

CITY OF EXCELSIOR
Hennepin County, Minnesota

MINUTES

City Council Work Session

Monday, July 2, 2012

1. Call to Order/Roll Call

Mayor Ruehl called the meeting to order at 5:35 p.m.

Councilmembers present: Caron (arrived at 5:37 p.m.), Fulkerson, Miller (arrived at 5:37 p.m.), Olson, and Mayor Ruehl

Also Present: City Manager Luger, City Attorney Staunton, City Engineer Dawley, Public Works Superintendent Wisdorf, and City Clerk Johnson

2. Agenda Approval

Fulkerson moved, Olson seconded, to approve the agenda as presented. Motion carried 3/0.

3. Easement Agreement for 148 West Lake Street

Staunton reported that the property at 148 West Lake Street is owned by James and Patricia Norman and it is adjacent to the City's Linwood Avenue fire lane. Like many who live adjacent to fire lanes, the Normans have a variety of improvements in the fire lane right-of-way. Unlike most of the other properties adjacent to fire lanes, portions of their driveway and two stairways that provide access to their house as well as a deck attached to their house are also located in the fire lane right-of-way. Because of this unusual situation, the Normans have asked if an agreement can be reached providing them and future owners of the property with clarity regarding what the City might do with these items in the future. Staff has drafted a proposed easement agreement to address that.

The draft agreement divides the improvements into three categories and conveys three levels of rights to the Normans. The first category includes the deck and two stairways used for entering the house. An exclusive agreement would be provided for these items until the encroaching improvements are removed. Staff is proposing that the City be compensated for the conveyance of these rights in an amount equal to the per-square-foot assessed value of the Norman's land.

The second category of improvements would cover the driveway that provides access from West Lake Street to the Norman's garage. It is not practical to provide the Normans with an exclusive easement over this area because doing so would block the City's use of the fire lane right-of-way. Staff is proposing that the City provide the Normans with a "non-exclusive easement" over this area that ensures their right to access their garage while also preserving the

3. Easement Agreement for 148 West Lake Street – (Continued)

public's right to use the area to access the lake. Since this easement does not provide the scope of rights that the exclusive easement provides, in exchange for the non-exclusive easement, the Norman's would agree that the City is not responsible for the maintenance, repair, or replacement of the driveway.

The third category includes all of the remaining improvements. For these improvements, staff is not proposing an easement but, instead, granting a revocable "right of use" of the fire lane for these improvements. This is essentially the same as the license agreements the City has requested from other properties in the City with improvements that encroach on the right-of-way. It permits existing improvements located in the right-of-way to remain in place but releases the City from any liability associated with the improvements and establishes that the City may require the improvements to be removed at the property owner's expense in the future.

Staff is looking for informal feedback and guidance on how the Council would like to proceed. If the Council is interested in proceeding with an Agreement, the Norman's would have a survey conducted that would identify the specific areas and the items subject to the easements and right of use. The survey can also determine the number of square feet subject to the exclusive easement and provide calculations for the compensation the City would receive for granting the exclusive easement. He noted that the City has no obligation to enter into this agreement or convey property rights associated with this fire lane.

Mayor Ruehl said that if there is exclusive use the property owner should provide the maintenance. If there is non-exclusive use it is hard to require the property owner to maintain the area 100%. Staunton said if there is damage done that was caused by the public the City should correct it; if it is the property owner's driveway the City should not maintain it.

Mayor Ruehl said it is no different than a street that leads to a driveway. This is an extension of a street that provides access to two residents, but it also provides access to people going to the lake. The language in the agreement needs to be specific.

Miller and Caron thought that if the fire lane is considered a street then the City will maintain it in the same manner as it does any other street, which may mean that it get patched versus replaced.

The Council asked who uses the driveway. Staunton said the two neighboring properties, the Norman's and the Gabriel's.

Staunton said it was his understanding that the City was not maintaining the driveway. Wisdorf said that is correct.

3. Easement Agreement for 148 West Lake Street – (Continued)

Caron said what the City does will depend on how the blacktop area is viewed. She asked where the damage is located that the Norman's are concerned about.

Jim Norman, 148 West Lake Street, said he is not comfortable taking on the maintenance of the entire driveway area because it is used by the Gabriel's and the public, and the Public Works will also need to use it to maintain the fire lane. If the public is using the driveway the City should maintain it.

Miller asked if the City plows the driveway area now. Wisdorf said that the City plows at the end of the blacktop; the Norman's have always maintained the driveway area and mowed the grass. Mayor Ruehl said the City should maintain what it owns and provide exclusive easement to the Norman's for the portion of the driveway needed to access their property.

Fulkerson said why an easement; why not a quick claim deed? She asked how the cost per square foot for the easement is calculated. She noted not all of the property is lakeshore. Staunton said the Council can value the land however it wants. Staff took the current value of the land not the house and came up with a cost per square foot. If the Council wants to move forward, the Norman's will pay to have a survey done to determine what the square footage is for the easement area.

Miller asked what other elements are located in the City's fire lane. Wisdorf said there are planters and landscaping. Staunton said these elements will be covered in a right of use license agreement like the City had with all of the other properties that had landscaping in the City's fire lane.

Miller said that the City will not maintain the other elements in the City's fire lane. Staunton said that is correct.

Norman said that the blacktopped area of Linwood Avenue is only 33 feet wide and he maintains a 50 foot wide area. He does not see what it would hurt to sell him a portion of the fire lane and make the area consistent with the street width.

Fulkerson said it makes more sense to her to do that than an easement.

Caron said that the City has not sold any part of its fire lanes.

Mayor Ruehl said if the City can get a recordable agreement he is alright with the easement agreement provided the maintenance issue can get cleared up.

Olson said that staff has done a good job on this; the City is recognizing that this fire lane is different than most of the fire lanes.

3. Easement Agreement for 148 West Lake Street – (Continued)

Fulkerson said this is a narrow street, so she doesn't understand why the City doesn't just move the line. Olson said he would prefer to get the revenue from selling a portion of the fire lane to the adjacent property owner.

Olson asked if the City should proceed under a different path. Mayor Ruehl, Miller, and Caron wanted to continue working on the easement agreement.

4. Metropolitan Council Forcemain Project

Dawley said that the Council started the discussion on this agenda item at the June 16th Council Work Session. There were two outstanding items that the Council wanted to think about, the reconfiguration of Beehrle Avenue and the improvements to Excelsior Boulevard.

Dawley showed the two configurations for Beehrle Avenue. He noted that the cost implications are about the same for each option.

Mayor Ruehl asked about stop signs. Dawley said that any of the stop signs that are there now will be relocated accordingly. Mayor Ruehl said his concern is with the people traveling from the trail; drivers will not necessarily see people coming off the trail.

Mayor Ruehl said that the buses park on Beehrle Avenue. He questioned whether there should be a parking area for the buses.

Miller said with the new grocery store there might be more traffic on Beehrle Avenue. He asked which configuration would work best for the added traffic.

The Council chose Option 1 with the addition of a parking area for buses.

Dawley reviewed the options for Excelsior Boulevard. The Excelsior Boulevard work includes the installation of a 12 inch watermain. Option 1 has lower City and Metropolitan Council Environmental Services costs to construct but has significant disruption to front yards, driveways, retaining walls, and landscaping for homes. Option 2 has less disruption for the residents but a significantly higher cost for the City and MCES. The cost for Option 1 is \$136,000 and \$831,000 for Option 2. The City's increase in cost between Option 1 and 2 is \$190,000.

Mayor Ruehl asked what the likelihood is that the City's sewer line will have to be replaced after the improvements are completed. Dawley said the improvements will last somewhere between 60 to 100 years. He said most of the increased cost to the City would be for the retaining wall adjacent to Oak Hill Cemetery.

4. Metropolitan Council Forcemain Project – (Continued)

Caron said that there was an accident some years back where someone was struck and killed by a vehicle when he was walking along Excelsior Boulevard. She asked how the City makes sure this area is as safe as possible. Does the City elevate the trail or walkway? Dawley said the area will be made safer with the installation of curb; there is no curb there now.

Wisdorf said that there will be storm water improvements along Excelsior Boulevard so the sidewalk will stay dry. Dawley said the sidewalk will be elevated and at least six feet in width.

Caron asked if the sidewalk should be concrete versus bituminous. Mayor Ruehl said maybe the section of sidewalk by the cemetery should be concrete and the remainder bituminous.

Caron asked why not make the sidewalk concrete the entire length. Wisdorf said that Greenwood has bituminous; staff was looking to match the City's sidewalk with Greenwood's.

Mayor Ruehl asked what the difference in cost is between concrete and bituminous. Dawley said the cost for concrete is about 25% more than bituminous.

The Council chose Option 1 with the change to a concrete sidewalk versus bituminous.

Dawley said that there are about 10 parcels into Greenwood along Excelsior Boulevard that want to connect to Excelsior's watermain. The cost for installing the watermain can be included in the contract with MCES, but the City would need to have a separate agreement with the City of Greenwood. The residents would be assessed 100% of the costs and then the City of Greenwood would pay the City of Excelsior.

Miller asked if this would be new customers for Excelsior. Dawley said yes.

Mayor Ruehl asked what it would cost to increase the size of the watermain. Dawley said about \$10.00 per linear foot.

Mayor Ruehl said it doesn't make sense not to upgrade. At some point the City will want to connect into a loop system. He thinks that the City should do a 12 inch pipe and also encourage Greenwood to upgrade to a 12 inch pipe. He would also like to see what the cost is for a 12 inch pipe up and around Christmas Lake Road.

Miller asked what size is the City's watermain currently. Dawley said the City has a 6 inch watermain. When the City did the water study it was determined that there should be a 12 inch line to provide the capacity that is needed for the City's service. Greenwood has said that they are not

4. Metropolitan Council Forcemain Project – (Continued)

interesting in charging their residents for a 12 inch line; they are only willing to participate in an 8 inch line.

Mayor Ruehl said he doesn't want the City to have to tear up a new road to upgrade the water line at a later date.

Miller said if the City has the capacity to add the properties in the City of Greenwood and the City will get reimbursed for the costs, he sees no reason why the City shouldn't move forward with this.

Mayor Ruehl said the cost for upgrading to a 12 inch line would be the City's cost up to Christmas Lake Road; beyond Christmas Lake Road would be the City of Greenwood's cost.

Dawley said the preliminary cost estimates for the City's portion of the improvements is about \$2.8 million, which includes a 20% contingency. The total cost for the street improvements will be \$333,000 and the City's portion will be \$38,500.

Dawley said one question the Council will need to decide is how to calculate the assessments. Should the City assess 15% of the City's cost to the benefiting properties or assess the total cost of the entire project against the benefiting properties? If the City assessed the total costs for the street improvements, the average assessment for the 72 properties would be about \$4,600. Commercial properties would be charged a higher amount. If the City only assesses 15% of the costs to benefiting properties, the assessment would be about \$500. The City Council does not need to decide that now, but a decision would be needed soon so the feasibility study could be ordered. The feasibility study will need to show the benefit each property is receiving from the improvement since the assessment can't exceed the benefit that the property is receiving.

Mayor Ruehl said that commercial properties will reduce some of the costs for residential. He doesn't see how the City can assess a higher cost when it's other taxpayer money. Is that a responsible thing to do?

Miller said he looks at fairness. If someone got a new street and now the next person doesn't pay anywhere near what the other properties paid is that fair? Dawley said that past process and projects can be factored in the feasibility study.

Mayor Ruehl said that the City would need to change the assessment policy if the City is going to begin charging by value versus cost.

Miller asked when the City will begin addressing other improvements that need to be done. Luger said that this will be a discussion later on.

4. Metropolitan Council Forcemain Project – (Continued)

Dawley said the last item that staff would like the Council to discuss is the idea of installing a roundabout at the five corners intersection.

Mayor Ruehl said that he thinks a roundabout will slow traffic down.

Dawley asked the Council is the idea of a roundabout is worth further investigation.

Miller said he's seen roundabouts being installed everywhere. Statistics show that accidents are less violent.

Olson and Caron said they like the idea of having a roundabout.

Mayor Ruehl said he does not think a complete study is needed. Maybe some more preliminary work could be done and then the Council could discuss this at a separate work session. He thinks it will be more difficult for pedestrians.

The Council agreed to have a discussion on the roundabout at a future Council Work Session.

5. Minnesota Pollution Control Agency Stipulation Agreement

Dawley said that staff has been in discussions with the Minnesota Pollution Control Agency (MPCA) for about a year. The current permit was issued to the City in November 2009 and it is valid through 2014. A new permit will be needed in 2014 and there will be new requirements.

The City has been asking questions of the MPCA to get clarification regarding the additional testing of the City's treatment ponds. From 2009 to 2010, the City's testing costs were going from about \$700 to \$7,000 to keep up with the new frequency of testing and reporting that the MPCA was requiring. When the City received notice from the MPCA that it was out of compliance, staff reminded the MPCA that the City was looking for guidance.

Having requested multiple meetings with the MPCA, the MPCA is requesting that it enter into a Stipulation of Compliance (SOC) for the existing permit and moving forward. The SOC will have certain requirements to ensure the regulations are being met. The completion of a facilities plan is included in the draft SOC. Other items include specific dates that need to be met and a financial penalty for past non-compliance of around \$9,000. The SOC and penalty are negotiable. Preliminary discussions have indicated that the MPCA wants to know what impact this will have on the City's overall utilities budget. The penalties are based on what it would have cost the City to comply with the missed reporting and testing requirements.

The Staff's recommendation would be to move forward with the negotiations, look for a reduction in the penalty, submit financial information to demonstrate

5. Minnesota Pollution Control Agency Stipulation Agreement – (Continued)

the hardship, and ultimately execute an agreement following the completion of the facilities plan. A proposal for the facilities plan will be presented to the Council at the July 16, 2012 Council meeting.

Mayor Ruehl said the City really doesn't have a choice. He asked if Staff has talked through what the facilities costs might be. Wisdorf said that staff doesn't have any idea; it depends on the option selection.

Mayor Ruehl said that the Council will need to see this fairly quickly so it can be wrapped into the financial plan.

Miller asked at what point in the reporting cycle would the City have known it was not in compliance. Wisdorf said that is when staff started conversations with the MCPA and communications failed. Miller asked when that was. Dawley said about 6 months ago. Miller said that is a stiff penalty for 6 months.

6. Hourly Restrictions on Construction Activity

Caron moved, Olson seconded, to continue this agenda item to the next Council Work Session agenda, with direction to staff to place this item first on the agenda. Motion carried 5/0.

7. Other

None

8. Adjournment

Caron moved, Olson seconded, to adjourn the meeting at 7:02 p.m. Motion carried 5/0.

Respectfully submitted,

Cheri Johnson
City Clerk