

**WOODLAND SPECIAL CITY COUNCIL MINUTES
MONDAY, SEPTEMBER 26, 2005
6:00 P.M.**

CALL TO ORDER:

Mayor Stark called the meeting to order at 6:08 p.m.

PRESENT: Jean Stark, Jim Doak, Mark Evenstad, Michael Jilek and Steve Hornig

STAFF: City Clerk Shelley Souers

OTHERS: Attorney Kim Kozar, Denny and Mary Newell, Judy Lampert, Deb Nelson, Robert and Debbie Johnson and Bill Upjohn.

EXECUTIVE CLOSED SESSION REGARDING NEWELL V. CITY OF WOODLAND LAWSUIT

Attorney Kim Kozar recommended that according to State Statute 13D.05 Subd. 3 (b) the Council go into closed executive session for attorney/client privileges to discuss settlement agreement for Newell v. City of Woodland. Councilmember Jilek moved to adjourn to executive closed session. Councilmember Doak seconded. Motion carried 5-0.

Councilmember Evenstad moved to adjourn the executive closed session at 8:43 p.m. Councilmember Jilek seconded. Motion carried 5-0.

Mayor Stark reconvened the public meeting at 8:46 p.m.

CONSIDER APPROVAL OF MUTUAL RELEASE AND SETTLEMENT AGREEMENT REGARDING NEWELL'S V. CITY OF WOODLAND

Mayor Stark asked Attorney Kim Kozar to provide an overview of the settlement agreement. Attorney Kim Kozar summarized, based on the establishment of a prescriptive easements, the city will convey three easements which are stated within the Mutual Release Settlement Agreement. Attorney Kim Kozar noted that the easements are perpetual and available to any subsequent purchaser, provided they comply with the terms of the conveyance of the easements. The Newells have agreed to indemnify the city against any third party claims related to the conveyance. The city will support the Newell's dredging application with the Minnehaha Creek Watershed and the construction of a retaining wall to facilitate dredging as set forth on page 5 of the Agreement. The Newells will be making a monetary payment to the city and are required to comply with all the rules and regulations, including city ordinances and rules of the LMCD. The Newells will be maintaining insurance to protect the city from claims that result from the Newells' use of the property and placement of structures. All structures outside of the easement area, conveyed in the agreement, will be removed no later than November 30, 2005. This is a full and final resolution and all claims between the city and Newells and the case will be dismissed with prejudice.

Attorney Kim Kozar noted that the city will accept public comment regarding this matter.

Mrs. Judy Lampert, 2760 Woolsey Lane, stated the city was very generous to persons who did not buy the property. Mrs. Lampert expressed concern about who would enforce the Agreement.

Attorney Kim Kozar stated that the city may enforce any defaults in the Agreement with a seven day written notice to cure and if the matter is not cured, the city has the option to terminate the easements.

Mrs. Deb Nelson, 2865 Maplewood Road, expressed concern with the ability to maneuver a sailboat in and out of Woolsey Channel and stated the use of the channel has been impaired. Mrs. Nelson also expressed concern with the use of a bubbler to keep the water open, which creates a danger to persons using the channel. Mrs. Nelson was disappointed that there was no prohibition regarding bubblers in the Agreement. Mrs. Nelson stated that she felt the city is giving the Newells better protection than the property owners with riparian rights.

Mayor Stark stated that the Newells will need to comply with all matters denoted in the agreement or will lose their rights.

Mr. Robert Johnson, 2800 Woolsey Lane, stated that he would feel more comfortable if the easement was automatically terminated for infraction of rules.

Attorney Kim Kozar stated that the Agreement gives the city the most latitude with regard to enforcement. The Council's job is to protect public property.

Mr. Bill Upjohn, 2705 Maplewood Circle East, asked what was the rationale for the agreement.

Attorney Kim Kozar stated the Council is not at liberty to disclose the reasons as it is protected attorney/client privileged communications.

Mr. Bill Upjohn stated that he would have concerns if other watercraft cannot get by the dock. Mr. Upjohn asked if there was anything the City could do to "soften the blow" regarding this matter.

Attorney Kim Kozar stated that the council has made a policy decision regarding this matter and weighed many factors and has spent a great deal of time on this issue. There are numerous protections for the city and strict enforcement procedures.

Mrs. Deb Nelson, asked why there were no restrictions regarding a bubbler in the channel during the winter.

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Mayor Stark thanked the residents for their comments and stated that the council has appreciated their comments throughout this process. The Council has had many discussions and tried to weigh both sides of the situation in order to reach the settlement.

Councilmember Evenstad moved to approve the Mutual Release and Settlement Agreement, dated September 26, 2005, between Franklin D. Newell III and Mary W. Newell and the City of Woodland, inclusive of comments in the margins on page 2, paragraph 2A i., and page 3, paragraph 3, changing October 3 to October 7; and page 5, paragraph 10, and with the approved attachments. Councilmember Doak seconded the motion. Upon a roll call vote, motion carried 5-0.

ADJOURNMENT

Councilmember Doak moved to adjourn the Special Council Meeting at 9:17P.M. Councilmember Evenstad seconded the motion. Motion carried 5-0.

Respectfully submitted,
Shelley Souers, City Clerk