

**WORTHINGTON CITY COUNCIL  
REGULAR MEETING, AUGUST 27, 2018**

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: Dayton Williamson.

Staff present: Steve Robinson, City Administrator; Jason Brisson, Director of Community Development, Planning, Zoning and Building Services; Todd Wietzema, Public Works Director; Mindy Eggers, Assistant City Clerk.

Others present: Chris Kielblock; Benjamin Weber, Dan Greve, Kevin Donovan, Karl Evers-Hillstrom, The Globe; Justine Wettschreck, KWOA.

The Pledge of Allegiance was recited.

**HONORARY COUNCIL MEMBER**

Mayor Kuhle welcomed Dayton Williamson as the Honorary Council Member for July, August and September, 2018.

**AGENDA CLOSED / APPROVED**

Staff was requesting an addition to the agenda of Item E. 6. *Yellow Company - Release of Restrictive Covenants and Easement.*

The motion was made by Council Member Harmon, seconded by Council Member Janssen and unanimously carried to close / approve the agenda with the requested addition.

**CONSENT AGENDA APPROVED**

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

- City Council Minutes of Regular Meeting August 13, 2018; Special City Council Meeting Minutes of August 15, 2018; and Special City Council Meeting Minutes of August 21, 2018
- Minutes of Boards and Commissions - Water and Light Commission Minutes of August 13, 2018; Planning Commission/Board of Appeals Minutes of August 7, 2018; Public Arts Commission Minutes of July 12, 2018; Worthington Charter Commission Unapproved Minutes of August 16, 2018
- Municipal Liquor Store Income Statement for the Period January 1, 2018 through July 31, 2018
- Application for Temporary On-Sale Liquor License - Minnesota Extreme Bull Riding Tour
- Application for Parade Permit/ to Block Streets - UFCW - Local Union 1161/St. Mary's
- Bills payable and totaling \$4,463,147.34 be ordered paid.

**THIRD READING AND ORDINANCE NO. 1117 ADOPTED - CHANGE OF ZONE - 1535 COLLEGEWAY**

Pursuant to published notice, this is the time and date set for the third reading of a proposed ordinance to amend Title XV of the City Code of Worthington, Nobles County, Minnesota, to rezone property from "I-1" (Institutional) and "PUD" (Planned use Development) to "R-5" (Multi-Family, Medium and High Density).

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 NO. 1117

AN ORDINANCE TO AMEND TITLE XV OF THE CITY CODE OF WORTHINGTON, NOBLES COUNTY, MINNESOTA, TO REZONE PROPERTY FROM 'I-' (INSTITUTIONAL) AND 'PUD' (PLANNED USE DEVELOPMENT) TO 'R-5' (MULTI-FAMILY, MEDIUM AND HIGH DENSITY).

(Refer to Ordinance File for complete copy of Ordinance)

**SECOND READING PROPOSED ORDINANCE - TEXT AMENDMENT (COMMERCIAL PARKING LOTS)**

Pursuant to published notice, this is the time and date set for the second reading of a proposed ordinance to amend Title XV Section §155.042 of the City Code of Worthington, Nobles County, Minnesota so as to require construction of dustless and durable hard surface on any part of a parcel of property used primarily for parking where such parcel is located in the 'B-3' - General Business Zone and where such parcel abuts property located within a residential zone.

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

**SECOND READING PROPOSED ORDINANCE - CHANGE OF ZONE - PARCEL NO. 31-2853-000**

Pursuant to published notice, this is the time and date set for the second reading of a proposed 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 Business District)

The motion was made by Council Member Oberloh, seconded by Council Member Cummings and unanimously carried to give a second reading to the proposed ordinance amending Title XV of the City Code of the City of Worthington, Nobles County, Minnesota, to rezone property from "R-3" (low density preservation residential) to "B-3" (general business district).

**COUNCIL DIRECTIVE TO CONTINUE EVALUATION OF CITY DEVELOPED SPEC BUILDING APPROVED**

Steve Robinson, City Administrator explained that staff has completed a preliminary study of an initiative in which the City would develop a spec building to be leased for entertainment and community amenity purposes. He said that in research of the entertainment industry has led staff to the conclusion that many of these businesses are not financially viable in a city with a population of ours. Staff has concluded that the only avenue in which certain entertainment businesses can thrive is that in which the public sector participates by developing the site, constructing and owning the building, and leasing the building to a private business, the private business would be responsible for certain leasehold improvements necessary for the specific operations of their business.

Mr. Robinson stated that the estimated cost for land acquisition, site improvements, building construction, and professional services is \$3.0 million. The building would remain a city-owned asset until such time there may be an opportunity to sell it to a private sector. Staff is requesting direction from Council to continue with this proposed project.

Council Member Janssen stated that he has had emails and conversations with businesses and individuals not in favor of the City getting involved with private business.

Mr. Robinson stated that staff would investigate all avenues of funding as staff is not recommending using reserve funds.

Council Member Harmon stated that a conversation with a County Commissioner had indicated it was his feeling that the County would have an obligation to be part of the project as the City has an obligation to be part of the library project.

Council Member Oberloh stated that the City has provided amenities in the past such as the tennis courts, bike trail, aquatic center, etc. He said the City would be providing a spec building that already has a tenant and he would support taking half of the money out of the hospital proceeds for the project and would encourage moving forward with recreational items that the citizens have asked for.

Mayor Kuhle stated that the City is not trying to compete with private business but is trying to help provide another amenity that the citizens are asking for.

A motion was made by Council Member Janssen, seconded by Council Member Oberloh and unanimously approved to have staff move forward gathering more detailed information for the project.

**YELLOW COMPANY PARTIAL RELEASE OF MORTGAGE APPROVED**

Steve Robinson, City Administrator, said the Yellow Company, LLC is requesting the partial release of mortgage. The mortgage has an outstanding balance of \$1,326,508. Proceeds from the sale of the parcel will be forwarded to the City to be applied to the mortgage. The estimated net proceeds to the City are \$564,000, reducing the outstanding mortgage balance to an estimated \$761,508.

A motion was made by Council Member Oberloh, seconded by Council Member Cummings and unanimously approved to move forward with a partial release of mortgage.

**YELLOW COMPANY RELEASE OF RESTRICTIVE COVENANTS AND EASEMENT APPROVED**

Steve Robinson, said the Yellow Company, LLC contacted the City late this afternoon requesting the release of the conveyance restriction that was placed on the property referred to as Lot 1 Block 1, the property was sold by Developer's Diversified in 1982 to Harworth Foods, Inc.

Mr. Robinson explained that there were many restrictions placed on the property that were specific to the parcel and the Hardee's building.

Mr. Robinson stated that the City Attorney has not had the opportunity to review the document so it should be approved contingent on the City Attorney reviewing the document.

A motion was made by Council Member Oberloh, seconded by Council Member Harmon and unanimously approved to release the covenant and easement pending review by the City Attorney.

**RESOLUTION NO. 2018-08-03 ADOPTED AUTHORIZING EXECUTION OF GRANT AGREEMENT WITH FIREHOUSE SUBS PUBLIC SAFETY FOUNDATION**

Troy Appel, Public Safety Director explained as part of the Worthington Police Department's continuing efforts to improve public safety through better training and equipment, the police department applied for a Fire house Subs public safety grant. In April of 2018, the police department applied for the grant providing information related to the dangers associated with active shooters and the need for additional safety equipment. The Firehouse Subs Public Safety Foundation Board of Directors has now awarded the Worthington Police Department \$7,176.00 related to the purchase of Active Shooter Vests. The Foundation Team has submitted a purchase order based on a quoted price for 24 carriers and 48 rifle plates.

The motion was made by Council Member Oberloh, seconded by Council Member Cummings and unanimously carried to adopt the following resolution:

RESOLUTION NO. 2018-08-03

A RESOLUTION RELATING TO FIREHOUSE SUBS GRANT AGREEMENT

(Refer to Resolution File for complete copy of Resolution)

**RESOLUTION NO. 2018-08-04 ADOPTED AUTHORIZING TOWARD ZERO DEATHS GRANT AGREEMENT**

Troy Appel, Director of Public Safety explained The Minnesota Department of Public Safety, Office of Traffic Safety, has initiated the process to participate in the Towards Zero Deaths Communities grant from October 1, 2018 through September 30, 2019. Mr. Appel stated that this grant pays for officers' overtime during the operational waves that focus on traffic safety and impaired driving enforcement. He noted the City of Worthington is partnered with Rock, Redwood, Jackson, Nobles, Lyon, Cottonwood and Murray Counties in the cities of Mountain Lake, Redwood Falls, and Marshall.

The motion was made by Council Member Cummings, seconded by Council Member Ernst and unanimously carried to adopt the following resolution:

RESOLUTION NO. 2018-08-04

RESOLUTION AUTHORIZING EXECUTION OF TOWARD ZERO DEATHS GRANT AGREEMENT

(Refer to Resolution File for complete copy of Resolution)

**ADOPTED RESOLUTION NO. 2018-08-05 ACCEPTING A DONATION OF PERSONAL PROPERTY**

Todd Wietzema, Public Works Director stated that Bedford Technology in celebration of their 20 year anniversary, has approached the city and would like to donate some of their manufactured dog park accessories for our city owned dog park. Dan Greve explained that Bedford Technologies was started 20 years ago and currently employees 115 full-time employees and have 150,000 square foot building that produces plastic lumber. Mr. Greve stated in celebration of their 20<sup>th</sup> Anniversary they would like to give back to the community and donate accessories for the dog park. An open house will also be held on Saturday, October 6<sup>th</sup> from 1-3 p.m.

A motion was made by Council Member Cummings, seconded by Council Member Oberloh and unanimously carried to adopt the following resolution:

RESOLUTION NO. 2018-08-05

A RESOLUTION ACCEPTING A DONATION OF PERSONAL PROPERTY

(Refer to Resolution File for complete copy of Resolution)

**RESOLUTION NO. 2018-08-06 ADOPTED REGARDING INTENT TO BOND FOR COST INCURRED IN PURCHASING AND REMODELING THE FORMER MC FITNESS BUILDING INTO A NEW PUBLIC WORKS FACILITY**

Todd Wietzema explained that Federal tax regulations require that local governments declare the intent to reimburse themselves for prior cost incurred in local government capital improvement projects with proceeds with bonds. In other words, the City must state the intent to sell bonds for a project after significant costs have already been incurred. It is typical for the City to temporarily finance projects with reserves until an adequate amount of costs have been incurred to warrant the issuance of a bond.

Mr. Wietzema stated the maximum bonding amount of \$4,000,000.00 listed in the resolution is approximately 15% higher than the project estimate as presented to the council. He noted that this resolution does not require the City to bond any specific amount for this proposed project, but cannot exceed the maximum bonding amount.

A motion was made by Council Member Cummings, seconded by Council Member Janssen and unanimously carried to adopt the following resolution:

RESOLUTION NO. 2018-08-06

A RESOLUTION REGARDING INTENT TO BOND FOR COST INCURRED IN PURCHASING AND REMODELING THE FORMER MC FITNESS BUILDING INTO A NEW PUBLIC WORKS FACILITY

(Refer to Resolution File for complete copy of Resolution)

**CENTENNIAL SPLASH PAD PROJECT CHANGE ORDER AND AWARD OF CONTRACT APPROVED**

Todd Wietzema stated that bids were opened for the Centennial Park Splash Pad project on August 21, 2018. There was only one bid submitted and that was from Hulstein Excavating, in the amount of \$599,892.39, which was \$119,519.39 over the engineers estimate. Mr. Wietzema explained as the

bid was being reviewed by our Civil Engineers from the firm of Bolton and Menk, it was discovered that there seemed to be a discrepancy in one of the line items of the submitted bid. After consulting with representatives of Hulstein Excavating, it seems that one of the submitted unit costs was transcribed improperly. This improper line item resulted in substantial increase in their bid total. Staff consulted with our City Attorney and were advised that since Hulstein Excavating was the lone bidder, we would be able to accept their bid and at the same time do a change order for the incorrect line item total. A completed change order in the amount of \$-123,310.00 has been done on recommendation from Bolton and Menk. After correcting that line item the new base bid amount was \$476,582.39, making the bid amount \$3,790.61 under our engineers estimate.

Mr. Wietzema said, Alternates #1, 2 and 3 are additional water features that were included, in the event that the received bids were greatly under engineers estimates. Alternate #4 is the addition of a debris trap and rainwater diverter valve. This valve will divert rain water from entering the chlorinated system allowing us to save chemical cost to retreat the recirculating system. Alternate #5 is installing a UV water treatment system, instead of using chlorine to treat the water. Mr. Wietzema stated that staff is recommending that we only consider Alt. #4, because it will be cost effective in saving the city staff time and money. Staff is recommending that we accept the bid from Hulstein Excavating and approve the signed change order in the amount of \$ -123,310.00, for a total base bid of \$476,582.39. Staff is also recommending that we approve Alternate #4 at a cost of \$13,472.12 which is \$2,527.88 under the engineers estimate. If the base bid and Alternate #4 are approved, the total bid would be \$490,054.51.

A motion was made by Council Member Cummings, seconded by Council Member Janssen and unanimously approved to accept the bid from Hulstein Excavating in the amount of \$599,892.39 with the change of \$-123,310.00 for a total base bid of \$476,582.39 adding Alternate #4 in the amount of \$13,472.12 for a total bid award of \$490,054.51.

#### **ART PROJECT AT BUSS FIELD APPROVED**

Mr. Wietzema stated that Gail Holinka, Public Arts Commission, made a request that a piece of public art be placed at Buss Field Soccer complex. The art sculpture resembles a soccer ball and is painted to represent some of the different nationalities found in Worthington. The Park & Recreation Advisory Board reviewed and recommended that the sculpture be placed at Buss Field.

Gail Holinka and Bobbie Alsgaard - Lien were in attendance and Ms. Holinka explained that Les Houselog did the plasma cutting and put the soccer ball together, volunteers painted the sculpture and a donor stepped forward to donate the cement pad. Bobbie Alsgaard-Lien noted that Cenex donated the tank to use for the sculpture.

The motion was made by Council Member Ernst, seconded by Council Member Janssen and unanimously carried to approve the art project at Buss Field.

**RESOLUTION NO. 2018-08-07 ADOPTED VACATE PORTION OF UTILITY EASEMENT**

Dwayne Haffield, Director of Engineering stated that the owner of property at 1214 Clary Street is proposing to construct an egress window well on the east side of their existing home. The window well would extend into a utility easement over the east 10 feet (and south 10 feet) of the lot. The northerly portion of the easement is not being utilized. The southerly portions of the easement are being used to serve the property east of 1214 Clary Street. In evaluating the property owner's request to vacate the unused portion of the easement to allow construction of the egress window, it was also determined that the easement along the east 10 feet of the lot extends over a portion of the house that existed at the time the easement was obtained. The house was constructed in 1949. The easement was obtained in 1974.

A motion was made by Council Member Oberloh, seconded by Council Member Harmon and unanimously carried to adopt the following resolution:

RESOLUTION NO. 2018-08-07

**A RESOLUTION TO VACATE PORTION OF UTILITY EASEMENT**

(Refer to Resolution File for complete copy of Resolution)

**WORKFORCE HOUSING APPLICATION APPROVED**

Jason Brisson, Community/Ec. Development Director explained that Wegen Bune has submitted an application for a forgivable loan through the City's Workforce Housing program for the eligible developer installed infrastructure improvements installed for the newly constructed house he has purchased at 2217 Eleanor Street. Mr. Brisson noted that program, which was adopted in 2008, was created to encourage the construction of affordable housing units within boundaries of TIF District by offering forgivable loans to qualified home buyers. A total of 8 have taken part in the program but more promoting of the program could be done.

A motion was made by Council Member Oberloh, seconded by Council Member Harmon and unanimously carried to approve the Workforce Housing application.

**THOMPSON HOTEL REPORT APPROVED**

Mr. Brisson stated on July 23, 2018, City staff brought forth two proposals from independent roofing consultants to identify and assess the current roofing system, provide recommendations for repair/reconstruction and provide a cost estimate for the recommended repairs. The estimated cost of the new roofing system is approximately \$210,600-\$275,400, depending on square foot costs, unless it is determined that insulation will be required to meet contemporary building energy codes, then the consultant estimates would increase by \$44,000 and the total to complete the project, for



a total of \$254,600-\$319,400. He noted these are not firm figures at this point, the city would have to proceed with the sealed bid process.

Mr. Brisson said if the City does the work, the costs that the City incurs in repairing the roof would be charged against the property as a lien against the real estate. This lien is levied and collected as a special assessment. The City Council may provide that the assessment may be paid in five or fewer equal annual installments with interest at 8 percent per year. As a second option to the lien, the City can recover the costs by obtaining a court judgment against the owner of the real estate.

Council members agreed that repairs need to be made as it is currently an unhealthy, hazardous place to have people living.

A motion was made by Council Member Oberloh, seconded by Council Member Cummings and unanimously approved to proceed with sealed bids to repair the roof this year.

#### **CITY VOTING REQUIREMENTS DIRECTION OBTAINED**

Mr. Brisson said that in doing some research he found that The Worthington City Code defines voting requirements for routine City actions, such as ordinance amendments, conditional use permits and text amendments to the City Code. The language used in the City Code with respect to changes of zone, City Code text amendments and conditional use permits states that “a vote of two-thirds of **all** its members” is required for the specified action. The language used in the Code would seem to indicate that 4 affirmative votes would be required regardless of the number of Council members in attendance.

In talking with the City Attorney he has opined that the law would not favor an interpretation that would paralyze City government. For example, if there were 2 members of the Council absent for an extended period of time, no action could be taken on those issues. The City Attorney advised the best course of action would be to bring the issue concerning the wording of these sections to the attention of the City Council and let the Council decide whether or not they want to knowingly leave the language as it is with the possibility that it could impede action by the City in certain situations. Alternatively, the Council could amend the sections and change the language to “those members present and voting” or “those members present” so that there would be clarity in the wording.

A similar situation exists with respect to comprehensive plan amendments. Section § 151.03 of the City Code states that adoption or amendment of the Comprehensive Plan must be approved by affirmative votes of “not less than five-sevenths **of its total membership**”. Again, a four-member quorum could be present, but no action could be taken on the item without 5 members.

Mr. Brisson said that staff is looking for direction from Council as to whether Council would prefer to leave the language as is or have staff prepare an amendment to City Code that would allow for votes on the specified items with the stated fraction of present members.

Council agreed to direct staff to proceed with a text amendment and language should be cleaned-up.

### **COUNCIL COMMITTEE REPORTS**

Mayor Kuhle - No report.

Council Member Janssen - No report.

Council Member Oberloh - Attended the open house at the Memorial Auditorium, along with Larry Janssen and Mayor Kuhle. Staff sold \$2,000.00 worth of tickets after the open house program.

Council Member Cummings - No report.

Council Member Ernst - No report.

Council Member Harmon - No report.

### **CITY ADMINISTRATOR'S REPORT**

Steve Robinson, City Administrator, stated that the closing on the MC Fitness Facility is on Wednesday at 3:00 p.m. The Lakeside Travel Center project plans were resubmitted late last week and will now go through the review process.

### **ADJOURNMENT**

The motion was made by Council Member Janssen, seconded by Council Member Harmon and unanimously carried to adjourn the meeting at 8:08 p.m.

Mindy L. Eggers, MCMC  
Assistant City Clerk