



CARVER COUNTY PARKS

11360 Highway 212 West, Suite #2
Cologne, MN 55322
Phone (952) 466-5250 Fax (952) 466-5223
www.co.carver.mn.us/parks

Division of Public Works

11360 Hwy. 212 West, Suite #1
Cologne, MN 55322
Phone (952) 466-5200
Fax (952) 466-5223

Carver County Park Commission Regular Meeting

Carver County Public Works Head Quarters
11360 Hwy 212 West, Cologne, MN 55322

Wednesday, February 11, 2009

7:00 P.M.

Agenda

- 1) Call Regular Meeting to Order (7:00 p.m.)
- 2) Roll Call (7:00 p.m.)
- 3) Approval of the January 14, 2009 Regular Meeting Minutes (7:00 p.m.)
- 4) Additions or Deletions to the Agenda (7:05 p.m.)
- 5) Approval of Agenda (7:06 p.m.)
- 6) Commissioner Liaison Report (7:10 p.m.)
- 7) Open to the Public (7:15 p.m.)
- 8) New Business (7:30 p.m.)
 - Review 2007- 2008 Goals and Strategies, Begin Formulating 2009 -2010 Goals and Strategies
- 9) Staff Reports (8:00 p.m.)
 - a. Comprehensive Parks and Trail Plan
Northern Lakes Crow River Search Area
 - b. Clean Water and Land Legacy Amendment
 - c. Metropolitan Council Update (Marty)
 - i. Metropolitan Council Regional Park and Trail Survey 2008
 - d. 2009 Budget Update (Marty)
 - e. Ballroom Service Provider Update (Marty)
 - f. Events, Activities, Campground Software Demonstration (Lenny)
- 10) Commission Member Reports (8:50 p.m.)
- 11) Set Next Meeting Date (8:50 p.m.)
- 12) Adjourn Meeting (9:00 p.m.)

Please note if a Commission Member cannot attend the meeting, please call the Park Office at 466 – 5250.

Minutes

January 14th, 2009 Regular Meeting

Members Present: Tom Hermann, Neil Wingert, Gail Von Bargaen, Jeff Conkling, Richard Tieden, Myron Karki,

Staff Present: Commissioner Tim Lynch , Marty Walsh, Lenny Klevan Schmitz

Public Present: 47 members of the public present – see attached sign in sheets.

CALL TO ORDER - Wingert called the meeting to order at 7:00 p.m.

WELCOME NEW MEMBERS – Wingert welcomed two new members to the park commission, Richard Tieden and Myron Karki. Wingert also noted that He and Gail Von Bargaen have been reappointed for another term on the Park Commission.

MINUTES - Conkling motioned to approve the November minutes. Hermann seconded the motion. Motion passed 6-0.

AGENDA- Walsh asked to move the Commissioner Liason report to item 9.5 on the agenda following Old Business. Von Bargaen motioned to approve the agenda with the change. Conkling seconded the motion. Motion passed 6-0.

OPEN TO THE PUBLIC N/A

OLD BUSINESS

a. Comprehensive Parks and Trails Plan

Walsh briefly reviewed the timeline and steps taken in the past year or so to develop the draft of the comprehensive parks plan as a portion of the Carver County 2030 Comprehensive Plan. Walsh noted that the public comment period of the draft of the plan ended on December 31st, 2008. Walsh also provide a directors report with the public and agencies comments from the review period along with his written responses to those comments.

Public Comments

Penny Hatcher – E-mail

I'm writing to ask you to consider including dedicated horse trails/corridors in your Carver County "The Last Best Places" 2030 Master Plan. Although I'm a Hennepin County resident (Plymouth), I stable my horse in Carver County (Chanhassen). Over the years we've had fewer & fewer trails/corridors to ride. I remember many years ago we could ride from Chanhassen to Chaska – where we stopped for lunch at area businesses. Access to places, even one county park that allows

horses and near Riley Lake via horse trails in Chanhassen are also eliminated due to new housing, Highway 212, etc. – once we could ride into town (Chanhassen).

Now the only places we can ride in Carver County are either the MN River Valley or Three Rivers/Carver Park. However to get to those places we need to 'drive' with the truck & horse trailer so adding to traffic congestion and pollution! It would be great if we had trails/corridors throughout the county, especially ones that connected to the above mentioned horse approved parks/trails.

Yes I live in Plymouth, the #1 City in America, but I must admit that the town of Chaska & Carver County are competing with us. However by including designated horse trails/corridors in Carver County, you have the opportunity to show your commitment to reducing pollution and increasing opportunity for physical fitness (reduce obesity).

My sister is a member of the Carver County mounted posse & lives in Chanhassen. So having the opportunity to ride our horses along designated horse trails/corridors provides the horses and riders more training so they are comfortable around people, cars, etc. Riding in the Three River Parks and along the MN River Valley does not provide this type of critical sensitivity training. Remember these posse horses are who help search for lost persons, including children and help monitor crowd control at City & County events, e.g. Carver County fair, National Night Out, etc. This is another opportunity for Carver County to indicate how they are helping all county residents by providing horse riders, especially posse members, designated horse trails/corridors so they can 'train' their horses to better serve

Fred Hawkins – E-mail

I support horse trails in Carver County. There are many private properties here that stable their horses. It seems to me that horse trails are needed as the county auto traffic and residential development grows.

Horse trails go hand-in-hand with 4H and the Carver County Fair.

The County's responsibility is to use taxpayer dollars to provide for all constituents and preserve unique cultural folkways of the County. It is unjust for taxpayers with horses to provide tax funding against their own interests.

Horseback riders may be smaller in number than cyclists, but they were here first, are demonstrably committed to their passion for horses, and add to the charm of the County. They should be accommodated in growth plans for public works projects.

Horse Trail Petition

In addition, County received a petition pertaining to horse trails. This document is attached as a PDF file or has been sent along with this report as an attachment.

The petition was circulated electronically and approximately 300 people responded to the petition many of them making comments to preserve existing trails or to expand trail opportunities for horses.

Response to Horse Trails

The County has received several direct communications concerning the need for horse trails and a petition reinforcing the desire to have horse trails. The first draft omitted horse trails the draft of the plan has since been updated to include the following:

Equestrian Trails

Currently, trails for horseback riding are provided in Carver Park Reserve, which is managed by Three Rivers Park District. At this time, there are no designated or anticipated locations for equestrian trails within any of the existing or planned regional parks within Carver County (since these land units are not likely to be large enough to develop long enough trail loops). The trail system plan does, however, leave open the option to consider developing an equestrian trail within a select and limited number of conservation corridors that connect with Carver Park Reserve and/or state and federal lands where

equestrian trails are provided. Final determination on developing equestrian trails in these corridors would be based on several key factors, including (at a minimum): 1) clearly documented demand; 2) adequate conservation corridor width/condition to limit impact of trail development on natural systems; and 3) approval by administering agencies of lands that the equestrian trails would connect to (i.e., USFWS, MN DNR, and Three Rivers Park District, as appropriate).

Many of the people that have commented have misinterpreted the Comp Plan. Their comments indicated that they are seeking preservation of trails within the County. Carver County supports the existing horse trails which are provided in Carver Park Reserve, along the Minnesota Luce Line Trail and horse trails in the Minnesota River Valley. The comp plan does not support the reduction of horse trails in the County.

Randy & Brenda Wellman – E-mail

My name is Randall Wendland and my property is located on the north side of Miller's Lake. While I have enjoyed living in a park like setting, the time is approaching for me to start planning for a transition to an easier to care for retirement home. But still I am reluctant to leave my location. Currently my property is zoned one dwelling per 40 acres so an additional building eligibility and subdividing is not available.

That brings me to the comp plan and some of the language pertaining to working with landowners to set aside lands for parks and corridors. This idea appeals to me. The idea of a Miller's Lake regional park at some future date is something I would support and be an advocate of. Then if I could build a home for myself and facilitate a park at the same time, I see this as a win-win situation.

Response:

No response is necessary but the comment indicates support for the alternative development tract which has been outlined in the comp plan.

Unknown Author

I understand the plan is still not approved, so we are not into the execution phase, but I would appreciate a return response to continue discussion and fact finding of the possibilities

I wish this had spell check and a larger box to work in but here it goes. Sorry for the length and repeat but I hope to get some items on the table that will have a long term effect on many in my area.

2030 PLAN - LAKE WACONIA, TRAIL & NORTH SHORE ROAD

== The entire lake and surrounding areas need to be addressed. Just a portion of the lake will not do. I would like to see a better long range projection for the development of all areas along and around all areas of Lake Waconia. You can't just address parts of the lake and forget the rest. The Carver County impact is much larger than is being planned for with the addition and development of a new trail a long Lake Waconia, increased public uses from all over, Environmental impacts not addressed or considered, North Shore Road has been overlooked and this roads uses, maintenance and repairs have not been addressed or considered in the life of this road that is directly related to the trail being considered for development. The entire Lake Waconia area and its shores needs to be considered in the comprehensive plan as this trail is planned and developed. Much is yet to be considered and planned for along Lake Waconia before costly damages are done that the public will need to fix later. The entire surroundings of Lake Waconia, its residents and future development around the lake needs to be considered, planned for and addressed in current plans before the trail is built and the 2030 Comprehensive Plan is revised and approved. Addressing the entire lake now only makes sense when planning for the future.

Response

Concerning trails along or near Lake Waconia, the master plan does support a trail along the eastern shore of the lake as well as trails along the Dakota Rail line and along County Road 10. The parks and trails plan does not address shore land preservation. Land use is addressed in another section of the comp plan.

Unknown Author

Before a Major Trail Project is considered: The railroad trail that is to be developed calls for a complete lake shore and lakes area comprehensive study to consider uses, development, impact, damages to area properties, restricted uses based on the trails impact to neighborhoods and land owners. The construction of the limited use trail factors into the current and future uses of area properties and has not been studied and this trail many cause damages to area property owners and residents. Has a trail areas impact study been done that has considered all or any of the affects this trail will have on values, limited uses and restrictions that will be created and the loses of land use rights that will be affected. The trails impacts, damages, costs, environmental impacts, public use impacts, private property owners impacts, pollution, local road damages and over uses' runs fare beyond anything addressed or considered in the 2030 comprehensive plan as proposed in this area.

Response

Converting railroad corridors to trails has and continues to be a widely supported approach to providing trails for recreation and transportation purposes throughout the state as well as nation. An example of this support is evidenced in Federal Transportation Enhancement Funding made available for the preservation of railroad corridors and conversion of use for trail and other transportation purposes. Concerning the use of Federal Transportation Enhancement Funds for trail projects, Environmental analysis is conducted before projects would be approved. Additional work to meet with area residents on particular issues concerning trail development is done through trail master planning process which provides opportunity for public review and comment on trails. The public process involves open houses, meetings with township and city officials, meetings of the park commission, meetings of the County board and meetings of the Metropolitan Council. Concerning the effects of trails on salability of property, in a book entitled The Proximate Principle published by the National Recreation and Parks Association, and written by Professor John Crompton, the " prevailing sentiment was that the presence of a trail had no impact on these issues" This book further defines the positive effects on property values in relation to open space.

Unknown Author

Overview of issues related to planning for parks, open space, and trails, and its connection to health. This introductory section provides important justification for the provisions included in later sections. The vision statement and policy plan provides very good coverage of numerous health issues including physical activity, accessibility, mental health, air quality, water quality, food access, and safety. Finally, this section does a nice job of laying out future goals, objectives, and policies that support the link between health and planning issues, particularly in the Parks and Open Space Acquisition and Development section. The specificity of the many of the policy statements provides clear direction for the County as it considers next steps in parks, open space, and trail planning.

Trail and Bikeway System Plan: This plan prioritizes safety and convenience (accessibility) of the system, leading to secondary goals of recreation, fitness, and transportation – all of which contribute to health. It provides a useful breakdown of trails and use types, acknowledging the needs of varied needs of user groups. The inclusion of the "Linking Trails" section is particularly applicable from a health perspective as it addresses numerous aspects of health including accessibility, safety, physical, and air quality.

Parks and Open Space System Plan: The discussion of corridors in this section does a good job of linking the recreation and natural resource values of open space corridors. From a human health perspective, both recreation (physical activity) and water quality are highlighted among the numerous values to be captured by protecting sensitive corridors.

Local Systems Connection Plan: This element does a nice job of setting forth a framework for an interconnected park, open space, and trail system throughout the county. The proposed trail classification helps to ensure consistency in planning between the county and the cities. In addition, providing specific implementation recommendations for each jurisdiction helps highlight the role

that each plays in contributing to an interconnected system. The inclusion of the “active living by design” section provides a really strong basis for what is proposed in the plan, emphasizing how parks, open space, and trails contribute to numerous aspects of healthy and active communities. In addition, the discussion of “complete streets” makes it clear that accommodating multiple modes is a priority within the county. Finally, the “safe routes to schools” section emphasizes the special transportation needs of children.

Response

No response is needed. The author is highly supportive and clearly understands the work that went into the document. The comment validates our work on the comp plan.

Agency Comments

City of Carver

Parks, Open Space, and Trail System Plan

- Map 4-2 identifies a large portion of the Carver growth area as a search area for a Carver Ravine acquisition. This acquisition is not identified in the City of Carver Comprehensive Plan. However, the City is open to discussion with the County and the Metropolitan Council regarding this topic. No further detail on this proposed unit or the Bevens Creek one could be located later in the chapter, so the City could not determine if there are any conflicts with the City’s plans.
- The concepts in this chapter of preserving the high value resources (which are frequently wooded) is in conflict with the County’s and township land use policy and zoning practice of allowing additional residential density in “amenity” areas.
- Figure 4-5 should show the Union Pacific rail to trail conversion with a future extension to Scott County, similar to how other corridors that link to the County border are shown with an arrow.
- Figure 6-9 is labeled as “City of Mayer”.

Response

Bullet Point 1- No comment is necessary.

Bullet Point 2- Concerning preserving high value resources in conflict with City and township land use policy, yes, this may be a conflict but the comp plan suggests ways to allow development to occur and preserve natural resource areas by offering an incentive approach for development and preservation of natural resources.

Bullet Point 3- Figure 4-5 has been corrected to show the extension into Scott County.

Bullet Point 4- Figure 6-9 needs to be corrected to reflect the City of Carver

City of Chanhassen

Section 3 – Parks and Open Space System Plan

- Page 3.24 & 3.25: An existing pedestrian trail connection between a City property, Herman Field Park and Minnewashta Regional Park may be noted by inference, but in the best interest of the public, should be included in the County’s master plan. Acknowledgement and improvement of this connection will lead to improved awareness of this convenient access from neighborhoods north of the park leading to increased park use. It is also the City’s desire to see a future local trail connection to the expanding neighborhoods south of the park included in the parks master plan.
- Page 3.37 – Figure 3.11 MN DNR/USFWS Land Holdings and Future Collaborative Opportunities: Update to include acquisition of the Seminary Fen SNA.
- Page 3.4 – Figure 3.3 Natural Resources Inventory Map of Carver County: Data for a majority of Chanhassen is omitted.
- Page 3.4 – Equestrian Trails: Carver County boasts a sizable community of horse owners who are seeking expanded opportunities for trail riding within the area.
- Page 3.49 – Disc Golf Course: It is noted that typically only one disc golf course would be provided in each regional park district. The County already maintains a course at Baylor Regional Park. The City would welcome the opportunity to partner on a second course within the Carver County System at Minnewashta Regional Park. Through resident input

and feedback we are aware of a significant interest in expanded disc golf opportunities in Eastern Carver County.

Response

Bullet Point 1 – While the City of Chanhassen supports a trail connection from Herman Park, this connection is inconsistent with the Master Plan for Lake Minnewashta Regional Park. The primary issue about formalizing the connection at this location is that the nature of the connection changes the use and character of this portion of the park. The trails in this area of the park are natural surfaced and meant for a somewhat remote hiking and walking experience through a wooded area of the park. It was not contemplated in the master plan for the park that a trail connection here would facilitate access into the park. Also, by enhancing the connection suggests that the trail surface would be paved increasing infrastructure cost within the park boundary. At a time when the master plan is revised the issue of a neighborhood connection or greenway connection should be addressed to resolve the issue.

Bullet Point 2- the Seminary Fen is identified as an area of collaborative opportunities which the County may play a role in the preservation of portions of the Seminary Fen. The DNR has purchased a significant portion of the Seminary Fen. Carver County may preserve additional open space related to the Minnesota Bluffs Regional Trail this may or may not involve acquisition.

Bullet Point 3- Natural Resource data for this section of the County is not available. The County is not proposing to inventory this section of the County due to the existing level of development.

Bullet Point 4- Equestrian Trails are addressed in section 4.

Bullet Point 5 – Disc Golf is currently not contemplated in the Master Plan for Lake Minnewashta Regional Park but may be included in a revision to the master plan.

Section 4 – Trail and Bikeway System Plan

- Page 4.21: We do not concur that the Highway 101 North Trail in Chanhassen offers a less than compelling trail experience, which likely reduces the level of use it receives. This trail was the most widely sought-after section of trail in the community leading to its' construction in 2002, assisted by a \$500,000 grant from the State of Minnesota.
- Page 4.22 Equestrian Trails: The City of Chanhassen receives numerous inquiries concerning the lack of equestrian trails in the area. On a county-wide basis horse ownership and interest in facilities associated with recreational riding compounds significantly. We encourage the inclusion of equestrian trails in the County's master planning efforts.

Response

Bullet Point 1- The reference to TH 101 has been removed form the page.

Bullet Point 2- Equestrian Trails are addressed in section 4

Section 6 – Local Systems Connections

- Page 6.14 – Figure 6.4 City of Chanhassen Trails Map with Regional Trail Corridors Overlaid: The map depicted is a "Future Possibilities" map describing park and recreation planning ideas expressed during our public open house sessions. This map needs to be replaced with a current park and trail master plan. A note recommending a regional trail connection through the Minnesota Landscape Arboretum should be reviewed with the University of Minnesota.
- Page 6.14: Note concerning protection of the Seminary Fen needs updating to acknowledge recent partial acquisition by the State of Minnesota.
- Page 6.15: It should be noted that the City is a partner in *GoCarverGo*, an active living program administered by Carver County.

Response

Bullet Point 1- The map has been replaced with the correct map.

Bullet Point 2- This change has been made.

Bullet Point 3- Map has been changed to reflect acquisition on figure 3.13 and paragraph added on page 3.4

Bullet Point 4- Acknowledgement has been made that Chanhassen is partner in GoCarverGo.

City of Watertown

Parks, Open Space & Trails

- Page 4.66: Direct Purchase/Fee Simple Acquisition should be put last on the list of strategies for projecting and managing natural resources because it is not the preferred method.
- Page 4.69: Is Lake Minnewashta Regional Park on the priority list for acquisition of land or just for improvements as stated on page 4.71?
- The City of Watertown is supportive of a Crow River-Northern Lake Regional Park Search Area. The City is currently seeking land for a community park with an array of facilities and amenities including off leash dog park, disc golf course, outdoor performance area, access drives and parking lots, restrooms, visitor/interpretive center, paved & Nature trails, multi-recreational fields, etc. Although the community park would not meet the recommended regional park size, conservation corridors and interconnected trails with the regional park will be important to consider and evaluate with searching for a Northern Lakes Regional Park.

Response

Bullet Point 1- Land acquisition may be the preferred method in some instances in working with willing sellers and with grant funds.

Bullet Point 2- The master plan for Lake Minnewashta Regional Park indicates that that land acquisition is complete for the park.

Bullet Point 3- No response is necessary.

Scott County

The Scott County Regional Park and Trail System Map (Figure VII-2) identifies the Union Pacific Railroad "Chaska Spur" line (that is in the process of being abandoned) as a Proposed Trail Corridor Search Area. This corridor could serve as a trail crossing into the City of Carver, and Scott County believes this trail corridor would serve a regional purpose. Scott County staff recommend the Carver County's Trail and Bikeway System Plan on page 4.73 acknowledge this trail connection across the Minnesota River. Scott County looks forward to continue to work with Carver County, Metropolitan Council, and the cities of Carver and Chaska in acquiring the "Chaska Spur."

Response

The map on Figure 4.5 has been revised to show the trail connection to Scott County.

Metropolitan Council

Parks – Jan Youngquist, 651-602-1029

- The informal review process found the Parks section **complete for review** but **substantive issues** have been found with respect to conformance with regional systems.

- The Update is complete for regional parks. However, the Update does not conform to the 2030 Regional Parks Policy Plan (RPPP). The RPPP identifies two regional park search areas—the Miller Lake Search Area and the Minnesota River Bluff and Ravines Search Area in Carver County. The Parks and Open Space System Plan Map (page 4.72) refers to these park search areas, but also includes the “Crow River-Northern Lakes Regional Park Search Area.” Although the Crow River Regional Park search area was part of the 2001 Regional Recreation Open Space Plan, it was not identified in the RPPP. Therefore, the potential acreage and land acquisition costs of this regional park search area were not part of the RPPP adopted by the Council in 2005. The RPPP sets the initial framework for the regional parks system elements the Council will help fund.
- In order to conform to the current RPPP, the reference to a “regional” park search area in the Crow River-Northern Lakes area needs to be removed. The Council will be updating its RPPP in 2009-2010. Council staff recommends that the County seek regional status for the search area during the RPPP update. The County could label the area as the “Crow River-Northern Lakes Park Search Area (will seek regional status).” Additionally, page 4.69 refers to three regional park search areas, although the RPPP has identified two. This information needs to be included in the Update.
- The regional trails identified in the RPPP include: the Dakota Rail Regional Trail, Highway 5 Regional Trail, Highway 101 Regional Trail, Waconia-St. Bonifacius Regional Trail, Twin Cities & Western Regional Trail, Chaska-Victoria Regional Trail (also known as the Southwest LRT Connection Regional Trail). Regional trail search corridors identified in the RPPP are the Crow River Regional Trail Search Area and the Carver County North-South Regional Trail Search Area. The Trail and Bikeway System Plan Map (page 4.73) includes these, and additional trails. To ensure conformance to the RPPP, a distinction of which trails are regional needs to be made.
- In addition to the Update, Council staff had the opportunity to review the County’s 2030 Parks, Open Space and Trail System Plan. The County has done an outstanding job of defining its vision for the system, including identifying partnership opportunities and potential local connections to the regional system. This Update has set a strong foundation for future master planning of regional parks and trails.
- Council staff offers the following comments on the 2030 Parks, Open Space and Trail System Plan:
 - The comments given above with regard to the Crow River-Northern Lakes Search Area and labeling of regional trails apply to this Update, also.
 - The Update states that Carver County is one of seven regional park implementing agencies (page 3.9). Actually, there are ten regional park implementing agencies—this information needs to be updated.
 - The description for Carver Park Reserve (page 3.23) refers to the SW Regional LRT Trail. Three Rivers Park District has renamed this trail the Lake Minnetonka LRT Regional Trail. The trail name needs to be updated in this section.
 - The description of the Council’s Regional Parks Acquisition Opportunity Fund (page 8.19) includes outdated information. The Council revised the program to provide up to \$1.7 million per agency to finance up to 75 percent of the costs to acquire land. The remaining 25 percent is not eligible for reimbursement. The program description needs to be updated in this section.
 -

Response

Bullet Point 1- No response is necessary.

Bullet Point 2- Carver County will seek regional recognition of the Crow River Northern Lake Area.

Bullet Point 3- The change has been made as suggested removing the word regional from the description.

Bullet Point 4- Notation have been added to the document indicating which trails are have regional status and which trails are proposed for future consideration as regional.

Bullet Point 5- No response is necessary.

Bullet Pont 6 and sub bullets- Changes were made as suggested.

Wingert opened the floor for comments pertaining to horse trails as it pertains to the comprehensive plan. (See the noted from the public comment period)

Karki made a motion to accept the revised text including horse trails as a potential activity in greenway corridors and future park areas as it was stated in the director's report and added to the draft plan. Von Bargaen seconded the motion. Motion Passes 6-0.

Wingert noted his desire to establish a list of resources pertaining to horse trails and horse trail development based on the positive feedback and support from those in the horse community throughout Carver County and the surrounding area for future reference.

- LIAISON REPORT-** Lynch stated that the Carver County Board has asked staff to work on appraisals for lands to be acquired for Lake Waconia Regional Park so if an opportunity presents itself as funding is available a purchase could be made. Lynch also noted that he is a little concerned with how things will be handled at the state legislature with the Land and Water Legacy Fund dollars and the potential that once it is determined how these dollars will be split up it could have an impact on how other funding has been dispersed to the County for regional parks funding including operations an maintenance which could have a negative impact on Carver County.
- STAFF REPORTS -** Staff reports where put off until the February meeting due to the length of the public comment period and discussion.
- NEXT MEETING –** February 11th, 2009, 7 p.m. at the Carver County Public Works Facility in Cologne.
- ADJOURN -** Hermann Motioned and Karki Seconded to adjourn. Motion was approved 6-0 to adjourn at 9:40 p.m.