

UNAPPROVED MINUTES  
WATKINS CITY COUNCIL  
THURSDAY, APRIL 8, 2021

Mayor Rowan called the regular meeting to order at 7 p.m. at City Hall.

MEMBERS PRESENT: Mayor Chris Rowan, Marc Wirz, Tootz Tschumperlin, Sue Unterberger, Brenda Carlson

MEMBERS ABSENT: None

Others: City Attorney Boe Piras, Joel Vogel, Jody Bauer, Deputy Ernie Defries, Lindsey Wirz, Randy Berg, Nate Bork, Dave and Karri Hokanson, Clerk Deb Kramer and Public Works Director Steve Geislinger via phone.

MOTION BY TSCHUMPERLIN TO APPROVE THE AGENDA, SECONDED BY WIRZ. MOTION CARRIED.

MOTION BY CARLSON TO APPROVE THE CONSENT AGENDA, SECONDED BY WIRZ. MOTION CARRIED.

Items on the Consent Agenda were minutes of the March 11<sup>th</sup> regular meeting, March financial report and Resolution No. 2021-13, resolution accepting donations.

Public Forum – none

MOTION BY TSCHUMPERLIN TO APPROVE PAYMENT OF THE AMBULANCE SERVICE BILLS AS PRESENTED, SECONDED BY CARLSON. MOTION CARRIED.

MOTION BY WIRZ TO APPROVE THE FIRST QUARTER AMBULANCE SERVICE REPORTS, SECONDED BY TSCHUMPERLIN. MOTION CARRIED.

Joel Vogel, with Advocates for Health, gave a presentation on outdoor auto external defibrillators (AED's). Joel gave a presentation to the Lions Club last month and they will be purchasing an AED to be installed somewhere in the city. They have free-standing units (\$5,495 includes AED) and structure mounted units (\$4,895 includes AED). These prices do not include electrical hookup or concrete pad/base. No action was taken.

Nate Bork, Quantum Data Systems, gave an overview of some technology updates for the city to consider. Council advised Nate to prepare a quote for these updates along with Voice over Internet Protocol (VoIP) services.

Alley vacation – It was noted the alleys in question (north of Fourth Street North between Meeker Avenue North and Western Avenue North) were platted approximately 60 years ago and over the years structures have encroached on the east/west alley and a driveway on the north/south alley. It is unknown if there were any zoning regulations in effect at the time the structures were built.

Wirz asked the city attorney if the city could be compelled to improve that alley. The city attorney replied there is not a mechanism for a property owner to require a city to build a street. The city attorney noted there could be a request for the city to build a street and then the council would have to

consider the request just like they consider everything. The city attorney noted it can't be arbitrary - it's a legislative decision. The city attorney noted Mr. Hokanson's attorney has indicated they believe there is a requirement. The city attorney noted according to Mr. Hokanson's attorney, if the city were to vacate the alley, there is a potential for litigation over what that would do to the value of that property, without the theoretical access, even though there's not a street. The city attorney noted in the same conversation, Mr. Hokanson's attorney is indicating the city does have an obligation to build an access point, so it's almost as if the city vacates the alley, there will be some potential for litigation and if it doesn't vacate the alley, there will be some potential for litigation. The city attorney noted there could be litigation brought by property owners that are encroaching to protect their structures. The city attorney noted there is potential for litigation either way on this matter. The city attorney noted by vacating the road and letting the property owners resolve it themselves, there would be fewer potential plaintiffs in that situation. The city attorney noted that's why his firm recommended to vacate the alley in the first place. The city attorney noted this road is kind of mucking everything up and preventing owners from using their property and if the city were to get out of it, it would allow them to have some assurances. The city attorney noted if any of them try to sell their property, it's going to be difficult because they have those encroachments.

Wirz asked the city attorney if the alley would essentially split to the property owners. The city attorney noted it would go back to the prior owner- whoever owned the land underneath the road when initially platted. The city attorney noted if we can't tell who that owner was then it gets split down the middle. The city attorney noted if there was one original owner and that owner owned the entire road, then it would go back to them. The city attorney noted this is just an easement for city use, the city does not own it. The city attorney noted if the prior owner is deceased, it would go to the successor of the owner of the property. Wirz asked if they could decline ownership. The city attorney replied that it is technically theirs already. The city attorney noted the vacation would get rid of the easement and what they choose to do with it is their prerogative. The city attorney noted there could be litigation between the property owners. The city attorney noted that it is his firm's position, as well as the League of MN Cities, that the city doesn't own this alley, it's just an easement and the city is not required to do anything with it.

The city attorney stated that Mr. Hokanson and his attorney have taken two positions per a memo provided by Mr. Hokanson's attorney. Mr. Hokanson's attorney states that a public benefit has not been demonstrated yet. The city attorney noted this would happen at the hearing. The city attorney noted somebody would speak for it and somebody would speak against it and the city would have to develop a record depending on what the city is going to do. The city attorney noted you would weigh the benefits against the detriment of getting rid of the street - what type of future use could that street have. The city attorney noted the other point Mr. Hokanson's attorney makes in the memo is that it would decrease the value of the property. Wirz asked which property was being referred to. The city attorney noted it's his firm's position that you would look at the decrease in the value of that land locked property and if the courts do say you have taken away access, then it's just like any other taking. The city attorney noted you would have to look at the reduction in value of taking away this "paper" street. The city attorney doesn't know what that value would be as there has never been a street there. In the memo from Mr. Hokanson's attorney, Mr. Hokanson's attorney states there would be a decrease in value to the other property because Mr. Hokanson would have to give himself an easement. Mr. Hokanson's attorney states the value of that property would decrease by \$150,000. The city attorney noted his firm's position is that you would just look at the value of the property that you would be removing access to. Wirz noted he doesn't look at it as cutting off access because he doesn't think there was ever access to begin with.

The city attorney noted there has not been a case in MN regarding this specific issue. There is some case law from Iowa, but no clear case law in MN. Wirz noted his personal opinion is if moving forward with vacating the alley is potentially going to give the city less exposure to litigation, then his opinion is to move forward with vacating it. The city attorney noted the city would be moving forward to the hearing. The city attorney clarified that by vacating the easement it would revert back to the prior owner of record, if that can be determined, or it would be split down the middle. Mr. Hokanson noted he does not have an access from the north or west. Carlson also felt the city needed to look at the option of vacating.

Mr. Hokanson apologized for some prior documentation he provided to the city and what he thought was a road based off a Meeker County website search. Mr. Hokanson asked how far back you would go to find the original owner. The city attorney replied that you would look at who owned the property when the easement was established. Mr. Hokanson noted after fifteen years they own the property the building is sitting on and the east/west alley is basically unusable. Mr. Hokanson noted vacating the east/west alley could create a lot of problems if it can't go back to the original owner. Mr. Hokanson noted if it's split down the middle, he would have to sell what he gained to the party whose structure is on the alley. Mr. Hokanson noted if vacated and split, the property owners would argue over who gets use. Mr. Hokanson believes the city made a mistake during the 2007 project when it installed a curb cut on part of the north/south alley. Mr. Hokanson noted if he wanted to develop the vacant lot, he would have to diminish the value of his property with his home on it to get access. Mr. Hokanson stated he doesn't want the city to vacate and if the city decides to do this, he would be forced to continue with litigation. Mr. Hokanson stated if the city leaves the alley and builds up the alley, which is also his right by state law, then his property can be developed. Mr. Hokanson noted the city can get future tax revenue from a developed property rather than just a vacant property and the narrow thinking of what's going to affect the city right now vs. 100-150-200 years from now, that property is worth nothing. Mr. Hokanson noted the city is going to get very little tax revenue off it but if he would construct something the city would get tax revenue off it. Mr. Hokanson noted as a tax payer, he would have to ask why would the city pay out a property owner to vacate a property in town, at a great expense to the city, vs. providing access to a piece of property.

Wirz asked Mr. Hokanson about his reference that state law requires the city build a road to give him access and asked Mr. Hokanson if that was correct. Mr. Hokanson replied yes, and that is his attorney's opinion as well. The city attorney replied he hasn't been provided with anything and that is not his firm's opinion nor the League of MN Cities.

The city attorney noted that as a general clarification you cannot obtain the city easement through adverse possession.

Wirz asked the city attorney if this goes to litigation, how long would it take to get through the court system. The city attorney noted due to COVID-19 the court systems have been shut down and just starting to turn back on. Criminal cases would go first. Everyone else is fighting for time. In the best circumstances, most litigation takes about a year.

Wirz asked Mr. Hokanson "Just so I understand you Dave, if we don't vacate it and we don't improve that alley, you're going to take the city to court on that, right?" Mr. Hokanson noted that was correct. Wirz noted in his opinion the only option is to move forward with the vacation process. Wirz noted if

the city is going litigate it and put money into it he would just as soon be away from the property and at the end be done with it and it's a private landowner issue.

MOTION BY WIRZ TO SET UP THE HEARING FOR VACATING THE ALLEY, SECONDED BY CARLSON. TSCHUMPERLIN ABSTAINED. MOTION CARRIED.

Tschumperlin abstained from all discussion on this matter and voting due to a conflict of interest as her son owns property that encroaches on the east/west alley.

Council called for the public hearing to vacate the alley to be held May 13, 2021 at 6:30 p.m. at City Hall.

MOTION BY TSCHUMPERLIN TO ACCEPT THE SHERIFF'S REPORT, SECONDED BY CARLSON. MOTION CARRIED.

Pool – Only one application for manager was received. No water safety instructor applications were received. Two lifeguards from the 2019 season returned applications and there is possibly one new one. One concession stand employee from 2019 returned an application and there were a few new applications. Council reviewed the application for manager and discussed setting up an interview committee.

MOTION BY WIRZ TO APPOINT UNTERBERGER AND CARLSON TO INTERVIEW COMMITTEE, SECONDED BY TSCHUMPERLIN. MOTION CARRIED.

An updated wage schedule was approved in 2019. Council agreed lessons could not be done at the pool this year with no staff in place at this point.

MOTION BY CARLSON TO FORGO LESSONS THIS YEAR, SECONDED BY UNTERBERGER. MOTION CARRIED.

Council agreed not to offer season passes this year due to COVID-19 and the reduced capacity. Council was given a draft Preparedness Plan for opening of the pool. This will be reviewed further at the May meeting.

Quiet Zone – Tschumperlin noted she didn't feel this was necessary.

MOTION BY WIRZ TO TABLE THE QUIET ZONE UNTIL THE MAY MEETING, SECONDED BY CARLSON. MOTION CARRIED.

Council reviewed flooring estimates. The quotes were for vinyl planking in the entrance of City Hall and restroom and then 1) broadloom carpet (wall-to-wall) and 2) carpet tiles throughout the rest with vinyl trim. Tom's Carpet broadloom quote is \$5,541.43 and carpet tile are \$5,617.67. Cold Spring Carpet broadloom quote is \$5,478.22 and carpet tile are \$6,262.22.

MOTION BY WIRZ TO ACCEPT THE QUOTE FROM TOM'S CARPET FOR CARPET TILES FOR \$5,617.67, SECONDED BY CARLSON. MOTION CARRIED.

City Facebook page – Rowan reported the page was created but is not active. Discussion was held on who should have administration rights. Rowan will check with some other cities and see how they manage theirs.

MOTION BY WIRZ TO TABLE THE FACEBOOK PAGE UNTIL MAY, SECONDED BY CARLSON. MOTION CARRIED.

MOTION BY UNTERBERGER TO APPROVE THE CITY'S UPDATED PREPAREDNESS PLAN, SECONDED BY TSCHUMPERLIN. MOTION CARRIED.

COVID-19 leave pay – The Families First Coronavirus Response Act that was created in 2020 provided paid leave for up to 80 hours but cities weren't eligible for the tax credits. That act expired 12-31-20. Under the 2021 American Rescue Plan Act, cities are eligible for the paid leave tax credits for up to two weeks, effective April 1<sup>st</sup> through September 30<sup>th</sup>, 2021. Staff that quarantined used PTO hours, some of which was before April 1<sup>st</sup>. Discussion followed on what to offer and drafting forms to use for said leave.

MOTION BY WIRZ TO ALLOW 80 HOURS OF PAID LEAVE ENDING SEPTEMBER 30, 2021 AND GIVE EMPLOYEES BACK THEIR PTO, SECONDED BY TSCHUMPERLIN. MOTION CARRIED.

Forms for the paid leave will be drafted for the May meeting.

MOTION BY UNTERBERGER TO APPOINT CHRIS ROWAN AND TOOTZ TSCHUMPERLIN TO SERVE AS THE CURRENT COUNCIL MEMBERS ON THE WATKINS BASEBALL ASSOCIATION BOARD PER THE JOINT POWERS AGREEMENT, SECONDED BY CARLSON. MOTION CARRIED.

Council called for a special meeting to be held Thursday, April 22<sup>nd</sup> at 6:30 p.m. at City Hall to discuss pool operations and ordinance amendments.

National Night Out will be Tuesday, August 3<sup>rd</sup>. Carlson agreed to be in charge of the event.

Council agreed to keep Ordinance 2020-1, ordinance allowing temporary creation and extension of commercial space for bars/restaurants related to the COVID-19 Pandemic in place being there is still a State of Emergency in place by the Governor.

Spring newsletter draft – Tschumperlin noted the requirement for golf cart permits should be added to the newsletter. The information regarding seasonal pool passes needs to be removed.

MOTION BY WIRZ TO APPROVE THE NEWSLETTER WITH THE ADDITION OF GOLF CARTS PERMITS AND CHANGES TO THE POOL INFORMATION, SECONDED BY UNTERBERGER. MOTION CARRIED.

Council approved to get a mini biff at McCarthy Park (ADA unit) and VFW Park (standard unit) for the season.

Kramer asked about allowing someone renting the Village Hall to do a hog roast. Council advised they would need to get permission from KUE Contractors as they would probably be on their property.

The owners of 340 Meeker Avenue North have asked to install a gravel driveway at the property. There is an existing curb cut and the vehicles are already parking on the grass area.

MOTION BY UNTERBERGER TO ALLOW THE DRIVEWAY AT 340 MEEKER AVENUE NORTH, SECONDED BY TSCHUMPERLIN. MOTION CARRIED.

Council reviewed quotes for a new service door at City Hall. The quote supplied by Mid Central Door via Faber Building was \$3,422.03. The quote supplied by KUE Contractors was \$2,548.00.

MOTION BY CARLSON TO APPROVE THE QUOTE FROM KUE CONTRACTORS IF NEW HARDWARE IS INCLUDED, SECONDED BY WIRZ. MOTION CARRIED.

MOTION BY TSCHUMPERLIN TO APPROVE PAYMENT OF THE BILLS AS PRESENTED, SECONDED BY UNTERBERGER. MOTION CARRIED.

Next regular meeting is Thursday, May 13<sup>th</sup> at 7 p.m. A public hearing on the alley vacation will be held at 6:30 p.m.

MOTION BY WIRZ TO ADJOURN THE MEETING, SECONDED BY UNTERBERGER. MOTION CARRIED.

Adjourned at 9:36 p.m.

Submitted by

Deb Kramer, Clerk

ATTEST:

Chris Rowan, Mayor