

**WORTHINGTON CITY COUNCIL
REGULAR MEETING, SEPTEMBER 8, 2014**

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.

Staff present: Craig Clark, City Administrator; Brian Kolander, Finance Director; Brad Chapulis, Director of Community/Econ. Development; Dwayne Haffield, Director of Engineering; Armand Eshleman, Building Official; Kevin Flynn, Interim Public Safety Director; Officer Colby Palmersheim and Canine Thor; Janice Oberloh, City Clerk.

Others present: Rex Buettgenbach, WOW!; Erin Trester, Daily Globe; Nancy Galland; Dennis Kolander; Gary and Patty Palmersheim; Marlin and Corrine Mammen; Chad Cummings.

The Pledge of Allegiance was recited.

AGENDA CLOSED/APPROVED

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

CONSENT AGENDA APPROVED

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

- City Council Minutes of Regular Meeting August 25, 2014; Special Meeting August 27, 2014 and Special Meeting August 29, 2014
- Minutes of Boards and Commissions - Water and Light Commission Minutes of Regular Meeting September 2, 2014; Planning Commission/Board of Appeals Minutes of September 2, 2014; Traffic and Safety Committee Minutes of August 27, 2014; Park and Recreation Advisory Board Minutes of August 7, 2014; Center for Active Living Minutes of August 11, 2014; Worthington Housing and Redevelopment Authority Board Minutes of July 29, 2014; Nobles Economic Opportunity Network Minutes of August 14, 2014; WGTN-TV3 Minutes of August 7, 2014
- Bills payable and totaling \$554,700.04 be ordered paid

RESOLUTION ADOPTED APPROVING PROPOSED 2014 TAX LEVIES COLLECTIBLE IN 2015

The motion was made by Council Member Kuhle, seconded by Council Member Wood and unanimously carried to adopt the following resolutions approving the proposed 2014 tax levies collectible in 2015:

CITY OF WORTHINGTON, MINNESOTA

PROPOSED RESOLUTION APPROVING 2014 TAX LEVIES COLLECTIBLE IN 2015

Be it resolved, by the City Council of the City of Worthington, County of Nobles, State of Minnesota, that the following sums of money are to be levied for the current year, collectible in 2015 upon the taxable property in said City of Worthington, Minnesota for the following purposes:

LIMITED GENERAL PURPOSE TAX:	2014/2015 LEVY	SPECIAL TAX LEVIES	2014/2015 LEVY
General Fund	791,051	G.O. Debt Service Funds Including Improvement Bonds (MS 275.50 Subd. 5e and MS 429.091)	
Recreation Fund	889,843		
Economic Development Authority Fund	0	PIR Series 2007A \$4,370,000	375,000
Improvement Construction Fund	366,606	PIR Series 2009C \$2,710,000	170,862
Aquatic Center Facility Fund	50,000	PIR Series 2010A \$1,915,000	185,484
Airport Fund	9,184	PIR Series 2012A \$2,570,000	<u>283,264</u>
Memorial Auditorium Fund	39,430	SUBTOTAL DEBT SERVICE FUNDS	1,014,610
GENERAL PURPOSE TAX LEVY-CITY	<u>2,146,114</u>	Economic Development Tax Abatement	27,000
EDA TAX LEVY	<u>83,000</u>	TOTAL SPECIAL TAX LEVIES	<u><u>1,041,610</u></u>
TOTAL GENERAL PURPOSE TAX	<u><u>2,229,114</u></u>		
		RECAP OF TAX LEVY TOTALS:	
		General Purpose Levy	2,229,114
		Special Tax Levies	1,041,610
SPECIAL TAX LEVIES: (Other than Debt Service)			
Housing & Redevelopment Authority (MS 462.545 Subd. 6)	Separate Certified Levy	TOTAL NET LEVY	<u><u>3,270,724</u></u>

RESOLUTION APPROVING 2014 TAX LEVIES COLLECTIBLE IN 2015

BE IT RESOLVED, by the City Council of the City of Worthington and the Economic Development Authority of the City of Worthington, County of Nobles, State of Minnesota, that the following sum of money be levied for the current year, collectible in 2015, upon the taxable property in said City of

Worthington, Minnesota, for the following purposes:

SPECIAL TAX LEVY	CERTIFIED LEVY 2014/2015
ECONOMIC DEVELOPMENT AUTHORITY TAX LEVY (Minnesota Statute 469.107, Subdivision 1)	
Special Tax for Operations	\$83,000.00
NET CERTIFIED LEVY	\$83,000.00

WORTHINGTON HOUSING & REDEVELOPMENT AUTHORITY
RESOLUTION APPROVING THE 2014 TAX LEVY COLLECTIBLE IN 2015

BE IT RESOLVED, by the City Council of Worthington and the Housing and Redevelopment Authority of the City of Worthington, County of Nobles, State of Minnesota, that the following sum of money be levied for the current year, collectible in 2015, upon the taxable property in said City of Worthington, Minnesota for the following purposes:

SPECIAL TAX LEVY	CERTIFIED LEVY 2014/2015
HOUSING & REDEVELOPMENT AUTHORITY TAX LEVY (Minnesota Statute 469.033, Subdivision 6)	
Special Tax for Operations	\$105,000.00
NET CERTIFIED LEVY	\$105,000.00

APPLICATION FOR ON-SALE BEER LICENSE APPROVED - EL MEXICANO 3, INC.

The motion was made by Council Member Wood, seconded by Council Member Nelson and unanimously carried to approve an application for a new On-Sale Beer license for El Mexicano 3, Inc., Efrain Patino Vega, 304 Tenth Street for the license period September 9, 2015 through December 31, 2014.

APPLICATION FOR NEW ON-SALE WINE LICENSE APPROVED - EL MEXICANO 3, INC.

The motion was made by Council Member Sankey, seconded by Council Member Kuhle and unanimously carried to approve an application for a new On-Sale Wine license for El Mexicano 3, Inc., Efrain Patino Vega, 304 Tenth Street for the license period September 9, 2014 through June 30, 2015.

RESOLUTION NO. 3564 ADOPTED APPROVING TRANSFER OF OWNERSHIP FROM KNOLOGY, INC. (DBA WIDE OPEN WEST WOW) TO CLARITY TELECOM

Council considered a request from Knology Inc., doing business as Wide Open West (WOW), to adopt a resolution approving transfer of ownership to Clarity Telecom. Craig Clark, City Administrator, noted that, pursuant to the City's local franchise agreement, and state and federal law, the cable franchise is non-transferable without the consent of Council. The transfer agreement was reviewed by attorney Brian Grogan, with Moss & Barnett, the City's legal counsel for matters concerning our local franchise agreement. In a letter to the City, Mr. Grogan outlined the financial qualifications of Clarity are satisfactory to effectively operate the company, and he does not believe that the request for transfer can be reasonably denied.

Craig Clark, City Administrator, noted that all of the expenses for the review by Mr. Grogan on the City's behalf will be the responsibility of Clarity Telecom.

The motion was made by Council Member Kuhle, seconded by Council Member Wood and unanimously carried to adopt the following resolution approving the transfer of ownership from Knology, Inc. (DBA Wide Open West WOW) to Clarity Telecom:

RESOLUTION NO. 3564

APPROVING THE PROPOSED TRANSFER OF THE CABLE FRANCHISE CURRENTLY HELD BY KNOLOGY, INC.

(Refer to Resolution File for complete copy of Resolution)

OFFICER COLBY PALMERSHEIM AND CANINE THOR HONORED

Council participated in honoring Officer Colby Palmersheim and Canine Thor for their diligence and efforts while assisting a Nobles County Deputy with a domestic call that involved a firearm. Following a felony stop where the suspect was taken into custody and no firearm was found on the suspect or in his possession, Officer Palmersheim and Thor returned to the area of first contact with the suspect to search for the gun. Under direction to search, Thor located a loaded handgun partially

buried on the edge of a corn field near the location of the initial stop. Sgt. Wilttrout nominated Officer Palmersheim and Thor for the Thin Blue Line award which recognizes his performing an act of intelligent and valuable police service, demonstrating a special faithfulness and perseverance to his duty. Kevin Flynn, Interim Director of Public Safety, presented Officer Palmersheim with a certificate recognizing his efforts. Officer Palmersheim's parents, Gary and Patty Palmersheim, were present for the award and presented him with the Thin Blue Line pin. Mayor Oberloh presented Thor with a new rubber ball toy.

RESOLUTION NO. 3565 DECLARING COST TO BE ASSESSED AND ORDERING PREPARATION OF PROPOSED ASSESSMENT, AND RESOLUTION NO. 3566 CALLING FOR HEARING ON PROPOSED ASSESSMENT ADOPTED

Staff presented a Resolution Declaring Costs to be Assessed and Ordering Preparation of Proposed Assessment, and a Resolution Calling for a Hearing on Proposed Assessment for the following:

2014 Miscellaneous Unpaid Charges

- Removal of Ice and Snow
- Removal of Solid Waste
- Removal of Noxious Weeds and Vegetation
- Street Lighting Special Service Charge
- Abatement of Nuisance Affecting Public Health or Safety (Well Sealing)

Dwayne Haffield, Director of Engineering, stated the resolutions call for the hearings to be held at the October 13, 2014 Council meeting.

The motion was made by Council Member Wood, seconded by Council Member Kuhle and unanimously carried to adopt the following resolutions declaring cost to be assessed and ordering preparation of proposed assessment and calling for hearing on proposed assessment:

RESOLUTION NO. 3565

DECLARING COST TO BE ASSESSED AND ORDERING PREPARATION OF PROPOSED ASSESSMENT

(Refer to Resolution File for complete copy of Resolution)

RESOLUTION NO. 3566

CALLING FOR HEARING ON PROPOSED ASSESSMENT

(Refer to Resolution File for complete copy of Resolution)

CONTRACT FOR PROFESSIONAL SERVICES FOR PRELIMINARY DESIGN OF STORM WATER LIFT STATION MODIFICATIONS APPROVED

Council reviewed a proposal from SEH for professional services for a preliminary design of storm water lift station modifications in the area generally lying east of Tower Street and north of West Okabena Street. Drainage of this area is currently provided by a combination of gravity lines flowing naturally northeast to County Ditch 12 and to a storm water lift station located in Centennial Park. Dwayne Haffield, Director of Engineering, said the lines to the lift station are generally newer lines than the system draining northeast and play a major role in the service currently provided, however, the two systems do not provide a drainage system that meets current City standards. The Master Plan calls for the gravity system to be upgraded, which can be done after the ditch itself is upgraded. In the meantime, the lift station continues to serve probably the majority of certain areas. The lift station needs to be kept in service, and Mr. Haffield said they would look at keeping it in service even after the system is upgraded.

The lift station system does have some issues - they're looking at pump replacements and access issues. Staff solicited the proposal from SEH based on their experience in storm water lift station design. The current storm water Capital Improvements budget includes the project for completion in 2016 but that budget is based on a loosely defined scope of project. The 2014 storm water utility budget includes \$37,500 for design of the lift station improvements - which will allow for more accurate budgeting and initiate project development. The proposal from SEH came in less, however, it only includes services for a preliminary design. Mr. Haffield noted that the proposed contract before Council contained a Limitations on Consultant's Liability section, which has now been removed from the contract.

The motion was made by Council Member Wood, seconded by Council Member Kuhle and unanimously carried to authorize execution of the contract.

APPEAL OF ZONING BOARD OF APPEALS AND ADJUSTMENTS DENIAL OF VARIANCE APPLICATION DENIED

At their September 2, 2014 meeting, the Planning Commission, serving as the Zoning Board of Appeals and Adjustments, considered a variance application submitted by Dennis Kolander and Nancy Galland for property they own at 1120 Collegeway. The property is legally described as:

The East Half of Lot 8, Block 1, Fairway View Estates, City of Worthington, Nobles County, Minnesota

Mr. Kolander and Ms. Galland sought the variance to be allowed to retain a remodeled /constructed

deck that exceeds the 40% maximum structure coverage allowed for the property by 65 square feet. No building permit had been obtained. After holding their public hearing, the Commission denied the variance application on a 4-0 vote, based on the belief that approval would undermine the purpose, intent, and credibility of the City and its Code. The applicant was now appealing the Commissions' decision. Title XV, Section 155.219 Paragraph (B)(5) of the City Code of Worthington states it requires a four-fifths (4/5) vote to alter or rescind the Planning Commission's decision.

Brad Chapulis, Director of Community/Economic Development, provided additional background information on the issue, noting that the property is located within Fairway View Estates subdivision. The developers of the subdivision had obtained approval to establish a Planned Unit Development (PUD), which set a maximum building coverage as 40%, vs. 30% permitted in all other similar residential zoning districts. The structure coverage is set at 40% as well.

In a letter received from Nancy Galland, she states they hired a contractor in August to start work in October, but the project didn't start until November. While working there, the City's Building Official stopped and checked with the contractor, and told the contractor everything was okay, so work continued. Only the footings were not completed because of the cold weather. Ms. Galland said they were then notified later that the deck was too big, which is why they proceeded with the variance. The two City departments did not communicate and now the deck is done and they will be stuck with the expense.

Mr. Chapulis said he was first aware of the deck repair/replacement as well as the addition when the contractor called for an inspection following installation of the footings which was June 19th, after which the contractor applied for the building permit - the deck had essentially been completed. Mr. Chapulis said it was his determination that the deck was too big. Council and staff discussed options for imposing a penalty/fine on the contractor, including doubling the cost of the building permit, which in this case, would be \$70.

The motion was made by Council Member Kuhle and seconded by Council Member Wood to double the fee for the building permit, and to overturn the denial of the variance by the Planning Commission.

Mr. Chapulis said there were two wrongs here, building code and zoning, and the one before Council tonight was the zoning, which we have the legal recourse to deal with. You can't just say you did it wrong but you can keep it - a variance has to be approved. In that case, the Planning Commission serving as the Board of Zoning Appeals still has to hear that and find justification in approving the variance, and if their decision is appealed it is coming back to Council.

Nancy Galland spoke to Council, and said she understood from her contractor that the Building Inspector had been out, saw what he had done except for the joist or whatever it's called wasn't in

concrete because the time allotment had slipped by and we couldn't get in the ground and he said it looks good - it looks okay - I'll come back when you put the concrete in. When the concrete got put in he said it was too big.

Mr. Chapulis said the visitation by Armand was done in the fall on June 19th, when the building permit was applied for that day, and it was not the Building Official who made the comment the deck was too big, it was himself. It was the first opportunity he had to review it. He contacted the contractor that day. Council Member Wood said someone who visited in the fall should have asked if they had their permit yet.

Armand Eshleman spoke, and said he did go there in the fall - his recollection was that he was in that area and saw the contractor's vehicles parked in front of the house. Curiosity made him find out what was going on. After entering the back yard he recalled the conversation was that they were replacing the deck boards, guards, things like that. Normally we don't get too nervous if they're replacing deck boards, guards, things like that because it's already established - they're already there. My recollection is - if he asked questions at that point about altering the size of the deck my response, which is pretty much canned, I've said it so many times it comes out automatically - if you proceed without approval you're on your own-I can't tell you for sure that it is or isn't good - I probably said by looking out in the backyard that there's a good chance you have enough room left because of the size of the yard. But I don't know what all the permutations are for every location in the city. Mr. Eshleman added that we don't know for sure until it goes through the building permit process. He did agree that the contractor called him out in June 19th and all the work was done except for the footings.

The following voted in favor of the motion: Kuhle, Graber, Wood; and the following voted against the same: Sankey, Nelson. Motion failed to gain 4/5's vote as required.

Mr. Chapulis said the decision would now be final as far as the City is concerned, the next step would be if they chose to appeal it through district court.

COUNCIL APPOINTMENT TO OXFORD STREET REDEVELOPMENT STEERING COMMITTEE

Staff was requesting Council to appoint one member to the Oxford Street Redevelopment Steering Committee. The motion was made by Council Member Kuhle, seconded by Council Member Wood and unanimously carried to appoint Council Members Wood and Nelson to the Committee as they represent different Wards.

COUNCIL COMMITTEE REPORTS

Mayor Oberloh - 75th Turkey Day coming - lots of big things planned. Also Corn Off the Cob is

coming up at Memorial Auditorium on the 20th.

Council Member Kuhle - Cable 3 Board met - did a tour of facilities at the High School - added some new technology and now they can do live streaming of events around the community. Arnie Sexe will be retiring - has been on the board for more than 30 years - congratulations to him.

Council Member Graber - CAL met - reviewed activities - they have about 200 members now and continue to get new members. Senior Dining delivers about 45 meals, only 5 - 8 eat at the Center. Lots of planning being done for the Pickle Ball tournament. New director for the food service - Lori Olsen. Kris is looking for volunteers to help there. Reminder of Corn Off the Cob, plus the Eagles Tribute will be in October.

Council Member Sankey - National Telecommunication Information Administration met in Minneapolis last Thursday on building a broadband community roadmap. Blandin Foundation was there - they said there are funds available for feasibility studies.

Council Member Wood - Water and Light Commission is working with the watershed board as they are looking at Ocheda and some of the issues that are going on out there. They are very aware of the fact that anything they do there could influence our well heads - they know we have to be a major player. Our wells are falling but falling slowly - still in the green area. Buffalo Ridge Transit is still functioning - they have a grant from the state and are working to keep the four counties connected. Prairie View - as part of our park land they are moving more toward multiple use - putting in foot golf which is getting very popular across the country.

Council Member Nelson - Planning and Zoning met - some new members on the Committee - looking at having a question and answer session for them.

CITY ADMINISTRATOR'S REPORT

Craig Clark, City Administrator, noted there will be an open house for the finalists for the Public Safety Director position - the public is invited and are welcome and encouraged to attend. That will be on the 18th from 5:00 to 6:30 at BenLee's where you can meet and comment on the candidates. We did get a memo from Troy Larson with Lewis and Clark - some of the discussions going on with Iowa and funding and the proposals they're looking at and how future federal funds would be utilized. It's quite an interesting scenario that's transpiring as Iowa works to see how they'll fund their portion and the line from South Dakota to the Iowa line - it only benefits Iowa - he and Scott Hain (predominantly Scott Hain) are looking at that.

ADJOURNMENT

The motion was made by Council Member Kuhle, seconded by Council Member Wood and unanimously carried to adjourn the meeting at 7:59 p.m.