exercise by the City or the City of Minnetonka of their respective taxing powers to pay any principal of the Note or interest or premium thereon, or to enforce payment thereof against any property of the City except the interests of the City in the Loan Agreement which have been assigned to the Lender under the Assignment of Loan Agreement. The Note shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City or the City of Minnetonka except the interests of the City in the Loan Agreement which have been assigned to the Lender under the Assignment of Loan Agreement. The Note shall recite that the Note is issued without obligation on the part of the state or its political subdivisions, and that the Note, including interest thereon, is payable solely from the revenues pledged to the payment thereof; and the Note shall not constitute a debt of the City or the City of Minnetonka within the meaning of any constitutional or statutory limitation.

6. The Note, the Loan Agreement, the Assignment of Loan Agreement, and the Cooperation Agreement are directed to be executed in the name and on behalf of the City by the Mayor and the Clerk-Administrator. Any other documents and certificates necessary to the transaction described above, including the Application to the Minnesota Department of Employment and Economic Development for approval of the Project, shall be executed and delivered by the appropriate City officials. Copies of all of the documents necessary to the transaction herein described shall be delivered, filed, and recorded as provided herein and in the Loan Agreement.

7. The City shall proceed forthwith to issue the Note, substantially in the form and upon the terms on file with the City. The offer of the Lender to purchase the Note at a price of par is hereby accepted. Upon approval of the Project by the Minnesota Department of Employment and Economic Development and approval by the City Council of the City of Minnetonka of the issuance by the City of the Note, the Mayor and the Clerk-Administrator are authorized and directed to prepare and execute the Note and to deliver the Note to the Lender.

8. The Mayor, the Clerk-Administrator, and other officers of the City are authorized and directed to prepare and furnish to the Lender and to Kennedy & Graven, Chartered, as bond counsel (the "Bond Counsel") certified copies of all proceedings and records of the City relating to the Note, and such other affidavits and certificates as may be required to show the facts relating to the legality of the Note as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the truth of all statements contained therein.

9. The approval hereby given to the various documents referred to above includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by the officials authorized herein to execute said documents, which approval shall be conclusively evidenced by the execution thereof. The Mayor, the Clerk-Administrator, and other officers of the City are hereby authorized to execute and deliver, on behalf of the City, all other certificates, instruments, and other written documents that may be requested by Bond Counsel, the Lender, or other persons or entities in conjunction with the issuance of the Note and the expenditure of the proceeds of the Note. Without imposing any limitations on the scope of the preceding sentence, such officers are specifically authorized to execute and deliver a certificate relating to federal tax matters including matters relating to arbitrage and arbitrage rebate, a receipt for the proceeds derived from the sale of the Note, a general certificate of the City, and an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038 (Rev. January, 2002).

10. All covenants, stipulations, obligations, representations, and agreements of the City contained in this resolution or contained in the Loan Agreement or other documents referred to above shall be deemed to be the covenants, stipulations, obligations, representatives, and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations, representations, and agreements shall be binding upon the City. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred, and duties and liabilities imposed, upon the City by the provisions of this resolution or of the respective Loan Agreement or other documents referred to above shall be exercised or performed by the City, or by such officers, board, body, or agency as may be required or authorized by law to exercise such powers and to perform such duties. No covenant, stipulation, obligation, representation, or agreement herein contained or contained in the Loan Agreement or other documents referred to above shall be deemed to be a covenant, stipulation, obligation, representation, or agreement of any elected official, officer, agent, or employee of the City in that person's individual capacity, and neither the members of the City Council nor any officer or employee executing the Note shall be liable personally on the Note or be subject to any personal liability or accountability by reason of the issuance thereof.

11. Except as herein otherwise expressly provided, nothing in this resolution or in the Loan Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the City and the registered and beneficial owners of the Note, any right, remedy, or claim, legal or equitable, under and by reason of this resolution or any provision hereof or of the Loan Agreement or any provision thereof; this resolution, the Loan Agreement and all of their provisions being intended to be, and being for the sole and exclusive benefit of the City and the registered and beneficial owners of the Note issued under the provisions of this resolution and the Loan Agreement, and the Borrower to the extent expressly provided in the Loan Agreement.

12. In case any one or more of the provisions of this resolution, or of the documents mentioned herein, or of the Note issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Note, but this resolution, the aforementioned documents, and the Note shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

13. All acts, conditions, and things required by the laws of the State of Minnesota, relating to the adoption of this resolution, to the issuance of the Note, and to the execution of the Loan Agreement and the other documents referred to above to happen, exist, and be performed precedent to and in the enactment of this resolution, and precedent to the issuance of the Note, and precedent to the execution of the Loan Agreement and the other documents referred to above have happened, exist, and have been performed as so required by law.

14. The members of the City Council, officers of the City, and attorneys and other agents or employees of the City are hereby authorized to do all acts and things required by them by or in connection with this resolution and the Loan Agreement and the other documents referred to above for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Note, the Loan Agreement, and the other documents referred to above, and this resolution.

15. If for any reason the Mayor is unable to execute and deliver those documents referred to in this resolution, any other member of the City Council, or any officer of the City duly delegated to act on behalf of the Mayor, may execute and deliver such documents with the same force and effect as if such documents were executed by the Mayor. If for any reason the Clerk-Administrator is unable to execute and deliver the documents referred to in this resolution, such documents may be executed and delivered by any member of the City Council, any officer of the City duly delegated to act on behalf of the Clerk-Administrator, with the same force and effect as if such documents were executed and delivered by the Clerk-Administrator.

16. The Note is hereby designated as a "qualified tax-exempt obligation" for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended. The aggregate amount of tax-exempt obligations, other than private activity bonds that are not qualified 501(c)(3) bonds, to be issued by the City during calendar year 2007 is not expected to exceed \$10,000,000, and no more than \$10,000,000 of such tax-exempt obligations, including the Note, will have been designated by the City as "qualified tax-exempt obligations" during calendar year 2007.

Voting aye: Mayor Johnson, Council Members Fisher, Betts, Gyllenblad, Wenck. Nay: None. Therefore, said resolution was passed and adopted.

Motion by Gyllenblad, second by Fisher to direct Staff to prepare a resolution that these funds be designated to the Parks Fund. All present voted aye. MOTION CARRIED.

Council Member Gyllenblad stated that he would like all funds of this kind in the future to be designated to parks or some other specific use. Mayor Johnson and council members concurred that it was an excellent way to handle these funds, and directed Staff to draft a policy statement for this purpose and present at the next council meeting for discussion.

8. FURTHER CONSIDERATION OF CODE AMENDMENT TO ADD POLO AS A CONDITIONAL USE IN THE AGRICULTURAL ZONE.

Attorney Vose reviewed the history of this request. Fisher stated that he wants the language to be as simple as possible. However, he wonders if we should be dealing with this without a specific request to have a polo field. Mayor Johnson asked if this should go back to the Planning Commission. Attorney Vose advised that legally it would not be required. However, Council could send it back for Planning Commission review. Attorney Vose stated that Polo could be listed as the next letter under conditional uses.

Motion by Wenck to list Polo Grounds of 50 acres or more as a code amendment. Motion died for lack of a second.

Motion by Mayor Johnson, second by Betts to add Polo Grounds as a Condition Use, and to go back to Planning Commission for review. All present voted aye. MOTION CARRIED.

9. OPEN/MISCELLANEOUS.

Mr. Quaas, from Minnetrista, is concerned with access to Highway 12 and with the new corridor being built between Long Lake and Maple Plain. He is particularly concerned that people won't be able to cross Highway 12 in Maple Plain at the County Road 19/Budd Street intersection.

10. Motion by Betts, second by Fisher to adjourn. All present voted aye. MOTION CARRIED. Meeting adjourned at 8:15 p.m.

Respectfully submitted,

Mollie Little, Recording Secretary