

**Minutes of the
SPECIAL MEETING OF THE
METROPOLITAN PARKS AND OPEN SPACE COMMISSION**

Tuesday, November 12, 2013

Committee Members Present: Dean Johnston, Carrie Wasley, Tony Yarusso, Barbara Schmidt, Seyon Nyanwleh, Bob Moeller, Emily Piper, Wendy Wulff, Council Liaison

Committee Members Absent: Daniel Shlaferman

CALL TO ORDER

Chair Johnston called the meeting of the Council's Metropolitan Parks and Open Space Commission to order at 4:30 p.m. on Tuesday, November 12, 2013.

APPROVAL OF AGENDA AND MINUTES

It was moved by Wasley, seconded by Moeller to approve the agenda. **Motion carried.**

It was moved by Yarusso, seconded by Schmidt to approve the minutes of the October 1, 2013 meeting of the Metropolitan Parks and Open Space Commission. **Motion carried.**

PUBLIC INVITATION: Invitation to interested person to address the Commission on matters not on the agenda.

None.

BUSINESS

Schedule Public Hearing to Amend the 2030 Regional Parks Policy Plan for Park Acquisition Opportunity Fund Grant Rules – Raintry Salk, Senior Parks Researcher

Salk gave a presentation outlining a request to amend the 2030 Regional Parks Policy Plan for Park Acquisition Opportunity Fund Grant Rules. She discussed the background and rationale for this request as outlined in the materials provided. Salk then gave an overview of the rule changes being proposed as well as the schedule for the public hearing process.

Yarusso referred to page 17 under environment contamination and asked if it should say 'have contaminates or are expected to contaminate'. Salk pointed out that there is soil contamination and also aquifer contamination and they are two different things.

Wasley stated that abandoned wells are expected to be or become contaminated. She noted that there are many unknown abandoned wells.

Salk responded to Yarusso's question that stated that this language was reviewed by an environmental expert and was approved as stated.

Wulff asked if the eminent domain language is new or have we done this before. Stefferud responded that we have not granted funds for eminent domain before and discussed the language on page 13. Wulff stated that this speaks to legal fees and clarified her question asking if we have paid for condemned land before. Stefferud stated no, but it would be considered.

Wulff stated that she is concerned that we've always said we'd buy from willing sellers and going after land through eminent domain concerns her. Stefferud agreed that eminent domain is a big deal and Park Boards take it very seriously and gave a specific example in Dakota County. He explained that it is not the norm for the process.

Steve Sullivan, Dakota County Parks explained that the County Board's practice has always been to deal with willing sellers. He noted they have a Federal Grant to build a contiguous trail and that they've been negotiating for 30 years. They've been able to settle with two of the three landowners. He stated they will go to court in December with the third land owner. He stated that they need to secure an easement by March 31, 2014 or they will lose the Federal Grant.

Yarusso stated that our current policy doesn't state that power of eminent domain cannot be used. Stefferud stated that this is correct and pointed out that this language shows how grant money can be used in the process.

Schmidt pointed out we've always done it this way and that we buy from willing sellers whenever possible. Stefferud confirmed that this is correct.

Piper stated that litigation can be very expensive. She asked if we are stipulating that these expenses can be reimbursed and will we have discretion to say yes/no. Stefferud noted that agencies are limited on how much money they will be eligible to receive.

Moeller stated he is concerned that staff will be faced with a lot of decisions to make regarding the 25% match and asked if there is consensus amongst the agencies on this language. Salk explained that there wasn't prior language regarding eminent domain and this was added at this time as a point of clarification because the amendment was being done.

Nyanwleh asked if eminent domain has ever been used before. Stefferud corrected his previous response and stated yes and gave the example done by Three Rivers Park District in Lake Minnetonka. He stated that it is rare, but it has happened.

Piper reiterated her concern for legal fees. Stefferud reminded members that an agency is limited to what they can receive (their share of the capital budget). Piper responded that her concern is that we have no opportunity to say we don't want them to spend the money on legal fees.

Wulf shared her concern when it's \$1.7 million – first come, first serve – you are using money that could be used for other lands. She is not in favor of language that puts the Council on the line for legal fees and eminent domain.

Sullivan noted that this is new for Dakota County and has not been an easy decision. For them, condemnation is a process step to determine the land's value. Working with a willing seller is predominantly their policy.

Kelly Grissman, Three Rivers Park District stated that the Park District does not take condemnation lightly and it is rare. She discussed the difficulty in establishing a regional trail system if eminent domain cannot be used.

Chair Johnston called for a motion.

Wasley motioned and it was seconded by Yarusso to recommend that the Metropolitan Council:

1. Conduct a public hearing on February 18, 2014 as part of its Community Development Committee meeting regarding amending the *2030 Regional Parks Policy Plan* to:
 - a. Replace the Park Acquisition Opportunity Fund Grant rules, found in Chapter 4 of the *2030 Regional Parks Policy Plan*, to those outlined in attachment B.

The hearing record shall remain open until 4:30 p.m., Friday, February 28, 2014.

2. Direct staff to publish public hearing notices and distribute copies of the proposed amendments to the *2030 Regional Parks Policy Plan* under the Council's administrative procedure for public hearings.

Yarusso moved to amend the motion to strike attorney fees and litigation expenses from the language on page 13, section e. There was no second. **The amended motion failed due to lack of a second.**

Piper clarified that today's motion is to go forward with the public hearing, however this will come back to this commission. Stefferud responded that it would, however, if there are substantial changes made to the document, it would require a second public hearing.

Moeller referred to litigation and attorney fees and asked if there is any wisdom to limiting the amount of expenses allowed. Stefferud pointed out that we didn't pay for all of the fees in Lake Minnetonka.

Piper stated that fees will likely be deemed reasonable and incurred.

Schmidt is concerned that we are trying to fix a problem that historically hasn't been a problem. Wasley agreed. She feels park agencies are very judicious as their dollars are limited.

Yarusso moved to amend the motion to add language requesting that the Metropolitan Council consider whether it would be appropriate and necessary to limit and deal with fiscal liability. There was no second. **The amended motion failed due to lack of a second.**

Schmidt asked if Yarusso is referring to all attorney fees.

Yarusso moved to amend the motion to clarify only legal fees related to condemnation. There was no second. **The amended motion failed due to lack of a second.**

Nyanwleh stated that he felt the discussion has been good.

Nyanwleh moved to amend the motion to ask staff to fine tune the language regarding legal fees and willing sellers. There was no second. **The amended motion failed due to lack of a second.**

Wasley called the question. The debate ended.

Chair Johnston called for a vote and the motion passed 5/2 with Piper and Nyanwleh voting nay.

Nine Mile Creek Regional Trail Master Plan, Three Rivers Park District - Jan Youngquist, Planning Analyst

Youngquist gave a PowerPoint presentation discussing the master plan submitted by Three Rivers Park District for the Nine Mile Creek Regional Trail as outlined in the materials provided. The trail will run from Hopkins to Bloomington. She discussed the trail alignment and the estimated costs. She then discussed the public planning process and conclusions from the review of the master plan.

Piper asked what the difference is between Edina's feelings vs. others. Kelly Grissman, Three Rivers Park District stated that they've worked extensively with Edina and their City Council is very supportive. She noted that the other communities (Richfield, Hopkins, and Bloomington), are all excited and supportive.

Nyanwleh asked for timelines for the communities other than Hopkins. Youngquist noted that Hopkins segment is being done with a known road project. She noted that other areas will depend on when there are willing sellers for the trail right of way.

Moeller asked for further clarification of Edina's support. Grissman explained that their resolution of support for this trail is the same language that is stated in the master plan.

Yarusso noted that there is no safe connection to Mendota Heights. Youngquist responded that the Old Cedar Avenue Bridge will provide a safe connection known as the Inner-city Regional Trail. Grissman also stated that there is a trail crossing at Hwy 494 at Fort Snelling.

Moeller motioned and it was seconded by Nyanwleh to recommend that the Metropolitan Council:

1. Approve the Nine Mile Creek Regional Trail Master Plan.
2. Require that if the MAC Alternative Alignment is selected as the preferred route for the regional trail, Three Rivers Park District should submit documentation of its compliance with Federal Aviation Administration regulations as well as the required approvals from the Metropolitan Airports Commission, the Minnesota Department of Transportation, and the Cities of Richfield and Bloomington to the Metropolitan Council prior to seeking regional parks funding for this route.
3. Require that prior to initiating development of the Nine Mile Creek Regional Trail, preliminary plans should be sent to Scott Dentz, Interceptor Engineering Manager (651-602-4503) at Metropolitan Council Environmental Services for review in order to assess the potential impacts to the regional interceptor system.

Chair Johnston called for a vote and the motion carried.

INFORMATION

Report on Amending Unified Capital Program – Arne Stefferud, Manager Parks and Natural Resources

Stefferud provided a report on amending the Unified Capital Program and reviewed its contents. This is a 'house-keeping' amendment and requires no action/recommendation by this Commission.

REPORTS

Chair: None.

Commissioners: Yarusso stated that he appreciated the email from staff outlining Council actions taken as it helps him feel 'in the loop'. Other Commission members agreed that they found this helpful.

Staff: None.

ADJOURNMENT

Business completed, the meeting adjourned at 6:02 p.m.

Sandi Dingle
Recording Secretary