

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

Staff present: Steve Robinson, City Administrator; Jason Brisson, Assistant City Administrator/Director of Economic Development; Jeremiah Cromie, City Planner; Dwayne Haffield, Director of Engineering; Todd Wietzema, Public Works Director; Kevin Flynn, Captain, Public Safety; Mindy Eggers, Interim City Clerk.

Others present: Leah Ward, The Globe; Justine Wettschrek, Radio Works; Ben Weber; Pat Janicek.

The Pledge of Allegiance was recited.

AGENDA CLOSED / APPROVED

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

- City Council Minutes of Regular Meeting July 8, 2019
- Planning Commission Minutes of July 2, 2019
- Joint Powers Transit Authority Minutes of April 25, 2019
- Public Arts Commission Minutes of June 20, 2019
- General Fund Statement of Revenues and Expenditures - Budget and Actual - for the Period of January 1, 2019 through June 30, 2019
- Municipal Liquor Store Income Statement for the Period of January 1, 2019 through June 30, 2019
- Bills payable and totaling \$4,012,440.86 be ordered paid

APPROVED NOMINATING COMMITTEE RECOMMENDATIONS FOR COMMITTEE APPOINTMENTS

The Nominating Committee met on July 10, 2019 and are making the following recommendations for committee appointments:

Center for Active Living -

Appoint Diana Elsing to fill the unexpired term of Maria Parga who resigned her seat, term was set to

expire 12/31/2019.

Memorial Auditorium Advisory Board -

Appoint Brett Lehman for a first three-year term to replace Dave Reeves who is not eligible for another term, term to expire 7/31/2019

The motion was made by Council Member Ernst, seconded by Council Member Harmon and unanimously carried to approve the Nominating Committee recommendations for committee appointments.

APPOINTMENT OF CITY CLERK APPROVED

Mr. Robinson explained Section 2.03 of the Worthington City Charter states that effective January 1 each year the City Council shall appoint a Clerk for a one-year term and shall serve until a successor is appointed and qualified. Janice Oberloh was appointed as the City Clerk for a one year term effective January 1, 2019. Ms. Oberloh retired on June 30 and Assistant City Clerk Melinda Eggers was appointed as the Interim City Clerk effective July 1, 2019 to serve until a permanent City Clerk has been appointed.

Sixteen applications for the position were received. Of those, three of the applicants had five or more years of municipal experience and were selected for an interview. The interview committee, comprised of the City Administrator, Assistant City Administrator and the City Clerk from a neighboring community, met with the three applicants on July 15. It was the consensus of the interviewers that Melinda Eggers was best suited for the position.

The motion was made by Council Member Cummings, seconded by Council Member Harmon and unanimously carried to appoint Melinda Eggers as City Clerk from July 23, 2019 through December 31, 2019.

POSITION GUIDELINES, SALARY GRADE AND AUTHORIZATION TO ADVERTISE FOR ADMINISTRATIVE SERVICES SECRETARY/ACCOUNTING CLERK APPROVED

Mr. Robinson stated as previously discussed at the City Council planning session on January 23, 2019, Administration requested the creation of staff positions that may be filled to further our ability to serve our constituents. Council previously approved the positions of:

- Assistant City Administrator/Director of Economic Development,
- City Clerk,
- Human Resources Assistant and Compensation Specialist, and
- City Planner.

The above positions have been filled. To complete the reorganization, one additional position is needed to fulfill staffing requirements. The duties and responsibilities of the city hall receptionist and administrative services secretary have been expanded to include accounts payable tasks.

The Administrative Services Secretary and Accounting Clerk is classified as a salary grade non-exempt 6 (N-6) which has a minimum hourly wage of \$21.62.

The reorganization results in five new positions replacing four previous positions. The most current cumulative wages (as of June 1) of the four previous positions was \$143.26/hour. The cumulative wages of the five new positions will be approximately \$154.07/hour, an increase in annual wages of \$22,485.

Council Member Oberloh asked if the total was \$154.07/hour for the five positions, Mr. Robinson stated that it was with an annual increase in wages of \$22,485 if the Administrative Secretary/Accounting Clerk is hired at the bottom of the pay scale for the position.

Council Member Ernst stated that she appreciated that staff is thinking to realign the positions so it works better for the City of Worthington. Mr. Robinson stated the reorganization of the positions best uses the talents of current employees.

A motion was made by Council Member Harmon, seconded by Council Member Ernst and unanimously carried to approve the position guidelines, salary grade and authorize staff to advertise for the Administrative Services Secretary/Accounting Clerk position.

BUDGET AMENDMENT/EXPENDITURES OF RESERVE FUNDS FOR SQUAD PURCHASE APPROVED

Kevin Flynn, Captain Worthington Police Department explained the Worthington Police Department is seeking budget amendment approval for the expenditure of Reserve Funds to supplement the 2019 Equipment Revolving Schedule (ERS) funds designated for the purchase of three (3) marked patrol squads.

The Ford Motor Company was unable to fulfill the Minnesota Law Enforcement demand for 2019 Police Package Explorers and many agencies were forced to wait for the release of 2020 models. WPD made numerous efforts to locate 2019 Explorers through various means and was unsuccessful.

He explained the 2020 Police Package Explorers are now available from Marthaler Ford and through the State. The 2020 Explorers are approximately \$4,500 more than what was anticipated and budgeted for 2019 Explorers. It is also unknown how changes in body style will affect the transfer of reusable equipment from the retired squads which will result in added expenses.

To cover the added expenditures, approximately \$15,000 of reserve funds will need to be transferred to supplement the current ERS funds designated for the purchase of three (3) squad cars.

A motion was made by Council Member Oberloh, seconded by Council Member Cummings and unanimously carried to approve the budget amendment/expenditures of reserve funds for the squad purchase.

CHANGE ORDERS FOR THE PUBLIC WORKS REMODELING PROJECT APPROVED

Todd Wietzema stated on February 14, 2019 sealed bids were opened for the Public Works Remodeling project. This project includes a 32,000 sq.ft vehicle storage area, new public works offices, bathroom facilities and break room area. The bid for the remodeling project was \$1,907,110. Council approved, at their May 27th meeting a first group of change orders. Since that meeting there have been a second set of change orders proposed. Wilcon Construction, the contractor for the project, has proposed 7 additional Change Orders. They are as follows:

1.) Add a tee to underground fire water main:	Add	\$2,221.01
2.) Replace fire suppression piping from plastic to metal:	Add	\$4,108.99
3.) Change from polishing concrete to epoxy flooring:	No Change	\$0
4.) Remove buried foundation walls:	Add	\$12,444.62
5.) Install sand trap in was bay:	Add	\$2,341.23
6.) Change locker from welded to knockdown:	Deduct	\$-790.00
7.) Sheetrock and Wood sills around office windows:	Add	\$1,883.20
Total change amount:	Add	\$22,209.05

Mr. Wietzema stated included in your packet is a letter of recommendation from the architect approving these change orders and also each change order listed on a separate document. With our current contract sum at \$1,947,568.78. Adding these change orders will increase our current contract amount to \$1,969,777.83. The original architects estimate for this project was \$2,035,710.

A motion was made by Council Member Cummings, seconded by Council Member Ernst and unanimously carried to approve the change orders for the Public Works remodeling project in the amount of \$22,209.05.

RESOLUTION NO.'S 2019-07-34, 2019-07-35, 2019-07-36 ADOPTED ACCEPTING DONATIONS OF PERSONAL PROPERTY

Based on recommendation of the Park and Recreation Advisory Board, Staff presented three resolutions accepting park bench donations as follows:

- from the Wasmund Family in memory of Bud and Dorothy Weiser, to be located by the Meadows along the bike trail
- from the DeWitt Children in honor of June C. DeWitt, to be located at the Chautauqua Park Band Shell
- from the DeWitt Children in honor of Ross C. DeWitt, to be located at the Chautauqua Park Band Shell

Todd Wietzema, Public Works Director, said the donations meet all the requirements as set forth in the Park Donation policy adopted by City Council.

The motion was made by Council Member Oberloh, seconded by Council Member Janssen and unanimously carried to adopt the following resolutions accepting the donations:

RESOLUTION NO. 2019-07-34

A RESOLUTION ACCEPTING A DONATION OF PERSONAL PROPERTY

(Refer to Resolution File for complete copy of Resolution)

RESOLUTION NO. 2019-07-35

A RESOLUTION ACCEPTING A DONATION OF PERSONAL PROPERTY

(Refer to Resolution File for complete copy of Resolution)

RESOLUTION NO. 2019-07-36

A RESOLUTION ACCEPTING A DONATION OF PERSONAL PROPERTY

(Refer to Resolution File for complete copy of Resolution)

RESOLUTION NO. 2019-07-37 ADOPTED APPROVING PLANS FOR EAST AVENUE SEWER IMPROVEMENT

Dwayne Haffield, Director of Engineering stated the firm of Midwest Engineering has prepared the plans and specifications for the extension of sanitary sewer along East Avenue from Spring Avenue to 950 feet southeast. The project is as approved at the June 24, 2019 improvement hearing.

He said staff is recommending that Council pass the resolution approving the plans and authorize advertisement for bids to be received August 15, 2019 and considered at the scheduled special Council meeting on August 21st.

The motion was made by Council Member Cummings, seconded by Council Member Janssen and unanimously carried to approve the plans and authorize for bids to be received August 15, 2019 and considered for award at the Special City Council meeting on August 21, 2019 and to adopt the following resolution:

RESOLUTION NO. 2019-07-37

APPROVING PLANS AND SPECIFICATIONS AND ORDERING ADVERTISEMENT FOR BIDS

(Refer to Resolution File for complete copy of Resolution)

PLANS FOR 2019 SANITARY AND STORM SEWER IMPROVEMENT PROJECT APPROVED

Mr. Haffield explained the 2019 Storm Water Utility Fund budget includes \$159,080 for storm sewer repairs in three location. These locations and work are:

Eighth Avenue - 13th Street to 185 feet southwest: replace main and manhole at 12th Street and 4th Avenue: replace 2 catch basins & lead, add manhole on Ninth Street at 6th Avenue: replace catch basin, lead & manhole.

The 2019 Wastewater Fund budget includes \$147,000 for sanitary sewer repairs in two locations. The locations and work are:

Doratheia Boulevard: replace 330 feet of main on Fourth Avenue - 10th to 11th Street: Two spot repairs

He said all the work is required to repair failing pipe and/or catch basins. The sanitary sewer spot repairs on Fourth Avenue address only the high priority repairs on that segment of sanitary sewer. Reconstruction of the full length of sanitary sewer on that street segment is proposed as part of a future street and utility reconstruction project.

Staff has completed plans and specifications for the sanitary sewer and storm sewer work. The estimated total cost, including engineering and contingencies, for the storm sewer repairs is \$125,500 and \$120,900 for the sanitary sewer improvements.

He noted work in the three locations near downtown will not be allowed to start until after Turkey Day.

Staff is recommending that Council approve the plans and authorize advertisement for bids to be received August 15, 2019 and considered at the scheduled special Council meeting on August 21st. Council may note that in regard to the sanitary sewer work it will be awarding on behalf of the Water and Light Commission; however, that work alone would be able to be quoted rather than bid. The work is combined for efficiency.

A motion was made by Council Member Oberloh, seconded by Council Member Janssen and unanimously carried to approve the Plans for 2019 Sanitary and Storm Sewer Improvement Project.

PROFESSIONAL SERVICES AGREEMENT FOR THE CONSTRUCTION PHASE OF THE CENTENNIAL PARK PEDESTRIAN BRIDGE PROJECT APPROVED

Mr. Haffield said the professional services required during the construction phase of the Centennial Park Pedestrian Bridge Replacement project will be done with the firm of SEH. The services include those for inspection during critical bridge placement work, shop drawing reviews, and staking.

City staff will provide inspection of general construction activities such as walk placement. The fees are hourly estimated and may vary depending on construction activities and/or problems encountered. The estimated fees are within the budget indicated to Council at the time of bid award (\$215,000).

A motion was made by Council Member Cummings, seconded by Council Member Ernst and unanimously carried to approve the Professional Services Agreement for Construction Phase of the Centennial Park Pedestrian Bridge Project.

RESOLUTION NO. 2019-07-38 ADOPTED TO VACATE PORTION OF EASEMENT OVER PART OF VACATED CIRCLE DRIVE APPROVED

Mr. Haffield explained the owners of 2020 Circle Drive (Newport Laboratories) are proposing to pave the gravel surfaces within their site and provide storm sewer inlets with necessary piping to improve area drainage. Due to the location of buildings and the available storm water outlet, the storm piping will interfere with the sanitary sewer located in the former Circle Drive right-of-way. Site plans also include placement of area lighting which would hinder access to the sewer main. Placement of such storm lines and lighting would be in conflict with the easement the City obtained over the former right-of-way at the time it was vacated. A proposed solution is to abandon the sanitary sewer within a majority of the former street right-of-way and allow it to be utilized as a sewer service. Modifications to the sewer line and the building services will be required to maintain compliance with plumbing code and City Sewer User Ordinance requirements. A utility locate was conducted to verify that only the sanitary sewer was utilizing the easement obtained over the vacated Circle Drive.

He said the Water and Light Commission was to consider the abandonment of the sanitary sewer segment and make a recommendation to vacate the easement area as requested by the abutting owner. He noted once the Commission approves the sanitary sewer abandonment and recommends to vacate the easement, staff recommends that Council pass the resolution vacating that part of the easement over the vacated Circle Drive lying 66 feet west of Newport's east property line (or 6 feet west of the east line of the platted Lot 3). Council Member Harmon stated that the Water & Light Commission approved the vacation of the easement at the Commission meeting this afternoon.

A motion was made by Council Member Harmon, seconded by Council Member Janssen and unanimously carried to approve vacating a portion of an easement in vacated Circle Drive and to adopt the following resolution:

RESOLUTION NO. 2019-07-038

VACATING A PORTION OF AN EASEMENT IN VACATED CIRCLE DRIVE

(Refer to Resolution File for complete copy of Resolution)

CONDITIONAL USE PERMIT - GOLDEN HORIZONS

Jason Brisson, Assistant City Administrator/Director of Economic Development stated on June 17, 2019, the City received a completed application for a conditional use permit from KC Companies for a proposed expansion of the existing Golden Horizons assisted living facility. At the July 8, 2019 City Council meeting, City staff presented a written recommendation for approval of the conditional use permit to the City Council from the City's Planning Commission. After receiving the Commission's recommendation from City staff, the City Council discussed the request and voted 3-2 to approve the requested permit with Council Members Janssen and Oberloh voting against the motion. The City's Zoning Ordinance requires a 4/5 affirmative vote for approval of a conditional use permit. As such, the permit request was denied.

Mr. Brisson explained State Statute requires that the City furnish a decision to the applicant regarding a land use request within 60 days. If a written decision stating the body's decision and the relevant findings of facts is not provided to the applicant within 60 days, the application is deemed automatically approved. In addition to this requirement, the League of Minnesota Cities' Zoning Guide states the following (staff emphasis has been added):

A number of court decisions have reviewed the question of what constitutes denial of a request. In most situations, the courts have required that the city council actually pass a resolution or motion denying the request. However, state statute provides that the failure of a motion to approve an application constitutes a denial, provided that those voting against the motion state on the record the reasons why they oppose the request. This provision usually comes into play when a motion to

approve an application fails because of either a tie vote, or lack of the required number of votes to pass.

During the discussion on July 8, Council Member Oberloh stated the reasons he opposed the application were the parking being provided was not adequate for the proposed development and the encroachment of the development on the east property line. Council Member Janssen made no comments for the record. After reviewing the matter with the City Attorney, staff finds that Council member Janssen must state on the record the reason(s) he opposes the applicant's conditional use permit request. Without this statement, staff finds that the City will not have complied with the 60-day requirement and that the application could be deemed approved if the Council's decision were appealed to a higher court.

Council Member Janssen stated that he gave a statement regarding his vote after the last council meeting to the reporter from The Globe. He said he voted against the Conditional Use Permit because he had the same reservations as Council Member Oberloh concerning the parking, encroachment and wetland issues.

Council Member Oberloh stated that he had contacted the Homestead Cooperative on Friday and was told that the last time that the Golden Horizons contacted them a few years ago it was about land north of the Homestead, no-one has contacted them regarding land on the side for the proposed current project.

Council Member Ernst stated that a representative from Golden Horizons was at each of the Planning Commission meeting regarding the proposed project.

Jason Brisson reminded Council that unless the project changes it cannot be revisited for one year.

HEARD HOTEL THOMPSON UPDATE

Mr. Brisson stated on July 2, City staff was informed by Lighthouse Management Group, the court-appointed receiver for the Hotel Thompson property, that they have failed to reach a deal with any of the private parties that expressed interest in the property and that they now intend to auction the property. Staff was hoping to have more information on the terms and the timeline of the auction but still has not heard anything regarding the issue.

Mr. Brisson explained after sharing this information with our legal counsel, staff was advised to provide a list of the expenses the City has incurred to date with the intention of obtaining an Order to reduce the City's expenses to a fixed dollar amount and file a lien on the property. City staff has provided this information to the City's legal counsel who is now working on scheduling a court date for action.

Mayor Kuhle asked if the City's expenses could be used as the minimum. Mr. Brisson stated that staff is working with legal counsel on whether the City should move forward with a lien, as of now staff has not heard back from them.

Council Member Oberloh asked if legal counsel could attend a meeting to answer some of these questions.

Mr. Robinson stated that staff is waiting on information from counsel and the judge on how the City should proceed.

COUNCIL COMMITTEE REPORTS

Mayor Kuhle - Has received many positive comments on the splash pad and it seems to be a big hit. Would like to thank staff for all of their hard work.

Council Member Janssen - no report.

Council Member Oberloh -

Council Member Cummings - Wanted to add that there will be benches added to the dry areas of the splash pad for visitors to be able to sit. The new Beach Nook will offer indoor/outdoor showers and a drinking fountain so there are more enhancements to come.

Council Member Ernst - no report.

Council Member Harmon - Attended the Water & Light Commission today, attended the City, County, School architect interview on July 16th. Encouraging article in The Globe on the 2 new daycares in Nobles County.

CITY ADMINISTRATOR'S REPORT

Steve Robinson, City Administrator, explained that staff is working with the City Attorney on drafts to repeal the previous Ordinance concerning the Sales & Use Tax and replacing it with a new Ordinance. Will be going on field house tours at in Orange City, IA and Sioux Falls, SD on Wednesday with Council Members Ernst and Harmon. A pre-construction meeting will be held on the theater project next week. A Census Complete Count Committee meeting will be held on August 5th.

ADJOURNMENT

The motion was made by Council Member Oberloh, seconded by Council Member Cummings and unanimously carried to adjourn the meeting at 7:54 p.m.

Mindy L. Eggers, MCMC
Interim City Clerk