

**MINUTES OF A REGULAR CITY COUNCIL MEETING HELD WEDNESDAY,  
OCTOBER 4, 2006 – 7:00 P.M. – ROCKVILLE CITY HALL**

The meeting was called to order by Mayor Brian Herberg. Roll Call was taken and the following members were found to be present: Mayor Herberg, Council members: Vern Ahles, Jeff Hagen, Ed Karls, Lloyd Lommel, Don Simon, & Greg Simones. Absent: None.

Staff Members present were: Administrator/Clerk Rena Weber, Public Works Director Greg Stang, Finance Director Julie Zimmerman, Fire Chief Randy Dingmann, EMS Director Mike Hofmann, SEH Engineer Scott Hedlund & Attorney Jim Mogen.

Planning Commission Members present were: Chair Jerry Bechtold & Dan Hansen.

Others present were: Brian Hatten, Jack Tamble, Tudie Hermanutz, Joyce Hansen, Ev Balko, Dave Volkmuth, Kathy Hansen, Aaron Cheeley, Arnie & Maureen Heiserich, Duane Willenbring, Dani Kesteloot, Mike & Joan VanderWeyst, Mike & Jim Voigt, Harold & Marilyn Sietsema, Fran Platzer, Marie Skaja, John Koerber & Scott Palmer.

**ADDITIONS TO THE AGENDA: Motion by Member Ahles, second by Member Simon, to approve the additions to the agenda for discussion purposes.**

**AYES: Ahles, Hagen, Herberg, Karls, Lommel, Simon & Simones.**

**Motion passed on a 7 to 0 vote.**

**CONSENT AGENDA: Motion by Member Lommel, second by Member Karls, to approve the consent agenda as presented:**

a) **Approve minutes of 09/20/06**

b) **Approve Treasurer's Report of 10/4/06**

c) **Approve List of Bills as presented: 10/4/06**

|                                       |             |
|---------------------------------------|-------------|
| Accounts Payable Ck #008387 to 008434 | \$80,777.98 |
|---------------------------------------|-------------|

|                              |          |
|------------------------------|----------|
| Payroll CK #002488 to 002495 | 6,232.01 |
|------------------------------|----------|

d) **Approve Mary Grams as election judge**

**AYES: Ahles, Hagen, Karls, Lommel, Simon & Simones**

**ABSTAINING: Herberg**

**Motion passed on a 6 to 0 vote.**

**BOARD/STAFF REPORTS**

**FIRE DEPARTMENT** – Randy Dingmann reported that the increase in the Relief Association benefit to \$1300 per year has been put on hold until the next meeting.

800 MHz – Randy Dingmann reported that the Fire Departments are working with area legislators to seek funding for the 800 MHz. \$57,000 would be the cost for the City of Rockville. There is also an annual user fee of \$175.00 to \$200.00 per radio.

Mayor Herberg reported that the metro area is up and running as well as the Stearns County Sheriff's Dept, St. Cloud, Waite Park, Sartell, Sauk Rapids, & St. Joseph. Stearns County is still seeking grants. There is a 1.6 million shortfall for Stearns County.

**MAINTENANCE DEPARTMENT** – Greg Stang reported on the following:

AGATE BEACH ROAD BIDS – Greg reported that two bids were received from the 6 notices that were sent out. Funds to pay for this would come from 101-43100-220.

|                      |           |
|----------------------|-----------|
| Herberg Construction | \$4403.18 |
|----------------------|-----------|

|            |        |
|------------|--------|
| Silt Fence | 378.00 |
|------------|--------|

|                      |           |
|----------------------|-----------|
| Lange Trenching Inc. | 10,939.74 |
|----------------------|-----------|

|            |        |
|------------|--------|
| Silt fence | 201.60 |
|------------|--------|

**Motion by Member Lommel, second by Member Simones, to approve the low bid of Herberg Construction as presented, pending a signed easement before project begins.**

**AYES: Ahles, Hagen, Karls, Lommel, Simon & Simones**

**ABSTAINING: Herberg**                      **Motion passed on a 6 to 0 vote.**

**ROCK FEST REPORT** – Kathleen Stanger reported on the following:

**BUDGET REVIEW** – Kathleen gave a short overview of the Rock Fest fund stating that they started with approximately \$5,916; they raised 26,949, had \$17,657 in expenses, and are looking at approximately \$9000 in the fund. The committee recently earned \$1000 in fund raising by selling glow necklaces. The goal is to be one year ahead and have \$15,000 to \$20,000. The main goal to promote the city and bring all entities together. Meetings are always the last Wednesday of the month – 7:10 p.m.

**PLANNING COMMISSION**

Rena Weber reported that Dan, Kathy & Joyce Hansen are requesting a variance & interim use permit to operate a mining pit and to excavate in the 30' setback from right-of-way.  
**LEGAL DESCRIPTION:** The address of the property is: near Highway 23 and Rausch Lake Road with a legal description of: That part of the Southwest Quarter of the Southeast Quarter and that part of the Southeast Quarter of the Southwest Quarter, both in Section 16, Township 123 North, Range 29 West, Stearns County, Minnesota lying southerly of the south line of MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY PLAT NO. 73-47 and MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY PLAT NO. 73-48, according to the recorded plats thereof, said Stearns County.

**A VARIANCE IS BEING REQUESTED AND IS GOVERNED BY THE FOLLOWING ZONING ORDINANCE REQUIREMENTS:**

Zoning Code, Ord. 2003-04, Sec. 9, Subd. 13 Mining/Extractive Uses  
 Zoning Code, Ord. 2003-04, Sec. 27 Conditional Use Permits,  
 Zoning Code, Ord. 2003-04, Sec. 28 Interim Use Permits

Dan Hansen was present to report that a change to the interim use permit needs to be made:

1. Interim use should be 5 years not one.

Jack Tamble (representing Joyce Hansen) stated that he has a problem with the letter of credit and the amount. This is a road that is not being maintained and is in the process of being repaired. How do you identify the amount of damage caused by driving the road and stated the city does not require letter of credit from anybody else. That road has been bounced around and twists.

Jim Mogen stated the letter of credit is for both reclamation \$25,000 and \$50,000 is the estimated cost for the repair of the road due to the trucks.

Scott Hedlund stated that a 2" overlay is being planned and what we are asking for is very reasonable. He can concede the road is not in the very best shape, and if there is not a gravel pit on there it would last longer. This is  $\frac{3}{4}$  mile of a haul road. Just to say the road is not in good condition doesn't mean you can beat it up. The concern is the repetitive hauling.

Dan Hansen stated that 10 trucks a day is their proposal.

Mayor Herberg stated that he would play the devil's advocate – the city does not get anything when we haul and there is nothing stopping Bauerly Brothers from traveling over any roads.

Scott Hedlund indicated that it is proposed to video tape the condition of the road every year. We could take pictures and have them pay for the damage.

Jim Mogen explained why the city should require the letter of credit in that the city doesn't want to lose out on the ability to collect a user fee when you can.

Scott Hedlund suggested the Council put the onus back on the applicant to prove they did not wreck the road.

Mayor Herberg stated the biggest problem is the damage at the access where the pavement is ground out. Mayor Herberg further indicated that \$30,000 is needed for 230<sup>th</sup> Street and this would help both them and the city.

Jack Tamble voiced concern that the permit is to only go west on 230<sup>th</sup> Street.

Dan Hansen indicated they are also asking to go both ways.

Scott Hedlund stated that he did some research on the repeat actions and what that does to the road. ASTM is a test that is done which is visual. They would video tape the site, evaluate

the pavement distress; do a report and grading scale. This could be done annually or as needed Cost would be \$1500 to do that and Scott recommended doing this for sure.

Member Simones asked if they will have a scale on site. Dan Hansen indicated no they would not.

Member Simones questioned if it would be more fair not to exceed a ton mile ratio so you have some frame of reference to the use of the road. This would give Hansen's some comfort if you tie it to some concrete numbers.

Member Lommel questioned the 30' requirement and why the interim use permit says 17'. Scott Hedlund explained that the city may need 17' of right-of-way when 230<sup>th</sup> Street is improved.

Jack Tamble stated the development of the wetland would require them to work in this area.

Scott Hedlund stated the concern here is of getting into the virgin ground.

Jim Mogen indicated that there is a ditch that extends over the right of way and this needs to be maintained. That is why they are recommending they don't go into the right of way.

Scott Hedlund indicated there is also an economic gain to them.

Jack Tamble said it has to be done as part of developing the wetland.

Member Simones questioned #15 in that equipment has to be stored outside of the excavated area. Scott Hedlund stated that this is due to the wellhead protection area.

Member Hagen questioned a secondary containment unit. Mayor Herberg stated this would be a vault.

Jim Mogen stated that the council has too many questions and recommended the council table action.

Jack Tamble stated there are 3 issues:

- Letter of Credit issue
- Traveling back and forth
- Permit change from 1 year to 5 years

Mayor Herberg recommended that this go to the street committee for their review.

Member Hagen voiced concern stating that with the problem they have on the east side of town, and to protecting the view of Rockville, there has to be a better location for a mining pit. We would be allowing a business in the agriculture area which could cause complaints from residents in the future, and this would not go against the 1 year allowance per the ordinance. Member Hagen further indicated that we should follow the engineer's recommendation on the bond.

Mayor Herberg stated that in looking at the outcome, with the Bauerly pit there is no outlook, this one does have an outlook. Removal of the dirt has to happen in order to get the wetland. We already agreed to the concept of the wetland, and urged the council to look at the issues. The idea of this being an on going situation is not true.

Mayor Herberg motioned to table action until the Street Committee reviews this.

Member Lommel stated that he agrees with Jeff Hagen and disagrees with running this for 5 years.

Motion died for a lack of a 2<sup>nd</sup>.

Mayor Herberg stated the Interim Use permit expires in one year with the option for 4 year renewals.

Member Simones indicated this should not be a problem for a 5 year permit with one year review. The burden of proof would then be on the city.

Member Lommel motioned to approve the interim use permit based on the originally written plan @ 5 years, and review annually so that it can be renewed

Mayor Herberg seconded the motion.

Member Simones questioned if the burden of proof would be on the city.

Member Hagen stated that he wants to have the legal counsel to review/write the permit and then the council should review the document before you finally approve.

Member Lommel withdrew his motion. Mayor Herberg withdrew his second too.

Direction to the city attorney – Write the permit with the following corrections:

- 5 year permit
- Burden of proof that city does the findings that the conditions have not been met
- Must be annually reviewed
- Hauling is allowed – east or west

Member Hagen stated that he wants to see if citizens are affected by this if it is not working.

Member Hagen stated that the request for donating the 17' is a fairly reasonable request so that whenever we fix the road we don't have to buy the land.

Jack Tamble stated that he still wants to excavate the black dirt, but not below the original grade.

**PUBLIC HEARING – WATER RATE** Rena Weber read the notice of public hearing stating that the proposed Budget for 2007 shows revenue of \$85,304 with Expenditures of \$101,900 = \$16,866 shortfall.

Julie Zimmerman, Finance Director, reviewed some of the major changes in the budget citing once again that the city is not funding depreciation.

Greg Stang explained the increase of water meters to \$3500 indicating that 10 years is the expected life of the meter.

Duane Willenbring – 25123 County Road 139, questioned a number of expenditures & revenues recognizing that depreciation has not been included in the budget.

Duane Willenbring voiced further concern that the recommendation to increase water/sewer rates 5% per year is pretty tough and please do not tie the hands of future council.

Tudie Hermanutz - 211 1<sup>st</sup> St W, reiterated her concern with the 5% each year increase and added that 3% is generally what you hear. Tudie Hermanutz stated that in regards to the \$ .77/1000 gallons, leave it alone and see how it floats. In regards to allocation of costs she wonders how that all works. How do you differentiate from the new water tower and the old towers?

Jack Tamble – asked are the wells metered? Yes they are.  
Do you cross reference with what you bill out? Yes we do.

Duane Willenbring – 25123 County Road 139, asked what would happen with the two proposals brought forward.

***Motion by Member Simones, second by Member Ahles, to close the public hearing at 9:09 p.m.***

***AYES: Ahles, Hagen, Herberg, Karls, Lommel, Simon & Simones.***

***Motion passed on a 7 to 0 vote.***

***Member Hagen introduced the following ordinance and moved for its adoption:***

***ORDINANCE NO. 2006-34***

***AN ORDINANCE AMENDING THE WATER RATE FOR THE CITY OF ROCKVILLE, MINNESOTA:***

***The Rockville City Council amends Basic Code Section 52.51 Water Rates, Fees & Charges to read:***

***Subd. 1 Water Rate Fees will be:***

***A. Water Availability Fees***

***\$ 8.00/month flat fee – OM & R (Operations, Maintenance & Replacement) +***

***\$ 2.29/1000 gallons***

***EFFECTIVE DATE: This ordinance shall become effective 11/1/06 and upon its passage and publication in the official newspaper.***

***The motion for the foregoing ordinance was duly seconded by Member Lommel with the following vote being taken.***

***AYES: Ahles, Hagen, Herberg, Karls, Lommel, Simon & Simones.***

***Motion passed on a 7 to 0 vote.***

**WATER RATE FEE FOR CONTRACTOR'S** - Julie Zimmerman asked the council to consider raising the water rate to a contractor from \$2.50/1,000 gallons to \$5.00/1,000 gallons.

***Motion by Member Hagen, second by Member Lommel, to approve the increase in the water rate to contractor's to \$5.00/1,000 gallons.***

***AYES: Ahles, Hagen, Herberg, Karls, Lommel, Simon & Simones.***

***Motion passed on a 7 to 0 vote.***

**WATER METER FEE** – Discussion was held regarding the price of the water meters. It, too, has been some time since the city reviewed this rate and we are using a different type of meter now. It was determined that staff needs to research the water meter fee.

### **NEW BUSINESS**

**VOIGT BROTHER'S PROPOSAL** – Jim and Mike Voigt were present to request deletion of late fees for the development of their 7 lot plat. They will pay the current due \$1616.88 if we delete the \$1724.19 late fee.

Mayor Herberg motioned to recommend the late fee deletion pending signing of the developer's agreement.

Member Hagen voiced concern that we should deny waving the late fees. Motion died for a lack of a second.

More discussion was held regarding other issues such as the settlement of the well site land.

***Motion by Mayor Herberg, second by Member Ahles, to approve deletion of the late fees pending the Voigt's pay the remaining \$1616.88 and signing the developer's agreement by the close of the work day on 10/05/06.***

***AYES: Ahles, Herberg, Karls, Simon & Simones***

***NAYS: Hagen***

***ABSTAINING: Lommel***

***Motion passed on a 5 to 1 vote.***

### **LETTER FROM MALKERSON GILLILAN MARTIN REGARDING THE PLEASANT LAKE**

**WELL SITE**– Mayor Herberg informed the council that this is an offer to settle the matter if the city were to pay the Voigt Brother's \$100,000.

Jim Mogen recommended that the council deny this request as they do not have any way of basing justification for the amount. The city is obligated to pay fair market value and has to have some basis by which they make their decision. The appraised value of the property is \$51,000, the Voigt's have not provided an appraisal, and the Voigt's have not broken down the need for \$100,000.

Jim Mogen further reported that an updated opinion from a developer is being obtained on the effect being argued for the exchange being made.

Time Frame for event:

10/12 hearing – then set up commissioner's hearing.

Court makes a ruling on the 12<sup>th</sup> or they have 90 days to get back.

Don Simon left at 9:35 p.m.

Member Lommel stated that legally we can't accept the proposal.

Jim Voigt stated then let it go to court.

***Motion by Mayor Herberg, second by Member Simones, to deny the request to settle and let this go through the court system.***

***AYES: Ahles, Hagen, Herberg, Karls & Simones***

***ABSTAINING: Lommel***

***Motion passed on a 5 to 0 vote.***

**PICKUPS N' POWERSPORTS** – Arnie and Maureen Heiserich were present to request council approval in not hooking up to city water & sewer by the end of October. They indicated that they are looking for more time like 1 to 1 ½ years to make the connection. The request has to do with

the amount of work in the building to make the connection and financial concerns. The SAC/WAC charge of \$3528 is also being asked to be deleted.

***Motion by Member Karls, second by Member Simones, to grant them 20 months or until 5/1/08 to hook up to both city water and sewer.***

Member Hagen urged the council to consider next summer at the latest

***AYES: Ahles, Herberg, Karls & Simones***

***NAYS: Hagen & Lommel***

***Motion passed on a 4 to 2 vote.***

***SAC/WAC DELETION –Motion by Member Simones, second by Member Ahles, to not do anything with this request until they are required to hook up in 20 months or 5/1/08.***

***AYES: Ahles, Herberg, Karls, Lommel, & Simones***

***NAYS: Hagen***

***Motion passed on a 5 to 1 vote.***

**EMPLOYEE SAFETY MANUAL** - Mike Hofmann, EMS Director, presented a copy of the Safety Manual for approval. Mike indicated that a number of employees have been taking the training offered by MMUA (Minnesota Mutual Utilities Association) & the League of MN Cities. The cost to the city is \$600 per year. This is mandatory and required by OSHA.

***Motion by Member Ahles, second by Member Simones, to adopt the Safety Manual/Policy as presented.***

***AYES: Ahles, Hagen, Herberg, Karls, Lommel & Simones.***

***Motion passed on a 6 to 0 vote.***

**SCHEDULE PUBLIC HEARING – SCHILPLIN WATER ASSESSMENT** – Rena Weber reported that a public hearing would need to be scheduled to assess the Schilplin Family Estate for the water improvement project at Pleasant Lake.

***Mayor Herberg introduced the following Resolution and moved for its adoption:***

***RESOLUTION NO. 2006-33***

***RESOLUTION FOR HEARING ON PROPOSED ASSESSMENT***

***WHEREAS, by a resolution passed by the council, the Administrator/Clerk was directed to prepare a proposed assessment of the cost of improving 2005 Watermain Project;***

***AND WHEREAS, the Administrator/Clerk has notified the council that such proposed assessment has been completed and filed in her office for public inspection, NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF ROCKVILLE, MINNESOTA:***

- 1. A hearing shall be held on the 1<sup>st</sup> day of November, 2006 in the city hall at 8:00 p.m. to pass upon such proposed assessment and at such time and place all persons owning property affected by such improvement will be given an opportunity to be heard with reference to such assessment.***
- 2. The Administrator/Clerk is hereby directed to cause a notice of the hearing on the proposed assessment to be published once in the official newspaper at least two weeks prior to the hearing, and she shall state in the notice the total cost of the improvement. She shall also cause mailed notice to be given to the owner of each parcel described in the assessment roll not less than two weeks prior to the hearings.***
- 3. The owner of any property so assessed may, at any time prior to certification of the assessment to the county auditor, pay the whole of the assessment on such property, with interest accrued to the date of the payment, to the Administrator/Clerk, except that no interest shall be charged if the entire assessment is paid within 30 days from the amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the succeeding year.***

***The motion for the foregoing resolution was duly seconded by Member Lommel with the following vote being taken:***

***AYES: Ahles, Hagen, Herberg, Karls, Lommel & Simones.***

***Motion passed on a 6 to 0 vote.***

#### **COMMITTEE REPORTS**

**MAYOR'S REPORT** – Mayor Herberg reported that he had one heck of a week.

**EDA – BUSINESS SUBSIDY CRITERIA** – President Greg Simones reported that the JOBZ criteria needed to be included in the business subsidy criteria. The EDA reviewed the criteria at their special meeting on 10/02/06 and are recommending approval of the criteria. Greg Simones further reported that as part of obtaining the JOBZ designation the Stearns County Commissioners have to approve the request for transfer of 20 acres of JOBZ land which they did. Rocori School Board meets on Monday 10/9/06 at 6:30 p.m. and will be asked to approve the same.

#### **ADMINISTRATOR REPORT**

**KIRSCHER COMPLAINT** – Rena Weber presented a written report per John Kirscher's request at the last meeting. Mr. Kirscher has since learned that his assumptions were incorrect on Jeff Hagen's sewer bills and has withdrawn his request. Mr. Kirscher also apologized for what he put staff and the council through. The written report was provided to the council so that should anybody else question how people were assessed and what they are paying for in sewer bills the council can show them.

**RFP FOR ATTORNEY & BUILDING INSPECTION SERVICES** – Rena Weber reported that Building Inspection Services contract and the Attorney contract are both up for review by the end of the year.

***Motion by Mayor Herberg, second by Member Ahles, to authorize the Request for Proposals for both the attorney and building officials.***

***AYES: Ahles, Hagen, Herberg, Karls, Lommel & Simones.***

***Motion passed on a 6 to 0 vote.***

**MORATORIUM ON SHORELAND DEVELOPMENT** – Rena Weber stated that she may have jumped the gun in asking the moratorium be lifted. An Alternative Shoreland Ordinance is in the process of being reviewed and education will be a major component of the adoption of such ordinance. Discussion was held regarding why the moratorium was put on due to the adoption of the Stearns County Shoreland ordinance. Once that was done, it was felt that the moratorium could be lifted.

Scott Palmer, representing the Alternative Shoreland Committee members, indicated that water quality is the main concern which requires another ordinance. The Committee is asking for a six month extension in order to draft the ordinance and share it with the two lake associations.

***Motion by Member Hagen, second by Member Simones, to place a 6 month moratorium on any plat development in the Shoreland District exempting out any plats that have preliminary approval.***

***AYES: Ahles, Hagen, Herberg, Karls, Lommel & Simones.***

***Motion passed on a 6 to 0 vote.***

**ZONING VIOLATION** – Rena Weber reported that the city was notified of a possible zoning violation which is being investigated. Rena Weber further indicated that she would present such information once all information is gathered.

**PUBLIC WORKS DIRECTOR** – Rena Weber reported that Greg Stang will be resigning on 10/27/06. Greg Stang would continue to offer his service for the water and collection system license. It was determined the Personnel Committee needs to review this and come back with a recommendation.

**OPEN FORUM**

Tudie Hermanutz – 211 1<sup>st</sup> St W, reported that she attended a meth coalition meeting. Vince Schaefer attended this meeting as well and the problem is not going away. Education is a key factor. Tudie advised people just to keep aware as it is not a law enforcement problem, it is a community problem.

Scott Palmer – 21108 Fowler Road, announced that the Grand Lake Assn. will sponsor a hog roast on 10/28/06 from 3:00 p.m. to 6:00 p.m. at the Grandview Resort. The Association hopes to create a lake improvement district by petition. They also will invite the 6 council candidates to the event and give them an open mike to present their platform at 4:00 p.m.

**ADJOURNMENT – *Motion by Member Simones, second by Member Lommel, to adjourn the meeting at 10:48 p.m. Motion passed unanimously.***

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**VERENA M. WEBER-CMC  
ADMINISTRATOR/CLERK**

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**BRIAN HERBERG  
MAYOR**