

***REGULAR ANDOVER CITY COUNCIL MEETING – JANUARY 17, 2023  
MINUTES***

The Regular Bi-Monthly Meeting of the Andover City Council was called to order by Mayor Sheri Bukkila, January 17, 2023, 7:00 p.m., at the Andover City Hall, 1685 Crosstown Boulevard NW, Andover, Minnesota.

Councilmembers present: Jamie Barthel, Ted Butler, Randy Nelson, and Rick Engelhardt

Councilmembers absent: None

Also present: City Administrator, Jim Dickinson  
Public Works Director/City Engineer, David Berkowitz  
Community Development Director, Joe Janish  
City Attorney, Scott Baumgartner  
Others

***PLEDGE OF ALLEGIANCE***

***RESIDENT FORUM***

No one came forward for Resident Forum.

***AGENDA APPROVAL***

***Motion*** by Nelson, Seconded by Barthel, to approve the Agenda as presented. Motion carries unanimously.

***APPROVAL OF MINUTES***

*January 3, 2023 Regular Meeting Minutes*

***Motion*** by Barthel, Seconded by Nelson, to approve the January 3, 2023 Regular Meeting Minutes as presented. Motion carries unanimously.

**CONSENT ITEMS**

- Item 2 Approve Payment of Claims
- Item 3 Approve 2023 Used Vehicle Sales License
- Item 4 Initiate the Replacement of the 2004 Toro Groundsmaster 561
- Item 5 Accept Petition/Waive Public Hearing/Order & Approve Feasibility Report/Order & Adopt Assessment Roll/23-21/2101/2103 – 140<sup>th</sup> Lane NW/WM (See Resolution R006-23)
- Item 6 Acknowledge 90 Day Extension From Applicant for Legacy at Petersen Farms PUD/ Preliminary Plat Applications
- Item 7 Approve Andover Fire Relief Association By-laws/Minutes
- Item 8 Approve 2023 Tobacco License
- Item 9 Receive December 2022 City Investment Reports
- Item 10 Approve Debt Service Payments

**Motion** by Butler, Seconded by Nelson, to approve the Consent Agenda as read. Motion carries unanimously.

**ANOKA COUNTY SHERIFF'S OFFICE MONTHLY REPORT**

Commander Lenzmeier provided the monthly report stating the Department responded to 12,846 calls for service in 2022. They saw significant decreases in burglaries, damage to property, and thefts if Walmart thefts are removed. There were 2 DWIs and 191 traffic stops in December. He noted a house fire where all occupants escaped safely. Commander Lenzmeier stated the Department has 10 Deputy openings. The Department purchased two e-bikes for 2023.

Councilmember Butler stated the Sheriff's office has good visibility by having squads out and that changed behavior.

Mayor Bukkila noted that traffic stops were down in 2022 but that may indicate Deputies were needed elsewhere. She stated personal injury accidents have gone up and she asked residents to slow down and be mindful.

Councilmember Barthel asked if some of the decreases were related to Covid. Commander Lenzmeier doesn't believe it was due to Covid.

Councilmember Nelson stated working with the Sheriff's Department in 2022 was awesome and the City looks forward to working with them in 2023.

***APPEAL HEARING – CANNABINOID LICENSE DENIAL***

The City Council is requested to hold an appeal hearing for a Cannabinoid License denial for CDB RS, 13650 Hanson Boulevard NW, Suite 104. City Administrator Dickinson stated the business is requesting an appeal based on proximity to a day care and an alcohol or drug treatment facility.

Steban Kabalan, 13650 Hanson Boulevard NW, came forward and read a statement. He noted he lived in Andover for 5 years and began a business to invest in the Andover community. He stated he contacted the City and explained they would operate as a CBD and hemp shop. Mr. Kabalan was informed that he needed to apply for a tobacco license even though they weren't selling tobacco products. He explained it is a family run business and they have invested in the store and in the City. Mr. Kabalan stated they closed the store when the Cannabinoid License was denied. He feels they should be grandfathered in. The shop has never had any issues and has never sold to anyone under 21. Mr. Kabalan asked the City Council to reconsider, as the shop is highly qualified.

Carol Moss, attorney at Hellmuth & Johnson in Edina, came forward to speak on behalf of CBD RS. She stated the letter the firm sent included many points and she would highlight a few. Ms. Moss stated hemp derived cannabinoids, including hemp-derived CBD and hemp derived THC have been legal since 2019. She explained it is a misconception that hemp derived THC became legal in July of 2022. Ms. Moss stated CBD RS has been selling in Andover since 2019 and the reasons they have been denied are due to zoning provisions. She explained there is a statutory requirement that property users using their property in a legal manner may continue to do so if the zoning provisions changed; a legal non-conforming use. Ms. Moss stated CBD RS is an asset to the community and should be allowed to sell in the manner they have due to legal non-conforming use.

City Attorney Baumgartner stated the City disagrees that this is a zoning issue. He stated the ordinance regarding cannabinoids is not a zoning ordinance but a licensing ordinance. Mr. Baumgartner stated the ordinance regulates the selling of cannabinoid products and does not designate zones which it can be sold. He referred to case law that supported the City's position. Mr. Baumgartner stated he spoke with attorneys at the League of Minnesota Cities (LMC) to ensure he wasn't misunderstanding. He stated he did his due diligence and respectfully disagrees with the points presented by Ms. Moss.

Ms. Moss stated a license is not needed for a legal non-conforming use to continue. She stated the restrictions are zoning and the business does not need a license to sell their products. Ms.

Moss noted her client has great respect for the City and they have a right to use the property in a legal non-conforming use.

Mayor Bukkila asked if the appellant closed their doors. Mr. Dickinson stated it is his understanding they had closed their doors. He stated they can sell non-intoxicating products, however, they cannot sell products containing THC. Mr. Dickinson explained the City asked for a Tobacco License so they could conduct a background check. He noted they can sell their CBD products of non-intoxicating nature.

Ms. Moss stated her client closed their doors due to the letter received from the City that had a statement in bold and underlined: if you are selling cannabinoid products, you will be cited for violation of the ordinance. She explained cannabinoid is a large description of products and her client sells products derived from cannabinoids. Ms. Moss stated she advised her client to close his doors until she had conversations with the City about the intent of the ordinance.

Mayor Bukkila asked if there were changes the City needed to make to City Code or can the business operate as they were. Mr. Dickinson requested the Council allow staff to make the ordinance clearer. Mr. Baumgartner explained cities were scrambling to form ordinances after the State made THC products legal. He believes the definition erroneously encompasses all hemp and asked the Council to allow staff to amend the definition to reflect the intent of the City Council.

Mayor Bukkila asked Mr. Baumgartner to explain the difference between non-intoxicating hemp products and the edibles that are now legal. Ms. Moss stated the difference between intoxicating and non-intoxicating is difficult to describe, as it varies between people. She stated the products CBD RS sells have been safely sold since 2019 without any issues and are legal State-wide and Federal-wide. Mayor Bukkila asked where edibles fall in the spectrum. Ms. Moss stated edibles depend on what the cannabinoid is. She explained there are CBD edibles and the restrictions on THC edibles are 5 mg per serving and 50 mg per package. Mr. Baumgartner explained there are hemp derived products that contain trace amounts of THC and there are edibles approved by the State at 5 mg per serving. He stated intoxicating THC ranges from higher than trace amounts up to 5 mg. The non-intoxicating products would contain less than trace amounts. Mr. Baumgartner suggested non-intoxicating be defined as trace amounts or less and intoxicating be defined as more than trace amounts up to 5 mg.

Mayor Bukkila asked what changes need to be made to handle the current scenario. Mr. Baumgartner stated Ms. Moss has spoken with Mr. Dickinson and is clear that they can sell products with less than trace amounts of THC without a license. Mayor Bukkila stated the City's

Code is more restrictive than they intended. Mr. Baumgartner agreed it is due to the definitions of intoxicating versus non-intoxicating in the ordinance.

Mayor Bukkila asked how to address the appeal. Mr. Baumgartner stated the change will be made to definitions to clarify the distinction between the two types of products.

Councilmember Butler stated he is not clear on what decision needs to be made: appealing the right to sell what they are currently selling or appealing the license to sell products that are more than a trace amounts of THC. Ms. Moss stated it is a mixture of both. She stated the Ordinance does not require a license for THC to be sold. She stated they are requesting to sell products they have been selling. Ms. Moss stated she has not seen a city that has the 1,000 feet restrictions from a day care and treatment centers. She noted Andover does not have an ordinance that restricts alcohol from being sold at the same standard. Ms. Moss stated she can provide information to City staff to redraft the ordinance. She stated the City would benefit from CBD RS continuing to operate.

Councilmember Nelson stated the City appreciates small business owners but the City's number one priority is public safety. He stated the business is open and they are selling their products. Ms. Moss stated public safety is a shared goal and the business allows 21 and older to enter.

Councilmember Engelhardt asked if the change in definition would change the location requirements. Mr. Baumgartner stated the location restrictions would only apply to businesses selling more than a trace amount of THC in their products.

Councilmember Barthel stated he is fine with the business selling what they have sold since 2019 and asked if the products contained trace amounts or less. Mr. Baumgartner stated the State Statute regulated what is currently being sold. He believes CBD RS was selling the products legally and the State Statute prompted cities to adopt their own ordinances.

Mr. Baumgartner explained the appeal is requesting that CBD RS does not need a license to sell products containing trace amounts of THC up to 5 mg. He stated the second appeal addresses not needing a license to sell products with trace amounts of THC or lower.

Councilmember Butler asked if the products being sold prior to the State implementing a law were in a legal gray area. Mr. Baumgartner stated it is still gray. He explained the State tried to reign in the marketing and providing to minors. He noted that the State, pharmacies, and Federal agencies do not agree on what is intoxicating and what is non-intoxicating.

Councilmember Butler stated the business was selling products that were unregulated prior to

State law. He said his intention is to ensure the City was placing protections for minors to be exposed to products containing THC and not making it more difficult for people seeking treatment.

Mr. Baumgartner asked how the Council wants to address businesses that were selling prior to the City Ordinance that the City now wants to license. Mayor Bukkila polled the Council on where they stand. The Council reached consensus to require a license for greater than trace amounts up to 5 mg.

Mayor Bukkila asked if the Council needed to address the 1,000 feet requirement. Mr. Baumgartner stated the license was denied due to the 1,000 feet requirement. Mayor Bukkila polled the Council on their opinion of maintaining the 1,000 feet requirement. The Council reached consensus to maintain the 1,000 feet requirement.

Mr. Baumgartner stated the City could take time to modify distances. Mayor Bukkila noted the only modification the City Council supports is changes in the definition.

**Motion** by Nelson, Seconded by Engelhardt, to uphold the denial of a cannabinoid license for CBD RS. Motion carries unanimously.

The Council reached consensus to have staff update definitions in the Cannabinoid Ordinance.

***HOLD PUBLIC HEARING/ORDER PLANS & SPECS/21-39/TULIP ST. NW & 161<sup>ST</sup> AVE.  
NW RECONSTRUCTION***

The City Council is requested to hold a public hearing and order plans and specifications for Project 21-39, Tulip Street NW & 161<sup>st</sup> Avenue reconstruction. Public Works Director/City Engineer Berkowitz stated the current condition of the road is at a 3.6 out of 10. Mr. Berkowitz presented the proposed improvements to the road as described in the staff report. He stated there is only one parcel that fronts 161<sup>st</sup> Avenue and three park parcels in the project. He explained staff are proposing using front footage assessment with assessments ranging from \$4,642.50 to \$14,432.91. Mr. Berkowitz noted lot sizes vary from 1 to 19 acres and front footage from 150 feet to 585 feet. The City will pay the assessments for the park properties. Mr. Berkowitz displayed pictures of the road conditions. Mr. Berkowitz explained the assessment cost and how it can be paid.

Councilmember Nelson asked if the City is saving money by reclaiming the asphalt. Mr. Berkowitz said that is correct and the excess will be hauled out.

Mayor Bukkila stated the estimate is not the end cost. She said the end cost would depend on the bids and actual cost. Mr. Berkowitz stated it is an estimate and the final payment will be based on actual cost. He explained the City has gotten favorable bids in the past that has resulted in lower costs.

**Motion** by Nelson, Seconded by Barthel, to open the Public Meeting at 8:30 p.m. Motion carries unanimously.

Bonnie Dehn, 16485 Tulip Street, came forward and stated she owns a farm on the proposed road improvement. She stated traffic is excessive on Tulip Street. Ms. Dehn said the State Aid Road should absorb the excess traffic that the residents do not create. She would like to see the percentage the residents have to pay reduced to 10%.

Jennelle Eisinger, 15909 Tulip Street, came forward and stated they have been residents for 25 years. She believes the street needs help but to ask the residents to pay for 25% of the cost seems excessive. She stated there are high levels of traffic due to the connection to County roads. Ms. Eisinger believes the percentage should be lowered because of the traffic the parks attract. She asked why the State Aid was only going towards the City's cost and not the residents' cost. She requested the percentage be reduced to 10%. Ms. Eisinger loves the idea of side road striping and would like it extended along the entire road.

Marlene Yochim, 3425 161<sup>st</sup> Street, came forward and asked if there will be road safety measures added to the project as there have been a lot of accidents at 161<sup>st</sup> Avenue and Round Lake Boulevard. She stated there is excessive traffic. She asked if there were agricultural deferrals. She asked to see the feasibility study. She asked if there were other ways to fund the project to reduce costs and if the City would apply for additional funds from the State. She asked if there was a way to delay the project due to economic turmoil.

Bonnie Dehn, 16485 Tulip Street, stated she has been a resident of Andover since 1950. She stated they have a lot more truck traffic due to development of Petersen Farms. She explained the residents are not the only people that use the road. Ms. Dehn stated there are construction trucks and many others that use the road.

**Motion** by Butler, Seconded by Nelson, to close the Public Meeting at 8:44 p.m. Motion carries unanimously.

Mr. Berkowitz explained the City receives \$1.7 million for the City's State Aid roads, 25% of which goes into maintenance. Mayor Bukkila stated the \$1.7 million would cover about a half

mile of road reconstruction. Mr. Berkowitz noted the funds go to the extra ½ inch of asphalt required for a State Aid Route.

Mr. Berkowitz stated the City is working with Anoka County Highway Department to improve the intersection of 161<sup>st</sup> Avenue and Round Lake Boulevard. He stated they are coming up with a plan to reduce confusion at the intersection. He said there will be designated left, right, and through lanes with a new traffic signal. The City will stripe small shoulders for traffic calming and pedestrians. Mr. Berkowitz stated there will be turn lanes going into the parks. Mr. Berkowitz stated the City will look at extending the road striping along the entire road, even the part that is not being reconstructed.

Mr. Berkowitz stated State money is available for major roadways that typically go to county or State projects. Mr. Berkowitz noted that none of the properties being assessed qualify for the agricultural deferral. He stated the challenge with delaying the project is predicting the cost and the City usually sees favorable bids during tough economic times. He explained the only way currently to fund reconstruction is the Road and Bridge Fund, State Aid, and assessments. Mr. Berkowitz stated the City assesses based on unit or on front footage.

Councilmember Nelson asked if the City could post a sign with axle weight to keep trucks off it. Mr. Berkowitz explained trucks are allowed on a State Aid Route. He presented traffic counts and stated the higher the traffic counts, the more State Aid the City would get. Mr. Berkowitz explained that residents do not pay for the additional cost of the road being a State Aid Route.

Councilmember Engelhardt asked if there would be additional funding due to the parks. Mr. Berkowitz stated the park property is assessed based on front footage and is paid by the City.

Mayor Bukkila stated there is never good timing for road construction when it is your road. She said the City put less funding into the roads during the 2008 recession and it just put off the inevitable. She explained the City has established a regular cycle for road repairs and improvements. Mayor Bukkila stated she has seen higher assessments than the ones being discussed.

Councilmember Butler stated the State Aid Route is building a better road that won't need to be replaced in 15 years. He noted the importance of consistency within the City for road improvements. Mayor Bukkila stated every neighborhood has traffic on their roads that aren't residents, and the standard 25% assessment applies to all road projects. She said staff has proposed increasing the percent assessed to residents, however, the City Council has not supported it.



Councilmember Barthel agrees with the 25% assessment. He suggested taking 161<sup>st</sup> Avenue from Tulip Street to Round Lake Boulevard and having the City cover the cost. He explained the City paved the parking lot at Pine Hills North and it is heavily used by athletic associations. Mr. Berkowitz stated taking out that section would reduce one person's assessment by \$10,000. He explained the City is already paying for most of that section because of the assessments to the parks.

**Motion** by Butler, Seconded by Nelson, to adopt Resolution No. R007-23 ordering the improvement of Project 21-39, Tulip Street NW & 161<sup>st</sup> Avenue NW Reconstruction and directing the preparation of final plans and specifications. Motion carries unanimously.

***HOLD PUBLIC HEARING/ORDER PLANS & SPECS/23-17/2023 FULL DEPTH RECLAMATION***

The City Council is requested to hold a public hearing and order plans and specifications for Project 23-17, Full Depth Reclamation. Mr. Berkowitz identified the location of the project and explained the bituminous would be ground up and replaced with 3 inches of bituminous. He stated lots that are able to subdivide are assessed for the number of lots they can create. Mr. Berkowitz highlighted the road improvements and displayed pictures of existing conditions. He presented the assessment method.

**Motion** by Nelson, Seconded by Barthel, to open the Public Meeting at 9:10 p.m. Motion carries unanimously.

No one came forward.

**Motion** by Nelson, Seconded by Barthel, to close the Public Meeting at 9:10 p.m. Motion carries unanimously.

**Motion** by Butler, Seconded by Engelhardt, to adopt Resolution No. R008-23 ordering the improvement of Project 23-17, Full Depth Reclamation and directing the preparation of final plans and specifications. Motion carries unanimously.

Mayor Bukkila handed the gavel to Mayor Pro-Tem Butler. Mayor Bukkila left the meeting at 9:11 p.m.

***CONSIDER A CONDITIONAL USE PERMIT FOR A DRIVE-THRU WINDOW – PIN 34-***

**32-24-31-0154; 2184 BUNKER LAKE BLVD. NW – ANDOVER STATION 2016, LLP  
(APPLICANT)**

The City Council is requested to consider a request for a Conditional Use Permit (CUP) for a drive-thru window located at 2148 Bunker Lake Boulevard. Community Development Director Janish identified the location of the proposed Chipotle. He noted that the drive-thru could stack 7 vehicles and does not have an order box; customers order on-line or by an app. Mr. Janish displayed the landscape and grading plans. Mr. Janish stated the Planning and Zoning Commission held a public hearing on November 22, 2022. He noted that one resident spoke on headlights glaring into his home and Mr. Janish stated a berm and additional landscaping should mitigate the issue. Mr. Janish stated a resident was concerned about traffic at Quinn Street and the entrance to the shopping center. He stated the Planning and Zoning Commission recommended approval on a 4-2 vote.

Councilmember Nelson asked if the Planning and Zoning Commission's decision was based on the current landscaping plan. Mr. Janish explained the Planning and Zoning Commission requested additional screening such as the berm and landscaping to mitigate the lights.

Councilmember Engelhardt noted that he attended the Planning and Zoning Commission meeting and was impressed with the attention to detail and the line of questioning from the Planning and Zoning Commission.

**Motion** by Nelson, Seconded by Engelhardt, to adopt Resolution No. R009-23 approving the Conditional Use Permit request for a drive-through window for the proposed business located at 2184 Bunker Lake Boulevard.

Don Jackson, 2182 – 137<sup>th</sup> Lane, came forward and stated his backyard abuts where the Chipotle is going. The distance of his dining room window to the property is 280 feet. He appreciates putting in landscaping, but vehicles are getting bigger and lights are getting brighter. He asked how high the berm will be and what kind of foliage will the landscaping have. He stated he is putting money on the inside of his house so his daughter can sleep. Mr. Jackson stated it is difficult for him to enjoy his backyard due to the light and the noise pollution. He is concerned he won't enjoy sitting outside. Mr. Jackson is concerned that when Chipotle leaves, the location will be turned into an ordering drive-thru and he'll hear noise from the speaker box. He stated the shopping center has poor snow removal.

Mr. Janish stated the berm is two feet high with coniferous landscaping to block headlights year-round. He explained there were four buildings slated for this area. Mr. Janish stated the City can

address the snow removal with the management company. He stated any change to the CUP would require an amendment and go before the Planning and Zoning Commission and the City Council.

Motion carries unanimously.

***CONSIDER A CONDITIONAL USE PERMIT FOR A DRIVE-THRU WINDOW – PIN 34-32-24-32-0027; 2248 BUNKER LAKE BLVD. NW – ANDOVER STATION 2016, LLP (APPLICANT)***

The City Council is requested to consider a request for a Conditional Use Permit (CUP) for a drive-thru window located at 2248 Bunker Lake Boulevard. Community Development Director Janish identified the location of the business and stated 7 vehicles can be stacked through the drive-thru. He stated customers would order online or through the app. Mr. Janish displayed the landscaping plan and stated it will reduce headlight glare. The Planning and Zoning Commission held a public hearing on January 10, 2023 and no public comments were received. Mr. Janish summarized the discussion of the Planning and Zoning Commission, and they recommended approval on a 7-0 vote.

Councilmember Engelhardt asked if the seasonal sales previously on the lot were going to be moved. Mr. Janish stated the seasonal sales had a CUP and the proposed business is going to replace it.

Councilmember Nelson asked if the proposal includes landscaping instead of a fence. Mr. Janish displayed the landscape plan and stated it will mitigate headlight glare.

Councilmember Engelhardt asked if residents could benefit from landscaping. Mr. Janish explained the CUPs are addressing landscaping to mitigate headlights that may affect residents to the north. He stated residents can plant additional screening if they choose.

***Motion*** by Butler, Seconded by Nelson, to adopt Resolution No. R010-23 approving the Conditional Use Permit request for a drive-through window for the proposed business located at 2248 Bunker Lake Boulevard. Motion carries unanimously.

### ***ADMINISTRATOR'S REPORT***

City Staff updated the Council on the administration and city department activities, legislative updates, updates on development/CIP projects, and meeting reminders/community events.

**(Administration)** Mr. Dickinson updated the Council on the Red Oaks neighborhood and said the State Legislature is working on the bonding bill for the water improvements. He stated \$9 million is proposed. Mr. Dickinson said the EPA is getting involved in investigating the cause of the contamination. He noted the City needs to order vehicles about two years out because of long lead times. Mr. Dickinson updated the Council on meetings he is attending. He announced items for the January City Council Workshop.

**(Engineering/Public Works)** Mr. Berkowitz stated maintaining the ice rinks has been a challenge. Public Works has been working on snowplowing and asked residents to give the snowplow vehicles space. He updated the Council on items for the next Workshop. Mr. Berkowitz stated Engineering is working on the design process for 2023 projects.

**(Community Development)** Mr. Janish stated they are reviewing commercial site plans. He updated the Council on development projects.

Councilmember Engelhardt asked if there were concerns about critical vehicle replacements. Mr. Dickinson stated the City has one critical vehicle on tonight's agenda. He said the lead time for specialized vehicles is about 18 months.

### ***MAYOR/COUNCIL INPUT***

**(Snowplowing)** Councilmember Nelson stated he received comments about snowplowing in Andover and asked residents to be patient because there has been more snow this winter than all of last winter. He encouraged residents to be patient, slow down, and give snowplows room. Mr. Dickinson stated the City sends snowplows to scrape as the snow melts, removal of the slush is crucial for drivability.

### ***ADJOURNMENT***

**Motion** by Butler, Seconded by Nelson, to adjourn. Motion carries unanimously. The meeting adjourned at 9:45 p.m.

Respectfully submitted,

Shari Kunza, Recording Secretary  
*TimeSaver OffSite Secretarial, Inc.*

**REGULAR ANDOVER CITY COUNCIL MEETING MINUTES – JANUARY 17, 2023**  
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