WAYZATA CITY COUNCIL
MEETING MINUTES
December 18, 2018

AGENDA ITEM 1. Call to Order.
Mayor Willcox called the meeting to order at 7:00 p.m.

AGENDA ITEM 2. Pledge of Allegiance.

AGENDA ITEM 3. Roll Call.
Council Members present: Koch, McCarthy, Plechash and Tyacke. Also present: City Manager Dahl, Director of Planning and Building Thomson, Public Works Director/City Engineer Kelly, and City Attorney Schelzel.

AGENDA ITEM 4. Approve Agenda.
Mrs. McCarthy made a motion, seconded by Mr. Tyacke, to approve the agenda, as presented. The motion carried 5/0.

AGENDA ITEM 5. Public Forum.
a. Heritage Preservation Board Presentation of Centennial House Award
Heritage Preservation Board Chair Nate Leding thanked staff for helping with providing the background on homes and provided a brief history of the home at 534 Wayzata Boulevard E.

Mr. Thomas Vanderheyden described the home and accepted the certificate for Centennial House Award.

b. Heritage Preservation Board Presentation of the Mayor's Best Historic Restoration Award 2018
Mr. Leding gave a brief history of the home at 16201 Holdridge Road W.

Ms. Judy Starkey talked about the home and accepted the certificate for Mayor's Best Historic Restoration Award.

c. Introduction of Sergeant Dustin Edberg
Police Chief Risvold thanked the Council for supporting the addition of a sergeant to the police force. He said the promotional process started in September and out of an excellent group of prospects one candidate, Dustin Edberg, rose to the top. Dustin Edberg was a drug recognition evaluator and a huge help in the technology department. Chief Risvold congratulated and introduced Sergeant Dustin Edberg.

Sergeant Edberg thanked the Council, staff, citizens, Chief Risvold, and especially his family for all of the support.

AGENDA ITEM 6. New Agenda Items.
None.

AGENDA ITEM 7. Consent Agenda.
Mr. Dahl noted that an additional item had been left off the Consent Agenda and should be acted upon: Accept Jeff Buchanan's Resignation from the Planning Commission.

Mr. Plechash requested that an item be pulled from the Consent Agenda due to his membership in the Fire Department: item 7.g. Approval of Resolution No. 72-2018, Approving Appointment of Fire Department Officers for 2019.

Mr. Tyacke made a motion, seconded by Mrs. McCarthy, to approve the consent agenda amended to remove item 7.g.:

a. Approval of City Council Workshop Minutes of December 4, 2018 and City Council Regular Minutes of December 4, 2018
b. Approval of Check Register
c. Approval of Municipal Licenses
d. Police Activity Report
e. Building Activity Report
f. Approval of Revised Development Agreement for Ventana Condos at 253 Lake Street East
~~g. Approval of Resolution No. 72-2018, Approving Appointment of Fire Department Officers for 2019~~

The motion carried 5/0.

g. Approval of Resolution No. 72-2018, Approving Appointment of Fire Department Officers for 2019

Mr. Tyacke made a motion, seconded by Mr. Koch, to adopt Resolution No. 72-2018, Approving Appointment of Wayzata Fire Department Officers for 2019. The motion carried 4/0 (Plechash abstained).

h. Accept Jeff Buchanan's Resignation from the Planning Commission

Mr. Plechash made a motion, seconded by Mrs. McCarthy, to approve accept Jeff Buchanan's Resignation from the Planning Commission. The motion carried 5/0.

<u>AGENDA ITEM 8. New Business.</u>

a. Consider Approval of Wetland Replacement Plan for Lake Street/Barry Avenue Parking Facility

Mr. Kelly gave the staff report on the proposed wetland replacement plan, including project location, proposed parking configuration, application process, and action requested

Mayor Willcox asked a question about the application process because there was a decision on the application in the materials. Mr. Kelly clarified that the decision was a draft that spelled out conditions from each of the environmental agencies with a five-year life. He further explained that the City was the local governing body who ultimately made decisions on wetland applications.

Mr. Tyacke asked why the Department of Natural Resources had not signed the technical evaluation. Mr. Kelly explained that the DNR representative was not present at the technical evaluation panel meeting in order to sign, but that the application was valid without the signature. The Department of Natural Resources also did not provide any comments during feedback period.

Mr. Koch asked if the rest of the City wetland acreage was available for mitigation in the future. Mr. Kelly said there were five-acres of wetland remaining that could be withdrawn as future credits.

Mrs. McCarthy asked questions and shared a concern over the close proximity of the proposed public parking wetland area to the lake. Mr. Kelly explained that the goal was to minimize or avoid impacts. Public parking was needed with the potential for growth in the future. This flat parking lot could be expanded upwards in the future so there would not be any more impact. There was also a potential for improvement of vegetation in the wetland both aesthetically and functionally.

Mr. Plechash asked if the wetland bank benefited the lake and what was the monetary value. Mr. Kelly answered yes and $2.75 per square foot.

Mr. Tyacke made a motion, seconded by Mr. Koch, to approve the Wetland Conservation Act (WCA) Permit Application for the proposed parking project, located north of Lake Street and west of Barry Avenue, adjacent to the Wayzata Blu and Ventana projects. The motion carried 5/0.

b. Consider Request to Construct a Public Street to Access 445 Bovey Road Property

Mr. Dahl gave the staff report including the background, financial consideration, and staff's recommendation to deny the request.

Mrs. McCarthy asked about the location, existing structures, width of the fire lane easement, required width of a city street, and cost. Mr. Kelly explained the location was Ferndale Woods Road, the easement and roadway varied in width, the fire code required a public street to be a minimum of 20-feet, the subdivision code required a street to be a minimum of 26-feet, and a rough estimate for cost of construction the requested public street was $120,000 to $150,000.

Mr. Plechash asked about the history of the property, why the property lines were drawn this way, and if there was any benefit to the City of constructing the requested public street. Mr. Dahl said it was part of a plat that was approved over 40 years ago and the property owner had access when it owned the property to the north of the subject property. Mr. Dahl stated that there was no benefit to the City of constructing the requested public street.

Mayor Willcox asked what was legally required of the City in order to provide access. Mr. Schelzel responded that the City has no legal obligation to provide a public street to access private property.

Michael Klemm, Hellmuth & Johnson, attorney for the owner of the subject property, addressed the Council and shared history of the property. He talked about the easement dated December 13, 1978 and addressed the language in Section 6 of the easement. He stated that the key issue was whether or not a public street was necessary. Mr. Klemm reasoned that it was necessary because the owner clearly needed access to the property in order to make it viable for residential use which was its intended purpose. He also noted that property owner expected to cover the cost for construction.

Dan Schmidt, Sathre-Bergquist, Inc., civil engineer for the property owner talked about the major issues, including safety, cost, and tree removal, for building an access road from the property to Bovey Road.

Mr. Schelzel addressed a question from the Council concerning the property owner's other options for accessing the property, including acquiring an easement from a neighbor.

Jane Payfer, owner of the subject property, addressed the Council explaining steps that had been taken previously.

Mr. Tyacke stated that he supported going forward with a public hearing on the request.

Mayor Willcox asked if the City would be taking pubic property by using the fire lane easement, and was it necessary that all platted property have public access. Mr. Schelzel confirmed that the City would be converting public property from a fire lane easement to a public street, but it had the right to do so under the terms of the existing easement if the street was necessary. He also explained that the City was not legally required to provide a new public street to access the subject property.

Mrs. McCarthy suggested this was coming at the problem backwards. If the public street was necessary, then the City would have identified it as part of its Capital Improvement Program. She also noted if there was a Public Hearing, the neighbors would most likely be against it.

Mr. Plechash said the best solution would be an access on Bovey Road or a private right-of-way. It was not in the City's best interest to build a public street.

Mr. Koch noted he was sensitive to the property owner's plight; however, the best-case scenario would be to purchase property rights from adjacent properties to create an access easement.

Mr. Tyacke believed that a public hearing was necessary in order to determine if a public road was necessary.

Mayor Willcox agreed with the consensus of the other Council members, but noted he was sensitive to the property owner.

Mrs. McCarthy made a motion, seconded by Mr. Plechash, to deny the request to construct a public street to access 445 Bovey Road. The motion carried 4/1 (Tyacke).

c. Award Contract for Wayzata Boulevard, Superior Boulevard Intersection Improvement Project

Mr. Kelly gave the staff report including project limits, proposed timeline, bidding and award of contract, and action requested.

Mr. Kelly answered a question of the Council concerning New Look Contracting, Inc. He shared that New Look had worked for the City before, but under a different name. Mr. Kelly had also received recommendations for New Look from other cities who had used them more recently.

Mrs. McCarthy asked if the City was using technology as part of the project to alert drivers when pedestrians were crossing. Mr. Kelly answered that staff was not supportive of in pavement solutions, but would look into possibilities and associated cost.

Mr. Tyacke asked staff to explain Alternate 1 outlined in the bids. Mr. Kelly explained that it provided one additional year of landscape maintenance.

Mr. Plechash asked how the three contractors were chosen. Mr. Kelly explained that the three contractors had not been chosen. The bid was public and out of eight potential contractors, only three submitted actual bids.

Mr. Koch asked a question about enforcement of contract and punishment for issues such as not meeting deadlines. Mr. Kelly confirmed that the City could enforce penalties for breach of contract, but there was difficulty with proving a breach.

Mr. Tyacke made a motion, seconded by Mr. Plechash, to award the Wayzata Boulevard/Superior Boulevard Intersection Improvement project contract to the low bidder, New Look Contracting, Inc., in the amount of $1,635,080. The motion carried 5/0.

d. Review of Construction Management Plan

Mr. Thomson gave the staff report including background information, administrative citations, fee schedule amendment, and the updated construction management plan. He noted that staff was looking for Council feedback on the plan which would be implemented in early 2019.

Mr. Tyacke suggested including that the general contractor would be responsible for any fines even when the sub-contractor was directly responsible for the violation. He asked a question about tree protection fencing. Mr. Thomson said excavation was allowed outside of the fence. Mrs. McCarthy was interested in requiring better fence materials that would stay in place.

Mayor Willcox noted a typographical error on Page 117, Section 16 (changing ‘repairs’ to ‘repaired’), and indicated he was uncomfortable with the language concerning damages to public property.

Mr. Thomson noted that City staff would amend the construction management plan based on the Council feedback.

e. Consider Resolution No. 77-2018, Approving Concurrent Preliminary and Final Plat at 153 Peavey Lane

Mr. Thomson gave the staff report including property information, the proposed subdivision, zoning ordinance standards, the planning commission review and action, and action steps for the Council.

Mr. Tyacke asked why the zoning of the property is not the same as the comprehensive plan land use designation for the subject property. Mr. Thomson explained that the current use of the property as a triplex falls within the medium density residential land use designation based on the size of the lot.

Mrs. McCarthy asked if the zoning of the subject property would be considered spot zoning. Mr. Thomson answered that it would not because the residential properties on the same block are all zoned R-3.

Mr. Koch asked about setbacks. Mr. Thomson stated that setback requirements for the new lots would be 20-feet from the front and rear property lines, and 10 feet from the side property lines.

Applicant's representative, Mr. Todd Rapp, 13316 Caffrey Avenue, Rosemount, discussed the proposal and stood for questions.

Mr. Plechash asked about a secondary plan if this proposal was not approved. Mr. Rapp said that the existing tri-plex would likely be upgraded.

Mr. Koch asked if the proposed building pads could be moved. Mr. Rapp answered the builder would need to answer that question. Mr. Koch asked if it was practical to maintain sight lines of the fronts of the existing homes on the street. Mr. Rapp said he thought there was some flexibility and noted the plat dramatically improved the neighborhood.

Applicant's surveyor, David Pemberton, Vice President-Land Surveying for Sathre-Bergquist, Inc., stated that their niche was residential development. Details had been left out of the plan on purpose, but there was potential to move the location of the homes around on the new lots.

Applicant's representative, Lori Serum, Regency Homes, Inc. said that she was flexible on the placement of the homes.

The Mayor noted a member of the public wished to speak about the application, and invited her to do so. Carol Danner, 151 Peavey Lane, said that she originally thought two-structures would be acceptable on the subject property, but had changed her mind. She believed that only one home should be built on the lot.

Mr. Koch asked what a developer could build on the subject property without any approvals from the City Council. Mr. Thomson said a substantially larger home could be built as long as it met the applicable setback and zoning requirements.

Mayor Willcox asked about the orientation of the proposed two lots. Mr. Thomson said one would be oriented towards Peavey Road, and one towards Peavey Lane.

Mrs. McCarthy noted that the Council could place conditions on what would be built to ensure compliance with the standards of the subdivision ordinance. Mr. Rapp said that staff had acknowledged that it was entirely compliant with zoning, the comprehensive plan, and the subdivision ordinance so why would the Council add conditions. Mr. Schelzel confirmed that the subdivision ordinance give Council the authority to place conditions on approval, but the conditions must be reasonable and related to the criteria in the subdivision ordinance.

Mr. Tyacke voiced a concern over the proposed setbacks and lot sizes, and their effect on the neighborhood.

Mr. Plechash thought it was a dramatic improvement and there was not a reason to deny.

Mr. Koch was supportive of the project, but had a concern with the effects of the proposed setbacks on the neighborhood.

Mrs. McCarthy said the proposed plat did not meet subdivision ordinance criteria five through seven that were noted in the report.

Mayor Willcox said his biggest concern was the adverse effects of the proposed setbacks and small size of lots compared to surrounding lots.

Mr. Schelzel talked about the Council's options for acting on the application if they did not adopt the draft resolution to approve the application. He said it could make a motion to adopt the resolution to approve the application, make a motion to deny the application with the reasons for such denial, or table action on the application until the next meeting so that a denial resolution with findings of fact could be drafted. He recommended tabling so that staff had time to draft a denial resolution.

Mayor Willcox asked members how they would like to proceed, and asked for a motion.

Mr. Tyacke made a motion, seconded by Mr. Koch, to table consideration of Resolution No. 77-2018, Approving Concurrent Preliminary and Final Plat Subdivision at 153 Peavey Lane, to the January 8, 2018 meeting. The motion failed 2/3 (McCarthy, Plechash, and Willcox nay).

Mr. Tyacke made a motion, seconded by Mrs. McCarthy, to adopt a resolution to deny the Concurrent Preliminary and Final Plat Subdivision at 153 Peavey Lane based on the Preliminary Plat Criteria (City Code Section 1003.02 Subd. E) not being met with regard to Items 5-7, as noted in the record, that (i) the creation of the proposed lots would adversely impact the scale, pattern and character of the neighborhood, (ii) design of the lots and the building pads, and the site layout proposed would not respond to or be reflective of the surrounding lots and neighborhood character, and (iii) the lot sizes resulting from the subdivision would be dissimilar from adjacent lots and lots found in the surrounding neighborhood. Upon roll call vote, the motion carried 3/2 (Koch and Plechash nay).

f. Consider Resolution No. 73-2018, Appointing Planning Commissioners

Mr. Dahl shared that interviews for new City boards and commission appointments were conducted prior to the Council meeting. The Council would vote by ballot.

Recess and Reconvene

Mayor Willcox called a recess at 10:17 p.m. He called the meeting back to order at 10:19 p.m.

f. Consider Resolution No. 73-2018, Appointing Planning Commissioners - continued

Mr. Tyacke made a motion, seconded by Mr. Plechash, to adopt Resolution No. 73-2018, Appointing Planning Commissioners as follows: Greg Flannigan shall serve a full three-year term, Laura Merriam shall serve a full three-year term, Lindsay Bashioum shall serve a one-year term, and Jeff Parkhill shall serve a one-year term. The motion carried 5/0.

g. Consider Resolution No. 74-2018, Appointing Parks & Trails Board Members

Mrs. McCarthy made a motion, seconded by Mr. Tyacke, to adopt Resolution No. 74-2018, Appointing Parks and Trails Board Members as follows: Tori Schalkle shall serve a full three-year term, Merrily Babcock shall serve a full three-year term, and Dan Baasen shall serve as the Executive Board Chair for a full one-year term. The motion carried 5/0.

h. Consider Resolution No. 75-2018, Appointing Heritage Preservation Board Members

Mr. Koch made a motion, seconded by Mr. Plechash, to adopt Resolution No. 75-2018, Appointing Heritage Preservation Board Member(s) as follows: Judy Starkey shall serve a full two-year term. The motion carried 5/0.

i. Consider Resolution No. 76-2018, Appointing a Housing and Redevelopment Authority Commissioner

Mrs. McCarthy made a motion, seconded by Mr. Koch, to adopt Resolution No. 76-2018, Appointing a Housing and Redevelopment Authority Commissioner as follows: Steve Tyacke shall serve a full five-year term. The motion carried 4/0 (Tyacke abstained).

AGENDA ITEM 9. City Manager's Report and Discussion Items.

a. Update of 2018 Wayzata Police Department Alcohol Compliance Checks

Mr. Dahl shared that the police checked 28 local businesses. There had been two failures including Birch's on the Lake and Wayzata Bar & Grill. The Wayzata Bar & Grill would pay its fine through the Muni to a local non-profit. It would also update the new hire training packet, implement a zero-tolerance policy, and increase compliance education from annually to twice per year.

b. Upcoming Events/Announcements

- Staff was working to get the ice rink open; however, the weather was not cooperating.
- Mr. Dahl thanked Mr. Tyacke for his years of service on behalf of all staff.

c. Council Member Updates/Announcements

Each Council member thanked Mr. Tyacke for his service and shared personal thoughts and memories.

<u>AGENDA ITEM 10. Public Forum Continued (if necessary).</u>

There were no comments.

<u>AGENDA ITEM 11. Adjournment.</u>

Mrs. McCarthy made a motion, seconded by Mr. Willcox to adjourn. There being no further business, Mr. Tyacke adjourned the meeting at 10:35 p.m.

Respectfully submitted,

Kathy A. Leervig

Kathy Leervig
City Clerk

Drafted by Sarah Peterson
TimeSaver Off Site Secretarial, Inc.