

**WORTHINGTON CITY COUNCIL
REGULAR MEETING, JULY 22, 2013**

The meeting was called to order at 7:00 p.m. in City Hall Council Chambers by Mayor Alan E. Oberloh with the following Council Members present: Mike Kuhle, Diane Graber, Rod Sankey, Ron Wood, Scott Nelson. Honorary Council Member: Robert Bristow.

Staff present: Craig Clark, City Administrator; Brad Chapulis, Director of Community/Economic Development; Scott Rosenberg, Parks Superintendent; Mark Shepherd, City Attorney (7:20 p.m.)

Others present: Paul Langseth; Brigitte Rosenberg.

HONORARY COUNCIL MEMBER

Mayor Oberloh welcomed Robert Bristow as the Honorary Council Member for the months of July, August and September, 2013.

AGENDA APPROVED WITH CHANGE IN ORDER

Craig Clark, City Administrator, noted that Item F.1 *Discussion Regarding Stump Grinding Contract* would be moved to the end of the meeting to accommodate a possible closed session.

The motion was made by Council Member Nelson, seconded by Council Member Kuhle and unanimously carried to approve the agenda with the requested change in order.

CONSENT AGENDA APPROVED

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

- City Council Minutes of Regular Meeting July 8, 2013
- Minutes of Boards and Commissions - Worthington Housing and Redevelopment Authority Minutes of Special Meeting March 7, 2013, Monthly Meeting May 21, 2013, Special Meeting June 5, 2013, Monthly Meeting June 18, 2013, Special Meeting June 26, 2013; Heron Lake Watershed Board Minutes of Regular Meeting May 21 2013; Planning Commission / Board of Appeals Minutes of July 10, 2013
- Financial Statements - Municipal Liquor Store Income Statement for the Period January 1, 2013 through June 30, 2013; General Fund Statement of Revenues and Expenditures - Budget and Actual - for the Period January 1, 2013 through June 30, 2013
- Temporary On-Sale Beer License - King Turkey Day Mixer - from 5:00 p.m. to 9:00 p.m. on September 9, 2013 at Pioneer Village
- Temporary On-Sale Liquor License - King Turkey Day, Inc. as follows:
 - Friday, September 13, 2013 from 4:00 p.m. to 11:00 p.m. at the Sheep and Poultry Barn, Nobles County Fairgrounds
 - Saturday, September 14, 2013 from 1:00 p.m. to 11:00 p.m. at the Sheep and Poultry

Barn, Nobles County Fairgrounds and from 5:00 p.m. to 11:59 p.m. in the Worthington Arena, Nobles County Fairgrounds, for the Hairball Concert

- Application to Block Streets for the 2013 King Turkey Day as presented
- Change Order No. 1 to the Dechlorination System Improvements Project
- Amended Storm Water Utility Credits for MN West Parcels as presented
- Bills payable and totaling \$1,804,230.18 be ordered paid

ORDINANCE NO. 1071 ADOPTED VACATING PORTION OF PUBLIC UTILITY EASEMENT - 2177 CASTLEWOOD DRIVE

Pursuant to published notice, this was the time and date set for the third reading of a proposed ordinance that would vacate a portion of the a public utility easement at 2177 Castlewood Drive as follows:

Section I.

An ordinance vacating that portion of the platted public utility easement in Lot 12, Block 2, Dano Addition, City of Worthington, Nobles County, Minnesota described as follows:

The east 10.00 feet of Lot 12, Block 2, Dano Addition, City of Worthington, Nobles County, Minnesota, except the north 10.00 feet thereof.

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

ORDINANCE NO. 1071

AN ORDINANCE TO VACATE A PORTION OF THE PLATTED PUBLIC UTILITY EASEMENT IN LOT 12, BLOCK 2, DANO ADDITION

(Refer to Ordinance File for complete copy of Ordinance)

SECOND READING PROPOSED ORDINANCE AMENDING CHAPTER 90, SECTIONS 90.01 AND 90.03 OF THE WORTHINGTON CITY CODE - ANIMALS

Pursuant to published notice this was the time and date set for the second reading of a proposed ordinance amending Chapter 90, Sections 90.01 and 90.03 of the Worthington City Code to clarify that rabbits are not included in the definition of "Farm Animal".

The motion was made by Council Member Wood, seconded by Council Member Nelson and unanimously carried to give a second reading to the proposed ordinance.

**SECOND READING PROPOSED ORDINANCE AMENDING CHAPTER 113 OF THE
WORTHINGTON CITY CODE - PEDDLERS, SOLICITORS AND TRANSIENT
MERCHANTS**

Pursuant to published notice this was the time and date set for the second reading of a proposed ordinance amending Chapter 113 of the Worthington City Code to require the registration of all operators of farmer's markets, solicitors, and any person exempt from the City's licensing requirements. It would also prohibit the display, sale, bartering, trade or giving away of any live animal as defined in Worthington City Code 90.01 (*Animal - every living creature except members of the human race.*)

The motion was made by Council Member Wood, seconded by Council Member Kuhle and unanimously carried to give a second reading to the proposed ordinance.

**PURCHASE AND INSTALLATION OF SIGN AT MEMORIAL AUDITORIUM
APPROVED WITH INPUT ON FUNDING SOURCE TO COME FROM CITY
ADMINISTRATOR**

The Memorial Auditorium Advisory Board met and discussed the lack of signage at the Auditorium facility following the addition/remodel project. Two quotes were obtained for design and installation of a sign, and following review of the materials and cost, the Advisory Board voted unanimously to recommend Council approval of the use of the stone material and the low bid of \$4,650.00 from Jasper Stone Company, engraved and installed, with funds to come from the Vance Trust money.

Council and staff discussed whether the costs associated with the sign would be eligible for the half-cent sales tax collection as the Event Center project was reported to be coming in under budget. The Vance Trust could then be used for the impending repair of the ceiling and rigging at the Auditorium. Craig Clark, City Administrator, noted that the auditorium project portion of the sales tax collection had been closed out but he would investigate whether it could be reopened and if the sign would be an approved use. Brad Chapulis, Director of Community/Economic Development, stated that, while the Event Center project was approximately \$150,000 under budget, of the \$4 million from the half-cent sales tax designated for the project, \$3.75 million was designated for project construction, with the remaining \$250,000, along with revenue from operations, to be used for capital reserve for long-term replacement for the facility.

The motion was made by Council Member Graber, seconded by Council Member Wood and unanimously carried to approve the quote from Jasper Stone Company for the purchase and installation of a sign at Memorial Auditorium in the amount of \$4,650.00, with input on funding source to be provided by the City Administrator.

DESIGNATION OF OFFICIAL CITY REPRESENTATIVE TO PARTNERSHIP CITIES

OF CUERO, TEXAS AND CRAILSHEIM, GERMANY IN 2013, AND AUTHORIZATION FOR REIMBURSEMENT OF EXPENSES

In 2012, Council adopted Ordinance No. 1055 amending the Worthington City Charter to include Section 4.17, Historical Partnerships, which provides for Council authorization of expenditures for one or more designated City officials to serve as official City representatives to Crailsheim, Germany, Cuero, Texas, and such other destinations that have a historical partnership/significance to the City..." Following adoption of that ordinance, funds were included in the 2013 budget for expenses related to these historical relationships.

Mayor Oberloh and his wife have received an invitation to represent the City of Worthington in Cuero, Texas for their 2013 Turkey Fest in October, and to Crailsheim, Germany in September for Volksfest, commercial tours and a discussion of the future of our long-standing relationship between Crailsheim and Worthington. Mayor Oberloh was asking Council to designate him as the City's official representative to Crailsheim, Germany and Cuero, Texas in 2013, and to authorize reimbursement of his expenses.

CONDITIONAL USE PERMIT APPROVED SUBJECT TO CONDITIONS- 1451 JOOSTEN ROAD

Smith Trucking was seeking a conditional use permit for their property at 1451 Joosten Road, which would allow them to construct a fence along the north property line that will vary between 6 and 15 feet in height, constructed of telephone poles and sheet metal. Because the materials are not identified as acceptable fence materials by the City's zoning ordinance, a conditional use permit is required.

The Planning Commission considered the request at its July 10, 2013 meeting and voted unanimously to recommend Council approval of the conditional use permit subject to the following conditions:

1. The fence is structurally designed to comply with the State Building Code;
2. The fence may only be constructed along the north property line of the subject property;
3. The fence is constructed with the materials specified in the fence elevation plan submitted; and
4. The fence is kept in good condition, plumb and true without damage.

Brad Chapulis, Director of Community/Economic Development, noted that the conditional use permit, once issued, would stay with the subject property to apply to future owners if the current owners should sell the property.

The motion was made by Council Member Wood, seconded by Council Member Nelson and

unanimously carried to approve the conditional use permit for 1451 Joosten Road.

CHANGE ORDERS APPROVED - WORTHINGTON EVENT CENTER

Staff presented the following change orders to the Worthington Event Center project for Council consideration:

General Conditions	-\$26,970
Kitchen & Roof Access Modifications	\$12,727
FF & E	\$ 1,472
Kasota Stone	\$18,400
Irrigation	\$ 2,975
Wedding Park Electrical Wiring	\$ 8,508
Repaint Door Frames	\$ 750

Net cost of the changes is \$17,862 and will come out of the project contingency fund.

The motion was made by Council Member Wood, seconded by Council Member Kuhle and unanimously carried to approve the change orders to the Worthington Event Center project as presented.

COUNCIL COMMITTEE REPORTS

Mayor Oberloh - Visited with an exchange student from France here at City Hall last week. Nice young lady - interested in city government - will be touring the Law Enforcement Center tomorrow. Also noted the nice article in the paper regarding the bike riders that came through town.

Council Member Kuhle - Nothing to report.

Council Member Graber - Attended a Heron Lake Watershed meeting, talked about manure issues, feasibility studies, and a restorations grant. Also attended an Auditorium Advisory Board Meeting - discussed repair of the wood floor - the estimated cost of \$500 would come from the budget. The ceiling issue was also discussed. Attended a Nobles County meeting.

Council Member Sankey - Nothing to report.

Council Member Wood - Water and Light Commission discussed the water situation - have not yet reinstated the ban but will discuss it again in two weeks.

Council Member Nelson - Attended a HRA meeting - discussed the 36-unit project - bids came in higher than expected - they're trying to sharpen their pencils - looking at a possible planning session.

CITY ADMINISTRATOR'S REPORT

Craig Clark, City Administrator, reported that a meeting regarding the outdoor pool was scheduled for tomorrow. Council Member Nelson will attend in Council Member Kuhle's place. The

Chamber has scheduled a Legislative Breakfast for Friday morning at the Hickory Lodge - starts at 7:00 a.m.

DISCUSSION ON CONTRACT FOR STUMP GRINDING SERVICES FOR CITY BOULEVARD AND CITY PARKS TREES REMOVED AS A RESULT OF THE APRIL 2013 ICE STORM - CLOSED SESSION UNDER MN STAT. 13D.05 SUBD. 3 - ATTORNEY-CLIENT PRIVILEGE

At their July 8, 2013 meeting, Council awarded the quote for stump grinding services for city boulevard and city parks trees removed as a result of the April 2013 ice storm to Al Drost, Prairie Landscaping, as the low qualified quoter in the amount of \$41,034.00. Since that time, Mr. Drost had submitted a letter to the City regarding his ability to fulfill the obligations of the contract.

Based on advise from City Attorney, Mark Shepherd, Council determined to go into closed session under MN Stat. 13D.05, Subd. 3 - Attorney-Client Privilege- regarding options for proceeding with the stump grinding contract.

Mayor Oberloh announced at 7:39 p.m. that Council would be going into closed session and requested that those not eligible to remain should leave the room at this time.

Mayor Oberloh re-opened the meeting at 7:55 p.m.

The motion was made by Council Member Nelson, seconded by Council Member Wood and, following discussion, was unanimously carried to award to the second highest bidder, Gourley Tree Service, at the quoted price of \$70,074, under the same parameters as the original quote. Staff will negotiate with Gourley regarding the stumps that have already been ground.

Mr. Shepherd noted to Council that, as Council consensus during the closed session was to not litigate the breach of contract, the discussion from the closed session would now be public:

Mr. Shepherd gave a brief background of the quote - noting that a cashier's check had been submitted by Mr. Drost in the amount of \$4,100 in lieu of a bid bond, which is to insure that the bidder/quoter signs the bid award agreement and commences to perform it. A performance bond would insure that the contractor performs the work, but was not required in this instance because of the estimated dollar amount of the project. Mr. Shepherd noted the proposal clearly stated that the check or money order would be forfeited to the City in the event the quoter does not fulfill his quote as specified. He further advised that, in this case, the City is entitled to keep the check. City staff had verified Mr. Drost's ability to perform the job under his quote at the time of the quote opening.

Mr. Shepherd reviewed options for the City, including potential litigation, and either moving on to the next low bidder, or to relet the project for new quotes. Following discussion, Council consensus was that they did not desire to proceed with litigation. Staff noted that Jim Eulberg, Public Works Director, had spoken to Gourley Tree Service, the next lowest quoter, and that they were still interested in the job at the price they quoted.

Mr. Shepherd noted that once Council determines not to litigate, the information in this closed session becomes public, and suggested that perhaps Council should make their determination of how to proceed in the open meeting. He will also draw up an agreement stating that in exchange for the City agreeing to not pursue litigation, Mr. Drost will give up any claim to the check he submitted as part of his quote, and that there will be no payment for the work he had completed thus far.

Mayor Oberloh announced that Council would be coming out of closed session.

ADJOURNMENT

The motion was made by Council Member Wood, seconded by Council Member Kuhle and unanimously carried to adjourn the meeting at 8:01 p.m.

Janice Oberloh, MCMC
City Cler,