



**City of Newport  
City Council Minutes  
May 05, 2016**

**1. CALL TO ORDER**

Mayor Geraghty called the meeting to order at 5:30 P.M.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**Council Present** – Tim Geraghty; Tom Ingemann; Bill Sumner; Tracy Rahm; Dan Lund

**Council Absent** –

**Staff Present** – Deb Hill, City Administrator; Fritz Knaak, City Attorney; Larry Osterman, Sergeant;; Jon Herdegen, City Engineer

**4. ADOPT AGENDA**

**Motion by Sumner, seconded by Rahm, to adopt the Agenda as amended. With 5 Ayes, 0 Nays, the motion carried.**

**5. ADOPT CONSENT AGENDA**

**Motion by Ingemann, seconded by Sumner, to approve the Consent Agenda as amended, which includes the following items:**

- A. Minutes of the April 21, 2016 Regular City Council Meeting
- B. List of Bills in the Amount of \$140,541.89
- C. 2016-2017 Liquor License Renewals

**With 5 Ayes, 0 Nays, the motion carried.**

**6. VISITORS PRESENTATIONS/PETITIONS/CORRESPONDENCE**

**7. MAYOR'S REPORT**

**Mayor Geraghty** – On the 22<sup>nd</sup> of April I attended the recycling and energy center where they unveiled their new logo and name, about 75 people attended. So that joint effort between Washington and Ramsey County is going forward. I also attended the house hearing on the tax increment financing, the HRA is working with Senator Rest's staff as far as modifying our request by narrowing some of the areas and reducing the ask a little bit. I think we've still got the primary areas that we want in there. I don't know where it's going to go if anywhere in this session or not but we did meet with staff and they asked that we refine it or tweak it.

**8. COUNCIL REPORTS**

**Councilman Ingemann** – I too attended the renaming of the recycling and energy center.

**Councilman Sumner** – I wanted to thank everyone that showed up to help make the Stone Soup Superbowl a great success and thanks to everyone that attended. We will be having another one, our 9<sup>th</sup> one is coming up soon. A resident stopped me and asked me if I could mention the fact that up on the north end of town, the Royal Tire

Agenda for 05-05-16

area, they're dropping off tires at night and there's a lot of noise associated with that if that's something we can look into.

**Mayor Geraghty** – I referred that to the Sheriff's Dept. so he's aware of it.

**Admin. Hill** – I'll be calling about it on Monday too.

**Councilman Lund** – I attended the Stone Soup Super Bowl and it was a pretty fun event. I also went to the renaming of the RDF Plant and as always I put in a plug for improvements and smell mitigation efforts with Commissioner Bigham and she was very receptive to that so I appreciate her work in that regard.

## 9. ADMINISTRATOR'S REPORT

A. **Public Hearing** – To consider a request for an Alley Vacation for the alley located between 7<sup>th</sup> Street and 8<sup>th</sup> Street and 3<sup>rd</sup> Avenue and 4<sup>th</sup> Avenue.

1. **Resolution No. 2016-18** – Authorizing the vacation of an alley between 7<sup>th</sup> Street and 8<sup>th</sup> Street and 3<sup>rd</sup> Avenue and 4<sup>th</sup> Avenue.

Admin. Hill presented on this item as outlined in the May 5, 2016 City Council packet.

**Motion by Sumner, seconded by Lund, to adopt Resolution No. 2016-18 Authorizing the vacation of an alley between 7<sup>th</sup> Street and 8<sup>th</sup> Street and 3<sup>rd</sup> Avenue and 4<sup>th</sup> Avenue. With 5 Ayes, 0 Nays, the motion carried.**

10. **ATTORNEY'S REPORT** – Nothing to report

11. **WASHINGTON COUNTY SHERIFF'S OFFICE REPORT** – Nothing to report

12. **FIRE CHIEF'S REPORT** – Not present

## 13. ENGINEER'S REPORT

A. 15<sup>th</sup> Street and Cedar Lane Storm Sewer

Engineer Herdegen presented on this item as outlined in the May 5, 2016 City Council packet.

**Mr. Richardson, 1485 Cedar Lane** – At the last meeting I attended in the fall we had agreed that it would have to wait until spring and obviously we've had a lot of rain this spring already and things are continuing to deteriorate on my property and I'm just hoping that something moves forward with it without pushing it back any farther.

**Councilman Sumner** – Can you describe the current situation? I stopped down there after the last meeting and it looked like the grass was starting to come in. Is the main concern that the grass is being eroded? It's not flooding your house or your basement is it?

**Mr. Richardson, 1485 Cedar Lane** – No, when the flow comes down 15<sup>th</sup> onto Cedar and flows into that depression between mine and my neighbor's driveway which is kind of dead grass per say. It flows all the way across my yard and down, if it's a heavy rain, into my buildings which are on the down slope of my driveway. It is eating the edge of my driveway away slowly breaking apart. It is eroding my lawn because rocks are being exposed more and more, I have a tree that has roots being exposed now and that's right next to a power line that runs down through the neighborhood. There's a concern over time that the tree is going to come down with the power line which will create problems for my neighbors and me. It's probably going to fall on my building and who knows what's going to happen with the electricity. I cannot proceed with improving my lawn with this problem because I've tried it before. I've put in some new sod right along my driveway to help alleviate that. The first heavy rain we got, all of that sod ended up going across my yard because it flows quite heavily when it comes down and basically congregates as it comes across my driveway.

Agenda for 05-05-16

**Councilman Sumner** – Is there anything else that can be done on your side? Can you put a swale in there to pull it? I know that in tough areas they put matting down when the seed is establishing itself.

**Mr. Richardson, 1485 Cedar Lane** – I did put some of that on a small berm that when I first noted the erosion that went down into my yard too. I staked it with wood stakes, I've done a lot of things and it's getting worse because I'm starting to get swales in my yard from just the sheer amount of water that's running through it. The one berm I have that goes from the flat area down to where I have my buildings, I've estimated that I've lost 2 inches of dirt around that berm because it just flows across there so fast. During heavy rains I have one poll building that is a little bit to the east and higher than another structure and when it rains heavy I get water in that structure too.

**Councilman Lund** – The solution we have from our engineer is about \$25,000 which is certainly a big chunk of money. I understand that your position is that it's the street construction that created the problem but if the city were to construct and maintain a swale across your property and give you some kind of compensation for an easement do you think we could get a solution that comes in under that \$25,000?

**Mr. Richardson, 1485 Cedar Lane** – Well it's a partially incorrect statement. The street improvements accentuated the problem that was there. It seemed to only happen when we had those really heavy rains. Now it's almost every rain, the puddles form and water flows across my yard. From the perspective of putting swales in, I would be willing to bet that those would erode away as well.

**Councilman Lund** – It'd have to be rock or concrete.

**Mr. Richardson, 1485 Cedar Lane** – I'd really prefer not to have that in my yard.

**Councilman Lund** – So we're at \$25,000 right now so that's kind of a lot to work with.

**Councilman Sumner** – For one problem.

**Councilman Lund** – If we manufacture a swale we could at least aim it to an area that's more acceptable.

**Mr. Richardson, 1485 Cedar Lane** – What would the city engineer think of that thought?

**Engineer Herdegen** – There's certainly grade, obviously the water is getting from your driveway across to your yard and to the backwater of the river there so there would be grade to do that. I think a concrete swale would be pretty intrusive. There is reinforced matting that allows grass to grow through there that we could use to reinforce this area, they do it on a lot steeper slopes than this. It certainly can be done, cost wise I'm guessing if you're only doing surface grading I think it's a cheaper alternative. It also alleviates the concern of water coming back up the storm sewer and the rim elevations being below our flood stage. It is a possibility, the difficulty comes when trying to navigate around his buildings and there's a driveway down there. So you're also crossing a driveway before it gets to the backwater so something would have to be done there. It's a gravel driveway. I think a culvert would work but I don't think you have enough grade drop across the driveway.

**Councilman Ingemann** – If the water comes up then those buildings are surrounded by water anyhow.

**Mr. Richardson, 1485 Cedar Lane** – Out of the two buildings, one is lower in elevation and that one each year gets a little water in it, I know that. The upper building in the 7 years I've been there has had water in it once.

**Councilman Ingemann** – I've seen water around it a bunch of times.

**Mr. Richardson, 1485 Cedar Lane** – One concern I would have is a manufactured swale is when I go to improve utilities into the two structures I have or in the relatively near future put in a sprinkler system in my yard. Now I have to deal with this swale and how it gets repaired and is that my responsibility if I dig it up?

Agenda for 05-05-16

**Engineer Herdegen** – Yes the city would want to get an easement to construct the swale and any improvements across that easement would be subject to removal and reinstallation at his cost if it impacted the drains and utilities easement.

**Councilman Lund** – At least for irrigation we can lay a pipe underneath it and it shouldn't be a big deal.

**Mr. Richardson, 1485 Cedar Lane** – That's one reason why I don't have an irrigation system yet is because of the drain problem.

**Councilman Lund** – I'd rather not spend \$25,000 that doesn't help us that much.

**Mayor Geraghty** – How long would this swale be there? Pretty long right? How much savings would we have?

**Engineer Herdegen** – The other consideration is that we would have to do some survey work in the area as well as do a boundary survey so we can identify an easement. That design work is probably going to be about \$5,000 but it wouldn't be a chunk that'd be spent on the other fix. As far as the length....

**Councilman Lund** – Can we do a contract instead of a recorded easement and not go through that level of formality. We plan to give up this easement in 25 years when we redo Cedar Avenue.

**Mr. Richardson, 1485 Cedar Lane** –I plan to be here for 25 years.

**Councilman Lund** – We're wondering if she can ask whether we can put a swale across the homeowner's property and have the city be responsible for maintaining it and accomplish that with a contract given we don't expect this to be a permanent situation for when we redo the street at some point.

**Attorney Knaak** – Yes you can get a temporary easement.

**Councilman Lund** – Do we need a full blown survey for that?

**Attorney Knaak** – No, if you can describe it sufficiently.

**Councilman Lund** – What do you think the construction costs of that 270 ft. swale are?

**Engineer Herdegen** – It would certainly be less than half but then you also have the concern of maintenance and getting the grass to grow there. I don't know if that would be part of the agreement we have with the owner is that we put down as much seed as we possibly can and he makes sure that it gets watered.

**Councilman Lund** – Do you think it could potentially be accomplished?

**Engineer Herdegen** – My biggest challenge would be getting in and out of the trees around there because in order to have that defined swale we're going to have to be excavating root systems and if there are exposed roots and that's obviously where the water's going now, it may be the best spot to put the soil and I'm not quite sure what the damage to those trees would be.

**Councilman Lund** – The advantage of having a swale across your property is that it takes care of the whole runoff problem.

**Mr. Richardson, 1485 Cedar Lane** – How does that fix my driveway though?

**Engineer Herdegen** – Without knowing what the specific grades are there...I'd like to go underneath your driveway and come out the other side or we would do some kind of concrete apron there that would allow water across the driveway. At the low point where the two driveways are in the road, that's pretty flat and the water spreads out quite a distance. It has to get through his yard 50 feet before it starts to drop off so when you don't

Agenda for 05-05-16

have a grade to work with it's going to be challenging to get a swale in. There would be some design costs in there.

**Mr. Richardson, 1485 Cedar Lane** – If we were to go this route I would want a stamped survey for my property. It's not my first choice but as long as the city is going to have some kind of future responsibility in there.

**Councilman Sumner** – We also have a concern because we have a second person involved that we're pushing water further out toward the river. Any agreement we propose with Mr. Richardson is entirely dependent on agreement with the second party I would think right? We haven't had any comments from them have we?

**Engineer Herdegen** – Aside from what Mr. Richardson has said in passing I have never talked to them. I think their impact is considerably less aside from the integrity of the road or the shared driveway but you are correct that we haven't talked to them.

**Councilman Sumner** – I think we need to do that before we proceed. I don't want that person to come in a year from now with a concern.

**Mayor Geraghty** – It would have to be demonstrated to me that there's substantial savings because in the long run I think we're opening ourselves up to more liability if it doesn't work.

**Councilman Sumner** – Even if we do the proposal from the engineer we have the concern of the water level of the river coming up and back flooding. Is that correct?

**Engineer Herdegen** – We'd put a flapper valve on the system so ideally if it's functioning that should prevent any water from backing out and coming above ground at this location but those flapper valves are not 100% fool proof but we do have an isolation valve that in times of flood we can go and close the valve and be sure it doesn't come up.

**Councilman Sumner** – But if we have a flood and a big rain at the same time none of that water is going to go into the storm sewers correct?

**Engineer Herdegen** – Yeah the storm sewer would not be sized to handle the capacity.

**Mayor Geraghty** - Where's the current catch basin on 15<sup>th</sup>?

**Engineer Herdegen** – The closest catch basin is on 2<sup>nd</sup>.

**Mayor Geraghty** – How come we didn't design it to put some in?

**Engineer Herdegen** – Two reasons, the elevation would have been below the flood elevation and it would have left the city with more exposure to water head coming up at that location. If we went to 2<sup>nd</sup> Avenue, that's about 6 feet higher than this location and that's where the farthest extent of where the catch basins were so yes we could have put a flapper valve on the original design and possibly not made the problem worse. Secondly, the existing catch basins at 2<sup>nd</sup> were in the shoulder. Here we had catch basins that are in the curb line that we felt were going to be much more effective at collecting storm water runoff from areas to the east of 2<sup>nd</sup>. The area between 2<sup>nd</sup> Avenue and Cedar has been widened and has curb and gutter which likely aggravated the problem.

**Mayor Geraghty** – So it's all coming down at the bottom now right?

**Engineer Herdegen** – Yes but again I didn't feel comfortable adding catch basins where they weren't already particularly at an elevation lower than the flood elevation.

**Councilman Sumner**– I say we need to get some more numbers and have a discussion with the second individual involved.

Agenda for 05-05-16

**Councilman Lund** – Are there pipes under 15<sup>th</sup> there that run all the way down to Cedar?

**Engineer Herdegen** – Storm water pipe is along the north half of 15<sup>th</sup> Street and continues west to the river. There's no storm sewer on Cedar going north or south.

**Councilman Lund** – So we already have a pipe on the north side and nothing on the south side but we'd put the catch basin on the south side?

**Engineer Herdegen** – The pipe that we would use to connect the new storm sewer would be laid in the boulevard on the west side of Cedar so we would minimize the pavement reconstruction necessary on Cedar.

**Councilman Lund** – So we'd put the catch basin on the west side of Cedar?

**Engineer Herdegen** – We'd put catch basins on both sides of Cedar. We would still allow water to come off of 15<sup>th</sup> and go south along the west side of Cedar and we would place catch basins on the west side of Cedar, place another one across Cedar on the east and then go north.

**Councilman Sumner** – Mr. Richardson how do you handle it when the river comes up? Do you just move everything out of those buildings down below?

**Mr. Richardson, 1485 Cedar Lane** – Every spring we plan on not going on vacation. Throughout March yeah we drag out lawn mowers, boxes, etc. and move them up into our other building or the front yard and wait for it to go back down.

**Councilman Rahm** – I've driven by there and I've seen it come up pretty high. Does it affect your main living building there?

**Mr. Richardson, 1485 Cedar Lane** – I've been told that since 1965 it's never had water in it. It's been in the driveway once. The foundations are settling on my "barn shaped" building. I'm going to have to redo that building in the next "x" amount of years because of the water.

**Councilman Rahm** – Is the power up high?

**Mr. Richardson, 1485 Cedar Lane** – No it's in the ground. I've had concerns with trees and the power line going across my structure and Xcel energy said that it's a \$10,000 repair that you can pay for.

**Councilman Rahm** – My concern is that no matter how much we fiddle around there, can we guarantee that we're going to get all that water?

**Councilman Lund** – Our responsibility isn't to get all of the water it's to not make it any worse.

**Councilman Rahm** – I think that the real solution is in the future when you redo that street and put in storm sewers. That's the real solution here and anything else you don't know.

**Councilman Lund** – Yeah that's why I prefer to spend the least amount of money at this point.

**Mr. Richardson, 1485 Cedar Lane** – I understand that you can't get 100% of the water but if it was 90% of it I'll deal with the rest but I can't deal with that 100% when I walk out to my mailbox during a heavy rainstorm and I walk through 3 inches of water coming across my driveway.

**Councilman Sumner** – I think we should follow-up in 2 weeks and have a presentation that we can all see on a board.

**Mr. Richardson, 1485 Cedar Lane** – Either that or in two weeks you can just meet at my driveway.

Agenda for 05-05-16

**Councilman Sumner** – It'd be helpful for me if you had video taken during a rainstorm.

**Mr. Richardson, 1485 Cedar Lane** – I believe the utility dept. has done that. We've seen utility trucks out there during heavy storms.

**Engineer Herdegen** – It should be stressed that this is not a 100 year design, the pipes that we would be using here would not carry a 100 year storm. Quite frankly the 15<sup>th</sup> Street storm sewer is not designed for a 100 year storm. Generally they're designed for a 10-year storm and I think that might be generous at this point. I want to be clear that this isn't a foolproof solution. There will be a rainstorm that exceeds the capacity of this system.

**Mayor Geraghty** – Yeah but it's more of the constant stuff that's the problem.

**Engineer Herdegen** – I think that this would address probably up to a 3 or 4 inch storm where we could at least have an outlet for the water and not inundate the yard so if we think of that as a 10-year storm, he'll have water in his yard once every 10 years instead of 10 times each summer.

**Councilman Lund** – Under what conditions do we expect to shut that isolation valve?

**Engineer Herdegen** – When water would exceed flood stage.

**Mr. Richardson, 1485 Cedar Lane** – I've even offered up to John in different conversations that if the system went in this way I would even volunteer to help keep it clean to make sure it works and stays working.

**Councilman Lund** – Is any of this infrastructure useful when we reconstruct Cedar?

**Engineer Herdegen** – I wouldn't count on it. When you reconstruct Cedar I would recommend that you find a different outlet and not tie into the 15<sup>th</sup> Street storm sewer unless that was upsized at that point. We would most likely be going back to Mr. Richardson at that time and find a piped solution out to the river.

**Mr. Richardson, 1485 Cedar Lane** – That was one option I first presented but John had indicated that it would probably be more expensive than what he is showing here.

**Engineer Herdegen** – I think that it definitely would be and involve some significant tree removal.

**Councilman Lund** – So if we did this would you be willing to absolve the city of liability for this water coming from the street reconstruction?

**Mr. Richardson, 1485 Cedar Lane** – In what form? I would have to hire counsel to review it and make sure that they'd be happy with it on my behalf.

**Councilman Lund** – We can predict that whatever we do we cannot stop the water, correct? That's when we have to shut that valve and without a contract he's got the same claim he's got now which is that our street reconstruction is what caused the problem. So if we're going to spend \$25,000 it'd be nice to get rid of that potential liability altogether.

**Attorney Knaak** – Yes.

**Mr. Richardson, 1485 Cedar Lane** – Could the city attorney word that in a way to eliminate all future potential issues though? I'm just asking that you put forth the effort and fix the drainage problem and I'll deal with the amplified rains when that happens but I won't have to deal with the constant water across my yard. I can move forth with my yard work I want to do.

**Councilman Lund** – It's a lot better for the city if we don't have a liability hanging over our heads.

Agenda for 05-05-16

**Mr. Richardson, 1485 Cedar Lane** – If you want me to sign something I'll look at it but with the agreement I'd also like it to get done quickly not in 2 years.

**Mayor Geraghty** – Let's draft a resolution to authorize the project and then have a liability waiver drafted by you for him to review and I'm assuming that if it's satisfactory to us and yourself we would move forward quickly. May 19 we will make a decision.

**Councilman Sumner** – Do we need to have the 2<sup>nd</sup> party involved?

**Engineer Herdegen** – No I don't believe so. We received some comments back from the health department on the wellhead protection plan and we're going to respond to those and get them resubmitted.

**Mayor Geraghty** – Nothing major?

**Engineer Herdegen** – They had asked for things that they hadn't asked for in the guidance documents that we followed and now they're asking for them so they're kind of changing the rules on us but we'll get it submitted here shortly.

**14. SUPERINTENDENT OF PUBLIC WORKS REPORT** – Not present

**15. NEW / OLD BUSINESS**

**16. AT THE REGULARLY SCHEDULED PUBLIC CITY COUNCIL MEETING OF MAY 5, 2016, THE COUNCIL WILL CLOSE A PORTION OF THE MEETING FOR THE PURPOSE OF DISCUSSING PENDING LITIGATION WITH THE CITY'S LEGAL COUNSEL. THIS PORTION OF THE MEETING WILL BE CLOSED PURSUANT TO THE PROVISIONS OF THE MINNESOTA OPEN MEETING LAW RELATED TO ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS. MINN. STAT. §§ 13D.05, SUBDIVISION 1(d) AND SUBDIVISION 3(b).**

**Attorney Knaak** – I would just like to add for the record that this involves an insurance claim by a former employee.

**Mayor Geraghty** – At this time we will close the meeting and after dealing with the business we will come out of a closed session and I will immediately adjourn the meeting so there will be no further action after we come out of the closed meeting.

The City Council closed the meeting to the public at 6:23 p.m.

The City Council discussed the pending litigation with the city's legal counsel regarding an insurance claim by a former employee.

The City Council opened the meeting to the public at 7:13 p.m.

**17. ADJOURNMENT**

**Motion by Ingemann, seconded by Geraghty to adjourn the regular City Council meeting at 7:13 p.m. With 5 Ayes, 0 Nays, the motion carried.**

Upcoming Meetings and Events:

- |                                       |              |           |
|---------------------------------------|--------------|-----------|
| 1. Library Advisory Committee Meeting | May 24, 2016 | 5:00 p.m. |
| 2. Planning Commission Meeting        | May 12, 2016 | 6:00 p.m. |
| 3. City Council Meeting               | May 19, 2016 | 5:30 p.m. |
| 4. Library Advisory Committee Meeting | May 24, 2016 | 5:30 p.m. |

Agenda for 05-05-16

Signed: \_\_\_\_\_  
Tim Geraghty, Mayor

Respectfully Submitted,

Andrew Brunick  
Administrative Intern/Administrative Assistant