

**WORTHINGTON CITY COUNCIL
REGULAR MEETING, JULY 8, 2019**

The meeting was called to order at 7:00 p.m. in City Hall Council Chambers by Mayor Mike Kuhle with the following Council Members present: Larry Janssen, Alan Oberloh, Chad Cummings, Amy Ernst, Mike Harmon. Honorary Council Member: Scott Barber.

Staff present: Steve Robinson, City Administrator; Jason Brisson, Assistant City Administrator/Director of Economic Development; Jeremiah Cromie, City Planner; Dwayne Haffield, Director of Engineering; Mindy Eggers, Interim City Clerk.

Others present: Alyssa Sobotka, The Globe; Ben Weber; Jeff Marx, MERC; Clint Nixon; Mike Pigman, Tri-State; Lewayne Pigman, Tri-State; Lee Buchholz; Kyle Johnson; Brad Klassen.

The Pledge of Allegiance was recited.

INTRODUCTIONS AND OPENING REMARKS

Jason Brisson, Assistant City Administrator/Director of Economic Development introduced Jeremiah Cromie, the new City Planner to Council. City Council welcomed Mr. Cromie to the Worthington.

HONORARY COUNCIL MEMBER

Mayor Kuhle welcomed Scott Barber as the Honorary Council Member for the months of June, July and August, 2019.

AGENDA CLOSED / APPROVED

The motion was made by Council Member Ernst, seconded by Council Member Harmon and unanimously carried to close / approve the agenda as presented.

CONSENT AGENDA APPROVED

The motion was made by Council Member Janssen, seconded by Council Member Cummings and unanimously carried to approve the consent agenda as follows:

- City Council Minutes of Regular Meeting June 24, 2019
- Worthington Area Convention & Visitors Bureau Minutes of May 29, 2019
- YMCA Board of Directors Minutes of May 20, 2019
- Safe Roads Coalition Minutes of June 25, 2019
- Water & Light Commission Minutes of July 1, 2019
- NEON Committee Minutes of June 6, 2019
- Bills payable and totaling \$1,215,338.58 be ordered paid

THIRD READING AND ORDINANCE NO. 1142 ADOPTED CHANGE OF ZONE - CERTAIN PROPERTY SOUTH OF 704 OXFORD STREET

Pursuant to published notice, this was the time and date set for the third reading of a proposed ordinance that would rezone certain property south of 704 Oxford Street from its current "R-3" - Low Density Preservation Residential District designation to "B-3" - General Business as follows:

The following described property, presently included in the "R-3" district, shall henceforth be included in the "B-3" district:

Lot 4, Block 1, Apel-Chermak Subdivision, City of Worthington, Nobles County, Minnesota.

Adoption of the ordinance would allow the property owner to develop a parking lot on the subject property for customers of their commercial businesses on the abutting property to the north.

The motion was made by Council Member Oberloh, seconded by Council Member Cummings and unanimously carried to give a third reading to, and subsequently adopt the following ordinance:

ORDINANCE 1142

AN ORDINANCE TO AMEND TITLE XV OF THE CITY CODE OF WORTHINGTON, NOBLES COUNTY, MINNESOTA, TO REZONE PROPERTY FROM "R-3" (LOW DENSITY PRESERVATION RESIDENTIAL) TO "B-3" (GENERAL COMMERCIAL)

(Refer to Ordinance File for complete copy of Ordinance)

THIRD READING AND ORDINANCE NO. 1143 CHANGE OF ZONE - CERTAIN PROPERTY EAST OF A SOUTHERLY EXTENSION OF KNOLLWOOD DRIVE SOUTH OF FIRST AVENUE SOUTHWEST

Pursuant to published notice, this is the time and date set for the third reading of a proposed ordinance that would rezone certain property east of a southerly extension of Knollwood Drive south of First Avenue Southwest from its current "R-1" - One Family Detached Residential District designation to "PUD" - Planned Unit Development as follows:

The following described property, presently included in the "R-1" district, shall henceforth be included in Planned Unit Development District No. 13:

Lot 1, Block 1, South Lake Subdivision, inclusive of Common Interest Community No. 26, No. 26-A, No. 26-B, South Lake Condominium, all in the City of

Worthington, Nobles County, Minnesota.

The above described property shall be subject to the following zoning/land use regulations:

Permitted Uses - The residential land uses of Townhome and Two Family Home shall be permitted within this PUD.

All other zoning requirements of the "R-1" - One Family Detached Residential District shall apply.

The PUD would permit the land use of town house and twin family residential uses.

The motion was made by Council Member Cummings, seconded by Council Member Oberloh and unanimously carried to give a third reading to, and subsequently adopt the following ordinance:

ORDINANCE 1143

AN ORDINANCE TO AMEND TITLE XV OF THE CITY CODE OF WORTHINGTON, NOBLES COUNTY, MINNESOTA, TO REZONE PROPERTY FROM "R-1" (ONE FAMILY DETACHED RESIDENTIAL) TO "PUD" (PLANNED UNIT DEVELOPMENT)

(Refer to Ordinance File for complete copy of Ordinance)

MOVIE THEATERS OPERATOR'S LEASE APPROVED

Steve Robinson, City Administrator said ahead of awarding the contract for construction of the Entertainment Spec Building, Staff is requesting that Council approve and execute the operator's lease with Todd Frager of The Movie Guy, Inc.

Mr. Robinson explained the lease is for an initial term of five (5) years with ten successive two-year options for a total of twenty-five (25) years. The Lessee shall pay a Base Rent of \$5000.00 per month or \$60,000.00 annually. Rent shall be due and payable on the first day of the month and each month thereafter, commencing on May 1, 2020, or the first day of the month following issuance of a Certificate of Occupancy, whichever occurs later.

In addition to the Base Rent, the Lessee shall pay Supplemental Rent equaling five percent (5%) of the total net admission revenue when net admission revenue exceeds \$450,000.00 for the twelve (12) month period beginning on the first full month of operation, and each twelve (12) month period thereafter. Supplemental Rent shall be due and payable on the 10th day of the month following the twelve (12) month period. "Net admission revenue" means the total receipts for all movie tickets sold but does not include any applicable admission sales taxes paid by the Lessee. There shall be

no other deductions decreasing the "net admission revenue".

The lease was prepared by the City's attorney. The project sub-committee, consisting of Mayor Kuhle and Council members Ernst and Oberloh, have reviewed and approved the lease. Mr. Robinson explained after meeting with Mr. Todd Frager, The Movie Guy, Inc. He noted this afternoon a couple of minor word changes were made to the lease but have no impact on the terms of the lease.

A motion was made by Council Member Ernst, seconded by Council Member Harmon and unanimously carried to approve the lease and authorize the Mayor and Clerk to sign and execute the lease with Mr. Frager and the Movie Guy, Inc. contingent upon award of the construction contract.

Kevin Donovan and Todd Frager thanked staff and City Council for their patience and work on the project and after six years a movie theater will finally become reality.

AWARD OF CONSTRUCTION CONTRACT FOR ENTERTAINMENT SPEC BUILDING APPROVED

Mr. Robinson stated that bids for construction of the Entertainment Spec Building were received on June 27, 2019. Four contractors submitted bids.

He explained the building is pre-engineered steel construction approximately 19,527 square feet in area. It includes five theater auditoriums. Two of the auditoriums will seat 119 occupants and three auditoriums will seat 46 occupants, for a total seating of 376. In addition to the building, the work includes paved parking, storm water management, landscaping and extending Darling Drive approximately 350-feet. The City requested separate pricing for concrete or bituminous parking and street construction.

The low bidder was Tri-State General Contracting, Inc. of Jackson, MN with bids of \$3,590,000.00 for the bituminous option and \$3,795,000 for the concrete option. The cost of extending Darling Drive, included in the above bids, was \$202,681 for a concrete roadway and \$214,331 for a bituminous roadway.

The Architect's estimate for construction, which did not include the roadway extension, was \$2,970,000. The low bid is thirteen percent above the Architect's estimate.

Staff's recommendation is that funding for the project comes from Worthington Regional Hospital funds which, as of May 31, 2019, have a cash balance of \$9,754,174 and loan receivables of \$2,901,205 for total assets of \$12,655,379.

A motion was made by Council Member Oberloh, seconded by Council Member Ernst and

unanimously carried to award the bid to Tri-State General Contracting, Inc., using the concrete option and to authorize the Mayor and Clerk to sign and execute the contract.

LeWayne and Mike Pigman, Tri-State General Contracting, Jackson, MN also thanked Council for awarding the project to them and said they look forward working with the City.

AWARD CONTRACT FOR 2019 BITUMINOUS IMPROVEMENTS APPROVED

Dwayne Haffield, Director of Engineering stated that the bid abstract with recommendations on award of the 2019 Bituminous Improvements project were handed out prior to the meeting this evening.

He explained the only bid that was received was over the engineer's estimate, however the recommendation to award the bid is based on the following:

The Lake Street overlay is \$27,168 over the engineer's estimate for that work; however, the underrun on the 2019 Seal Coating bid awarded in June was about \$25,960 under the engineer's estimate. Both of those projects are funded from the "Contract Maintenance" budget available for this year (\$466,000). The "Contract maintenance" balance is still projected to be adequate with potential for some additional (minor) work to be completed later this season depending upon actual costs for the overlay and seal coat work.

He said the bid for the East Avenue schedule of work is about 5% (\$6,897) over estimate. It is still projected that the total estimated amount of the project would be as presented in the project report. It is however, less likely to be under the total estimated project amount.

A motion was made by Council Member Oberloh, seconded by Council Member Cummings and unanimously approved to award the 2019 Bituminous Improvements contract to Duininck, Inc.

AWARD CONTRACT FOR REPLACEMENT OF CENTENNIAL PARK PEDESTRIAN BRIDGE APPROVED

Mr. Haffield stated that the low bid received for the Centennial Park Pedestrian Bridge Replacement was submitted by Structural Specialties, Inc. from Hutchinson, MN, in the amount of \$153,842.00. The bid was reviewed and there were no disqualifying issues or major problems with the bid. While the bid did come in approximately 10.2% over the engineer's estimate there is nothing major that could be revised on the bidding documents that would significantly change the outcome of a rebid for this project.

A motion was made by Council Member Ernst, seconded by Council Member Harmon and unanimously approved to award the Centennial Park Pedestrian Bridge Replacement to Structural

Specialties, Inc.

APPROVED CONSIDERATION OF SUBDIVISION - MINNESOTA ENERGY RESOURCES CORPORATION - (MERC)

Jason Brisson, Assistant City Administrator/Economic Development Director stated that Minnesota Energy Resources Corporation has submitted a request to permit subdivision of certain property owned by the A. Elden Good Revocable Living Trust located south of 778 South CSAH 5. In the “TZ” zoning district, the zoning designation of the subject property, the minimum lot area is 435,600 square feet and the minimum lot width is 200 feet. The proposed 130-foot-wide, 16,900 square foot subdivision would not comply with either requirement. The City’s subdivision regulations require that no land shall be subdivided unless city sewer and water shall be available to such property; a subdivision cannot involve the construction or extension of any street, road or public utilities; and all subdivisions considered for approval must comply with the City’s design standards. The proposed subdivision does not conform to certain aspects of each of these requirements due to its proposed size and the lack of City services to the proposed subdivision. The City Code provides that if the Director of the Community/Economic Development or his or her designee determines that approval of the application for minor subdivision will not interfere with the intent and purpose of this chapter, he or she shall approve or deny the application. If the Director of the Community/Economic Development or his or her designee determines that the application would interfere with the intent and purpose of this chapter, the application shall be forwarded to the Planning Commission and City Council for their consideration.

The Planning Commission considered the subdivision request at its July 2, 2019 meeting. The Commission voted unanimously to approve the requested subdivision. The Commission’s recommendation was based on the following considerations:

1. The subject property is currently zoned “TZ” – Transition. The Transition Zone District is established primarily for those annexed unplatted areas within the city that have not been zoned for development and are undergoing a transition from, in most cases, agricultural to urban uses. It is the expressed intent of this district to allow only crop farming or similar agricultural uses in order to reduce potential land use conflicts as urban development occurs in the Transition Zone District. Certain lands in the district may be released for compact and orderly urban development, according to the comprehensive Development Guide Plan, pending proper timing and providing for the economical provision of city services. As these criteria take place a more conventional urban zoning district will replace the Transitional Zone District.
2. The City Code’s Schedule of Density, Area and Bulk Requirements has established minimum lot area and widths for each zoning district within the City. The City’s Zoning Code prevents the creation of lots that do not meet the minimum standards of the Zoning

District. The minimum lot area for the “TZ” – Transition Zone is 435,600 square feet. The minimum lot width is 200 feet. The proposed 130-foot-wide, 16,900 square foot subdivision does not meet either requirement. The large lot area and width of the “TZ” zoning district is intended to prevent development from occurring before the zoning designation of the “TZ” property is changed to a more conventional urban zoning district. 3. The City Council finds that the use of individual water and private sewer systems within the city creates serious health and safety hazards. Scattered development causes an unreasonable burden upon taxpayers of the city, creates fiscal and engineering problems

in the installation of improvements and utilities, causes undue financial burdens upon the city for policing, street and utility maintenance, fire protection and snow removal, disrupts orderly planning and stable growth and reduces community cohesion. For these reasons, no land shall be subdivided unless City sewer and water shall be available to such property. The proposed subdivision would not have access to either City sewer or water. All subdivisions considered for approval must also comply with the design standards as outlined in the City Code. City Code Section § 154.34 requires that each lot shall abut a public sanitary sewer main and a public water main within a street right-of-way or public utility easement.

4. City Code Section § 154.11 requires that a minor subdivision cannot involve the construction or extension of any street, road or public utilities. City Code Section §154.11 also provides that if the Director of the Community/Economic Development or his or her designee determines that approval of the application for minor subdivision will not interfere with the intent and purpose of this chapter, he or she shall approve or deny the application. If the Director of the Community/Economic Development or his or her designee determines that the application would interfere with the intent and purpose of this chapter, the application shall be forwarded to the Planning Commission and City Council for their consideration.
5. The City’s Comprehensive Plan has designated the future land use for the subject property Low Density Residential. Low Density Residential provides areas for neighborhoods of single-family housing. Single family housing can be described as a building intended to serve as a dwelling for one person or family unit.

Mr. Brisson explained that the City Code provides that if the Director of the Community/Economic Development or his or her designee determines that approval of the application for minor subdivision will not interfere with the intent and purpose of this chapter, he or she shall approve or deny the application. If the Director of the Community/Economic Development or his or her designee determines that the application would interfere with the intent and purpose of this chapter, the application shall be forwarded to the Planning Commission and City Council for their consideration.

Jeff Marx, Minnesota Energy Resources explained that MN Energy Resources is going to be putting in six miles of new pipeline because of the higher demand for gas for our customers in the area. This

is one piece of the project that will be done this summer that will allow more gas to be brought to customers. He stated the company likes to keep these regulating substations on the edge of town if possible.

Council Member Oberloh asked why the substation could not be put along County 5 since that is already zoned "T-Z" Commercial, he doesn't like the idea of the proposed location because there is potential for city services to be extended and according to our Comprehensive Plan low density residential housing could be developed in that area. Council Member Amy Ernst stated that the Planning Commission talked in length about potential housing in that area in the future. She said if you look at it and the way the County is allowing access off of county roads there would most likely be a frontage road which would put this in the back of the housing that could possibly be developed.

Mayor Kuhle asked if there were other locations that could be viable options. Mr. Marx stated that this is the optimal site the Planning Commission discussed a location on the southern boundary that is located on the creek side which would need more site preparation because it is so low lying. He explained MERC is very mindful and will work with everyone involved to make sure there is proper screening, soundproofing concerning decibel levels and other compatibility issues.

Mr. Marx stated that the large 12-inch transmission main coming into Worthington is what is needed to come into the sub-station and will line up with the existing infrastructure, from there it spreads out to other distribution lines and is diverted to other areas of the city.

A motion was made by Council Member Cummings, seconded by Council Member Janssen to approve the consideration of subdivision for Minnesota Energy Resources. Those voting in favor of the motion: Council Member Cummings, Ernst, Janssen, and Harmon. Those voting against the same motion: Council Member Oberloh. Motion passed.

APPROVED CONDITIONAL USE PERMIT - MINNESOTA ENERGY RESOURCES CORPORATION - (MERC)

Mr. Brisson explained that Minnesota Energy Resources Corporation has submitted a request for a conditional use permit for property owned by the A. Elden Good Revocable Living Trust located south of 778 South CSAH 5 to develop and operate a natural gas utility station. The development will include a 600 square foot building, an above-ground heating unit and above-ground piping. The subject property is currently zoned "TZ" - Transitional. The land use of utility station is permitted within the "TZ" district with issuance of a conditional use permit only. He said the Planning Commission considered the application at its July 2, 2019 meeting. After holding a public hearing, the Commission voted unanimously to recommend the City Council approve the requested conditional use permit subject to the following conditions:

1. The applicant is granted a variance from the City's Board of Zoning Appeals to encroach up to 32 feet into the subject property's required 35-foot front yard;
2. The property is developed in accordance with the submitted site plans in Exhibit 1B;
3. The subject property maintain compliance with all applicable local, State and Federal requirements; and
4. The applicant provide the required parking for the development in accordance with City Code Section § 155.040.

Mr. Brisson stated that condition #5 was inadvertently left out and is as follows:

5. The applicant provide a 5 foot screening around the development.

Mr. Brisson said that Brad Klassen has asked that Council consider adding the applicant must maintain compliance with 155.044 Governing Performance Standards Noise & Exterior Lighting section of the City Code which would allow Mr. Klassen the ability to have something done if noise becomes objectionable. Mr. Brisson noted that having this as a condition makes it easier for the city to enforce the conditional use permit.

Council Member Oberloh stated he feels this will squelch any future housing growth in that area.

Mr. Klassen stated that he also has concern about the fence being so close to the road and wondered if it would look better with no fence. Council Member Oberloh stated that is also a big concern that the city is allowing the set-back to deviate from the standard 32 foot setback. Mr. Marx said they like to keep everything secure, the addition of trees, however, would have to be located in the public right-away.

Council asked that staff list the conditions, Mr. Brisson stated the following items have been added as conditions of the Conditional Use Permit:

- The applicant is granted a variance from the City's Board of Zoning Appeals to encroach up to thirty-two (32) feet into the subject property's thirty-five (35) foot front yard;
- The property is developed in accordance with the submitted site plans;
- The subject property maintain compliance with all applicable Local, State and Federal Requirements;
- The applicant provide the required parking for the development in accordance with City Code Section § 155.040;
- The applicant maintain compliance with City Code Section § 155.044 governing performance standards, including noise and exterior lighting;

- The applicant maintain in healthy condition an obscuring greenbelt on all sides of the development that must be at least three (3) feet in height at the time of installation; and
- The applicant provide and maintain a five (5) foot fence around the perimeter of the development.

A motion was made by Council Member Harmon, seconded by Council Member Ernst to approve the Conditional Use Permit for Minnesota Energy Resources with the above added conditions, Council Members voting in favor of the motion Harmon, Ernst, Cummings, Janssen. Council Member voting against the same motion Oberloh. Motion carried.

APPROVED CONDITIONAL PERMIT - NEWPORT LABS

Jason Brisson stated Newport Labs has submitted a request for property they own at 2020 Circle Drive to operate an approximately 20,800 square foot animal services facility. The property is currently zoned “B-3” – General Commercial. The land use of animal services is permitted in the “B-3” zoning district through issuance of a conditional use permit only. The land use of animal services currently operates on the subject property, but a new conditional use permit is required as a result of the applicant’s request for an additional driveway on East Avenue. They are looking to refinish the parking lot and add a driveway for better flow of traffic.

Mr. Brisson explained the Planning Commission considered the application at its July 2, 2019 meeting. After holding a public hearing, the Commission voted unanimously to recommend the City Council approve the requested conditional use permit subject to the following conditions:

1. The property is developed in accordance with the submitted site plans;
2. The subject property maintain compliance with all applicable local, State and Federal requirements; and
3. The applicant agrees in writing to the rescinding of the previous conditional use permit approved for this development.

Council Member Oberloh asked if they have all of the required parking stalls that they need. Mr. Brisson stated that what they have now is legal non-conforming. Council Member Oberloh asked why we aren’t requiring them to bring it up to standards. Mr. Brisson stated that they have the legal amount of spaces that are needed.

Council Member Oberloh asked if Circle Drive was being abandoned. Kyle Johnson, Johnson Builders & Realtors stated that they are moving the driveway down and off of the MN DOT property and will be extending the culvert under Circle Drive 16 feet to the south and rebuilding it so the lanes stay off of it.

A motion was made by Council Member Oberloh, seconded by Council Member Cummings and unanimously carried to approve the Conditional Use Permit for Newport Labs.

CONDITIONAL USE PERMIT - KC PROPERTIES - DENIED

Mr. Brisson stated that KC Properties has submitted a request for a conditional use permit for property they own at 1790 Collegeway to permit a proposed 16-unit, approximately 8,250 square foot memory care expansion of the Golden Horizons Assisted Living Facility. The property is currently zoned “R- 5” - Multi-Family, Medium and High Density residential. The land use of memory care is permitted in the “R-5” zoning district through issuance of a conditional use permit only.

He explained the Planning Commission considered the application at its July 2, 2019 meeting. After holding a public hearing, the Commission voted unanimously to recommend the City Council approve the requested conditional use permit subject to the following conditions:

1. The applicant is granted a reduction in parking requirements from the City’s Planning Commission from 1.0 spaces per dwelling unit to 0.5 spaces per dwelling unit;
2. The property is developed in accordance with the submitted site plan.
3. The subject property maintain compliance with all applicable local, State and Federal requirements.

Mr. Brisson explained that the addition will be a single story addition and incorporate a small patio and fence that will be located on the side of the building between the Golden Horizons and the Golf View apartments. The applicant has updated staff to let them know that the wetland application has been submitted and they expect approval within 30 days. Drawings are also to be started in the next week and should be done in thirty days as well.

Steve Robinson, City Administrator, asked if there is a specific use or occupancy compared to the Meadows for parking for this facility. Mr. Brisson explained that there is in fact a provision in the city code that states a multi-family dwelling to be occupied by folks 60 years or older may reduce parking requirements from 1 space to .5 spaces at the sole discretion of the Planning Commission.

Mayor Kuhle asked if the building would ever be used for something different would the parking have to be brought back into conformance. Council Member Oberloh stated that it would not because it would be considered grand fathered in. Mr. Brisson stated that if the land use changed and there was an increase in demand it would have to conform. Council Member Oberloh stated he is more concerned about the encroachment issue not the parking.

A motion was made by Council Member Ernst, seconded by Council Member Janssen to approve the Conditional Use Permit for KC Properties. Council Members voting in favor of the motion: Ernst, Harmon, and Cummings. Council Members voting against the same motion: Oberloh and Janssen. Motion failed.

COUNCIL COMMITTEE REPORTS

Mayor Kuhle - no report.

Council Member Janssen - no report.

Council Member Oberloh - Wondering if the Council should consider doing a Resolution that addresses the Pledge of Allegiance officially be recited at the beginning of each meeting. He said nothing formal was ever done, Council started saying it years ago after it was suggested by a service group.

Honorary Council Member Barber - Asked what the city's role is in addressing the daycare issues in the city. He knows the county is looking at ways to promote it but there are a few more daycares closing, Mayor Kuhle stated that it is a council priority and WREDC is working on it.

Council Member Cummings - no report.

Council Member Ernst - no report.

Council Member Harmon - no report.

CITY ADMINISTRATOR'S REPORT

Steve Robinson, City Administrator, explained that WREDC is currently working on two proposals for smaller daycares, one in Worthington and one in a neighboring town, both would be in-home daycares. The Department of Health will be here tomorrow to inspect the Splash Pad, providing we pass inspection the hours will be 8:00 a.m. to 9:00 p.m. daily. The balcony seat installation has started at the Memorial Auditorium.

ADJOURNMENT

The motion was made by Council Member Oberloh, seconded by Council Member Cummings and unanimously carried to adjourn the meeting at 8:36 p.m.

Mindy L. Eggers, MCMC
Interim City Clerk