

MINUTES OF A REGULAR CITY COUNCIL MEETING HELD WEDNESDAY, MAY 19, 2010 - 6:00 P.M. – ROCKVILLE CITY HALL.

The meeting was called to order by Mayor Jeff Hagen. Roll Call was taken and the following members were found to be present: Mayor Hagen, Council Members: Bill Becker, John Koerber, Sue Palmer, Jerry Schmitt, Randy Volkmuth & Duane Willenbring. Absent: None

Staff members present were: Administrator/Clerk Rena Weber, Public Works Director Rick Hansen & Engineer Scott Hedlund.

Others present were: Tудie Hermanutz, Lt. Jon Lentz, Dave Volkmuth, Aaron Cheeley, Jim & Jackie Voigt, Paul Betz, Don Simon, Lon Voigt, Scott Palmer, Mike Voigt, Ruth & tom Nystrom, Paul Wenner, Toni Reif, Mike Lutgen, Polly & Charles Grell, Earl Anderson, Ev Balko, & Bill Molitor.

ADDITIONS TO THE AGENDA: Motion by Member Palmer, second by Member Willenbring, to approve the additions to the agenda for discussion purposes.

AYES: Becker, Hagen, Koerber, Palmer, Schmitt, Volkmuth & Willenbring.

Motion passed on a 7 to 0 vote.

OPEN FORUM

Don Simon – stated that Heidi Peper was at the last meeting asking for money for the trails. With the way the economy is going and before we move money around the council should use the money on the roads. He urged the council to go after the County, but he would rather see money spent on the roads.

Member Willenbring stated that for the record no dollars have been spent out of the general fund thus far.

CONSENT AGENDA –Motion by Member Volkmuth, second by Member Koerber, to approve the consent agenda as presented:

- a) **Approve minutes of 04/21/2010, 5/12/2010**
- b) **Approve Treasurer’s Report of 05/19/2010**
- c) **Approve List of Bills and Additions of 05/19/2010**

Accounts Payable CK #012036 to 012113	\$75,962.60
Payroll CK #003743 to 003755	9,627.07
EFT CK#000321 to 000324	3,152.79

AYES: Becker, Hagen, Koerber, Palmer, Schmitt, Volkmuth & Willenbring.

Motion passed on a 7 to 0 vote.

BOARD/STAFF REPORT

POLICE REPORT – Lt. Jon Lentz was present to report that there were 37 contract hours during the month of April and cited the activity.

NEW BUSINESS –

LIQUOR LICENCE RENEWALS – Rena Weber reported that annual renewal of liquor licenses should be held. One point of interest is that there is one establishment with a limited food license asking for the Sunday liquor license. According to a representative of the State Alcohol Control Board this is allowed, however, the law is changing on this.

Motion by Member Volkmuth, second by Member Willenbring, to approve the renewal of liquor licenses for:

	ON-SALE	OFF-SALE	SUNDAY
Big Daddy’s Burgers & Booze, Inc.	X		X
Stoney’s Bar	X		X
B’S Liquor of Rockville		X	
400 Supper Club	X	X	X

AYES: Becker, Hagen, Koerber, Palmer, Schmitt, Volkmuth & Willenbring.

Motion passed on a 7 to 0 vote.

CONTRACT FOR SPECIFIED SERVICE – Rena Weber requested approval for service with Stearns County indicating that only certain services are requested such as wetland delineation, feedlot, and some land use, however, these are pass through costs.

Motion by Member Palmer, second by Member Volkmuth, to approve the Contract for Providing Specified Land Use and Zoning Services in the City of Rockville as presented. (A copy is hereby attached and marked Exhibit A).

AYES: Becker, Hagen, Koerber, Palmer, Schmitt, Volkmuth & Willenbring.

Motion passed on a 7 to 0 vote.

GRAND LAKE IMPROVEMENT DISTRICT ANNUAL REPORT - Scott Palmer, President of the Grand Lake Association was present to review the LID Annual report. (A copy is hereby attached and marked Exhibit B). Contents of the report were:

Introduction

Status of 2009 Projects

- ◆ Curly leaf Pondweed Treatment
- ◆ Shoreland Best Management Practices
- ◆ Education and Information Newsletter
- ◆ Amended By-laws

Financial Condition of the LID

Board of Director's Intentions for 2010

- ◆ Curly leaf Pondweed Treatment
- ◆ Shoreland Best Management Practices
- ◆ Education and Information Newsletter

JAMES & JACKIE VOIGT – Deferral of Assessments – James Voigt was present to ask for another deferral of the assessments stating the area is under green acres and does not know what else to say. He can't get any money from the banks and asked if the council had any suggestions. They are at 1/3 of the price they started at.

Member Palmer voiced concern that the Auditor pointed out that there is a limit to the amount of assessments we can defer – we have to make our payments too.

Jim Voigt stated that he paid all the taxes for lots that weren't a part of this and \$1,000 of his house taxes.

Motion by Member Palmer, second by Member Koerber, to table action at this meeting and send it to the Finance Committee. Further staff is to check with other cities on what they are doing.

Member Willenbring asked how this affects our bond rating. Not favorably.

Mayor Hagen asked what transpired with the sale of the lot to Lois Lenzmeier. Rena Weber cited that a portion of the trunk fee/lift station was assessed to the 7 lot development, however, that did not cover the SAC fee. The Voigt's were hoping to sell some of the lots as just that and it was not communicated to the new owner that there were additional costs.

Jim Voigt asked if the City could provide them with a list of what people will have to pay.

Mike Voigt stated that Avon is in the same position.

AYES: Becker, Hagen, Koerber, Palmer, Schmitt, Volkmuth & Willenbring.

Motion passed on a 7 to 0 vote.

COMMITTEE REPORTS

MAYOR – NONE

PUBLIC WORKS – Mayor Hagen reported the Committee has met twice and considered the request of Bill Molitor to not having to pay to hook up to the sewer using the low profile retrofit as requested by the City Engineer. Mayor Hagen asked Scott Hedlund what was normally called for.

Scott Hedlund reported that when this was originally platted the water/sewer was sized to fit for larger lots.

Then he re-platted a portion into smaller lots and now needs two hook ups. The sewermain is 25' deep – which is quite deep. Normally he would recommend installation of a new manhole where the sewer would come in and drop to the 25' depth so the inside of the manhole has no problem or obstacles for maintaining it. He and Rick worked on ways to reduce the cost and this low profile method is what they came up with. MPCA requires that you have an access point where it comes into the manhole. The low profile retrofit has been the industry standard for the last 10 years.

Member Palmer commented saying “Or he could dig up and install another manhole, which would be more costly.”

Member Becker questioned worker safety and if this is enough room to work in. Scott Hedlund stated this precaution is being taken so that you are not working in there and you get sprayed.

Member Willenbring stated the typical interior drop is not really typical. In this case it is not normal. If his thought process is correct then does this warrant the cost of \$2300 to gain 1” of space?

Member Becker asked if \$2500 is it worth the risk of safety.

Rick Hansen indicated that if someone gets stuck down there, then you need another person to help.

Motion by Member Becker, to deny the inside drop proposal and do the appropriate way by adding a manhole. The motion died for a lack of a second.

Motion by Member Palmer, second by Member Schmitt, to install the low profile retrofit as recommended by the engineer.

Member Willenbring asked if the council assumes the cost will be assessed against the property owner and further that he will recuse himself from the vote.

AYES: Hagen, Koerber, Palmer & Schmitt

NAYS: Becker & Volkmuth

Motion passed on a 4 to 2 vote.

PUBLIC HEARING

GRAND LAKE AND FOWLER ROAD – Mayor Hagen announced that a public hearing had now been called for the purpose of considering an improvement project.

Rena Weber cited the information she had gathered since the informational meeting. First of all - Grell's use Rinke Noonan as their attorney and have switched for this issue. Adam asked if there would be an issue or would the city waive the conflict. Since the Grell's are not using Rinke Noonan - it should not be a problem.

Adam agreed that six years of maintaining the road would justify it being a public road. The city will have to provide information to prove that: such as signed affidavits from former township and maintenance records stating that the road was plowed and gravel added.

The city will have to prove that we have reviewed the standards for common law dedication so it is clear to any observer that the city is maintaining the road.

If we construct - we can only access the portion of the road that we have been maintaining as we don't have a temporary construction easement. We would be trespassing.

OPTIONS ARE:

1. Plow ahead - dot the I's and cross the t's. City will have to apply for common law dedication. Grell's can roll over or sue the city
2. Don't do anything.
3. Seek quiet title action - then the court issues and order.
4. Condemnation or possible dedication of land to city.

Rachel Carlson, LMC Research analyst, agreed in this statement and further added that the city must create a paper trail.

Mike Lutgen – 21125 Grand Lake Court – stated that Fowler Road used to be his driveway and now it is Grand Lake Court which is not maintained. He would like his to be the same and considered a private road.

Mayor Hagen stated that we can consider this and get legal opinion on it, but we need to move on.

Mary Beth Rausch, Betty Klein's daughter 21107 Fowler Road– read her mother's letter stating that she is against tarring Fowler Road. "We had this cabin for 32 years and had no problems with driving on Fowler Road to get to our cabin. Also our cabin is used only seasonally so why should I be assessed for something that we will not benefit from. If we don't need it – then don't do it."

Member Volkmuth explained the assessment policy for access roads.

Mary Beth claims it is a private road and only 3 owners use it.

Mayor Hagen indicated that the number does not matter.

Scott Palmer –21108 Fowler Road stated the big issue is not that it paved or gravel, but that the city continues to maintain it. If our neighbor want it gravel Sue and I are okay with that, but we would like to see it tarred. The road is a lot of clay and the frost heaves make it kind of greasy. The city did put down gravel to help fill potholes. Sue and I are hoping to live in this house until we die. The Grell's have been very gracious and have plowed the road, but city has plowed it and graded it over the years. Sue and I benefit the most from the city maintaining it and having this a public road. If declared a private road we will need an agreement that maintaining it by filling potholes and adding class 5 will be done. When we got the notification from the city our assessment doubles if it is a private road. He does not want to battle with his neighbors if we need to maintain it if it is a private road.

Member Volkmuth asked Rena if this was considered a private wouldn't the Palmer's & Klein's need an easement to access their property. Mayor Hagen indicated that the Grell's would have had to grant an easement to the two property owners since their property abuts Grand Lake Road.

Polly Grell – 21098 Fowler indicated that just because one person asked the city to maintain the does not start the clock ticking. There are other legal thoughts on this. It could be considered permissive use and this does not start the six years running. Her main point in speaking tonight is to keep their appeal right open and that they requested twice the documentation on how the road was maintained. They want to make a good decision too.

Charles Grell indicated that all the neighbors had to sign off on the easement.

Rena Weber indicated that staff will provide this information but was waiting for this meeting to determine if it is private or public.

Polly Grell stated the assessment on the Grand Lake Road would be 400' not 800' because of the formula. Palmer's have 200' and are being charged 400', Wenner's are being assessed 1700' based on the formula.

Scott Hedlund explained the clarification for the Wenner property.

I met with Paul Wenner and Toni Reif this afternoon to discuss questions they had with their proposed assessment, at their request.

The biggest thing that came out of the meeting was their claim that a significant portion of their property in the woods/brush area east of Grand Lake Court is actually wetlands. After our meeting I researched the National Wetlands Inventory (NWI) maps in the area and found that approximately 5.3 acres of the Wenner parcel in question appears to be wetlands. Wetlands are not assessed. Assuming 5.3 acres of wetlands and the remaining 6.95 acres are upland, the assessable footage would be reduced from 1779 to 1008 front feet; and thus the Wenner assessment would decrease from \$25,985.85 to \$14,723.86.

We also discussed the current zoning of the property and how it affects their assessment. Currently the parcel is zoned R-1. They claim the portion fronting Grand Lake Road is currently used for farming purposes with no intentions to develop. We discussed the possibility of the council considering assessing a portion of the property now and defer assess the remaining. One possibility is to assess the width of their property near the lake now, and defer the remaining footage until subdivided, developed or the use changes.

Using Data View I measured approximately 255 front feet along the lake. This would result in an assessment of \$3,724.79 now with the remaining \$10,999.07 being deferred. I am comfortable with these changes. I informed the property owner that the Council makes the final decision.

Mayor Hagen asked how wetlands affect that it doesn't affect the frontage on Grant Lake Road.

Scott Hedlund explained assessment formula in that the Grell's, Palmer's & Wenner's are looked at as irregularly shaped properties, odd shaped, fairly big and zoned R-1. Following the assessment policy you need to take the total acreage that is not wetlands and basically divide it by what a typical lot size would be to come up with the number of units. He used 100' front feet as the typical lot in this area times the number of units to come up with the assessment. This is with the thought that this could be subdivided.

Polly Grell stated that she disagreed with the policy because two years she was not granted approval to split their property. Roger Schmidt told them their property was only worth \$5000.

Rena Weber stated this was due to the moratorium that was in place. Mayor Hagen added that the city was in the process of developing the Shoreland Ordinance.

Scott Hedlund indicated the council can change the assessments.

Chuck Grell – 21098 Fowler Road asked why is everybody taking away from me without any value being given back to me. Just because one person asks to have the road plowed does not make it public. He questioned the 66' road right-of-way and if the road goes in will it be 66'. You are opening up a can of worms.

Mayor Hagen indicated that we have other roads in the city that are not 66' wide and were created a long time ago. Rules were in place does not mean they were township roads and now city roads.

Scott Palmer – Sue & I never have asked to have the road plowed.

Rick Hansen reported that in the four years he has been here they have plowed the road, same as his predecessor.

PUBLIC VS PRIVATE ON FOWLER ROAD

Member Volkmuth voiced concern that he is not certain he wants to start a legal battle unless we can win. There is legal precedent on this and he would rather contact an attorney first.

Member Volkmuth asked if it has been heavily maintained it. Rick said he maintained it as necessary.

Mike Lutgen asked why Grand Lake Court is not maintained.

Member Becker asked that he would like to see we actually maintained the road.

Polly Grell voiced concern that they have two different quotes for the assessment and if they were actually anywhere near being close they may be able to make a decision.

Member Palmer agreed.

Scott Hedlund explained that the city initially got quotes, but the assessment process calls for sending out for bids and then holding the final assessment.

Sue Palmer stepped down from the dais and stated that in the interest of this they have contacted an attorney. Their attorney looked up a case where the city did not want it to be public and essentially the same facts of the situation apply. While language refers to the necessity for definite evidence of maintenance done under public auspices and that public expense is not to be taken as the performance of such work, must be proven by anything more than usual preponderance of evidence. It goes on to say it is not necessary that every part of the road be worked as part of government expenses, but that any particular part is worked on each year is one that establishes and meets statutory maintenance requirements and is sufficient when necessary.

Sue Palmer also asked the council to consider a request regarding the assessment policy itself. To Rockville City Council members,

"We are writing to ask the council to consider a few items as they look at the assessments for Grand Lake Road and Fowler Road as there may be an inequity in the

assessment policy for those residents who have properties that are larger than a city lot but smaller than Ag-40. This comes largely into play if we are assessed for Grand Lake Road assuming that Fowler Road is not improved at this time. However, we reiterate that we are in favor of the improvements to Fowler Road.

Per the current policy, “properties that are zoned Ag-40 will be limited to 200 adjusted front feet for each building unit that may be constructed on the property (i.e. 200 front feet for each 40 acres). In addition, the property shall also have a deferred assessment for the remaining Adjusted Front Footage of the property. For SP-1, the assessment will be limited to 200 Adjusted Front Feet for each building that may be constructed on the property. No additional assessments will be levied and/or deferred for the remaining front footage of SP-1 property”.

Therefore, any property that is larger than a city lot but smaller than AG-40 will be proportionately assessed more than any other resident in the city. This is the case with several properties that fall within this project, including ourselves and several of our neighbors. We are asking that the council review this issue and consider a change to the policy to be more equitable across the city. In addition, we would ask that any portion of the assessment that relates to the potential for a split be deferred and not assessed unless a split occurs.

In addition, if Fowler Road were not improved at this time, we would still be assessed for Grand Lake Road. We discussed with Scott Hedlund what happens if Fowler Road is improved at a later time. Scott indicated that there would be a “credit” for the assessments already paid toward Grand Lake Road; however, he said that this would have to be within some time frame. However, our assessment policy does not clearly address the issue of having to pay twice (unless you assume it is similar to a corner lot) or a time frame for the improvement of the second road. We are also asking that the council review this portion of the policy to clarify.

We support the improvements to Grand Lake Road and Fowler Road as they clearly need improvements. Thank you for your consideration. “

Member Volkmuth indicated that the special assessment policy should be discussed.

Scott Hedlund stated that in his opinion these property owners can they subdivide their property.

Member Volkmuth indicated that we could say that, but we still need to look at the policy. Maybe we look at the policy and only charge no more than 200'. This is the first time we are applying it and realize there are problems that need to be addressed.

Mayor Hagen indicated that we still need to make a decision on public Vs private issue.

Member Volkmuth stated that he felt the Grell's are looking for a decision on the assessment policy before they decide what their next move is. If we state this is public then we are hog tying them. We could start the process, but we need to review the assessment policy. What he is seeing is very inequitable solution including the other people on this road.

Mayor Hagen indicated that there are assessment issues, but we can still make a decision on public Vs private. In his opinion and listening to Scott, Sue, the Grell's and Mary Beth they would like to see the road remain gravel as long as it is properly maintained. My feeling is

and based on research that Rena has done, the city has limited options as far as dedicating this public. If I put myself in Rausch's position, I don't know why you wouldn't want it public if it is going to stay gravel which is what you want, as long as the city maintains it. He would like to see a vote being taken and we can still address the assessments. A reduced amount based on deferring the assessment to a later date is something the three owners can base their decision on.

Scott Hedlund reported that Fowler Road could be bid as an alternate.

Member Willenbring voiced concern that Sue Palmer eluded that precedent has been set in regards to the 200'. We need to modify the policy. Based on the public input let's leave it as it is and please the people that are there.

Member Palmer indicated that the assessments do matter.

Ruth Nystrom – 10888 Grand Lake Road asked if Fowler Road is not fixed does Grand Lake Road assessment go up. Mayor Hagen stated that no, it does not.

Rena Weber explained the deferment option that is available to senior citizens.

Motion by Mayor Hagen, second by Member Volkmuth, to move ahead with the best option the attorney recommends to be a public road in whatever fashion is most economical. It would be nice if the three property owners on Fowler Road could come to an agreement on whether or not they want it paved. Further that the assessment policy be looked at as well as options.

AYES: Becker, Hagen, Koerber, Schmitt & Volkmuth

NAYS: Willenbring

ABSTAIN: Palmer

Motion passed on a 5 to 1 vote with one abstention.

Paul Wenner 21103 Grand Lake Road was present to enter his appeal into the record stating that he is not going to develop it.

Motion by Member Volkmuth, second by Member Becker, to close the public hearing at 7:49 p.m.

AYES: Becker, Hagen, Koerber, Palmer, Schmitt, Volkmuth & Willenbring.

Motion passed on a 7 to 0 vote.

Mayor Hagen asked if it safe to say that there are not a lot of objections to the project.

Member Volkmuth indicated that even if we go ahead with this tonight there still is another hearing to deal with the assessments. Are we better off dealing with it on the assessment policy or on a case by case basis?

Member Willenbring stated that Section 1 Subd c of the assessment policy reserves the right for the council to change assessments without changing the policy for situations that unlikely to occur in the future.

Scott Hedlund stated that there are three parcels affected (Wenner, Palmer, & Grell's). If Fowler Road becomes public and no improvement is made the Klein's would not be assessed. If it remains private all would be assessed.

Member Palmer explained there were two scenarios:

1) Fowler is private and all will be assessed for some portion of Grand Lake including the Klein's.

2) Fowler is public, but there are no improvements to it, then Grell's and Palmer's are assessed for Grand Lake because we have frontage. Klein's do not have frontage so they would not be assessed.

Scott Hedlund reported if Fowler Road is public and paved the estimated cost would be: 100' at \$1460 x 2 = \$2900 with the rest deferred. Wenner's was 255 front feet.

Paul Wenner asked why his wouldn't also be 200'.

Scott Hedlund stated it could be 200' and the rest deferred.

Member Volkmuth introduced the following resolution and moved for its adoption:

RESOLUTION NO. 2010-09

Resolution Ordering Improvement and Preparation of Plans

Grand Lake/Fowler Road Improvements

Rockville, Minnesota

WHEREAS, a resolution of the city council adopted the 12th day of May, 2010, fixed a date for a council hearing on the proposed road improvement:

**Grand Lake Road – West property line of house at #11056 to Agate Beach Road
Fowler Road – in its entirety**

WHEREAS, the City Engineer has provided a report advising the Council in a preliminary way as to whether the proposed improvement is necessary, cost-effective, and feasible; and as to whether it should best be made as proposed or in connection with some other improvement; and includes the estimated cost of the improvement as recommended.

WHEREAS, ten days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was held thereon on the 19th day of May, 2010, at which all persons desiring to be heard were given an opportunity to be heard thereon,

AND WHEREAS, a reasonable estimate of the total amount to be assessed, and a description of the methodology used to calculate individual assessments for affected parcels, was available at the hearing.

NOW THEREFORE, BE RESOLVED BY THE COUNCIL OF THE CITY OF ROCKVILLE, MINNESOTA:

- 1. Such improvement is necessary, cost-effective, and feasible as detailed in the feasibility report.**
- 2. Such improvement is to be bid two ways:**
 - a) Fowler Road is public and no actual improvements are made (Scenario 3)**
 - b) Alternate Fowler road is public and improvements are made (Scenario 1)**
 - c) The intent is to limit the current/initial assessments to 200' with the remaining adjusted assessable footage being deferred until certain conditions are met.**
- 3. Short Elliott Hendrickson Inc. (SEH) is hereby designated as the engineer for this improvement. The engineer shall prepare plans and specifications for the making of such improvement.**
- 4. The city council declares its official intent to reimburse itself for the costs of the improvement from the proceeds of the tax exempt bond.**

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

AYES: Becker, Hagen, Koerber, Palmer, Schmitt, Volkmuth & Willenbring.

Motion passed on a 7 to 0 vote.

Member Willenbring asked if we need to do soil borings on Fowler Road – yes

Member Willenbring asked if we need to add a turn around – no

Scott Hedlund asked if the plans and specs should include staking & grading. Discussion was held regarding how much engineering would be involved.

Member Willenbring had a number of concerns and asked for permission to meet with the engineer to discuss those concerns. Approval was given.

Member Koerber left at this point

ADDITIONS TO THE AGENDA

LION'S CLUB REQUEST FOR ONE DAY GAMBLING LICENSE - 7/10/10

Motion by Member Volkmuth, second by Member Willenbring, to approve the one day gambling license for the Lion's Club on 7/10/10 as requested.

AYES: Becker, Hagen, Palmer, Schmitt, Volkmuth & Willenbring.

Motion passed on a 6 to 0 vote.

PLEASANT LAKE DRAINAGE IMPROVEMENT – One bid was received:

Gene Lange & Sons Excavating, Inc. \$11,899.50

Motion by Member Volkmuth, second by Member Becker, to approve the low bid of Gene Lange & Sons Excavating, Inc. in the amount of \$11,899.50.

AYES: Becker, Hagen, Palmer, Schmitt, Volkmuth & Willenbring.

Motion passed on a 6 to 0 vote.

Open forum brought no one to the podium.

ADJOURNMENT – Motion by Member Volkmuth, second by Member Schmitt, to adjourn the meeting at 8:16 p.m. Motion carried.

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

**JEFF HAGEN
MAYOR**

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