



**City of Newport  
City Council Minutes  
July 19, 2012**

**1. CALL TO ORDER**

Mayor Tim Geraghty called the meeting to order at 5:30 P.M.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL -**

**Council Present** – Tim Geraghty, Tom Ingemann, Bill Sumner, Tracy Rahm, Steven Gallagher

**Council Absent** –

**Staff Present** – Brian Anderson, City Administrator; John Neska, Assistant Supt. of Public Works; Curt Montgomery, Police Chief; Mark Mailand, Fire Chief; Renee Helm, Executive Analyst; Fritz Knaak, City Attorney; John Stewart, City Engineer; Sherri Buss, TKDA Planner

**Staff Absent** – Bruce Hanson, Supt. of Public Works;

**4. ADOPT AGENDA**

**Motion by Ingemann, seconded by Gallagher, to adopt the Agenda as presented. With 5 Ayes, 0 Nays, the motion carried.**

**5. ADOPT CONSENT AGENDA**

**Motion by Sumner, seconded by Rahm, to approve the Consent Agenda as presented, which includes the following items:**

- A. Minutes of the June 21, 2012 Regular City Council Meeting
- B. List of Bills in the Amount of \$190,526.78
- C. North Ravine Partial Payment #3
- D. Lion's Annual Park Permit
- E. Gambling Permit for Foster My Pet
- F. **Resolution No. 2012-18** – Appointment of 2012 Election Judges
- G. **Resolution No. 2012-19** – Identifying the Need for Livable Communities Demonstration Account Funding and Authorizing an Application for Grant Funds

**With 5 Ayes, 0 Nays, the motion carried.**

**6. VISITORS PRESENTATIONS/PETITIONS/CORRESPONDENCE**

**7. MAYOR'S REPORT –**

**Mayor Geraghty** – I attended the transit open house meeting on June 28 for the City Council and Commissions. I also attended the Booya parade on July 7 and Booya on July 8, it was a good turnout. I also attended the HPC meeting and they talked about their inventory of the historic landmarks. We also discussed the Veterans' Memorial. We still need to decide who can put bricks in the Memorial. We did set the rate at \$75/

## 8. COUNCIL REPORTS

**Councilman Rahm** – I attended the open house yesterday on the Red Rock Transit Station. I also gave a presentation at a NEWCO meeting on the strategic plan that the City is working on.

**Councilman Ingemann** – I also attended Booya. I was at a Planning Commission meeting last Thursday; a couple of the items will be on the agenda tonight. I also attended the open house last night, it was a good turnout.

**Councilman Sumner** – I was also at the Booya parade and Booya event, as well as the meeting last night.

**Councilman Gallagher** – I was also at Booya and the meeting last night. I also attended the NEWCO meeting where Tracy presented and he did a good job on that. I also attended a few Met Council TAB meeting. My idea is to get MnDot to change Maxwell Avenue from a collector to arterial road to bring in more money.

## 9. ADMINISTRATOR'S REPORT

**Mayor Geraghty** – Before we get started I just want to make a comment. I know there are a number of issues tonight that people want to speak about and I would ask people to be recognized by me when they speak, including Council members and staff. I want to run a respectful meeting in a professional manner. If you would like to speak, step up to the podium and give your name and address.

### A. Request from Martin Vietoris

1. **Resolution No. 2012-20** – Approving a Rezoning Request from Martin Vietoris
2. **Resolution No. 2012-21** – Approving a Planned Unit Development and Minor Subdivision from Martin Vietoris

Sherri Buss, TKDA Planner, presented on this item as outlined in the July 19, 2012 City Council packet. The Planning Commission held a public hearing at its July 12, 2012 meeting and approved two resolutions recommending that the City Council approve a rezoning request and a planned unit development and minor subdivision.

**Councilman Rahm** – Did the Planning Commission vote unanimously on it?

**Executive Analyst Helm** – Yes.

**Councilman Gallagher** – Do we know what the square footage of the homes would be?

**Martin Vietoris, 2154 Hastings Avenue** – I looked at the MLS for Newport and there are 11 homes for sale and 9 of those are under \$175,000, so the price point will be around the \$160,000 to \$170,000 range, so you'll be lucky to get a 1,400 square foot home on these properties. The one clarification I wanted to make was that the lots, even though they do not meet the width requirements of R1 zoning, they meet the square footage requirements.

**Mayor Geraghty** – Will there be basements?

**Mr. Vietoris** – No but it'll be a two-level house. The area outlined in the plan is the buildable area allowed. It won't have a basement but it will have a larger garage for storage.

**Mayor Geraghty** – Are you building them yourself?

**Mr. Vietoris** – Yes, that's what we do.

**Motion by Ingemann, seconded by Rahm to approve Resolution No. 2012-20 approving a rezoning requested by Martin Vietoris, 2154 Hastings Avenue, Suite 100, Newport, for property located just west of Valley Road and south of Ford Road. With 5 Ayes, 0 Nays, the motion carried.**

**Motion by Ingemann, seconded by Geraghty to approve Resolution No. 2012-21 approving a planned unit development and minor subdivision requested by Martin Viotoris, 2154 Hastings Avenue, Suite 100, Newport, for property located just west of Valley Road and south of Ford Road. With 5 Ayes, 0 Nays, the motion carried.**

**B. Appeal from Veolia Environmental Services of Denied Building Permit to Install a 15,000 Gallon Above-Ground Storage Tank at 1545 7<sup>th</sup> Avenue**

Admin. Anderson and Sherri Buss presented on this item as outlined in the July 19, 2012 City Council packet. At the December 8, 2011 Planning Commission meeting, the members discussed a request from Veolia Environmental Services to install a 10,000 gallon above-ground storage tank at its facility, located at 1545 7<sup>th</sup> Avenue. City staff informed both the Planning Commission and Veolia that the building became nonconforming when the zoning district changed to MX-1 in 2000 and that expansion is only allowed for an existing use, building or structure. The Planning Commission informed Veolia that their request is not allowed per the Code and requested that the City continue to work with Veolia regarding their request. City staff met with Veolia in January and informed Veolia that an aboveground storage tank of any size is considered a new accessory use and therefore is not allowed per the Code. After the meeting, Veolia submitted a building permit application for a 15,000 gallon above-ground storage tank, at which time City staff denied the permit. Veolia appealed staff's decision to deny the building permit and the Planning Commission held two Board of Appeals meetings on April 12 and April 19, 2012. At the April 19, 2012 meeting, the Planning Commission, acting as the Board of Appeals, approved a Findings of Facts upholding staff's decision to deny the building permit.

**Councilman Rahm** – What's the difference between an aboveground propane tank and this tank?

**Ms. Buss** – Your code does allow a gas station use to have a small aboveground propane tank consistent with any state rules and they can also have underground tanks. The issues related to fire and safety is really different for aboveground tanks and there are different state rules. That's why your code treats them differently. This use is defined very differently in your code and it's only allowed in the industrial district.

**Motion by Geraghty, seconded by Gallagher to uphold the Board of Appeals decision to deny the appeal based on the Findings of Fact. With 5 Ayes, 0 Nays, the motion carried.**

**C. Ordinance No. 2012-9** – Amending Chapter 7, Section 760, Archery Deer Hunting

Admin. Anderson presented on this item as outlined in the July 19, 2012 City Council packet. It is recommended that the ordinance be amended to remove salt licks from the regulation against feeding of deer.

**Bob Whiting, President of the Metro Bowhunters Resource Base** – Mr. Whiting was present to discuss the Metro Bowhunters Resource Base (MBRB). The MBRB was organized in 1995 and use archery has a safe and efficient way to control deer in cities. MBRB provides hunt coordinators for each city and has less than 500 members. MBRB is conducting 22-23 hunts in 2012.

**Councilman Rahm** – Do you know how many deer you take in a typical hunt?

**Mr. Whiting** – It varies a lot depending on the number of deer there are in the first place. We get anywhere from 2 to 70 in one hunt. We concentrate on the mature does to reduce the breeding potential. It would not be a one year thing in terms of success.

**Admin. Anderson** – Their bylaws and board member information is available, it's just not on the website. We do not plan to conduct a hunt this year, so the first one would be in 2013.

**Mr. Whiting** – We would develop a hunt plan that identifies the areas and rules for the City.

**Bob Graves, 1420 Wild Ridge Trail** – I support the resolution. I would like to recommend that the resolution would require doe only hunting. This gentleman said he thought that would work but I think with the numbers involved, I don't think there would be a notable drop unless it was doe only.

**Mayor Geraghty** – Is that typically a request from cities?

**Admin. Anderson** – That can be in the terms of the hunt so we may not want to limit ourselves by placing it in the ordinance.

**Tom Aguilar-Downing, 1550 Wild Ridge Court** – Thank you for considering the recommendations that the neighborhood group put out. I had a question about the grouping together of properties. Again, to deal with the safety issues, I think the neighborhood feels that having the five acres only allows local hunters to hunt but still keeps it out of the small areas. If the Council is concerned, I hope you have some discussion in front of the public here.

**Councilman Gallagher** - I would like to amend Section 760.05 by removing MBRB, Loveland Park and Bailey School Forest so we don't limit ourselves.

**Councilman Sumner** – Do we need to talk about the aggregating of land for the five acres or is that a separate discussion.

**Mayor Geraghty** – Under this proposal it is still allowed. It's my opinion that this is a private rights issue for landowners to have that capability. I understand that there are a lot of people who don't allow hunting on their land but as times change or people change they may want to. So I agree with how it is written now.

**Councilman Rahm** – I attended the neighborhood meetings as well and I think Tom did a very good job of balancing the different issues and putting together the proposal. I go along with the property rights issue too. We can always revisit it.

**Councilman Gallagher** – What would be the limit, are we talking five houses with one acre a piece?

**Councilman Rahm** – When I look at the map, it looks like it would be hard to find five acres. I think we're more limited with what we're doing now.

**Corb Hopkins, 1790 1<sup>st</sup> Avenue** – I have a couple questions regarding the land. The question came up with how about the cemetery? Also, what about the area that is a buffer zone, owned by the refinery. Are those areas included in there or are they considered?

**Mayor Geraghty** – The refinery land is in the map now and it's up to them to allow hunting on that land. I'm not sure about the cemetery.

**Mr. Aguilar-Downing** – I believe many of the Councilmembers received an email from Dr. Adams, our neighbor, regarding the feeding ban. My personal feeling is that the ban should not be required but instead an educational process. As I'm hearing our talk about freedom to use your property, Dr. Adams talks about the freedom of his property to feed the deer.

**Mayor Geraghty** – We did receive that email and I think we removed the salt licks from the list but the remainder will stay.

**Councilman Rahm** – I replied to Dr. Adams and I think his primary concern was the salt licks, which we

removed.

**Mayor Geraghty** – Tom, thank you for your work on it. I know there was a lot of good discussion and the neighborhood committee did a good job on it.

**Motion by Rahm, seconded by Ingemann, to approve Ordinance No. 2012-9 as amended. With 5 Ayes, 0 Nays, the motion carried.**

#### **D. Discussion of Fishing Pier – Under Separate Cover**

Admin. Anderson presented on this item. In 2009, a fishing pier committee was formed and recommended that a fishing pier be placed in the Mississippi River at the sixth street entrance. In 2010, the City placed a fishing pier in the River. A resident has addressed concerns about the fishing pier not being ADA compliant. The City has not put the fishing pier in the River to date. The Council will need to discuss regarding what should be done about the fishing pier.

**Attorney Knaak** – The issue is not with the structure of the fishing pier but with access to the pier. There has not been a complaint, but former councilmember Schottmuller did indicate that she was concerned about the compliance issue and was aware of a potential complaint. That is why our staff recommended that the pier not be put in the water until the issue was resolved. We've looked at it and discussed it with the engineer. It would appear that, even with grandfathering provisions that the access would have to be in compliance with the 1991ADA standards, it has to do with the grade of access, among other things. That is one of the issues that you can look at and resolve. Another issue is that it is, as structured, a usable boat landing, which has different standards. That could be utilized under a lesser access standard. Nonetheless, I think it's understood that it has been announced has a fishing pier, which presents other issues. Right now, it's not out of compliance because it's not in the water. There has not been a formal complaint but these issues have been raised and this has also raised an analysis of other access points to the river. Those are not immediately before you but they are being reviewed.

**Admin. Anderson** – Just this past week I had a meeting with the National Parks Service. We took a look at sixth street and other access points. He saw a lot of potential with those sites. There is a grant that we can apply for to get his technical expertise to help us on our parks and have them be ADA compliant. He is here to address the capacity of our parks.

**Randy Thorseth, National Parks Service** – The program I'm involved with helps communities that have national parks in their area. Through my program I work with access points and trails. The more I talked with Brian, the more I realized that the grant would be good for the City. If awarded, I would provide the City with technical expertise to get involved with your whole string of parks. I brought some information along that I'll leave with you.

**Pauline Schottmuller, 97 10<sup>th</sup> Street** – For those that don't know me, I was twelve years on the Newport City Council and voted yes on the fishing pier when it was first proposed, I am also a member of the Washington County Parks and Open Space Board, I was also the Council member, who in 1999 pushed the City to do the rehab of the three WPA walls. Those are my credentials for pushing public access to the river and appreciating parks and open space. I'm also the one who brought, has Fritz has termed, concerns about the fishing pier. I felt I had to bring those concerns back because when I first voted on the fishing pier, there was supposed to be a committee formed, which there was, because there was a laundry list of concerns about that site and I felt that the committee would do their work properly, that the City would do their work properly, and that we would have a true municipal facility. That's not what happened. What happened is the City bought a dock off of craigslist and jerryrigged it for the Mississippi River. It's a dock that's meant to go in front of someone's lakefront property and we tried to turn it into a river fishing pier for public use.

**Mayor Geraghty** – Excuse me, if I'm not mistaken that pier was made for the river. I would ask that when you're talking to at least speak the truth.

**Mrs. Schottmuller** – My understanding of that is that it's more appropriate for lake use. We tried to make it work for river use. Anyway, the pier went in and then there was at least one if not more who have mobility problems who approached the former Mayor Kevin Chapdelaine because his house is right next to the fishing pier and they let Kevin know about their feelings about a site that isn't ADA compliant. Kevin brought those concerns to me because I was still on the City Council at that time. I looked into ADA compliance and at that time there were guidelines but they were not yet regulations. Although anybody who works for a municipality knows that the guidelines are out there for a few years and they build their facilities according to the guidelines. So I wasn't really able to do much until March of 2012 when these guidelines became regulations for fishing piers, not for access site. I mean the site was always noncompliant and those guidelines have been there for decades. For fishing piers, there are design regulations that took effect March of 2012 even though everybody saw it coming for a number of years. If you've ever been on a fishing pier in any other city, you realize what an ADA compliant fishing pier looks like. I contacted the State and Margo Imdieke came down and talked to the City. What her job is, because the State doesn't enforce Federal regulations, her job is to help municipalities understand the Federal regulations and help them come in to compliance. Margo kept talking to me. I want to read the final email that she sent to me:

“Pauline, I recently received word from DNR that after a thorough review of the record and after conversations with specific DNR staff, they are confident that they never gave any approval for the Newport fishing pier. So although, individuals representing the City of Newport say that they received State and Federal approval for the installation of the fishing pier at that location I now know that the DNR was not one of the entities that gave such approval. According to the info I received from the DNR, in 2009 a Newport City employee and a DNR employee met onsite to discuss the proposed fishing pier location where sixth street meets the Mississippi River, the DNR noted the following accessibility issue with the plan: the area between the parking and fishing pier was too steep and did not have a wide enough right of way to construct an agreeable route with accessible profile grades. Further, DNR staff specifically stipulated that the DNR employee did tell the City that it was not worth their time to apply for a grant to have the DNR assist with the fishing pier costs because the site did not lend itself to being accessible. Based on the communications that I have received from individuals representing the City of Newport, I believe that there will not be a willingness to negotiate an amicable solution. I strongly suggest that you proceed with your federal complaint.”

The thing is, the Federal Government enforces those regulations. I have spoken with Brian and told him that if the City places the fishing pier in the water, I will file a federal complaint and let the Federal Government hash it out with the City. The design of the fishing pier is not ADA compliant. You can go on the website, you can see the drawings and you know how far out of compliance it really is. And the site itself is not accessible. If there's grant money out and a way for making it accessible, I'm all for it. But it needs to be acceptable because we have disabled people in Newport that have the right to use our recreational facilities. It's not just the people that we traditionally think of as disabled. Us baby boomers are slowing down, any grandparent pushing a stroller knows what it's like to have mobility problems, you have a hip replacement, a hip replacement, you got mobility problems, you walk with a cane, you got mobility problems. Us baby boomers that are being diagnosed with diabetes, which affects the feeling in feet, have a difficult time walking on anything that's not a smooth surface. A large portion of our population has mobility problems. The City needs to recognize that and be responsive to that. I really feel that because I voted yes on the fishing pier that I still have a responsibility to make it right, which is why I'm kind of forcing things year. At the end of 10<sup>th</sup> street, we have a serpentine sidewalk. We tried really hard to make that site ADA compliant, and that site is much like the sixth street site in terms of length, size and incline. We couldn't do it. In terms of the overlooks, we're ok because we have two other overlooks that are flat, they don't have sidewalks but they're flat so someone with mobility problems can still access them. So as far as what I do next determines what this Council does next. If the fishing pier goes in the water then a federal complaint is made. I've already had an initial conversation with the woman who would come from Chicago to talk with you people. I've been told by someone who does building code enforcement in health care facilities, he told me that the City needs to understand that they do not want someone from the Federal Government to come in because when they do, they use that initial complaint to look at the whole city. That person is going walk in our front door,

that's not ADA compliant, maybe they're going to use our bathroom back here, that's not ADA compliant, if they have to talk with the police, that's not ADA compliant. Think of all of the things in the City that are not ADA compliant and the feds will come in and look at the whole city. I don't know if we want that kind of problem, I think we need to solve this ourselves and not have to get the Federal government involved, which means get the fishing pier out of the site and let's work with the people who are experts and let's make it a true facility.

**Mayor Geraghty** – Are you advocating that we make everything ADA compliant or are you just focusing on the one fishing pier issue?

**Mrs. Schottmuller** – It's really pretty clear, that if you have only one type of recreational facility that it needs to be ADA compliant. We only have one fishing pier so that needs to be ADA compliant. I'm saying let's solve this on our own, get the fishing pier out of there, let's work on providing river access the way it's supposed to be provided, let's find a way to do that, and keep the feds out.

**Mayor Geraghty** – I want to be clear on our choices. How does this affect 10<sup>th</sup> Street? To me, it's the same issue because it's noncompliant as well.

**Attorney Knaak** – I'm not suggesting that you...

**Mayor Geraghty** – I want to know the answer though. Is it the same rational? It's a public access, recreational access. You've admitted that people go down there fishing. I assume those same handicapped people would want to get down there and fish as well. And you just said that it's not ADA compliant.

**Mrs. Schottmuller** – No it's not but we have two overlooks that are.

**Mayor Geraghty** – I would like to have the attorney answer. I mean if we don't put it in I would like to make a clear choice that we're going to be treating properties fairly and equally.

**Attorney Knaak** – Compliance tends to be complaint-based. Technically, you have a threat of complaint. The question is what would be required. In this case, you've already done what you need to do in order to avoid a complaint, which is to not put the fishing pier in the water until you've dealt with the access. It's still a passive use, people still come to it and you're not really required as long as it's unimproved to do anything to it. Tenth street is more of a concern because there have been improvements to it. My suggestion is that unless it appears to be an egregious situation that you wait and see whether or not there is going to be a complaint. If you're going to be doing improvements then you do need to look at making it ADA compliant.

**Mayor Geraghty** – What if we do call it a boat landing or boat launch? Because we've already publically acknowledged that we have invited kayakers and canoeists there.

**Attorney Knaak** – A boat launch has different standards. The fact of the matter is that it's likely its primary use will be a fishing pier.

**Mayor Geraghty** – But we really want to advocate people landing and launching there and make it a permanent use. When it originally went in, I advocated people landing and launching there.

**Attorney Knaak** – You can certainly do that. It would change the character of it and eliminate some of these issues. However, I would point out, especially since it's already been used as a fishing pier that you would need to at least deal with the issue with signage indicating that it's no longer a fishing pier.

**Councilman Ingemann** – If we were to call it a canoe/kayak launch facility and a dock was used to load items into the canoe/kayak, the primary purpose is to load the canoe or kayak. If they fish off of it, that's their problem because it wouldn't be a fishing pier.

**Attorney Knaak** – Again, I would suggest placing signs there stating that the dock is intended for loading canoes/kayaks and not fishing. Again, this is not a clear issue unless you're going to be using it as a fishing pier. It's not the structure, it's the access to the structure, it's the grade from the road to the pier.

**Councilman Ingemann** – I think we need to wait for the Park Service to see what they come up with.

**Attorney Knaak** – Well the whole problem goes away with money.

**Dave Engfer, 1390 2<sup>nd</sup> Avenue** – In my past, I was on the board of the St. Paul Yacht club for about a dozen years. During that period of time, we totally rebuilt the yacht club, we built over 200 slips. Early on, we hired an engineer who had a specialty in designing floating docks. At the time, I thought we didn't need that because we had building docks for years. Boy was I mistaken. Once he got into it, it was pretty impressive. What you need to build is something fairly substantial, especially on the main channel. It's not just an ADA compliant issue, it's a safety issue. If a kid is on the dock and a boat comes by and rocks the dock and the kid falls off and drowns, you're liable. Fritz is right, in order to get these docks into compliance, it needs to be a fairly substantial dock, anchored into the river bottom with pilings. Otherwise, it's going to move. As far as the ADA compliance, the City of St. Paul required us to do that just as they were required to make their dock ADA compliant. Basically, what you end up with are some very long ramps that need to be substantial. You're not looking at something that is going to be simple to fix but you need to. You're talking about opening a new park in the tank farm area; you should spend some time to figure out how you can build an appropriate dock in that area. It's not that difficult, but it's not cheap either.

**Mayor Geraghty** – I agree with that and we'll look at other areas as well.

**Mrs. Schottmuller** – I know that a letter has been sent to Brian to enter into the record in terms of the safety that's been observed at the pier. One thing I want to point out that I have learned is that the legal liability that a municipality assumes with these recreational facilities and oftentimes with recreational activities, if someone gets hurt, that's part of the activity. People volunteer for the activity. There's also another thing that you need to be aware of and that is when a dangerous condition exists and the city is aware of it the city is liable. People have sued and won because a municipality has ignored a dangerous condition that they were aware of. Keep in mind that you have now been notified of the dangerous conditions that exist when that pier is in the water. We're insured by the League of Minnesota Cities and I would think that they would have an interest in looking at that if it goes back in the water.

**Mayor Geraghty** – I accept your notice and I'll say that the tenth street overlook is a dangerous issue as well.

**Admin. Anderson** – We did receive a letter from Kevin Chapdelaine to include in the official record and I did forward that to the City Council.

**Attorney Knaak** – Mayor, as a practical matter, because this is a recreational facility, you have immunity under the statute that a private entity such as the Yacht club wouldn't have. You also have discretionary immunities in what you decide or not decide to do there. While you should be concerned for health and safety, I don't want you to think that there is an absolute liability involved for allowing activity on this site. You do have some protections.

**Councilman Ingemann** – I think we should wait until the National Parks gets back to us. Let's see where our application goes.

**Mayor Geraghty** – I think we need to weigh in on whether or not it'll go in. I see all of the arguments and I do want to advocate using the River. I would be willing to utilize it as a loading dock instead of a fishing pier so that people can still get access to the River. If we do nothing, then I say we don't put it in and move to 10th Street.

**Councilman Rahm** – I'm looking at the longer term. We're trying to improve access to the River, which we haven't done in 60-80 years and I think that's important. One thing about it is that we're all aging and because of

that we might want to have access to the River but we won't be mobile. I think longer term, we want to make sure that all of our facilities are ADA compliant. My concern is that we've already sent the intent up that this is a fishing pier and so going away from that I think there would be some legal liabilities. If we want to have a fishing pier than let's do it right.

**Mayor Geraghty** – The loading dock would be an interim use until we can find a site that allows for handicapped accessibility.

**Councilman Rahm** – I understand that, I just think the original intent was a fishing pier and I think we should be compliant in the longer term.

**Councilman Ingemann** – I think we should keep the dock out for this year and see what the National Parks Service comes up with.

**Councilman Gallagher** – I agree.

**Councilman Rahm** – I think we should keep it out as well. It's not strategically in our best interest to put the dock in for two months at most.

**Councilman Sumner** – Fishing access will still be permitted from the river?

**Councilman Ingemann** – Yes.

**Mayor Geraghty** – I guess we'll table it until next spring.

**Councilman Gallagher** – Can we remove the dock from the area?

**Councilman Rahm** – We're not going to use it so let's put it away.

**Admin. Anderson** – I'll work with the Public Works Department to move the dock. Right now, there is a construction zone going on at their site so we may not be able to remove it right away.

#### **E. Approval of 2012-2013 Liquor License – Under Separate Cover**

Admin. Anderson presented on this item. Stephen Linn, CEO of Linn Companies, has applied for an off-sale liquor license, to open one at 1594 Hastings Avenue.

**Stephen Linn, CEO of Linn Companies** – As you all know, we recently built the new NAPA Auto Parts store that opened last fall. Since then, we vacated the building that is currently there and remodeled. We have been marketing the space to see what's out there. At this point, we've decided to move forward. Our company is progressively getting into many different businesses; we're in the automotive parts business, gas station business, laundry mat business, and real estate business. Off-sale liquor is one of the businesses that we've always anticipated opening. Our intent is to fill 100% of the 4,300 square feet of vacant space. We would operate the liquor store internally. I would open it up for any questions.

**Councilman Rahm** – Up and down Highway 61, there are several liquor stores at each access point. Do you think the market is saturated at all for liquor stores?

**Mr. Linn** – No, we don't think its saturated at all, especially not in the City of Newport, you only have one liquor store that I'm aware of. Yes, there is liquor on 80<sup>th</sup> Street in Cottage Grove but it's not like there are easy access points up and down Highway 61. In fact we think this is the easiest access point up and down Highway 61. We've experienced from our NAPA store that we're servicing a much larger base than that of Newport. We're getting customers from St. Paul Park, north side of Cottage Grove, south side of Woodbury, South St. Paul and Inver

Grove Heights. We think this deal is the exact same thing. There's a great deal of people that live off of Glen Road in Woodbury but their easiest access point is Glen Road and Highway 61. That holds true for the north side of Cottage Grove. To me, this is an easy access point. We also anticipate delivery service for large orders such as graduation parties or holiday functions.

**Councilman Ingemann** – Tell me if I'm wrong, I've heard from numerous sources that someone in your organization stated that if someone decided to not rent from you that you would either run them out of business or you would make sure another pizza parlor came in to replace them. Now, in some parts of the country that is considered extortion or threats or whatever you want to call it but that's not a good way to encourage happy renters. If you want to rent a space you should have a competitive rate and not charge, what is considered out of the ordinary, expensive high rent for prospective customers. My suggestion is, I don't think we need another liquor store.

**Mr. Linn** – I take great offense to that. I did not threaten anybody.

**Councilman Ingemann** – Tell me I'm wrong.

**Mr. Linn** – You are wrong, you are dead wrong.

**Councilman Ingemann** – I've heard from numerous sources.

**Mr. Linn** – I have never threatened anybody in my life.

**Councilman Ingemann** – Somebody in your office maybe.

**Mr. Linn** – No one in my company handles our real estate side of business besides me. There is nobody in our organization who handles dealing with any lease negotiations besides me. So you are only accusing me. And what sort of proof do you have of that?

**Councilman Ingemann** – I've heard it from numerous sources, unnamed.

**Mr. Linn** – Numerous sources?

**Councilman Ingemann** – Correct

**Mr. Linn** – Can you reveal those sources?

**Mayor Geraghty** – If we get to public comment we may hear some of it, I don't know. It's up to the people if they speak.

**Mr. Linn** – Here's the deal, I am not asking unreasonable rents for the facility. Do you know what I'm asking for rent for the facility?

**Councilman Ingemann** – I believe you're asking \$24 per square.

**Mr. Linn** – Really? Gross or net?

**Councilman Ingemann** – What are you asking?

**Mr. Linn** – Where did you get that? Is it published anywhere? When have I ever said that?

**Councilman Ingemann** – It doesn't make a difference.

**Mr. Linn** – I just don't understand, why would you start accusing me?

**Mayor Geraghty** – I don't know where he got that number, whether it's gross or net, I don't know.

**Mr. Linn** – I would also like to address your statement that the City doesn't need another liquor store. What does your current ordinance allow for now? Is it only one? Does it limit it to only one?

**Mayor Geraghty** – No but it's at our discretion. There's a lot of discretion.

**Mr. Linn** – If in fact, you believe that the City should only allow for one liquor store in the City then I would suggest, you as a City, change your ordinance to that.

**Councilman Ingemann** – We don't have to.

**Councilman Rahm** – First of all, we have more than one liquor store in the City. We don't have just one.

**Councilman Ingemann** – And just because we have a liquor license doesn't mean we have to issue it.

**Mr. Linn** – I understand that. But if you're specifically going to deny my application for a liquor license based on accusations then I would ask that there's some sort of proof of those accusations.

**Councilman Ingemann** – At this time sir, I don't believe another liquor store would be in the best public interest.

**Mayor Geraghty** – Anyone else from the audience that would like to make comments?

**Paul Hanson, 1925 10<sup>th</sup> Avenue** – Simply put, we do not need another liquor store in Newport.

**Corb Hopkins, 1790 1<sup>st</sup> Avenue** – As some of you know, I am a semi-professional demonstrator of spirits and wines and have been for ten years. I'm employed by Johnson Brothers Wholesale Liquors, and basically I've been doing this for ten years and am very good at it. In the process, I've visited many twin city liquor stores. I've seen what works, what is very desirable, that high service stores succeed, and I've seen what happens when basically other things are ignored. I've also seen the areas where the northwest airlines philosophy was followed. A new liquor store comes to town and says they'll do everything they can to get business and they start by cutting prices. That is the only way a new airline could ever get into the twin cities. They've undercut the competition until that small airline could no longer operate and it had to drop service and then Northwest had their monopoly and high prices. Well, I've seen some of that in the liquor industry. Secondly, how far back can you cut prices? Well, when you cut prices, you have to give up something. Like we say, the quality, the service, something suffers. Now, I've known Newport Liquor and I've done business with them the twelve years that I've lived here. G has developed, what I consider, a local "I Care" business. He cares for his customers; he knows them, knows their needs, caters to them and makes sure that they are satisfied. That is a recipe for success. It's done by the Apple Valley municipals, the finest wine stores on Lyndale. Overall, they serve and they survive. If a new store were to open besides one of these fantastic stores, they couldn't do it. There's more to running a store than stocking the shelves with what you think the customers will buy and cutting the prices to entice them to do it. The liquor business is hugely competitive. It is not at all uncommon, to see ads for liquor that are less than what the store paid for them. But that is the case in what can happen in the liquor business. Does Newport need another liquor store? I think not. What Newport has is an established group, they're not making a million dollars. They are working successfully, they are paying their rent, they are making their payments, they are paying their employees. What more can you ask from honest people who are trying to make an honest living by serving the public and serving them well? For all this, I would say, I do not believe in my experience that Newport needs another liquor store or that it should have one. Thank you.

**Councilman Gallagher** – I think Mr. Linn would actually say that he runs a honest business also.

**Mr. Linn** – I appreciate the business input but I would like to point out that our organization has been around since 1964. I operate several businesses, I have over 300 employees, many of them here in the City of Newport. I do think I know how to run a business and a very, very quality business. We are not all about price and if anyone knows me you would know that we are certainly competitive but we run very good businesses and a lot of what we do is provide top notch facilities, we have quality employees, we offer great products at a competitive price. I can tell you that what we could bring to the City of Newport is a facility that would have a much larger selection than you currently have in Newport, it would have a beer cave, which I don't believe is in Newport, it would have delivery service, which I'm not aware of in the City of Newport, it would have many of the opportunities that I'm not aware of that you have in the City of Newport, and it would have by far, the best access and visibility in the City of Newport and would be in what I believe is the nicest building in the City of Newport. We do know how to run a business and it's not just about price. I do understand there's a liquor store in town and they have local relationships. If they're great operators, then why are they afraid of competition? Competition is what made America great and if we're just here to say that there shouldn't be any competition in the City of Newport, I think you're making a bad decision. I can tell you that recently we opened a brand new Holiday station in Coon Rapids. There are seven gasoline facilities within a mile from our store but the City was happy to have us come in. They didn't say we have too many gas stations. They had very poor service in that area of town. Yes, there were seven gas stations in that part of town but they didn't offer what we were able to bring to the market. I'm just saying that competition is not a bad thing. You shouldn't look at it as a bad thing.

**Mayor Geraghty** – I've received a lot of calls on this. Obviously, it's a big local issue. I've struggled with it because I believe in capitalism and the free markets and to let the free markets work. At the same time, we're a small town city and to have another liquor store within 400 to 500 feet and this gentleman struggled for ten/fifteen years through construction and everything. I'm not saying I ever want to say that I want one liquor store because who knows what the transit station or something else will bring. I agree with you. I never thought the City could handle five body shops, or three gas stations but we have. The market may or may not handle two liquor stores, I don't know but to have it that close.

**Mr. Linn** – What competition tends to do is bring everybody up. You rise to the level of your competitors, you have to.

**Mayor Geraghty** – I understand, I've struggled with the issues. I understand capitalism, I believe in capitalism and free markets. But I do believe we have some discretion on issuing this particular permit. We can argue on the reasons but I think 500 feet is too close.

**Councilman Gallagher** – What would you say if Kwik Trip came up 500 feet from Super America?

**Mayor Geraghty** – We'd say yes.

**Councilman Ingemann** – Alright

**Councilman Gallagher** – So why are we now limiting what comes in? What comes next, are we going to say that a restaurant can't come in because we already have one? The point is that we shouldn't be limiting the competition; we shouldn't be limiting people from coming in.

**Mayor Geraghty** – No, but the law gives us the right to.

**Mr. Linn** – You could deny a gas station too but yet your saying that you wouldn't do that. You're stating that specifically, you're going to deny competition to protect one competitor because it may or may not be closer than you believe it should be.

**Councilman Rahm** – I'm not saying that. I do believe in competition too and that consumers can benefit from that. I think we do have a little bit of an issue here. One of our strategies is improving the first impression of the Highway 61 corridor and the types of businesses that we attract and having a diverse ecosystem of businesses that

can contribute to our economic development. I'm not sure, right now that a liquor store fits in that longer-term plan. It's not because we don't like competition, it's that we have a developed plan that we're trying to exercise and does a liquor store fit in that? I'm not sure about that when it comes right down to it.

**Mayor Geraghty** – Do you want to go to the point of limiting ourselves by only allowing one?

**Councilman Rahm** – No, I'm not saying that. I just don't know if a liquor store improves our economic mix right now. Maybe five years from now but not now.

**Mr. Linn** – So if a liquor store applied to go over where the old Knox Lumber site is, would you allow that?

**Councilman Ingemann** – That would have a better chance?

**Mr. Linn** – Why is that?

**Councilman Ingemann** – It's on the other side of the highway.

**Mr. Linn** – So the intent here is just to protect them?

**Councilman Ingemann** – No, it's not.

**Mr. Linn** – So it's allowed in the City, it's just not allowed here?

**Councilman Ingemann** – I'll make the motion that we deny the applicant a liquor license because I don't believe it's in the best public interest.

**Mayor Geraghty** – I'd like to get additional comments if people would like to make them.

**Mr. Linn** – I would like clarification. A liquor store would be allowed in the City, as long as it's not too close too them?

**Attorney Knaak** – Mr. Mayor, that is not the issue.

**Mayor Geraghty** – No, that's going to be answered by this Council or another Council. All we can do is answer the question before us tonight and give our explanation of it. I'm not attacking your business integrity. I know you're a successful businessman and I appreciate you having your businesses in Newport and I have struggled with this issue since it's been raised. In no way am I attacking your principles or business.

**Mr. Linn** – I was attacked right away, not by you, but I was certainly attacked. My integrity was attacked.

**Mayor Geraghty** – You're a successful businessman and I accept that and I'm not attacking your integrity or business methods. I can't speak for other members of the Council, but speaking for myself.

**Councilman Sumner** – I remember attending Council meetings as a resident before I was on the Council and a question came up about opening some new auto dealerships. I remember the Council did not allow the opening of a new auto dealership because they felt there were enough of that type of business in Newport at that time and they were also interested in developing a diversity of businesses that could come in and support the needs of Newport and I'm thrilled that the NAPA store is doing so well and serving local communities. I just don't think that in that location, it serves Newport the best to have another liquor store. I don't think that is the kind of business that we want to add to the mix. Putting myself in the position of you as the business owner, I was thinking what else I could suggest to you to go in there. And these are just two quick thoughts. I was thinking in the long term that we might have a need for childcare facilities. I know that there are some in Cottage Grove and Woodbury.

**Mr. Linn** – This facility is not designed for childcare. You can't do childcare in that type of a retail establishment. You have to have outdoor areas. Its uses are based on what the markets...

**Attorney Knaak** – Mr. Mayor this is your meeting to run, a gentleman is interrupting you. I'm sorry but there is supposed to be a public hearing here. I normally don't intervene but you're not in charge of the meeting, the Mayor is.

**Mayor Geraghty** – Do you want to make another comment?

**Councilman Sumner** – As a suggestion, there is a possibility of opening some medical offices. Those are only two suggestions so I didn't come with just nos.

**Mayor Geraghty** – I look for additional public comment if anybody has it. Please come forward and state your name and address.

**Mai Vu, Owner of Newport Liquor Store** – I just would like to say thank you for giving me this opportunity today. I know this has been a very difficult discussion and lots of concerns. I just wanted to say that I do respect your decisions to bring new business to the City of Newport. I just looked at this and thought do we need another liquor store because as we discussed earlier, we already have three off-sale liquor stores. With a city of 3,400 is that viable for another liquor store? This is only less than a block away from Newport Liquor Store. I understand what Mr. Linn is talking about with competition; I think competition is great and good for every business but this kind of competition where you are less than a block away. If Mr. Linn opens his liquor store, you know that the small owner liquor store is going to be out of business. Not only that, but I don't know if this is good for the community as we discussed earlier, but is this going to be good for the community as well as business owners? As you know, we lived through the construction on 61 and 494 and we know that there are three gas stations that were there but now there's only one. We really lived through that difficult time and survived it. Now, Mr. Linn wants to put a liquor store in his vacant building where he couldn't find anybody to rent it because the rent is pretty high, it's about \$23.50 per square foot. In the past three years, we have worked with Mr. Linn's brokers about possibly relocating to his space but obviously due to the high rent we would not survive if we relocated there. Since then, we have heard verbal intimidation stating that if nobody rented his space he would put a liquor store there. I know that Mr. Linn is building his empire and he has good intentions, obviously he's a great businessman but we are just small business owners and are just basically trying to make a living like everybody else. Mr. Linn is a multi-million businessman. Just so you know that Newport Liquor has served this community for the last 16 years and I understand that you have an obligation to make a decision but please rethink what the community really needs and I think that many of the people in the audience would agree with me that we do not need another liquor store. Thank you.

**Tom Aguilar-Downing, 1550 Wild Ridge Court** – I hadn't considered this at all. I'm hearing from the Council about a free market. Does Newport need another liquor store? Newport doesn't need any liquor stores; you don't need a liquor store. To open it up to the competition, ok. As far as Tracy is talking about the look of it, the building looks nice. Newport Liquor Store is kind of hidden away so I don't think we're going to give any investors the idea that we're overcrowded with liquor stores. Also, for the folks who do like the business and I tend to go to local stores before I go anywhere else, we always have that option of going there. As Mr. Linn is talking about, he may be drawing in more business to Newport. Again, Newport Liquor is hidden away and doesn't have a big image there so it's probably not drawing that traffic in. He's got a better viewpoint so he'll probably draw new business in. He'll be paying rent, he'll be paying taxes. I think the question is, can Newport or the area support two liquor stores? The only way you're going to find that out is by giving it a chance. Just some thoughts that I had.

**Chuck Williams, 627 12<sup>th</sup> Street** – I go to G's liquor store most of the time. The second time I walked in he says "Hi Chuck." I couldn't even remember telling him my name but he remembered it and got my business. At the moment, I don't think Newport needs another liquor store there. I would love to see Newport develop the former

Knox area that would be a great location for a liquor store and other businesses. The current location in question, the property adjacent to it on the corner there, I would like to see that be developed. I thought I remembered that there was going to be a Linn gas station. I'm incorrect. It got started and stopped. I would like to see Newport finish that. Also, down the street there is the other empty gas station and I would like to see that be filled. I would like something done with existing, unfinished projects before accepting any new business offers like this. Thank you.

**Mr. Linn** – I would like to point out that business does drive business. I know there are many vacant buildings in the City of Newport, there are many development opportunities. There is the go-kart area, the Knox Lumber area, there's certainly the closed down gas station but if you don't drive business to the City, you're not going to attract other businesses. For instance, when you do bring in a Home Depot and a Wal-Mart and places like that, and I'm not saying that you'll ever get places like that in Newport nor should you because of the density but we all know that they drive many, many other businesses. That you'll get other businesses and restaurants and things that build up around it and they do that because they feed off of that traffic and what I can tell you about your existing liquor facilities. And there's only one, full-fledged liquor store that I'm aware of. But in my opinion, and it's simply my opinion, you're not pulling traffic off of the highway. I don't think people heading home to Cottage Grove, St. Paul Park or Woodbury are shopping in Newport. Yes, absolutely, the people of Newport are buying local and no one has to stop doing that but what I believe that I brought to the City of Newport with our NAPA store and can bring to you again today, is the ability to pull off of the highway, the ability to pull from south Woodbury, north Cottage Grove, St. Paul Park, and to drive traffic to your City so that other businesses will come to this town and occupy some of the other vacant buildings. If you don't start doing that you're not going to get them. There aren't people busting down the door to get into this City. It's a great City, I love it, it's been great to our organization, we appreciate being here, I really do. As far as the other parcel we have in town to develop, we're not going to develop another parcel in town when we can't fill the parcel we have. And as far as rents, I can tell you, we have buildings all over the twin cities. I'm much attuned to what rent is going for in the twin cities and I can tell you that first of all, we're not at \$23 a square foot.

**Audience Member** – Yes

**Mayor Geraghty** – Excuse me, comments should be directed to me only and not outbursts.

**Mr. Linn** – First of all, rents depend on the level of investment that they're asking the landlord to put in. In other words if you come to me and say "I want you to do all my build out for me and put in the bathrooms and put up the walls and by the way I only want a small space, 1,800 square feet." You have to take that investment and divide that over the term of the lease and back into your rents. We deal in net rents, when they talk about any rent, they're talking about gross rent. Gross rent includes property tax. By the way, Washington County's property tax on the building is \$4.30 per square foot, sitting vacant. That's inside the \$23 but there are other costs you have to deal with, you have to heat the building, plow the snow, mow the lawn, there are maintenance costs associated with it. That's all in that number and again it's not \$23 a square foot. Do you want to know what they offered me? \$9 a foot, gross but that's neither here nor there. I do know how to negotiate rents. We are not outrageous people. We have lots of good buildings, I have many outside tenants outside of our organization but I beg you to at least consider this as a positive for the City. Will it impact their business? I would ask that you let the market decide that. It is not the position of the Council, in my opinion, to individually protect a business based on competitive factors. You should very well protect a business in other aspects to help them in any way you can as a City but in protecting them from competitors, in my opinion, is not the position of government. Thank you.

**Jeerasak Poophakumpanart, Owner of Newport Liquor Store** – Thank you Mayor, City Council and everybody. As you know, we are hard working people. We have been there, serving the community for more than eight years. I don't ask for you to help, I want you to think clearly. One thing, I would like to point out is, Newport, 3,400 population, we have two off-sale licenses. St. Paul Park, only one, population of 5,000. Cottage Grove, 22,000 people, five liquor stores. I want you to see the population to liquor stores. I don't want you to help; I want you to think the right way. Mr. Linn says the same thing what he try before. He's been saying that before to our broker. He said if we didn't do it, he would put a liquor store in and drive me out of business for the

past three years. He threaten me for more than three years. It's true.

**Mr. Linn** – I don't want to keep coming up but I want to make it very clear. Early on, I made it clear to many people that our company was looking into entering the liquor business and that this may be a location that we had interest in doing so. But that by no means was a threat. I don't threaten people. We were in fact looking into and will get into the liquor store business, whether that happens to be in Newport or other facilities, I can assure you, we will enter into that business but we did not do it through threats and I have no interest in threatening anybody. Thank you.

**Councilman Ingemann** – I'll make a motion to deny the liquor store request because in my determination I have decided that it is not in the best public interest for the City of Newport.

**Councilman Sumner** – I'll second.

**Councilman Gallagher** – I'm not supporting that motion because I don't believe we should be limiting competition in our City. It should be open for competition. If he comes in and you have to close, I'm sorry but I can't make my decision because of that. I have to make my decision on trying to drive business here. I can't make it on friendships, emotions, or relationships but rather what becomes here in the City. It's nothing against any other operation or business in the City of Newport but I have to respect everyone that comes here. We don't have an ordinance that limits the number of off-sale licenses here. I'm assuming he's done some research that says that he can make money here and it'll drive business. I don't think it's for the Council to deny such an application, it's free market and how things work.

**Mayor Geraghty** – I agree with free market but the law gives us the right to control this particular product and these licenses. We control a lot of things and the free market doesn't work entirely across all properties and businesses. The law does give us the right.

**Councilman Gallagher** – The law does give us the right, however we need to look at all pieces of it.

**Councilman Ingemann** – I don't think this is the image we want.

**Councilman Gallagher** – I don't think it's the image we want to...

**Mayor Geraghty** – I understand where it's going and what it's going to mean through this fall and the election. I'll be anti-business and you'll be pro-business. I am pro-business, I struggled with this decision the whole time and I'll take the heat no matter which way it goes. Not everybody is going to be happy with the decision tonight, not everybody is happy with any of the decisions tonight but we certainly have the right to limit the issuance of this. All I can say is it's been difficult and it's no way on your business operations or integrity. It's a personal decision that I think it is too close. Across, the highway, I think it would be a totally different thing and if you want to call that protecting a business than that's what you're calling it but I don't necessarily call it that.

**Councilman Rahm** – Again, do we think we have some other compelling interests here with what Steve said. I agree with what you said, free enterprise.

**Mayor Geraghty** – I agree, I told you that a week ago.

**Councilman Rahm** – I think a lot of us are but the compelling interest is, is that the type of business we want to attract for that area. If it was across the street at the old Knox site would we be having this discussion?

**Councilman Ingemann** – No.

**Councilman Rahm** – I don't think we would. So the thing is that we're looking at because of what that type of business is for that area and what our vision is for that area in the longer term and in my opinion trying to drive a

diverse customer base. I agree, maybe you would have a lot of draw but there's a little bit more than the free market here. This is a tough one; it's not an easy one.

**Councilman Sumner** – But this hinges on the City's long-term strategic development. And that's probably the overriding factor that is going to drive my decision. We would love to welcome alternative uses at this site. I say that very sincerely.

**Councilman Gallagher** – I think we as a Council then should state how many liquor licenses we have for on-sale or off-sale and even specify for both sides of the highway.

**Mayor Geraghty** – I agree with you, a geographic distance or whatever. We did talk about the issue and decided not to do anything about it.

**Councilman Rahm** – I think Bill made a very good point on the car dealership. The past Council decided, based on what type of business mix they want to encourage, so it's not like the Council hasn't done this before.

**Motion by Ingemann, seconded by Sumner, to deny the off-sale liquor license application submitted by Linn Companies. With 4 Ayes, 1 Nay, the motion carried.**

#### **10. ATTORNEY'S REPORT –**

**Attorney Knaak** – You do have the prosecution report before you and I have nothing to add other than to say the total number is 52. These high numbers are remaining and they're reflected in the hearing officer's numbers as well. It's not consistent with what is going on in the rest of the county. I give all credit to the Police Department.

#### **11. POLICE CHIEF'S REPORT**

##### **A. Code Red Presentation**

Chief Montgomery gave a presentation on Washington County's Code Red system. Code RED is a web based system which allows residents to sign up for email or phone notifications on issues such as a evacuation notice or missing children/individuals, not for severe weather. A link to sign up for the system is on the City's website. Residents will sign up through the Washington County Sherriff's Office.

##### **B. June 2012 Activity Report**

**Chief Montgomery** – You have the activity report before you and I will stand for any questions on it.

**12. FIRE CHIEF'S REPORT** – Chief Mailand reported on the number of calls in the past month, which include: downed power lines, gas leaks, mutual aid to St. Paul Park and Cottage Grove, garage fire and balcony fire. Chief Mailand also thanked Public Works for repairing items and the residents for helping make the 59<sup>th</sup> Annual Booya a success!

#### **13. ENGINEER'S REPORT –**

**Engineer Stewart** – Things are progressing with the North Ravine project. I'm estimating that the equipment will be leaving town in about two weeks, weather permitting.

#### **14. SUPERINTENDENT OF PUBLIC WORKS REPORT –**

**Asst. Supt. Neska** – This morning we poured the footings for the Bailey School Learning Facility. Street sweepers are out right now, I expect them to be finished by tomorrow.

**Councilman Rahm** – Are we doing something in Loveland Park?

**Asst. Supt. Neska** – Yes, we're resurfacing.

**Admin. Anderson** – Regarding the tennis court in Loveland, we couldn't get anybody in this year to repair the tennis court but we are working with a company to repair it early next spring. It'll be before Council later this

**15. NEW/OLD BUSINESS**

**16. ADJOURNMENT**

**Motion by Ingemann, seconded by Sumner, to adjourn the regular Council Meeting at 7:54 P.M. With 5 Ayes, 0 Nays, the motion carried.**

Signed: \_\_\_\_\_  
Tim Geraghty, Mayor

Respectfully Submitted,

Renee Helm  
Executive Analyst

April 20, 2012

Subject: Newport floating fishing pier ADA compliance investigation.

Ms. Margot Imdieke,

I Thank Pauline Schottmuller for inviting me but I will decline attending the meeting set up with you, Newport Administrator Brian Anderson, Newport City Attorney Fritz Knaak and Pauline Schottmuller regarding the Newport floating fishing pier. I'm afraid my presence will be misinterpreted and cause unnecessary political angst which could cloud the pursuit of a positive outcome in this matter. But I would ask that our questions and concerns be addressed by your department, and if possible placed into the public record file on this project.

I do want to state that we both very much support the public's right to access the Mississippi River and the concept of a community fishing pier, whether it be a floating or fixed design. Our issues in this case are with safety, design and location, not concept.

Wendy and I are very concerned about public safety, for both folks requiring ADA accessibility assistance and the public at large. The Newport fishing pier is located on the main channel of the Mississippi River where large wakes and fast currents are very common and conditions are ever changing. We have lived at this location for 20 years and hope our riparian experience and civic record will constitute some credibility.

The unsafe condition that concerns us the most occurs when a larger [30feet+] boat passes the floating fishing pier quickly leaving a sizable wake in its path. This wake can and often does create a very violent upset condition on the fishing pier causing it to quickly jump from left to right while following the waves up and down. When the fishing pier is in a downward movement, the pier floats strike the river bottom causing a sudden change in direction. We've witnessed many people who have been forced to run from the pier at the last second or quickly sit down and hold on to keep from being thrown about and possibly hurt. People requiring ADA approved access to enjoy this location will possibly not be able to protect themselves in this situation. The danger caused by this type of event has never been taken seriously by any Newport representative although this continued action did result in breaking one of the piers' vertical pipe supports in Oct 2011. If the fishing pier is put back into the water we could provide a video of this type of occurrence if it would be helpful, please let us know.

Another concern is that small children [under 8 years old] often visit the floating fishing pier without adult supervision. For the reasons given above and others, this can be very scary. We have called Newport Police in some cases and compelled the kids to leave in others. Our concerns are what if we don't see the kids walk down to the floating fishing pier and something horrible happens. We shouldn't have to be burdened with this responsibility, we didn't ask for it. We know this not an ADA issue but we felt it was important to state it for the record.

I also would like to state for the record, I was appointed by the Newport City Council to sit on the Floating Fishing Pier advisory committee in 2009. We were given very narrow design specifications. The Pier had to fit within Minnesota DNR fishing pier permit requirements of less than 20 feet long and 8 feet wide. The city did not want to apply for a Minnesota DNR fishing pier permit because of concern approval would not be granted. My goal was to create the safest floating fishing pier under these constraints. I'm not sure we achieved that but Newport City Council proceeded anyway.

Finally, it's our opinion based on 20 years of living on and 40 years of boating the Mississippi River that the main channel of this working river is not an appropriate place for a public floating fishing pier. The river just moves too much for a safe public ADA accessible environment.

Thank you for your diligence in this matter.

Kevin and Wendy ChapdeLaine  
601 2<sup>nd</sup> Ave Newport, Minnesota  
Chapdelaine61@comcast.net 651-458-3422