

**WORTHINGTON CITY COUNCIL  
REGULAR MEETING, OCTOBER 23, 2017**

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: Bob Wethor.

Staff present: Steve Robinson, City Administrator; Jason Brisson, Director of Community Development, Planning, Zoning and Building Services; Janice Oberloh, City Clerk; Detective Sgt. Nate Grimmus.

Others present: Justine Wettschreck, KWOA; Karl Evers-Hillstrom, The Globe; Mike Johnson, Kevin Donovan, Brian Pellowski; Abraham Algadi, Chris Kielblock; Aaron Marthaler; Ryan McGaughey; Todd Frager, Mike Smith.

The Pledge of Allegiance was recited.

**AGENDA CLOSED / APPROVED AS PRESENTED**

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

- City Council Minutes of Regular Meeting October 9, 2017; City Council Minutes of Special Meeting October 17, 2017 (at Noon Kiwanis Meeting); City Council Minutes of Special Meeting October 18, 2017
- Minutes of Boards and Commissions - Water and Light Commission Minutes of Regular Meeting October 16, 2017; NEON Committee Minutes of September 14, 2017
- Heron Lake Watershed Board Minutes of August 14, 2017; Prairie Justice Center Joint Operations Committee Minutes of July 20, 2017; Worthington Housing and Redevelopment Authority Board Minutes of Regular Meeting September, 19, 2017; Worthington Housing and Redevelopment Authority Board Minutes of Special Meeting October 11, 2017
- Financial Statements - General Fund Statement of Revenues and Expenditures - Budget and Actual - for the Period January 1, 2017 through September 30, 2017; Municipal Liquor Store Income Statement for the Period January 1, 2017 through September 30, 2017
- Bills payable and totaling \$1,116,036.82 be ordered paid

**NOMINATING COMMITTEE RECOMMENDATION FOR COMMITTEE APPOINTMENT**

At their October 9, 2017 meeting, Council voted to table action on a recommendation from the

Nominating Committee to appoint Cecilia Bofah to the Police Civil Service Commission to replace Jennifer Weg, who resigned. The action was taken to allow for additional information to be obtained.

Following discussion regarding the possibility of dissolving the Commission, the motion was made by Council Member Oberloh, seconded by Council Member Janssen and unanimously carried to not fill the vacancy at this time.

### **DEVELOPMENT AND LOAN AGREEMENT WITH PBK REAL ESTATE, LLC**

PBK Real Estate had submitted a proposed Development and Loan Agreement for the City-owned property identified as Parcel # 31-3786-551, for a proposed movie theater. Steve Robinson, City Administrator, said terms of the purchase and loan included the following:

- Sale price of the real property is \$104, 790.40, the appraised market value
- The sale includes receiving \$77,924.00 (less \$5,000 already received as a down payment) upon closing
- Entering into a loan agreement with the Buyer in which the remaining \$26,866.40 is in the form of a forgivable contract for deed loan based on creating 1.5 full-time equivalent jobs.

The proposal was modeled after an agreement approved by Council in 2014 with PurNet, Inc. in the form of forgiveness of the contract for deed payments in the amount of \$142,120.00. However, Mr. Robinson said the PBK proposal had been reviewed by the City Attorney, and that Mr. Shepherd was not recommending approval of the document in its current form, and noted that section 7.6 of the agreement appears to contradict earlier sections of the document in regard to the amount of loan forgiveness. His recommendation was that Council should consider the concept, and if approved, could direct staff to work to work with legal counsel to first determine if the proposal meets the minimum requirements under statute, and if so, direct staff and the City Attorney to draft a development agreement and contract for deed.

Council Member Oberloh stated that on September 25<sup>th</sup> Council voted unanimously to sell the property for \$104,790, which left \$26,866 over the proposed \$77,924. After giving the situation a lot of thought, he had a discussion with the City Administrator, and was now making a motion to let the previous motion to sell the property at \$104,790 stand, and on the day of opening of a theater, with no restrictions as to how many jobs or how much they pay, when it's done, we'll write them a check for the \$26, 866.40.

Kevin Donovan, speaking on behalf of PBK, talked about previous forgivable loans issued by the City and created under the Job Creation Act. He also noted a correction to FTE number that Mr. Robinson had provided, noting it was not 1.5 FTE, but two full-time jobs, paying between \$30,000 and \$50,000, and four to six part-time, or close to five full-time jobs. Under the Jobs Act, Mr.

Donovan said they should technically be eligible for \$100,000 loan. All they wanted was to get back to the previously agreed upon price of \$77,000. Council Member Oberloh said he just provided them a way to do that, and it would be based on their time line of November of next year.

Mayor Kuhle asked Council Member Oberloh if we could legally justify giving them a check when they open the door - isn't it based on job creation. Council Member Oberloh said he didn't know why we would base it on jobs, and asked Mr. Robinson if he had run that by the City Attorney, to which he responded "no".

Aaron Marthaler spoke in favor of the project, and noted that he and Brian Pellowski have been working together over the past weeks to get the mall property project moving forward - they signed an agreement tonight that will let it move forward.

Todd Frager, theater operator, talked about the theater project - he's ready to go and is excited about the project.

Mayor Kuhle said that while the concept is good, the history is not.

Brian Pellowski spoke, and noted there is skepticism on his side also. Mr. Oberloh's simple approach makes sense - leave it up to the lawyers to work it out and make it right. He has information that the Mayor went to Sioux Falls to talk to Tom Walsh in August about a theater here. And it's not good if I buy property, and somebody else is going to buy property to put a theater in too. The previous restrictions were unacceptable, it went downhill from there. Mr. Pellowski said he also wanted to make it clear that the City can't sell that property to anyone else as he filed a lien on it, same as the one on Marthaler's property.

Council was surprised at the statement. Council Member Ernst questioned why the City would want to do business with you? Who has threatened to sue the City? I wouldn't deal with someone like you in my personal life. Mr. Pellowski responded that was Ms. Ernst's opinion.

Council Member Janssen said Council Member Oberloh's idea was the best deal. Mr. Pellowski agreed.

The motion was seconded by Council Member Cummings with the following voting in favor of the motion: Janssen, Oberloh, Cummings, Harmon; and the following Council Members voting against the same: Ernst. Motion carried.

### **LIQUOR STORE PROJECT, CHANGE ORDER NO. 1**

Steve Robinson, City Administrator, said staff was looking for Council approval of a change order to the Liquor Store project that would result in a decrease to the project cost in the amount of

\$7,954.00. The change was based on staff's request to the general contractor for removal of the VCT flooring and placing hydraulic cement over the existing slab, and finishing with resilient tile flooring. The proposed change order includes removing the existing concrete floor slab and replacing it with a new 4-inch thick reinforced integral colored concrete floor slab.

The motion was made by Council Member Ernst, seconded by Council Member Janssen and unanimously carried to approve the Change Order No. 1 to the Liquor Store project.

**RESOLUTION NO. 2017-10-09 ADOPTED IN SUPPORT OF LOCAL DECISION-MAKING AUTHORITY**

Based on the number of bills introduced during the 2017 legislative session that would have restricted the decision-making authority by City Councils, the League of Minnesota cities was requesting City support of a resolution in support of local decision-making authority and opposing legislation that removes the ability of local officials to respond to the needs of their businesses and constituents.

The motion was made by Council Member Harmon, seconded by Council Member Janssen and unanimously carried to adopt the following resolution in support of Local Decision-Making Authority:

RESOLUTION NO. 2017-10-09

A RESOLUTION SUPPORTING LOCAL DECISION-MAKING AUTHORITY

(Refer to Resolution File for complete copy of Resolution)

**SMITH AVENUE STREET CLOSURE APPROVED FOR HALLOWEEN NIGHT**

The Worthington Police Department was requesting Council authorization to close Smith Avenue for Halloween night, from 5:00 p.m. to 8:00 p.m., due to the increased number of pedestrian and vehicle traffic for Halloween. The closure would also include a small portion of Clary Street at the intersection with Smith Avenue. The closure was for the safety of the public. In response to a question from Council, Detective Sgt. Nate Grimmus said they had not spoken with the property owners on that street about the closure. Council Member Ernst asked if they were aware that there was a large volleyball tournament scheduled at the high school that night, did they talk to the school? Detective Sgt. Grimmus said they did not know and hadn't notified the school. However, the Police Reserves will be monitoring the barricades and can open them for tournament traffic.

The motion was made by Council Member Oberloh, seconded by Council Member Cummings and unanimously carried to approve the Smith Avenue Street closure for Halloween night, and that a map

of the closure be provided to Josh Dale, A.D. at the high school.

### **SITE PREPARATION ASSISTANCE APPROVED - DU NGUYEN AND KHANH LE**

Jason Brisson, Director of Community Development, Planning, Zoning and Building Services, stated that Du Nguyen and Khanh Le had submitted a site preparation assistance request for their proposed 3,400 square foot commercial facility to be constructed at 1324 Ray Drive. They are requesting assistance with the costs affiliated with soil remediation affiliated with unsuitable soils. The legal description of the property is:

Block 1, Lot 1, McDonald's Addition, City of Worthington, Nobles County, Minnesota

To determine eligibility, Staff assessed the application using the Site Preparation Guidelines. Staff was also recommending that the assistance be limited to the costs affiliated with eligible improvements at an amount not to exceed \$50,000, which was the requested amount, plus 20% contingency. Mr. Brisson also pointed out that site preparation assistance had previously been approved by Council for this site, however, that approval ended June 30, 2016 but it had not been acted on by the previous owner.

The motion was made by Council Member Oberloh, seconded by Council Member Janssen and unanimously carried to approve the application for site preparation assistance submitted by Du Nguyen and Khanh Le.

Steve Robinson, City Administrator, noted there would only be about \$32,000 remaining in the fund after this project - staff will look at the possibility of additional funding.

### **COUNCIL COMMITTEE REPORTS**

Mayor Kuhle - Nothing to report.

Council Member Janssen - Nothing to report.

Council Member Oberloh - Attended an HRA meeting - authorized the City to provide funding for the college housing project.

Council Member Cummings - Attended a Law Enforcement Center Joint Committee meeting last Thursday - they are finding there was poor construction on many things.

Council Member Ernst - She and Council Member Oberloh attended a Community Growth meeting - they talked about a couple of projects. The trip to Cuero, Texas to represent the City of Worthington at Turkey Fest was a great experience - she was treated very well!

Council Member Harmon - Attended a Prairie Justice Center Joint Operations Committee meeting with Council Member Cummings. A new security system is installed in the courts end of the building. Water and Light Commission met October 16<sup>th</sup> - budgeting for next year. Their 2018 budget will include a \$1.8 million water treatment facility with high tech pumps as part of the Lewis

and Clark project. Also attended the Special City Council meeting on the 18<sup>th</sup>.

**CITY ADMINISTRATOR'S REPORT**

Steve Robinson, City Administrator, said that Sunday Liquor Sales had been estimated at \$4,790 per day, and after being open for 12 Sundays, the first eight weeks were above that and the last four weeks were a little less than that. The average for the 12 weeks is \$4,536 per day. The average sale per customer has fallen slightly per transaction. There has been no impact on Saturday or Monday sales. Staff will be meeting with the 49r's on Wednesday regarding their contract.

**ADJOURNMENT**

The motion was made by Council Member Cummings, seconded by Council Member Oberloh and unanimously carried to adjourn the meeting at 8:16 p.m.

Janice Oberloh, MCMC  
City Clerk