

MINUTES

1. CONVENE CITY COUNCIL WORK SESSION MEETING

Mayor Zerby called the meeting to order at 6:00 P.M.

A. Roll Call

Present. Mayor Zerby; Councilmembers Johnson, Labadie, and Sundberg (arrived at 6:08 p.m.); City Attorney Keane; City Administrator Lerud; Finance Director Rigdon; Planning Director Darling; and Director of Public Works Brown; Assistant City Engineer Baumann

Absent: Councilmember Siakel

B. Review Agenda

Johnson moved, Labadie seconded, approving the agenda as presented.

Roll Call Vote: Labadie, Johnson, Zerby voted Aye. **Motion passed.**

2. CIP DISCUSSION

Finance Director Rigdon explained that the City has a CIP that covers ten years but is reviewed and adjusted annually. He noted that there is not a lot that has changed from the prior year but explained that the items are flexible and can change. He reviewed the proposed CIP projects for 2021 which included: Park Improvements; Equipment Replacement; and Street and Utility Improvements. He noted that the Smithtown Pond has already been bonded for in 2020. He explained that the Shorewood Oaks and the Grant Street drainage projects have been moved from 2020 to 2021. He reviewed the proposed CIP projects for Trails and Utility Funds. He reviewed the debt service levy information.

Mayor Zerby noted that Councilmember Sundberg has arrived at the meeting.

Councilmember Johnson asked for an explanation of the addition of Minnetonka Boulevard and St. Alban's to the Street and Utility Improvements.

Public Works Director Brown stated that this was a request that was forwarded late in the game by the City of Deephaven. He stated that he cannot say that this would be number one of the City's list, but after he talked it over with City Engineer Budde, they opted to include it in the CIP and also included adding in the option of watermain and sewer work. He explained that the City has really vacillated about putting it in because staff has worked very hard to make this a predictable process especially with the public information and when it involves the neighboring cities it doesn't always follow a nice predictable path. He stated that the City could go back to Deephaven and explain to them that they will have to adjust their CIP.

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Councilmember Johnson stated that he assumes that there would be some sort of cost savings by doing the projects at the same time. Public Works Director Brown agreed and noted that it would be pretty hard to do that roadway in different phases because it is split down the center.

Councilmember Labadie asked what he thinks would happen if the City told Deephaven that they would have to adjust their CIP. Public Works Director Brown stated that he thinks they would be disappointed but would understand that each City is trying to make the finances work. He explained that he had asked City Engineer Budde to have a conversation with the city engineer at Deephaven but he is not sure that has happened yet. He stated that the City can go back and discuss this with Deephaven before this is finalized.

City Administrator Lerud stated that he will also reach out to Dana Young, Administrator for the City of Deephaven. Councilmember Labadie stated that she would like the City to have a conversation with them about their level of comfort regarding bumping it out one year, two years, or further.

Councilmember Johnson agreed that the two cities should have a conversation about this project, but noted that he would also like to take advantage of the low interest rates. He asked if the project was for all of Minnetonka Boulevard and St. Alban's, or just sections. Public Works Director Brown stated that he believes it covers the entirety of those two roads.

Mayor Zerby asked if the City has the CIPs from the other South Lake Minnetonka cities so the can be woven into the City's CIP. City Administrator Lerud stated that he has not seen them, but after the City approved its street improvement CIP this summer, he sent it to Tonka Bay, Excelsior and Deephaven, so they should be aware of our schedule. He stated that he was not contacted by Deephaven regarding this project.

Mayor Zerby noted that this is not the first time the City has run into this issue. He stated that CIPs from other cities should be public information and suggested that staff go to the websites to gather this information as part of researching and refining the City's CIP. He asked for details regarding some of the equipment that is planned for purchase in 2021.

Public Works Director Brown gave an overview of the equipment planned for purchase in 2021. He explained that he has gotten feedback from the Council on evening out the hills and valleys in the CIP and feels that this year is one of the best he has had in evening those numbers out.

The Council discussed various equipment replacement plans and the life span for the equipment. Mayor Zerby stated that he would like to see a comparison with how the most recent CIP tracks with previous CIPs. He gave the example of being able to see what the CIP plan from five years ago had planned for 2021 and see how it compares with reality.

City Administrator Lerud said that there is three years of prior history included with the spread sheet, but to carry forward year CIPs and show them would be difficult to read because it would require numerous columns. He said staff can look at how to present that information because he believed using the past as a reference is important as we look forward. He stated expenditures can vary dramatically year to year, but the important line in his opinion, is the revenue line. He stated that the idea of the CIP is to take these expenditures where you will have varying amounts each year but project revenue that is consistent year over year so taxes are not wildly rising one year and dropping the next.

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Councilmember Labadie asked about a prior discussion about trying to get more iPads or portable devices into vehicles and in the hands of the Public Works employees. She asked about the status of that desire and asked how many employees currently used them.

Public Works Director Brown stated that the City started with one City-owned iPad and his own personal iPad a few years ago. He stated that they added an iPad for the GPS units and added one more iPad. He stated that there may be a few more purchased through the Hennepin County Tree Grant program. He stated that he would still like to add one or two more out into the field which would come out of the computer line item.

Mayor Zerby stated that he just received a question about whether Strawberry Court will be done at the same time as Strawberry Lane because there is apparent interest in City water. City Administrator Lerud stated that the City sent a letter yesterday to the residents on Strawberry Court and Peach Circle to gauge their interest in connecting to water. He stated that both of those streets were planned for mill and overlay by 2023, so staff is planning to consolidate those into one project year. He stated the residents were asked to respond by the middle of November and once this input is received it can be incorporated into the utility plan.

Councilmember Johnson stated that he wanted to highlight a change that was included in the CIP that was a result of a Parks Commission discussion. He stated that he wanted to make sure that there was some consensus from the Council with the Park Commission recommendation. He stated that the Parks Commission discussion was around replacing playground equipment at Silverwood Park or a Cathcart Park. He stated that originally, Cathcart Park was scheduled for 2021 and after discussion with the Parks Commission, that was flipped with Silverwood Park partially because of the potential for replacement of the metal slides.

Planning Director Darling stated that the Parks Commission found that Cathcart Park was in better physical shape than the equipment at Silverwood Park, especially the slides. She stated that the two parks have essentially just traded places within the CIP. Councilmember Johnson stated that he personally agrees with the Parks Commission recommendation to switch these two parks within the CIP.

City Administrator Lerud noted that the CIP will be brought back to the Council when they discuss the final General Fund Levy later in early December.

3. EXCELSIOR SEWER CHARGE

City Administrator Lerud noted that last year the City was reviewing invoices, and the annual invoice from the City of Excelsior for sewer service caught his eye because it was over \$50,000 and he did not recall seeing an invoice in that amount before. He noted that since 1991 and based on a formula, Excelsior has billed the City of Shorewood the cost to convey sewer in two areas of the City through Excelsior sewer mains to Met Council interceptors. He noted that a previous sanitary sewer agreement was approved in 1971 between the two cities which stated that in exchange for Shorewood paying for half the cost of the sanitary sewer main installation on Glencoe, Shorewood would not be charged anything in the future for conveying sewage through that line. He stated that it appears that the Met Council, in 1991, notified Excelsior that they would no longer be paying rent on those lines and Shorewood and Excelsior entered a new agreement in 1991. He stated that there is very little in the minutes or other documentation that shows how the agreement or funding formula was established. He stated that through the research, staff began to question what the City was being billed for. He stated that they found out that about

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thirty percent of the connections that the City had been billed for since 1991 have always been connected to the Met Council lines and not the Excelsior sewer mains. He stated that he does not think this error was intentional and noted that there have been several meetings with the City of Excelsior to talk about the interpretation of the agreement and noted that each City has different interpretations. He stated that the central point from the staff is that the City has been paying for a service that it did not receive and Excelsior incurred no cost which amounts to approximately \$270,000 and with interest has a present value of approximately \$329,000. He stated that he believes this has been taken about as far as it can at a staff level. He stated that both cities feel a new agreement is needed, but Shorewood staff believes the reimbursement issue needs to be resolved before moving forward, or at the very least at the same time a new agreement is being worked on. He stated that staff is looking for direction from the Council as to how to proceed.

Councilmember Sundberg asked if staff had gone through the recommended option that staff outlined in the staff report with the City of Excelsior and whether they were amenable to it.

City Administrator Lerud stated that Excelsior staff does not agree that the City of Excelsior should remit any money back to the City of Shorewood. He stated that, at a staff level, they stated that they just want to look forward because it was not wrongly billed intentionally and the City of Shorewood also did not catch it, so they just want to start fresh. He stated that in his opinion, he feels it would be different if the City was paying twelve dollars for something that actually cost ten dollars, but he feels this is a completely different scenario. He stated that in this example, it would be like the City paying ten dollars for something that should have cost zero dollars and staff believes that those funds need to be paid back to Shorewood. He stated that the City has offered that the \$329,000 be offered as a credit against future charges and are not asking for a check to be written to the City. He noted that the existing 1991 agreement does have a cancellation provision that allows one city to provide notice to the other that the agreement is cancelled.

Councilmember Sundberg asked if staff felt that they could continue to negotiate with the City of Excelsior. City Administrator Lerud stated that he thinks staff's positions are pretty set on both sides.

Councilmember Sundberg stated that she is not sure she has an appetite for taking legal action, but feels it is clear that Excelsior owes this money to the City. City Administrator Lerud stated that he is not suggesting legal action. He stated that he feels the City can take that stance that it believes that there is a proven amount the City should be credited against future payments and if they do not agree to that, the City could just cancel the agreement and pay a reasonable amount on the number of connections that are there and take a credit against that moving forward.

Mayor Zerby asked if the existing agreement would have to be cancelled or if it can be revised. City Administrator Lerud stated that the 1991 agreement is very poorly written. City Attorney Keane stated that he agrees that the 1991 is not a good starting point, and that the two cities should start over with a new agreement.

City Administrator Lerud outlined some of the problems that exist in the 1991 agreement. Public Works Director Brown noted that this issue has highlighted that the City needs to go through the other existing agreements and make sure they do not need to be recrafted.

Councilmember Johnson asked if the City had a \$329,000 credit, how long would it take to get that amount back down to zero. City Administrator Lerud stated that it would take years before the City would have to write a check to Excelsior again.

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Councilmember Johnson noted that he had a conversation last night with Dale Kushner a councilmember in Excelsior who told him that the council was just informed about this issue recently. He stated that at one time, the Council had talked about the possibility of forming a subcommittee of councilmember and mayor from both cities to talk through this type of issue. He asked if the Council wanted to try to utilize that option in this instance or simply move forward with the option recommended by staff.

City Administrator Lerud stated that the two councils having a conversation is a worthwhile step but would need to happen sometime this month, so the City can provide notice to Excelsior that Shorewood intends to cancel the agreement. Councilmember Johnson stated that he thinks that no matter what, the City should go ahead and tell them that we will be cancelling the agreement and then the two councils can perhaps discuss a financial remedy to the problem.

Mayor Zerby asked if there was any risk to cancelling the agreement. He gave the example of Excelsior turning off a valve to Shorewood residents so they would not have access to the sewer lines. City Administrator Lerud stated that he does not think they could physically do that and reiterated that it is staff's position that the City has essentially pre-paid the sewer costs. City Attorney Keane asked Public Works Director Brown if Mayor Zerby's example was a physical possibility. Public Works Director Brown stated that it would be a physical possibility for them to plug the pipe. City Attorney Keane stated that this would be a tremendously foolhardy step for them to take because of the potential to damage private property.

Public Works Director Brown agreed and does not think they would take that action. Mayor Zerby asked if that would be considered an essential service so it could not be blocked or shut off. City Attorney Keane stated that he sees this as an essential service.

Mayor Zerby stated that his understanding of the Council discussion is to move towards option number four as presented by staff, but to also have some dialogue between the two councils with a subcommittee before executing a new agreement.

Councilmember Johnson offered to facilitate the formation of a subcommittee between the two councils. Mayor Zerby volunteered to serve on this subcommittee alongside Councilmember Johnson.

Councilmember Labadie asked if there is a creative way the credit can be applied towards other issues with Excelsior so it does not take years and years before the balance is down to zero.

City Administrator Lerud stated that the only place the cities overlap is the two joint powers agreements, but there is no provision in there for another city to pay more than their share. He stated that he thinks there will be value in just keeping it related to sewer and not try to use the credits elsewhere.

4. ADJOURN

Johnson moved, Labadie seconded, Adjourning the City Council Work Session Meeting of October 13, 2020, at 6:58 P.M.

Roll Call Vote: Labadie, Johnson, Sundberg, Zerby voted Aye. **Motion passed.**

ATTEST:

Scott Zerby, Mayor

Sandie Thone, City Clerk