

MINUTES

**1. CONVENE CITY COUNCIL REGULAR MEETING**

Mayor Zerby called the meeting to order at 7:00 P.M.

**A. Roll Call**

Present. Mayor Zerby; Councilmembers Johnson, Labadie, and Siakel; City Attorney Keane; City Administrator Lerud; Finance Director Rigdon; Planning Director Darling; Director of Public Works Brown; and, City Engineer Fauske

Absent: Councilmember Sundberg

**B. Review Agenda**

**Labadie moved, Siakel seconded, approving the agenda as presented. Motion passed 4/0.**

**2. CONSENT AGENDA**

Mayor Zerby reviewed the items on the Consent Agenda.

Councilmember Johnson commended Planning Assistant Patti Helgeson for her thirty-six years of service to the City.

**Johnson moved, Labadie seconded, Approving the Motions Contained on the Consent Agenda and Adopting the Resolutions Therein.**

**A. City Council Work Session Minutes from August 12, 2019**

**B. City Council Regular Meeting Minutes from August 12, 2019**

**C. Approval of the Verified Claims List**

**D. Accept Improvements and Authorize Final Payment for 2017 Street Improvements on Riviera Lane and Shorewood Lane, City Project 17-04, Adopting RESOLUTION NO. 19-076, "A Resolution Accepting Improvements and Authorizing Final Payment for the 2018 Reconstruction of Riviera Lane, Mann Lane and Shorewood Lane, and the Watermain Extension Along Yellowstone Trail (Club Valley Road to Riviera Lane), Riviera Lane, State Highway 7 (Riviera Lane to Lake Linden Drive) and Lake Linden Drive (State Highway 7 to 6140 Lake Linden Drive)."**

**E. Accept Planning Assistant's Retirement and Authorize Advertising for Position**

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- F. **Approve Hiring Andy Eslinger to Street Inspector Position and Authorize Advertising for LEO Utilities Position**
- G. **Approve Contribution for AIS Inspection at City Public Access on Christmas Lake**
- H. **Approve Mowing Contract for Enforcement Mowing, Adopting RESOLUTION NO. 19-077, "A Resolution Approving a Contract for Enforcement Mowing and Authorizing Staff to Sign the Contract"**

**Motion passed 4/0.**

**3. MATTERS FROM THE FLOOR - NONE**

**4. PUBLIC HEARING - NONE**

**5. REPORTS AND PRESENTATIONS - NONE**

**6. PARKS**

**A. Commissioner Vassar Report on August 13, 2019 Parks Commission Meeting/Tour**

Commissioner Vassar gave an overview on the August 13, 2019 park tour and meeting. She noted that Councilmember Johnson came up with an idea of selling the skatepark and staff is looking into that possibility. She stated that there will be a hockey board painting party on September 28, 2019. She explained that the Commission is also considering a possible design change for the picnic shelter in Badger Park because of some increased expenses because of the roof line.

Councilmember Labadie asked how many people have signed up to volunteer for the hockey board painting party. Planning Director Darling stated that she believes there are currently four volunteers that have committed to the event. She stated that it has been published in two newsletters, the hockey association has been alerted, and the school district has been contacted. She stated that she is hoping that there will be more responses once school is in session. She noted that they are looking for high school aged and above for volunteers.

Councilmember Labadie recommended contacting Michelle Seets at the Minnetonka Public Schools because she coordinates the volunteer opportunities for the students.

**B. Authorize Change Order No. 2 for Badger Park Project, City Project 19-01**

Planning Director Darling explained that there have been a few cost increases at Badger Park. She reviewed the items included in Change Order No. 2. She explained that due to the wind load stress on the design of the shelter, pilings would need to be increased, which would cost about fourteen thousand dollars in order to remain with the current design. She reviewed some of the design options that staff has looked at in order to decrease the cost. She stated that any design change will delay the project so they wanted input from the Council before they moved forward. She stated that if the design remains the same, there will be no delay, but will have the increased cost.

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Councilmember Johnson stated that he would rather there not be a delay in the project. He stated that he also likes the original roofline design because it mimics City Hall. Councilmember Siakel stated that she agrees and would be okay with keeping the design the same. Councilmember Labadie stated that it is a sizable increase in cost but agrees that she likes the design of the more expensive roofline.

Councilmember Johnson asked for the total budget for Badger Park. Planning Director Darling stated that she believes it is close to \$500,000.

Councilmember Labadie stated that she would also like this project to proceed without a delay.

**Johnson moved, Labadie seconded, Approving Option 1 and Adopt RESOLUTION NO. 19-078, "A Resolution Authorizing Increases in the Budget for Badger Park Project, City Project 19-01." Motion passed 4/0.**

**7. PLANNING**

**A. Commissioner Eggenberger Report on August 6, 2019 Planning Commission Meeting**

Commissioner Eggenberger gave an overview of the August 6, 2019 Planning Commission meeting.

**B. Variance Application for Setbacks and Substandard Lot: 27120 Edgewood Road**

Planning Director Darling explained that the property owner is proposing to demolish the existing home and construct a new home that requires variance for setbacks and for a substandard size. She stated that both the Planning Commission and staff recommend approval. She stated that one neighbor expressed concerns about the project and spoke at the meeting.

Councilmember Siakel stated that she attended this Planning Commission meeting and there was a robust discussion about this issue and she supports granting this variance.

Councilmember Johnson stated that there is no variance needed for the additional height, so he supports the variance.

**Siakel moved, Johnson seconded, Adopting RESOLUTION NO. 19-079, "A Resolution Granting Variances for Property Located at 27120 Edgewood Road." Motion passed 4/0.**

**8. ENGINEERING/PUBLIC WORKS**

**A. Appeal of Work in Right-of-Way Request: 27100 Edgewood Road**

City Engineer Fauske stated that this is on the property directly adjacent to the previous agenda item. She explained that the property owner had approached staff with a request to extend their private irrigation services within the Edgewood Road right-of-way. She stated that both staff and the City Attorney concurred that this is not a necessary encumbrance. She stated that the property owner when informed of this interpretation stated that they would like to appeal the decision which is why it is before the Council at this time.

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Susie O'Donnell, 27100 Edgewood Road, stated that their lot situation is a little odd because they own the land that the road is on as well as a portion of land on the opposite side of the road. She stated that her husband was unable to attend tonight's meeting and asked her to attend in his place. She stated that no one at the City has been able to explain how installing a 2-inch PVC pipe will in any way limit the City's ability to maintain utility services. She stated that they were informed that there were other options available but the City had not responded with what those options would be. She stated that they felt this would be a good time to install the irrigation system because their road will be resurfaced next month. She stated that they believe the ownership of private property should trump the right-of-way that the City has in this situation. She stated that part of the reason that they landscaped across the street was in order to protect their title so the other neighbor wouldn't simply mow it and take it over as their own.

Mayor Zerby asked City Attorney Keane to address her question about why the right-of-way trumps' property rights. City Attorney Keane stated that he is not clear about the point Ms. O'Donnell is making because the right-of-way is the right-of-way and the City is responsible for the activities that take place within the right-of-way.

Ms. O'Donnell asked what encumbrance there would be to a single PVC pipe going under the road to their property. Public Works Director Brown explained that the City has the responsibility to get to the public utilities as efficiently as possible. He explained the usual process of contacting Gopher State One before work begins and noted that the City would probably end up severing the irrigation pipe because private "utilities" such as this do not show up in the Gopher State One information. He stated that irrigation systems are fraught with issues and noted that it could cause problems with the public roadway should the line burst or freeze.

Mayor Zerby stated that one of their reasons for keeping the area landscaped is a defensive position in order to keep this as her property. He gave the example of his own home where a fence was put in the wrong location and three feet of his property is actually on the other side of the fence. He stated that when he expressed his concern about this situation, he was told that this area would not become part of his neighbor's property. He asked City Attorney Keane if there was some truth to the concern that if the land is not used it is simply forfeited to the neighbor.

City Attorney Keane asked if the O'Donnell's property was abstracted or if it had a torrens. Ms. O'Donnell stated that she believes it is a torrens but noted that there is a long history of debate about their property lines. She stated that their understanding is that if somebody else mowed this property for ten years that they could eventually say that it is their land. She stated that this was her husband's idea after a long arduous legal battle with a previous property owner.

Planning Director Darling noted that she had seen the court case and the registrar of titles and the results verified that it is a torrens. She stated that this is fairly recent so it may not have worked its way through the GIS system. City Attorney Keane stated that if the property is registered as torrens, no other physical activities are necessary to maintain ownership of the property. He stated that this means that nobody can lay claim to the property in the future by prescriptive rights.

Ms. O'Donnell stated that the information on this seems to be unclear and noted that they when the house across the street was being built, they were planning to build a driveway across their property as well as the neighboring property. She stated that she does not think this information or knowledge is being shared properly. She stated that after all the confusion and various

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interpretations of the law, this landscaping was what was suggested to them and now they simply want to protect it. She reiterated her question about what the other options would be for this property. City Engineer Fauske stated that there could be a temporary solution of having a hose go across the road, but there are also low maintenance landscaping options that would not require constant irrigation. Ms. O'Donnell stated that others in her area were allowed to putdown rock in the right-of-way but they were not allowed to do that.

Councilmember Siakel stated that issue will be discussed later in the meeting and the Council needs to have a conversation about encroachment on easements. She stated that some of the things that have been recently added to Edgewood Road are a concern.

**Siakel moved, Labadie seconded, Adopting RESOLUTION NO. 19-080, "A Resolution Denying the Appeal of Work in Right-of-Way Request for 27100 Edgewood Road." Motion passed 4/0.**

**B. Approve Quote to Replace Culvert Crossing on Lake Linden Drive**

City Engineer Fauske explained that earlier this year a sink hole developed on Lake Linden Drive and it was found that the cause was a failure of the culvert. She stated that staff received quotes from EJ Mayers, Inc. and G.F. Jedicki, Inc. Because of the timing of the project, as well as not wanting to close Lake Linden Drive for an open dig replacement, Fauske stated that staff is recommending awarding the work to EJ Mayers with the work to be completed by October 15, 2019.

**Siakel moved, Labadie seconded, Adopting RESOLUTION NO. 19-081, "A Resolution Accepting Quote and Awarding Contract for the Lake Linden Culvert Replacement Project." Motion passed 4/0.**

**9. GENERAL/NEW BUSINESS**

**A. Ordinance Amendment for Chapters 900, 1201, and 1202 Removing Bonds as an Acceptable Financial Guarantee**

Planning Director Darling stated that this is a draft ordinance amendment to remove bonds as an acceptable form of financial guarantee. She explained that bonds are difficult to seize and many cities no longer accept them as financial guarantees. She stated that rather than bonds, the City will look for cash deposits or letters of credit. She reviewed the additional amendments suggested by the Planning Commission.

**Siakel moved, Johnson seconded, Adopting ORDINANCE 569, "An Ordinance Adopting an Amendment to Chapters 900, 1201 and 1202 of City Code to Remove Bonds as an Acceptable Financial Guarantee." Motion passed 4/0.**

**Johnson moved, Labadie seconded, Adopting RESOLUTION NO. 19-082, "A Resolution Approving Publication of Ordinance No. 569 by Title and Summary." Motion passed 4/0.**

**B. Demolition of House at 5965 Grant Street**

City Administrator Lerud noted that earlier this year, the City purchased this property for the purpose of constructing a storm water retention pond. He stated that in order to construct the

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pond, the existing structure will need to be demolished and removed. He stated that the City received two bids for the project and staff is recommending acceptance of the low bid from Bollig and Sons.

**Johnson moved, Labadie seconded, to Approve Demolition of the House at 5965 Grant Street and award the project to Bollig and Sons. Motion passed 4/0.**

**C. Begin Process to Vacate Maple Avenue Right-of-Way**

Planning Director Darling explained that Maple Avenue is a 300 plus foot long gravel street that functions as a driveway. She explained that staff is proposing reorienting the driveway to Church Road, removing the unnecessary gravel, vacating the right-of-way back to the adjacent property owners, and retaining a drainage and utility easement of the right-of-way.

**Johnson moved, Siakel seconded, Adopting RESOLUTION NO. 19-083, "A Resolution Initiating the Vacation Process for Maple Avenue." Motion passed 4/0.**

**10. STAFF AND COUNCIL REPORTS**

**A. Administrator and Staff**

**1. July 2019 General Fund Budget Report**

Finance Director Rigdon gave a brief overview of the July 2019 General Fund Budget Report.

**2. Update on Sanitary Sewer Repair at 19990 Sweetwater Curve**

Public Works Director Brown stated that Valley Ridge came out and repaired the sanitary sewer at 19990 Sweetwater Curve. He stated that the homeowner is very pleased and the City had put a temporary patch on the road for the time being.

**Other**

Director Brown stated that Public Works is working on road patching, tree work and flood mitigation. He stated that there is a meeting scheduled with the City, the Minnehaha Creek Watershed District and the DNR to talk about the Mary Lake area and some possible long-term alternatives.

City Engineer Fauske stated that there will be a pre-construction meeting for the resurfacing project in the Lake Linden, Edgewood Road, Birch Bluff, Country Club Road and Sweetwater Curve area. She noted that she was contacted by the City of Minnetonka about a pavement failure on Vine Hill Road that appears to be due to a culvert failure. She will update the Council on this as she gets more information.

City Administrator Lerud stated that fiber was installed at City Hall last week and they are still working on the Community Center and Public Works. He stated that there is an Open House for the Riley Purgatory Bluff Creek on August 28, 2019 and asked that Councilmembers interested in attending let him know so he can R.S.V.P. He stated that copies of the report from Barr Engineering were distributed to the Council regarding Manor Pond. He asked if the Council

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wanted to consider scheduling a special work session meeting for the last meeting in September or a separate date.

City Administrator Lerud stated that he will send out a message with some possible dates for a special work session regarding Manor Pond. He stated that there will be an alum treatment this week and another in September.

**B. Mayor and City Council**

Councilmember Siakel stated that she would like the Council to have a discussion on the encroachments into the City's easement and right-of-way areas. She stated that she drove down Edgewood Road and noticed the addition of many new boulders that are right on the edge of the road. She stated that there was a similar boulder project that went in on Noble Avenue. She stated that by putting these things in the right-of-way, it may affect public safety, snow storage, access to utilities and plows being able to navigate around them. She stated that she thinks there needs to be communication with residents that this cannot be done. She stated that the City needs to protect the easements and this kind of thing is a violation.

Public Works Director Brown stated that it is a City-wide problem and noted that they had spoken with a few of the residents about this issue. He stated that the answer they have gotten is that they are trying to protect what they perceive as being their lawn. He stated that if the Council would like, they can start a communication campaign to let people know about the issue and what is allowed.

Planning Director Darling noted that there was an article in the newsletter a few months ago regarding what is acceptable in the right-of-way. Councilmember Labadie stated that she would like to address this City-wide and try to come up with a way to educate the citizens.

Mayor Zerby noted that he had attended the Northern Lights Lacrosse Festival on August 24, 2019 which was a really nice event.

**11. ADJOURN**

**Labadie moved, Johnson seconded, Adjourning the City Council Regular Meeting of August 26, 2019, at 8:13 P.M. Motion passed 4/0.**

**ATTEST:**

  
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Sandie Thone, City Clerk

  
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Debbie Siakel, Acting Mayor