

**WORTHINGTON CITY COUNCIL  
REGULAR MEETING, OCTOBER 11, 2021**

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: Chad Cummings, Chris Kielblock, Amy Ernst, Larry Janssen. Alaina Kolpin (excused).

Staff present: Steve Robinson, City Administrator; Hyunmyeong Goo, Assistant Engineer; Jeff Faragher, Assistant Engineer; Steve Schneider, City Engineer; Laura Garcia, Community Service Officer; Matt Selof, City Planner; Mindy Eggers, City Clerk.

Others present: Salvador Adame, Honorary Council Member; Julie Buntjer, The Globe; Emma McNamee, The Globe; Travis Winters, Bolton & Menk; Ryan McGaughey, Radio Works; Jorge Cardenas, Casey Ingenthron, Mary Ingenthron.

The Pledge of Allegiance was recited.

**HONORARY COUNCIL MEMBER**

Mayor Kuhle welcomed Salvador Adame as the Honorary Council Member for the months of August, September and October, 2021.

**AGENDA APPROVED WITH ADDITIONS/CHANGES**

A motion was made by Council Member Kielblock, seconded by Council Member Ernst and unanimously carried to approve the agenda as presented.

**HELD PUBLIC HEARING ON PROPOSED ASSESSMENTS AND ADOPTED RESOLUTION NOS. 2021-10-63, 2021-10-64**

Pursuant to published notice, this was the time and date set for a public hearing on proposed assessments.

The motion was made by Council Member Janssen, seconded by Council Member Cummings and unanimously carried to open the hearing.

Steve Schneider, City Engineer, presented information on the proposed assessments and what the payment options would be for each of them. Mr. Schneider noted the resolution pertaining to miscellaneous charges also adopts the assessments as amended.

The recommended terms for the proposed assessments are listed below.

**2021 MISCELLANEOUS UNPAID CHARGES**

- > Removal of Ice and Snow
- > Removal of Solid Waste

> Removal of Noxious Weeds and Vegetation  
4.0%<sup>1</sup> ; 1 year

SANITARY SEWER IMPROVEMENT NO. 114 \*

> Glenwood Heights Second Addition  
3.1%<sup>2</sup> ; 15 years

WATER MAIN IMPROVEMENT NO. 110 \*

> Glenwood Heights Second Addition  
3.1%<sup>2</sup> ; 15 years

<sup>1</sup> Based on recommended policy for a minimum rate of 4% or current rate for improvement assessments, whichever is greater

<sup>2</sup> Based on interest rate on PIR bonds

\* Single Resolution for both improvements.

Mayor Kuhle asked if there was any testimony. None was received.

A motion was made by Council Member Kielblock, seconded by Council Member Cummings and unanimously carried to close the hearing.

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

RESOLUTION NO. 2020-10-63

A RESOLUTION ADOPTING THE SPECIAL ASSESSMENT FOR 2021 MISCELLANEOUS UNPAID CHARGES

(Refer to Resolution File for complete copy of Resolution)

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

RESOLUTION NO. 2020-10-64

A RESOLUTION ADOPTING THE SPECIAL ASSESSMENT FOR SANITARY SEWER IMPROVEMENT NO. 114 AND WATER MAIN IMPROVEMENT NO. 110

(Refer to Resolution File for complete copy of Resolution)

**CONSENT AGENDA**

A motion was made by Council Member Janssen, seconded by Council Member Cummings and unanimously carried to approve the consent agenda as presented.

- City Council Meeting Minutes of September 27, 2021
- Planning Commission Meeting Minutes of October 5, 2021
- Public Arts Commission Meeting Minutes of August 25, 2021
- Bills payable and totaling \$1,866,844.13 be ordered paid

**PROFESSIONAL SERVICES AGREEMENT- LAKE OKABENA DAM FEASIBILITY STUDY APPROVED**

Steve Robinson, City Administrator, said the E.O. Olson Trust Board members discussed the condition of the lake outlet dam at their April 22, 2021 meeting. They inquired if City Engineering staff had taken steps to review the condition of the structure and staff informed the Committee that a condition assessment had been discussed but that consulting engineering services would be needed to perform this service. Mr. Robinson said the Trust Board committed \$92,780.36 to the City to perform a feasibility study and condition assessment of the outlet dam.

Engineering staff requested a proposal from Short Elliott Hendrickson for a feasibility study of the dam, built in the early 1900's, to review the condition of the dam and develop alternatives if replacement or rehabilitation is necessary. The scope of work in the proposal includes:

- Inspection of the dam, trail bridge and trail bridge abutments,
- Evaluation of alternatives to rehabilitate or reconstruct the dam structure and how the alternatives may impact the existing spillway, adjacent roadway, timber trail bridge and trail,
- Preparing conceptual layouts of various alternatives,
- Addressing long-term operations and maintenance,
- Preparing a summary of permitting requirements, and
- Preparing cost estimates and identifying funding opportunities.

The work will be performed on an hourly basis for a fee not to exceed \$49,500.00.

Council Member Ernst asked why the amount committed is such an odd amount. Mayor Kuhle said this was the amount that the E.O. Olson Trust received from the sale of the dredge site land.

Mr. Robinson noted this will be a long term process but will provide insight on how to proceed as there are many factors to consider.

**RESOLUTION #2021-10-65 ADOPTED ORDERING PREPARATION OF FEASIBILITY REPORT OF PROPOSED IMPROVEMENT AND TASK ORDER NUMBER 11 APPROVED**

Steve Schneider said the Eighth Avenue reconstruction from Ninth Street to its westerly terminus is proposed for 2022. He explained that a portion of the project costs will be assessable to the benefitted property owners. In order to move forward with the project, a feasibility study is required. Mr. Schneider said staff recommends the adoption of the resolution ordering the feasibility study for the improvement of Eighth Avenue from Ninth Street to its westerly terminus. He said the City currently has an existing engineering services agreement with Bolton and Menk and is recommending approval of Task Order Number 11 that will facilitate the required preparation of the Feasibility Report for reconstruction of Eighth Avenue, to include water main replacement, sanitary sewer service connection upgrades, regrading, base, curb and gutter, resurfacing, and sidewalk reconstruction. Task Work Order also includes design services through the bid letting process upon condition that the project is ordered ahead at the public hearing.

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

RESOLUTION NO. 2020-10-65

**A RESOLUTION ORDERING PREPARATION OF FEASIBILITY REPORT ON PROPOSED IMPROVEMENT**

(Refer to Resolution File for complete copy of Resolution)

A motion was made by Council Member Cummings, seconded by Council Member Ernst and unanimously carried to approve Task Order Number 11.

**ENGINEERING SERVICE CONSULTANT AGREEMENT TASK ORDER NUMBER 12 APPROVED**

Mr. Schneider said that additional engineering services are needed on a part-time temporary basis to assist in a smooth transition in engineering staff due to the pending retirement of the Assistant City Engineer. Having an experienced design engineer available a few days each week to assist with the preparation of plans and proposals, estimates, and project management will help insure projects in the capital improvement plan move forward in a timely manner. Mr. Schneider said the City currently has an existing engineering services agreement with Bolton and Menk. Staff is recommending Council approve Task Order Number 12 that would allow the Bolton and Menk staff to assist with the 2022 Capital Improvement Plan project delivery.

Council Member Cummings asked how long staff was planning on having the consultant, Mr. Schneider said they are planning May of 2022 and hoping sooner but will have to see how the transition of staff goes.

A motion was made by Council Member Ernst, seconded by Council Member Janssen and

unanimously carried to approve Task Order Number 12.

**RIGHT OF WAY ACQUISITION SERVICES, CONSULTANT AGREEMENT TASK ORDER NUMBER 13 APPROVED**

Mr. Schneider said the replacement of Bridge Number L3310 located on Fox Farm Road has been approved by the Minnesota Department of Transportation State Aid Office. State Bridge Bonding and local funding will be used to pay the project. The project is planned for construction in 2022.

Mr. Schneider explained permanent and temporary easements need to be acquired prior to the project going to a bid letting. Two consultants were contacted to provide an estimated cost to provide the engineering services to research the property ownership, write the easement descriptions, determine the estimated value of the easements, and work through the purchasing process. Bolton & Menk provided the lower cost of \$9,300 for the service. It is anticipated that the cost will be significantly lower if an amicable purchase can be negotiated with the land owners.

Mr. Schneider said the new bridge will be the same as the Tenth Avenue bridge and is in the 2022 budget.

He said the City staff recommends approval of Task Order Number 13 that would facilitate the required purchase of right of way easements needed to facilitate construction of the new precast concrete structure.

A motion was made by Council Member Kieblock, seconded by Council Member Ernst and unanimously carried to approve the Bolton & Menk Task Order Number 13.

**CONDITIONAL USE PERMIT - 88 ½ EAST TWELFTH STREET**

Matt Selof, City Planner, said Jorge Cardenas has applied for a conditional use permit to operate an automotive repair shop in the existing building located at 88 ½ East 12th Street. Pursuant to Minnesota Statute § 462.3595 and as outlined in Worthington City Code Chapter 155, Appendix E, the City establishes that automotive repair services require a conditional use permit in the 'B-3' – General Business District, the zoning designation of the subject property. The legal description of the subject property under consideration is as follows:

That part of the Southwest Quarter (SW1/4), of Section 24, Township 102, Range 40, described as follows: Commencing at a point, said point being the intersection of the East line of the West 52.50 feet of said Southwest Quarter (SW1/4) and the Northwesterly line of Block 6, East addition, thence North 0°54'09" East, assumed bearing, along said East line of the West 52.50 feet a distance of 161.45 feet to the point of intersection with a line, said line being parallel with and 100.00 feet southeasterly from the centerline of the Chicago, Northwestern Transportation Company railway main line; thence North 49°14'03" East

along said parallel line, a distance of 163.65 feet, more or less, to a point distance 300.00 feet South 49°14'03" west from the Southwesterly Right-Of-Way line of 12th Street; thence South 40°45'57" East a distance of 78.35 feet, more or less the centerline of the Chicago, Rock Island and Pacific Railroad Company spur track; thence North 49°02'21" East, along said spur centerline, a distance of 25.14 feet, more or less, to a point distant 275.00 feet South 49°02'21" West along said spur centerline from said Southwesterly Right-Of-Way line 12th Street; thence South 40°58'38" East a distance 96.02 feet, more or less, to a point, said point being on the Northwesterly Line of said Block 6, a distance 20.00 feet northeasterly from the Northwesterly Corner of Lot 3, said Block 6; thence south 59°29'51" West, along said Northwesterly Line of Block 6; a distance of 303.30 feet, more or less, to the point of commencement. Contain 0.8 acres, more or less.

Mr. Selof said for purposes of the description, the right-of-way of said 12th Street is determined to be 66 feet in width, the centerline of which runs from a point in the centerline of 12th Street is determined to be 66 feet in width, the centerline of which runs from a point in the centerline of 12th Street in the Southeasterly right-of-way line of First Avenue, to a point in the centerline of 12th Street in the Northwesterly line of said East Addition. Together with a nonexclusive easement ("Roadway") for ingress and egress purposes over a strip of land 15 feet in width, abutting and parallel with the Northwesterly line of Lots, 1, 2 and 3 in said Block 6, East addition. This easement grant is subject to certain terms and condition, which are deemed covenants and shall run with the land.

Mr. Selof said the City Planning Commission voted unanimously to recommend approval of the applicant's conditional use permit application subject to the following conditions:

1. The property complies with City Code Section 155.042: Parking and Loading;
2. The property complies with City Code Section 97.15: Inoperable Vehicles on Auto Repair Lots;
3. The subject property must maintain compliance with all applicable local, State, and Federal standards and requirements.

Mr. Selof highlighted the eight items the Planning Commission based their recommendations on and said the main topics of the discussion held was access to the subject property and the authority of the City to force a reversal of property sales were the main topics of discussion during the public hearing portion of the Commission meeting. He explained an abutting property owner has concerns about people driving through their property to get access to the applicant's property, why 88 ½ East 12th Street and 90 East 12th Street were ever allowed to be sold separately, and the presence of an ingress/egress easement that the abutting property owner maintains on the subject property.

The owner of 88 East 12th Street (31-3959-000) had made staff aware of a 35' x 75' easement for

ingress/egress they hold on the north corner of the applicant's property. This provides access to an overhead door located on the rear of the building. At the time of the meeting staff had no record of any such easement existing until a copy of the deed to the 88 East 12<sup>th</sup> Street was provided during the public hearing on October 5th. Staff also obtained a full copy from the County and verified that the legal descriptions do grant the easement as discussed. Mr. Selof said this means that the applicant can not block any portion of that easement so the abutting property owner can maintain access to their back door. He explained that even though the easement was not verified until after the Planning Commission meeting this would not prevent the applicant from operating an auto repair shop on the property. As with any easement this does not prevent usage of the land and would not be grounds to deny the application.

Mr. Selof said the abutting property owner (88 East 12th St.) also had questions and concerns about why the subject property was ever allowed to be sold separately from 88 East 12th Street. Since the properties were not to be sold separately they were anyways and it was asked that the City force a reversal of the property sales. Staff's opinion is that the City had no authority to do so but will seek legal Counsel.

Following the Planning Commission meeting, staff met with the City Attorney and was informed that the City has no such authority to reverse any property sales. Legal Counsel was also of the opinion that the City did its due diligence to enforce the zoning ordinances at the time by making the property owner go through the variance procedure to sell the property. Unfortunately, the owner did not follow the regulations and sold the two properties regardless. Since the City is not required to have any documentation of a variance denial recorded with Nobles County there was nothing attached to the property that would indicate there is a problem with the property sale. Additionally, there is no requirement that anyone has to notify the City when a property is sold. These two things coupled together meant that City staff, at the time, were not aware of the property sales.

Casey Ingenthron, owner of the adjacent property, expressed frustration with the City and asked if the ordinance was not going to be enforced why have it. Mr. Robinson said that the City was not going against an ordinance, the property was split into two parcels and the sales were made and it isn't anything the Council can address or change.

Applicant Jorge Cardenas said with the permanent easement in place it covers the street frontage issue. Council Member Cummings asked what his plans are if his customers use the area next to the railroad tracks to get to his business. Mr. Cardenas said that he is planning on putting up fence on the east side of his property between his building and Mr. Ingenthron's building and then also on the west side diagonally along his property line. He said this would make customers use the easement access and come to the back of his building where you would come into the lobby of his business.

A motion was made by Council Member Janssen, seconded by Council Member Kielblock and unanimously carried with a 4-0 vote to approve the conditional use permit for 88 ½ East Twelfth Street.

**COUNCIL COMMITTEE REPORTS**

Mayor Kuhle - No report.  
Council Member Janssen - No report.  
Council Member Ernst - No report.  
Council Member Kielblock - No report.  
Council Member Kolpin - No report.  
Council Member Cummings - No report.

**CITY ADMINISTRATOR REPORT**

Mr. Robinson said that paving on Cecilee Street has been completed. Jeff Faragher, Assistant Engineer said milling will begin on Ryan's Road tomorrow and the Glenwood project is also ready to pave.

**ADJOURNMENT**

The motion was made by Council Member Cummings, seconded by Council Member Ernst and unanimously carried to adjourn the meeting at 8:19 p.m.

Mindy L. Eggers, MCMC  
City Clerk