WAYZATA CITY COUNCIL
MEETING MINUTES
NOVEMBER 12, 2024

AGENDA ITEM 1. Call to Order.

Mayor Mouton called the meeting to order at 7:00 p.m. Mayor Mouton shared the multiple options for joining remotely and submitting comments or questions.

AGENDA ITEM 2. Pledge of Allegiance.

AGENDA ITEM 3. Roll Call.

Council Members present: Mouton, Sorensen, MacDonald, and Parkhill. Also present: City Manager Dahl, Deputy City Manager Yager, and City Attorney Schelzel.

Council Member absent: Plechash

Mayor Mouton noted earlier this evening, the City Council participated in a closed special meeting to conduct the annual performance evaluation of City Manager Dahl. She explained that the conclusions from this performance evaluation were that the Council continued to feel very positive about City Manager Dahl's performance. She noted that they also felt that his ability to interact with the Council, community, and staff had been exemplary. She stated that they felt that Mr. Dahl continued to show his dedication to the community, his job, his profession and that they were incredibly thankful for that.

AGENDA ITEM 4. Approve Agenda.

Mr. Parkhill made a motion, seconded by Ms. MacDonald, to approve the agenda, as presented. The motion carried 4/0.

AGENDA ITEM 5. Public Forum.

Mayor Mouton stated that he would like to move the recognition of service and the retirement of Police Chief Schultz to be the first item within the Public Forum.

City Manager Dahl stated that would be fine and did not believe it would require an official vote to change the agenda, since these items were just presentations.

a. Recognition of Service and Retirement of Police Chief Marc Schultz

Mr. Dahl noted that at the end of next week, the City would be saying goodbye to Police Chief Schultz at a Celebration/Open House on November 21, 2024 from 2:00 to 4:00 p.m. He encouraged residents and others who have worked with him over the years to come through and wish him well. He noted that this event would be more informal so the City wanted to take the opportunity to recognize Chief Schultz at tonight's meeting since this would be his last Council meeting with the City. He explained that after 27 years in law enforcement, 5 years of leadership, providing immeasurable value to the City of Wayzata and the Long Lake communities, and leading efforts to keep their community safe, Police Chief Schultz would be retiring and his last day would be November 27, 2024. He explained that he was very happy for Police Chief Schultz to be able to move onto the next chapter of his life with his family, but he would be missed. He shared some details of

Police Chief Schultz's background and experience in law enforcement, gave examples of the numerous awards that he had received, changes he had brought to the Department such as introducing a K-9 unit, bike patrol, and flock cameras. He stated that Police Chief Schultz has enhanced general community relations through his warmth as a person and his communication style of treating all people with dignity and humanity while doing what was necessary to keep everybody safe. He noted that he felt Police Chief Schultz's greatest accomplishment was the impressive team of peace officers and leaders in the community that he had supported and mentored in addition to the culture that he had defined. He stated that he knew he was speaking for everybody when he shared the sentiment that Police Chief Schultz would be greatly missed but would celebrate the next phase of his life.

Deputy Police Chief Baker stated that she also wanted to acknowledge Police Chief Schultz and noted that it had been a privilege and an honor to work under his leadership. She shared examples of how he had made a difficult career enjoyable, been a leader by example, been a mentor to at-risk youth, and been involved with Toys for Tots and the Special Olympics. She stated that she also wanted to acknowledge Police Chief Schultz's wife and his three children for their sacrifices and support for him throughout the years. She noted that an additional 'fun fact' about Police Chief Schultz is that he has a Bachelor's Degree in Fisheries and Wildlife Biology. She stated that on behalf of the law enforcement community, she wanted to thank Police Chief Schultz for his hard work, dedication, sacrifice, compassion, and leadership throughout the years.

Police Chief Schultz stated that he has spent a lot of time thinking about how he could express his gratitude and noted that he would truly miss everyone. He expressed his appreciation to everyone he has had the opportunity to work with throughout the years and stated that it had been an honor to work in law enforcement in general, but particularly to be able to work for Wayzata and Long Lake, alongside his team.

Mr. Parkhill stated that as others were speaking about Police Chief Schultz, there were words that really resonated with him such as, compassion, warmth, born leader, practical, and kind. He noted that Police Chief Schultz just seemed like a happy person and seemed to always be smiling. He stated that Police Chief Schultz had seen the rougher part of life with his career and he felt that everyone could learn from his perspective that it is wonderful to have an optimistic outlook on life, even when things may not be perfect.

Mayor Mouton stated that she was able to spend about an hour with Police Chief Schultz prior to tonight's workshop meeting when she interviewed him for the podcast. She noted that Police Chief Schultz's profession was difficult, but he made it look easy because he did always have a smile on his face and was very warm and gracious. He stated that they all wish him the very best and cannot wait to celebrate him next week.

b. Update of The Wayzata Conservancy Fundraising and Advocacy – Chair Blake Sandvold

Mr. Dahl stated that The Wayzata Conservancy was the leading organization that supports, advocates and funds the Panoway.

Blake Sandvold, Chair of The Wayzata Conservancy, gave a brief presentation on the Conservancy, its purpose, and the key goals that were established for the Panoway project. He briefly outlined what the Conservancy has been able to do, so far, with donations, advocacy, and engagement with other non-profits. He noted that Phase 3 of the Panoway project is on the horizon and the Conservancy was working on fundraising for the Section Foreman House portion of the project, Eco Park, and remodeling of the Depot Park. He gave a brief snapshot of their funding, what had been completed, and what they were still working on for portions of Phase 2 as well as the upcoming Phase 3. He explained that they planned to continue to engage with the community through various outreach avenues and intend to close out the final memorandum of agreement balances and then begin preparation for the Phase 3 projects.

Mr. Dahl noted that the first item under New Business on tonight's agenda will be discussing some change orders for the Panoway project and noted that everything mentioned by Mr. Sandvold had been incorporated into their budget calculations and they were in pretty good shape thanks to The Conservancy.

Mayor Mouton asked about the dock memorandum of understanding (MOU) and noted that she believed it had been due in June. She stated that when the City understood the costs for the Kebony they had been planning to go with a different material, but The Conservancy came to the City and told them to go ahead with the Kebony because they were going to fund it. She clarified that the City would not have moved forward with that choice if they had not received an MOU from The Conservancy. She asked how long they had the pledge for the balance owed.

Mr. Sandvold stated that it has been since the summer and explained that they have been in frequent contact with this individual/household collective. He stated that they have reiterated that it was in good standing and fully intend to follow through on it. He explained that it speaks to the difficult nature of fundraising because they had stepped forward immediately and said that they would come through with the funds but thought that the funds would come through faster.

Mayor Mouton stated that her concern was that the City relied on those funds and were about to make a decision later on the agenda based on actually having those funds paid to the City. She stated that this was a substantial amount of money and asked what Mr. Sandvold's level of confidence was that the City will actually receive those funds, because she did not want this to turn into a 'we will pay you tomorrow for a hamburger today' situation.

Mr. Sandvold stated that he understood the sentiment because this is a tough bind that they are in and was essentially a judgment call that they were making with the information that they have gotten but explained that they have a high degree of confidence in this funding.

Mayor Mouton asked if this individual had indicated why there has been a delay despite having this pledge for such a long time.

Mr. Sandvold stated that they had communicated this information to him through a personal and confidential discussion and noted that it had not swayed him from believing that this donation will come through.

Mayor Mouton stated that she understood that, but what the Council does is not personal and confidential because they deal with taxpayer money. She stated that the Council was accountable when they are putting the money out and relying on pledges and money that they have been told they would be provided. She stated that she was not comfortable making a decision this evening with a reliance on something that hasn't occurred and stated that she was very concerned.

Mr. Sandvold stated that he understood Mayor Mouton's concerns but he has the fiduciary obligation to their donors to not disclose confidential conversations.

Mayor Mouton stated that they either have the money or they do not have the money and noted that if they have the money, made this obligation, but are now not fulfilling it, that concerned her. She noted that she has to rely on what The Conservancy was saying but what happens in this kind of situation is that it causes issues at this level, where the Council ends up having to make a decision and rely on numbers based on what has been communicated to the Council by The Conservancy. She explained that, at this point, their faith is evaporating because the continual message is that the funding was coming, but it was not actually getting here, but the City has a bill to pay. She stated that the City was relying on that money and their overall numbers were based on having that money in the bank and now they do not have it so now the question becomes what they do. She explained that the Council had a fiduciary responsibility to the citizens of Wayzata.

Mr. Sandvold reiterated that he understood the concerns but working with donors was working in the best faith that they are both looking forward. He stated that when he relayed this information to the City, they had the full thought that things would come through more quickly. He assured the Council that they were not just relying on that \$100,000 and stated that historically, the 4th quarter is one of the largest quarters for giving because many are looking for year-end disbursements. He stated that they have had discussions with other donors who have expressed interest in six-figure donations as well but have not yet gotten to the point of a pledge but may still come through at the end of the year. He stated that he understands Mayor Mouton's point that it was difficult for the Council to make decisions, but noted that they were simply trying to relay information with their best faith conversations with their donors on when they may want to do this. He stated that they have said to him that they still fully intend to make this donation and noted that he speaks to them almost weekly. He reiterated that he still personally believed that this donation would come through, but they were also continuing to have other conversations with other donors.

Mayor Mouton stated that The Conservancy was formed in 2014 and has raised \$3 million in that timeframe but noted that the vast majority of it was probably over the last 3 years. She stated that there is a MOU with The Conservancy and asked if Mr. Dahl was in regular communication with them in relation to those funds.

Mr. Dahl stated that they usually communicate twice a month in order to talk about where things are with the project, funding, and events. He noted that it was actually formed in 2016 because it was one of the first things that he had implemented when he started in the City. He stated that there is a long-standing agreement that spells out the roles and responsibilities and noted that the City and The Conservancy were a team because they rely on each other and everything was done in good faith. He stated that the discussion later on tonight's agenda would be more of a risk/tolerance discussion.

Mr. Sandvold stated that in addition to the ongoing conversations with the City, there is also always a Councilmember that serves on the Board which was currently Mr. Parkhill and was formerly Ms. MacDonald. He stated that they had been in attendance at almost all of their meetings and there was full transparency and disclosure about these things.

Ms. MacDonald referenced the slide from Mr. Sandvold's presentation related to Phase 3 of \$10 million and the notation that \$500,000 had been funded. She stated that listening to Mayor Mouton's remarks and the MOU, she asked if that meant that the

$500,000 was earmarked and could not be used to settle things up and get even with where they are.

Mr. Sandvold stated that some of those funds were restricted, so they could not be used for other uses and noted that some of it had already been spent for Phase 3.

Ms. MacDonald stated that in the spirit of a public-private partnership if that was something that was disclosed to potential donors, for example, if they wanted to fund Phase 3, because Phase 3 was really not even on the table until Phase 2 has been completed. She asked if it was common in the fundraising world to raise funds for a phase that won't be started until the previous phase was completed and noted that she felt that seemed to be a bit of the cart before the horse kind of scenario.

Mr. Sandvold stated that it was very common in fundraising and noted that over half that amount was from his family and they felt very comfortable with it.

Ms. MacDonald stated that it felt counterintuitive to her to fund something when there was still something outstanding.

Mr. Sandvold reiterated that it was very common in fundraising because someone will come forward and say that they want to be part of a specific portion of the project. He noted that they have discussed this with donors and some have made donations that were not restricted to certain parts of the projects, but others have restricted their donations for certain parts of the project.

Mayor Mouton asked about the outstanding balance for the docks and when the City should cut their losses or if there was a tipping point where they just say that this was an uncollectable debt.

Mr. Dahl stated the answer was 'no' because this is an MOU and they are a team. He stated that if they were ultimately unable to pay for their portion, he felt that would determine future actions.

Mayor Mouton stated that was what she was asking about.

Mr. Dahl stated that would be something to be considered further down the road, but at this point, there was no recourse.

Mayor Mouton clarified that she was not looking for recourse and was looking at whether Phase 3 was in jeopardy if they cannot reconcile the financial obligations for previous phases, maintenance, and operations.

Mr. Dahl stated that from a financial perspective it would not put Phase 3 at risk because, in the worst-case scenario, if they do not get any additional funding for the remainder of Phase 2, there are other sources that could be explored in order to help cover it.

Mayor Mouton asked if Mr. Dahl was saying that the City would pay for Phase 3 without The Conservancy's assistance.

Mr. Dahl clarified that he was just referring to the gap in Phase 2 and noted that he may have misunderstood Mayor Mouton's question.

Mayor Mouton stated that she felt he had misunderstood her question and explained that she would never support moving forward onto Phase 3 if they cannot get their financial house in order for Phase 2. She stated that if they do not get the money, she did not think the City should spend a dime for Phase 3.

Mr. Dahl stated that the City will have its financial house in order, no matter what, with relation to Phase 2, but the partnership and reliance on future funding for Phase 3 with

The Conservancy being the primary funder, is a policy that the Council would want to take into consideration before spending additional money on Phase 3.

Mayor Mouton stated that was what she had been alluding to because the City had made a commitment to the residents not to use General Fund dollars, which they have not. She explained that she did not want the City to start down the slippery slope of fronting money with the hope that they will get reimbursed.

AGENDA ITEM 6. New Agenda Items.

AGENDA ITEM 7. Consent Agenda.

Mayor Mouton read the items on the consent agenda and asked if any Council member wished to pull an item for further discussion. Hearing no such request, she asked for a motion to approve the Consent Agenda as presented. Mr. Sorensen made a motion, seconded by Mr. Parkhill, to approve the consent agenda:

a. Approval of Check Register
b. Approval of Municipal Licenses
c. Receipt of Building Activity Report
d. Approval of 2025 Liability Insurance Coverage Waiver Form
e. Approval of Addendum to Recording Secretary Service Agreement with TimeSaver Off Site Secretarial, Inc. extending the agreement to December 31, 2025
f. Approval of Professional Services Agreement for 2025 Recreation Services with Wayzata Community Education
g. Approval of Amendment to Lease Agreement with Hennepin County for the Wayzata Library at 620 Rice Street East
h. Adoption of Resolution 47-2024 Approving Grant Agreement for Intensive Comprehensive Peace Officer Education and Training (ECPOET)
i. Approval of Northern States Power Company (Xcel Energy) Amended and Restated Transmission Line Easement
j. Approval of Loffler Statement of Work for Police Department IT Services
k. Approval of Loffler Statement of Work for IT Services for Administration, Public Works, and Municipal Liquor Operations
l. Approval of the Second Reading and Adoption of Ordinance 843 Special Events

The motion carried 4/0.

AGENDA ITEM 8. New Business.

a. Receive Update on Panoway Budget and Consider Authorization of the Execution of Panoway Change Orders

Mr. Dahl gave an update on the Panoway budget but cautioned that this was not a current expenses and revenues breakdown, because they do not have all of The Conservancy dollars that have been allocated, as they had just discussed, nor have they gotten the sales tax credit that they are assuming they will get based on State legislation. He noted that, ultimately, things are on track within the budget.

Mr. Sorensen asked if there were any contingencies within the numbers presented by Mr. Dahl. Mr. Dahl stated that they do not have any contingencies because the contingency throughout the project was estimated to be over $300,000 which had previously been eaten up by other change orders that did not require Council approval. He noted that once that contingency had been absorbed, then staff needed to come before the Council for approval of the change orders.

Mr. Sorensen stated that there was a line item for future potential change orders of $63,000+ and asked if that was an attempt to project any and all additional costs to complete the project. Mr. Dahl answered that was an attempt to project the amount that would be required to complete the step downs.

Deputy City Manager Yager stated that she believed that City Engineer/Public Works Director Kelly has actually seen change order requests for that dollar amount, but they have not been fully vetted or approved by staff yet, but explained that staff had wanted to include in them in the budget because they were potential costs.

Mr. Sorensen asked if the City was anticipating that there may be additional costs coming in besides these potential change orders before the project was completed. Mr. Dahl stated that there could be additional costs, but noted that he did not believe that they would be significant. He noted that if they do, it would be related to either the step downs or the docks because those are two areas that are still not completely closed.

Mr. Parkhill asked about the step downs and noted that there seemed to be some sort of flaw in the design and asked why the City should absorb all of those costs because it was an error in their design that did not work.

Mr. Dahl suggested that it may be helpful to get feedback from Bob Janssen, with Kraus Anderson, on that question. He stated that the primary reason for that additional cost was to make some tweaks so they are more efficient to install and remove, which was not part of the original equation when the design had been approved.

Bob Janssen, Kraus Anderson, stated that the modifications being made to the step downs are more to help make it more efficient, on an annual basis, to remove the step downs and reinstall them every year, which was not considered in the initial design. He stated that this would equate to a substantial cost savings on an annual basis.

Mr. Parkhill asked if the original design was meant for the step downs to be removed every year. Mr. Janssen stated that it was meant to be removed every year and upon investigation of what it would take to remove them annually, the original plans would mean that they have would disassemble them, take apart the framing and structure, store them, and then bring them back and reassemble them. He stated that when they looked at that with City Engineer/Public Works Director Kelly and the fabricator, they found out that there were adjustments that could be made so that a crew could come out and remove them more easily without having to disassemble and reassemble them every year.

Mr. Parkhill asked if there was already money in the budget to disassemble and reassemble the step downs from the beginning and moving forward in the ongoing maintenance of the Lakewalk. Mr. Dahl stated that he does not believe it had been fully included in the ongoing maintenance, but was a part of this year's project costs.

Mr. Parkhill stated that he did not remember any discussions about ongoing in and out of the step downs and was under the impression that they were permanent structures and stated that he felt that the City should have budgeted for the in and out actions. He asked what the original budget or thoughts for the cost that it would take to take them in and out. Mr. Dahl stated that was something that they have just started to explore which was why they had proposed making some tweaks and asked if Mr. Janssen could give the Council a ballpark figure for those costs.

Mr. Janssen stated that when they first started looking into this, the information they got from contractors for the costs to remove and reinstall them was around $50,000/year, but by making these modifications, the annual cost should be less than $10,000.

Mr. Parkhill asked if this was work that the City's Public Works staff would be able to do. Mr. Dahl stated that they have talked about that and noted that he felt that they had a better chance for that to happen if they make the design tweaks being proposed.

Mayor Mouton asked if the change order amount the Council was being asked to approve was $165,831 and the future potential change order was the $63,000, which was for the step downs that were in the process of being re-engineered. Mr. Dahl stated that was correct.

Mayor Mouton stated that the Council was not considering anything related to the step downs at this juncture. Mr. Dahl confirmed that the Council was not being asked to consider anything related to the step downs tonight.

Mayor Mouton stated that she was trying to understand the order in which this was coming to the Council because these were all items that have already been done. She asked why their approval was needed now and noted that it feels like staff should have gotten Council approval before these things were done. Mr. Dahl stated that, generally speaking, in order to move the project along and to meet the timeline, if issues came up that staff felt needed to be done, they did not have a choice. He stated that in addition, those things needed to be vetted, which took time. He noted that at the end of the day, the contractors who are working on the project are taking a risk by doing it because they knew that they did not have Council approval. He explained that because of the nature of the project, they know they have to go through a process and ultimately, if it is reasonable and within scope, the Council would consider it. He noted that these have now been vetted and explained that this was a conversation that they have had repeatedly and this was the process, in terms of timing, that the construction team recommended.

Mayor Mouton asked if they were making recommendations on when the Council would consider a change order. Mr. Dahl stated that they were making recommendations on when the change orders were ready to be considered.

Mayor Mouton asked for more information on that and explained that the Council looks to staff and not the construction team. She stated that she did not think she had ever seen this process play out this way. She noted that the City prides itself on fulfilling its financial obligations, however, Mr. Janssen had just heard the conversation that they had during Public Forum. She stated that she was not comfortable saying 'yes' to $165,000, however, this was for work that had already been done. She asked Mr. Sorensen to weigh in since he was somewhat of an expert on construction.

Mr. Sorensen stated that in his understanding there were previous change orders, but they did not require Council approval, but now these do and asked if that was the correct understanding. Mr. Dahl reiterated that the previous change orders were part of the contingency that was allocated for those types of requests. He explained that once they had absorbed the contingency funds, they needed to come back before the Council because it falls outside of the scope of what the Council had approved.

Mr. Sorensen stated that was why they were here then because these are funds that were beyond the contingency. He stated that he felt the other part of this was that this may be more of a contractual issue, but if this was work that was clearly not in the contractor's contract, the City probably owes them that money.

Mayor Mouton stated that she was not clear on the statement that the City had used up its contingency and now there is another contingency. Mr. Dahl clarified that there is no other contingency, which is why they had the change order requests in front of the Council for consideration.

Mayor Mouton stated that this was beyond the contingency and questioned how they could still be within the budget, if the contingency had already been exceeded. She asked if they were actually over budget. Mr. Dahl stated that they are over with some of the expenses that they had originally anticipated, but there has also been a reduction in expenses in other areas. He noted that they have also added some revenue to offset some of those costs, such as the sales tax credit, which was how they can actually be under budget.

Mayor Mouton stated that she believed she had cautioned them not to reduce the contingency too soon or too aggressively. Mr. Dahl confirmed that she had made that statement.

Mayor Mouton stated that she had made that statement because they did not know what was going to happen and a decision was made by staff to significantly cut the contingency.

Mr. Sorensen stated that he has not been privy to much of what has happened in the past and how things got to this point and explained that he had a considerable number of questions about it, but acknowledged that was not why the Council was here tonight. He noted that he did have a few questions that were specific to the change orders.

Mr. Dahl noted that he had an additional portion to his presentation that highlighted the information on the change orders.

Mayor Mouton suggested that Mr. Dahl continue his presentation and give more details on the actual change orders.

Mr. Dahl gave a brief summary of the change orders for pile obstruction, ice breaking, hydro crane set-up, remaining acceleration, and railing stiffeners.

Mayor Mouton asked Mr. Sorensen about a situation where there was a construction project that was designed, engineered, and at the point of implementation of the build, but then the installer comes and says that something will not work. She asked who would be responsible for that in the scenario she described. She noted that she could draw a house too, but that did not mean that it would withstand wind and rain. She explained that she was a bit flummoxed by the fact that the City had paid a substantial amount of money to have a project designed and then at the time of the build they get feedback that it will not work and by the way, you owe another $42,000. She stated that if you are recommending materials, design, and a building method, she felt that they should know that information.

Mr. Sorensen confirmed that her question was specifically pertaining to this last issue. He explained that he had the same question because normally you would ask all the questions associated with why it did not work if it was built according to how it was engineered and designed. He stated that he would question whether it was a contractor issue or if it was an insufficient design to start with. He stated that typically, you would have those conversations with the consultants and professionals to try to resolve it the best they can, within the group of people that could be responsible.

Mayor Mouton stated that she would like to talk about this example and why they were at this point.

Mr. Janssen stated that this was an RFI that came through and they had talked it through with the structural engineer on record and the designer, Civitas. He stated that the RFI came in and it was discovered that when the cable rails were being tensioned on the cable system that it would pull the uprights out of plum, once they were under tension. He stated that they started looking at it and found that the way the top rail would be mounted to the uprights would not be able to carry that load and the mounting devices would end up being sheared off. He stated that it was potentially tied to a value engineering change order as well that was approved early on in the job and noted that it was vetted out with all the consultants on the project.

Mayor Mouton stated that then they go back to the designer and the structural engineer about why the City was getting the bill if they are the ones who designed and engineered it and it did not work. Mr. Dahl stated that based on the changes to the design with the value engineering and the risk that was taken with building a Lakewalk on a ground that they did not know how the pilings would respond there was probably a bit of variation as a result of that.

Mayor Mouton clarified that she was just talking about this particular item. Mr. Dahl stated that he understood that, but it all gets back to the pre-cast and how everything was designed because it is all kind of related to each other.

Mr. Sorensen stated that what this is starting to look like to him, without having all the background information, was that they started this project with less than $400,000 in the contingency fund, which was around 3%, which was a very modest amount to have as contingency for a project like this.

Mayor Mouton stated that they had significantly more than that.

Mr. Jansen noted that it had started at 6% prior to bid time and after bid day it dropped down to 4%.

Mr. Sorensen stated that even with that, for a project like this, they started with a pretty modest contingency and have spent it all. He stated that if they were still within the contingency amount that they started with, they probably would not be here talking about it. He stated that he felt the issue was why they incurred these change orders and if they were appropriately scrutinized. He stated that he did not believe that the Council had a lot of insight into whether they were actually appropriately scrutinized or not. He noted that what they have is direct communications from Zenith Tech to Kraus Anderson which was included in the documentation and explained that he would have felt more comfortable if they had a communication from the construction manager to the City, whose job it is to ask the hard questions and scrutinize this, letting them know that they had looked at all of this and it had been thoroughly scrutinized and fully understood and think it is something that they are due. He stated that it was possible that had happened, but that was not included in the packet. He noted that related to the stiffener issue, some things do happen, which is why you have a contingency, but the issue is when there gets to be too many of those, especially if they are associated with one design firm. He stated that, at that point, there should be a hard discussion about who should really participate and be responsible for it financially. He stated that he was not sure, in this case, how many of those kinds of things go back to one designer or one issue and reiterated that was kind of why they have a contingency fund in order to deal with some of the smaller things, but this one was a pretty large number for just one issue.

Mayor Mouton suggested that they go back to the other items on the change order request.

Mr. Sorensen asked if the pile obstruction was that they had hit a boulder and had to break it up which cost around $19,000.

Mr. Janssen stated that was correct and explained that in the contract with Zenith Tech there was no obstruction costs.

Mr. Sorensen stated that was actually his question and if the presumption had been that they would not hit any boulders or have obstructions like this.

Mr. Janssen explained that would typically be a contingency item and noted that there was nothing in their contract to carry an allowance for obstructions. He stated that this was tracked and signed off on.

Mr. Sorensen stated that in looking back they could have a lot of questions about this and could have anticipated some of them, but it sounded like the City had just thought they would use contingency funds for something like this.

Mr. Janssen stated that the project superintendent was watching and making sure that there were daily logs to track all of this as well.

Mr. Sorensen stated that the other three items were all schedule-related.

Mr. Janssen stated that they were related to schedule and noted that they were pertaining more to delays in the project and changes in the bid documents. He stated that with the bid documents, the plan was to start with pile driving and being able to mobilize and start effecting the lake bed in May and when the permit was issued by the DNR, it pushed the start date to July 1st, so the acceleration costs were due to that. He stated that the piling also ended up going deeper than anticipated and also deeper than the geo-tech of record anticipated, which added more time to the schedule. He explained that it meant that there was ice breaking and getting into winter conditions, when that had not been the plan.

Mr. Sorensen asked about the in-stream disturbance dates from the DNR and if that came as a surprise.

Mr. Janssen stated that they had not anticipated that coming from the DNR or that the lake bed restrictions were in play until June 30th.

Mr. Sorensen stated that the Council was doing some digging back into the history but would not be able to do a lot about this. He stated that the Council has to rely on their in-house experts with staff and people like Kraus Anderson and need to be convinced that these have been thoroughly scrutinized, but right now, it was hard for them to know if that was actually the case.

Mr. Janssen assured the Council that there were a lot of discussions, primarily with Zenith Tech and they had scrutinized many of these numbers. He stated that they can provide that documentation to the Council in order to show how that looked.

Mr. Sorensen stated that it may be more of a point for the future to make sure that the Council was given the information that they needed in order to really understand it better because it was hard to make a judgment on this without that history.

Ms. MacDonald stated that with the idea of not being caught flat-footed and looking in hindsight if was an okay time to ask Mr. Janssen for specifics on what the change orders were looking like for the step downs. She noted that she did not think any of the design changes had been seen by the Council and asked if the skeleton that was currently present would always be there or if that was part of what would be removed. She stated that she felt like a lot of the aesthetic was changing.

Mr. Dahl stated that he felt it was a good question to ask, but felt it may make sense for the Council to take action on the items that have been presented and then they can move on to those types of questions since Mr. Janssen was at the meeting. He noted that it was all related so he did not think it was out of line to talk about it, but suggested that keeping things focused may be a good idea and consider what had been presented first.

Mayor Mouton stated that she appreciated Ms. MacDonald bringing it up because decisions were being made outside of the purview of the Council, which is what she believed she was hearing from her. She stated that this Council will be asked to approve the cost, yet they have not seen the design revisions and do not have any information about it. She reiterated that it seems as though there is a bit of a disconnect in terms of being asked to approve something after the fact because she felt that was 'too little, too late'. She suggested that the Council ask Mr. Dahl to get some information and come back to the Council at the next meeting about the step downs.

Ms. MacDonald stated that she felt that would be great and explained that she was comfortable working through the issue at hand, but felt it was a good time to bring it up so the Council does not end up in a place where they are being asked to pay a bill where the work had already been done.

Mayor Mouton suggested that Mr. Janssen plan to attend the future meeting where this is discussed. She asked the Council to share their thoughts on the request to approve the change orders that were presented tonight.

Mr. Parkhill stated that he felt that the City had been a bit optimistic with the 4% contingency amount, which may have been oversight from anybody involved with this project. He stated that he was feeling the same way that others were about not being involved in some of these decisions and noted that perhaps they would have gotten rid of the step downs if they had known that they were going to be costing the City 'X' amount of dollars per year for the in and out work that has not been budgeted for, plus an additional $63,000, but explained that the Council was not given the option to try to balance the budget. He noted that they could have thought that there may have been a boulder somewhere in the lake and set some money aside for that, but thinks that they would have ended up paying for it either way through the budget or a change order. He stated that ice breaking was a bit of a surprise for him given that there was not a freeze until sometime in January. He noted that the other items are a bit hard to ascertain exactly how they could have mitigated them. He explained that, at this point, he did not think the City had a choice and had to pay for this, but noted that his biggest request was for some transparency and clarity. He stated that the Council was being forced to make a decision, after the fact, which is really not fair to them or the community. He stated that it always seems to be the City that ends up eating it, which he has seen in many things, which is frustrating. He noted that this is a bureaucracy and things get through, but he did not see a way out other than to pay these but wanted to express his dissatisfaction with the process related to this.

Mr. Sorensen stated that he agreed with Mr. Parkhill because he also felt that, at this point, the City had little choice and needed to rely on the experts that they have hired to manage this. He stated that he felt that more documentation would have made the Council a bit more comfortable and would have helped them be more confident in their decision. He noted that he felt it was also a bit revealing that some of the discussion they were having pertained to the fact that they were out of contingency funds, but were now here talking about a change order, which was not evident in the packet materials. He reiterated that he felt that the Council had little choice but to approve this request.

Ms. MacDonald stated that she also agreed and would support payment of these bills. She stated that she wanted to push back a bit on the notion of waiting until the next meeting to discuss the step down updates because Mr. Janssen was already present and she believed that the next meeting would be short on members. She stated that because the work was already in process, she would not be comfortable waiting another 2 weeks to get the answers to their specific questions.

Mayor Mouton explained that she was a bit hesitant to have too much discussion about an item that was not on the agenda. She suggested that perhaps Mr. Janssen could stay after the meeting and answer some of the Council questions and then staff could report back to the rest of the Council by the end of the week.

Mr. Dahl stated that he would provide an update by Friday and noted that he felt that staff had gotten great direction from the Council about what their expectations are when it comes back to them in order for them to consider approval.

Mayor Mouton stated that if the City owes the money, then the City owes the money, however, she was planning to vote against this item because their budget was counting on money that they do not have in hand. She stated that if they backed out just one piece of it, they were not under budget, but over budget. She noted that she agreed with the comments made by others on the Council about the order in which these things are presented and the amount of information given to the Council. She stated that, in fairness to staff, along the way, they were told it was going to cost extra for an extra barge, for example, but when they get the information in drips and drabs, they cannot understand the totality.

Mayor Mouton asked for a motion. Ms. MacDonald made a motion, seconded by Mr. Sorensen, to Authorize Staff to Execute Change Orders for the Panoway Project Totaling $154,830.98.

Mr. Sorensen stated that he was planning to vote in support of this motion, but if he had not heard that Mayor Mouton was planning to vote against it, he would have considered abstaining or voting against it, for the same reason as she stated.

Mr. Parkhill stated that he had similar feelings, but his reasoning was a bit different and explained that this was because this happened over a year ago and the Council was just hearing about them on November 12, 2024.

Mayor Mouton suggested that they conduct a roll call vote. Upon a roll call vote, the motion carried 3/1 (Mouton opposed).

b. Consider Adoption of Resolution 46-2024 Canvassing the Returns and Declaring the Results of the November 5, 2024 City General Election

Mr. Dahl explained that the City was required, by State Statute, to canvass the election for the local results and reviewed the results: Andrew Mullin – Mayor; Alex Plechash – Council Member; and Ken Sorensen - Council Member. He briefly outlined how the residents of the City had voted in the Federal and State elections.

Mayor Mouton congratulated Mr. Sorensen, Mr. Plechash, and Mayor-Elect Mullin in addition to everyone who filed for office.

Mayor Mouton asked for a motion on the resolution. Ms. MacDonald made a motion, seconded by Mr. Parkhill, to Adopt Resolution No.46-2024 a Resolution Canvassing the Returns and Declaring the Results of the November 5, 2024 City General Election. The motion carried 4/0.

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

a. Upcoming Events/Announcements

- Thanked all the volunteers that the City has and noted that they were recognized last week at their Annual Volunteer Dinner.
- Expressed his appreciation to the election staff, led by City Clerk Leervig, for their dedication, service, kindness and excellent customer service for the voters. He read aloud the names of the election judges that volunteered their time over the last few months to help and to ensure that the City has a well-oiled machine for the election process.

b. Council Member Updates/Announcements

AGENDA ITEM 10. Public Forum Continued (if necessary).

There were no comments.

AGENDA ITEM 11. Adjournment.

There being no further business, Mayor Mouton asked for a motion to adjourn. Mr. Parkhill made a motion, seconded by Mr. Sorensen to adjourn. Mayor Mouton adjourned the meeting at 9:04 p.m.

Respectfully submitted,

Kathy A. Leervig

Kathy Leervig
City Clerk

Drafted by Kayla Rokosz
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