



**City of Newport  
City Council Minutes  
August 7, 2014**

**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; Steven Gallagher

**Council Absent** –

**Staff Present** – Deb Hill, City Administrator; Bruce Hanson, Supt. of Public Works; Curt Montgomery, Police Chief; Mark Mailand, Fire Chief; Renee Eisenbeisz, Executive Analyst; Fritz Knaak, City Attorney; Jon Herdegen, City Engineer;

**Staff Absent** –

**4. ADOPT AGENDA**

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

**5. ADOPT CONSENT AGENDA**

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

- A. Minutes of the July 17, 2014 Regular City Council Meeting
- B. List of Bills in the Amount of \$299,191.58
- C. **Resolution No. 2014-36** - Accepting Donations for the Period of July 15 - August 4, 2014
- D. **Resolution No. 2014-37** - Approving a Deferment Request for the 2014 Street Assessment for 1250 Kolff Court
- E. **Resolution No. 2014-38** - Approving a Deferment Request for the 2014 Street Assessment for 1412 3rd Avenue
- F. Authorizing Pipe Services to Perform 2014 Sewer Televising and Cleaning at a Cost of \$22,417.20

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

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

**Pauline Schottmuller, 97 10th Street** - I live next door to the Grove Street Overlook where the Council recently voted to erect a four foot fence. My comments tonight are for Tracy and Steve and the people out there in TV land. I don't have any questions and am not here for an argument. I'm going to read my statement and go home and whatever you would like to say you can say after I've left. For 59 out of my 61 years, I have lived either 1/2 a block away or adjacent to the Grove Street Overlook. Since 1974, 40 years, I have maintained that park, picking up the trash, mowing the grass, weeding, gardening, mulching, planting, I even haul over my own hose and water it. When I was elected in 1998, I made renovating the Overlook a priority. Grove Street has always been a heavily used River access and now it's attractive. No one in Newport, no one in Newport, is more familiar with that Overlook than me. I have a few other credentials, I have a B.S. in Parks and Recreation Administration. I also earned a water safety instructor certification. I'm serving my second, third-year term on Washington County's Park and Open Space Board. I know a few things about parks. What I know about that park and fence is that it will destroy people's enjoyment of that overlook. People are always sitting on that bottom wall to fish, watch boats, river watch, to relax. There are two benches but people prefer the wall. Sitting there will no longer be

possible. This is coming dressed up as a safety and insurance issue. The Overlook became an official overlook in 1932/1933, that's 82 years. 82 years people have enjoyed that access without any accident of any kind, that's a remarkable safety record. I don't want people to think that I'm unmindful of the tragedy of drowning. My brother drowned in the Mississippi in the 1100 block of 2nd Avenue. For the duration of my parents lives, I had a front row seat to their unending grief. I understand the impulse. Remember that young woman who lost control of her car and her and her young children drowned in a retaining pond. Some people called for fences but that's not going to happen. Hundreds of thousands of drivers every year safely negotiate such areas, fences aren't warranted, not around retaining ponds and not around overlooks. The HPC was in charge of the renovation in the 1990's, early 2000's. A fence at that time was discussed and rejected. Neither the HPC nor the Parks Board were consulted this time and I believe that was deliberate on the part of Tim Geraghty because he doesn't like to deal with opposing points of view. The League of MN Cities said no to the fence during renovation. Fences can be dangerous because kids climb them. I had my two grandkids at a State Park and we're heading down to a beach and there's a gate across the service road, my husband and I went along the footpath but the kids climbed over the fence both ways. Go to any playground, what's there, climbing equipment. Bruce told me that he has ordered a fence that he believes would be difficult to climb, but a difficult fence to climb means it's an easy fence to fall off of. Any child or teenager falling off in the River side will fall on to rocks, deep water is several feet out. A fall on to the rock, about eight feet, means a closed head injury, traumatic brain injury, C1 through C5 cervical fracture which could cause death or paralyzation. Another credential, for 11 years, I was a neuro intensive care nurse. This is not a safety and insurance issue because Tim doesn't care about safety and insurance. If he did that dangerous, so-called fishing pier at the end of 6th Street would never have gone in. Nor would he still be promoting the end of 6th Street as River access. It looks like a gentle, inviting place to wade or swim in to but boats are there and there are dangerous drop-offs and the current is strong there. Plus all of the kids that frequent Pioneer Park that are unsupervised, where do you think they are going to go, the end of 6th Street with no adult. If it wasn't for the vigilance of the Chapdelain's who have called the Police on a number of occasions and removed kids from the water, we could have had a drowning there already. That doesn't happen at the Grove Street Overlook because it's teenagers and families that come to fish. Last night, there were two cars parked so I went to look and it's a family fishing and the little girl is not more than four feet tall but she has her fishing rod and they spent the whole evening fishing. You put a four foot fence there and the little girl will not be able to go fishing. Let's talk insurance. The League of MN Cities insures Newport and just like policies homeowners carry, certain things can raise and lower premiums. We had looked at a skateboard park in Newport and the impact on insurance premiums. A skateboard park that won't raise premiums is pretty boring and we couldn't afford to raise the premiums at that time when we were pinching every penny. Cities that do have those facilities see this as part of the service they are providing to their residents. Now the League says that putting up a fence will lower our premiums, this is being touted as sound legal advice. Let's look at some legal advice that has been discussed before and I'm talking about the MN Statute that Fritz produced that justified not having our Community Center and Library open on certain major holidays like Christmas and Martin Luther King Day. The Statute looks pretty straight forward but laws are written by lawyers and there's always a gray area and the gray area in that law is except for essential services. There were court challenges, I called the Attorney General's Office. I said, why is it, think about it, even State Parks are open with State employees on the fourth of July, that's against the State Statute if you believe Fritz. Every community center except ours is open on holidays. When I called one center and asked if they were open they said "Are you kidding, that's our highest attendance day, why wouldn't we be?" How do you get around it? Other people had that question and there were court cases and challenges and the State Supreme Court said essential services, well define that. The State Supreme Court said that whatever the city deems as essential is essential and that's why every community center in the State of MN is open on Martin Luther King day is open except ours. Now let's look at some League doings and I'm talking about that Ludwig Award. Tim Geraghty had Brian Anderson write the recommendation and he wrote mostly about Tim's...

**Mayor Geraghty** - I did not ask him to write that...

**Ms. Schottmuller** - You are going to let me speak. Brian Anderson wrote it did he not?

**Mayor Geraghty** - He wrote it but I didn't ask him to.

**Ms. Schottmuller** - So he wrote it and sent it in just under the deadline so there wasn't time for public comment on it. Public comment came anyway and the response that I got from the League is that they now understand that they got a black eye from what they did. Tim is a constant con-artist, he always games the system and Tracy, you and Steve were conned. Let's look at reality, just like every other community center can have their facilities legally open on those holidays

and staffed by employees, every other city, township, county and State, celebrates our rivers, lakes, ponds, creeks, etc and looks for ways for the public to use them. How many examples do you want me to stand here and give? Is Lake Como fenced, the trails across the river fenced? During the high water, St. Paul paper ran a picture of a mom and toddler that were standing on the steps on Harriet Island that go right down to the river's edge. I thought that it was interesting that they don't even close that off when the river's up. Why can't Newport do what other municipalities do? My contention is because we have what other communities don't have, Tim Geraghty as Mayor. What is this really all about?

**Mayor Geraghty** - It's about you and your vendetta.

**Ms. Schottmuller** - It's about payback for me forcing the removal of the non-ADA compliant fishing pier and for obtaining the State's opinion that he violated the State's open meeting law. The fishing pier was retaliation against Kevin Chapdelain and this is more retaliation. When I went to the State and Federal Government, I used my own money, Tim Geraghty is using property tax dollars and staff time and City resources for his actions. The fishing pier was more than the \$3,000 to purchase and getting it into the water and modifications and staff time. The fence is custom-made and is costing between \$3,000 and \$4,000 to purchase, that's corruption. I will do two things to underscore this corruption. First, I'll be taking out all of the plants that I have planted and purchased. I went over the garden with John Neska the other day so he knows. Some plants are too large so I'll leave them but 50% will be gone. Nor will I weed or mulch or water. Soon it will be a patch of weeds and the Virginia creeper will smother the hedge that was donated by the Bailey's. I just spent six hours hacking away at it and that was the third time this year. The first time, I spent an entire weekend. No more, I'm done, you've ruined it. Secondly, I'll put up two signs, one on the fence and one on my property giving full blame of the fence to Tim with his contact information and asking people not to vote for him in 2016 and to please not vote for Dan Lund this November because he's nothing more than a Tim Geraghty lackey and we already have two of them on the Council and don't need any more. I thank you for your time.

**Mayor Geraghty** - Anyone want to comment?

**Councilman Gallagher** - I actually voted against it.

**Councilman Ingemann** - I think we should close the Overlook.

**Mayor Geraghty** - We can discuss that at another time.

**Councilman Sumner** - Can she take those plants out?

**Mayor Geraghty** - And she can't put up a sign on the fence either.

**Attorney Knaak** - That would be my initial reaction but I haven't been formally asked and I would suggest this would not be an appropriate time.

**Councilman Sumner** - I'm asking for the public then.

**Attorney Knaak** - They are fixtures on that property.

**Mayor Geraghty** - I'm concerned about the slander and comments about corruption. There's no truth to that whatsoever. I'm denying them, I've been in public office for 31 years and I don't think anyone can con people that long. I've served with integrity and done my best for the City and I don't believe people would have re-elected me consistently. It's slanderous in my opinion.

**Attorney Knaak** - Your only recourse is to speak towards it.

**Mayor Geraghty** - For the \$3,000 for the fence, how much did we put in for the Overlook for Pauline's design? I thought it was \$20,000 to \$30,000.

**Councilman Ingemann** - If I remember right, donations paid for the pier.

**Mayor Geraghty** - She's complaining about the fence. It was at least \$20,000 wasn't it Bruce?

**Superintendent Hanson** - Yes, somewhere in there.

**Councilman Sumner** - I resent being called a lackey, I'm here to serve.

**Councilman Ingemann** - Consider the source Bill.

**Councilman Sumner** - I am but I want to make a public comment in regards to that statement.

**Paul Hansen, 1925 10th Avenue** - 13 years in Newport and I'm here about the sod issue again. What's the holdup? I paid for that sod last year. I talked with Mike McNamara and he could care less. I think we're on the verge of breach of contract if someone don't get their rear-end in gear and get this dealt with. I'm going to continue to come here until my yard is back to the way it was before McNamara tore it up. Also, I wanted to file for office and was told that I could not take the packet from City Hall. Is there some sort of ordinance that's preventing this because I've always taken it home to fill it out. I want to know the reason I can't do that today.

**Executive Analyst Eisenbeisz** - We were advised by Washington County because we only have so many packets to hand out to have them fill them out at City Hall so that we don't run want because sometimes people take them and don't return them.

**Mr. Hansen** - Why can't you get some more?

**Executive Analyst Eisenbeisz** - They were only given so many.

**Mr. Hansen** - That's hard to believe. This is denying me my right to run for office.

**Mayor Geraghty** - You can fill out the form right here and we'll take it. It takes five minutes to fill it out. You don't have to take it home.

**Mr. Hansen** - I don't like the smell of it. I know you guys do whatever you want because you do. You had my as an ally but you don't anymore. I want to know why something can't be done about the drag strip at 10th Avenue and Barry Drive. They come down the hill like a bat out of hell and come down around. Mary can't get out, I have to help her to make sure cars don't ram into her. I had a Newport cop tell me years ago that they can't sit there and wait to see the violations because it would be discriminatory. Is upholding the law discriminatory? That came from Veid. I want to know what's going to be done about that drag strip and I'm going to keep coming back here until something is done about it. One last and final thing, everyone wants to know when this investigation is going to be over with. We're all anxious, we want to know what's going on and have a right to know. I'm very familiar with these investigations, a lot of the times, the feet are dragged so everyone can cover their butts. I hope that's not the case here. I think you need to get this in gear so the public knows what is going on. I'll be back on 10th Avenue and Barry Drive next meeting.

**Lynn Murray, 1130 Mark Court** - Last couple times I've been here I addressed the sod like Paul just did. Something that we just noticed, there is brand new cement in our driveway where they dug the hole for the gas shut-off, the surface of it is coming off. I'll reiterate what Paul said about the shotty work from McNamara. When they patched our driveway, the color was nowhere near the color we have which I'm not sure why. The surface is coming off now and the rocks are exposed, very shotty.

**Engineer Herdegen** - This is the first I've heard of any concrete issues.

**Mr. Murray** - We should have called, it's been getting worse in the last couple weeks. Not blaming you for not knowing. It seems like we didn't get our money's worth. I paid cash upfront even though the interest was higher than I would have gotten if I took out a personal loan, which I don't understand. The tar is still cracking all along Mark Court, it's not going to last 20 years like they said it would.

**Engineer Herdegen** - We'll take a look at the concrete issues. As for the sod, we talked about it at the last meeting and this is not the right time to place sod, it's too dry. They recommend placing sod after August 15 and we have communicated that to McNamara. It should hopefully be in before the next meeting.

**Wayne Meredyk, on behalf of 1453 3rd Avenue** - Is it ok if I approach and hand out pictures? (attached)

**Mayor Geraghty** - Yes.

**Mr. Meredyk** - What I just handed out is a photograph of what the entrance of that property looks like at this current time. I don't know if this is the proper place to address this but I wanted to ask if anyone has visited that construction site and seen the conditions of it are and the results. I want you to envision individuals in their late 70's walking out to their mailbox on a slippery snowy morning to get their mail. Anyone see any problem with this? What I would like to ask is, I know they are getting ready to put in curbs, I visited this weekend after my father indicated that they had graded the street and put stakes in for the curbs. If you look at the picture, you'll see where the stake is representing the top of the curb and where the driveway is now, there is going to be an incredibly steep entrance to that residence. I don't know any of the mechanics or decisions made to dig that street down that deep to create that situation but what I'm asking is, I can't imagine if anyone whose handicapped would be able to leave that property with that street entrance at the condition that it's being put in. Before this project, that street and driveway were completely flat with each other. My next question is, is there anyone here who cares and can help out to at least lighten the burden of the end results of this driveway?

**Engineer Herdegen** - The picture does not illustrate what the end result will be. The contractor has removed the street pavement and driveway pavement to do the work that they need to do. We're going around tonight and tomorrow to mark where we're going to saw cut the driveway and tie into it. For this particular driveway, the street did get cut about a foot lower than where it was to begin with but in order to fit our curb in and make sure the people on the west side had adequate drainage, we had to lower that street. That was part of the problem to begin with that water on third avenue stayed in the boulevard. In order to get that street drained, we had to drop this. This picture is a good representation of what the residents are having to deal with during construction. We're working with the contractor as best we can to ensure the residents can get in and out of their driveway without bottoming out. Unfortunately, these are problems we have to deal with. What's shown here will not be the end result, we're going to remove enough pavement so that there is a manageable slope.

**Mayor Geraghty** - Where did you think the top of the curb would be?

**Mr. Meredyk** - It shows in the picture, just in front of the date. There has to be at least a good foot and a half in elevation drop. Even if you were to consider making it handicapped accessible that driveway would need to get cut back considerably.

**Engineer Herdegen** - To be clear, the line you see on the stake, is labeled C5 which is the elevation of the class five, above that you have three and one-half inches of bituminous pavement and six inches of curb so you have almost nine inches above that line where the top of the curb will be. The apron will be placed four feet into the driveway and will be the same elevation of the curb. The back side of the apron and wherever we cut the blacktop will be filled in and that will be the end result. The line you see at the stake is not where the curb will be.

**Mr. Meredyk** - What do you anticipate the elevation change to be in that four feet?

**Engineer Herdegen** - Six inches in four feet. I would be happy to meet onsite and go over it with you.

**Mr. Meredyk** - I would appreciate that. Would you at least have the courtesy to talk with my father? He's at the age where he thinks that you're going to do what you're going to do and he can't change your mind. That's why I'm here tonight. All I'm asking is for you to take the time to meet with him and guarantee him that he won't have an unsafe driveway.

**Engineer Herdegen** - If you can leave his contact information and I would be happy to pass it on to our inspector, he'll

walk through everything with your father.

**Mr. Meredyk** - I'm surprised because there are several other neighbors who are unhappy with the street.

## **7. MAYOR'S REPORT –**

**Mayor Geraghty** - I attended National Night Out on Tuesday at Newport Lutheran. It was a good turnout and I would like to thank all of the volunteers. Also, Pioneer Day is on Sunday. The parade starts at 11:00 at 1st Avenue and 17th Street. Pioneer Day will go until 7:00 p.m. If you buy your button you can get free corn, at 5:30 there will be an Elvis impersonator.

## **8. COUNCIL REPORTS –**

**Councilman Rahm** - Nothing to report.

**Councilman Ingemann** - I was also at National Night Out.

**Councilman Sumner** - I also enjoyed the company of Newport residents at National Night Out. The Red Cross is desperately short of blood so please donate if you can. I'm looking forward to Pioneer Day.

**Councilman Gallagher** - Thanks to the volunteers that helped with National Night Out. It was nice to have all of the officers and fire fighters out. Please come out to Pioneer Day, it will be a lot of fun.

## **9. ADMINISTRATOR'S REPORT –**

### **A. Approval of the City's Strategic Initiatives**

Admin. Hill presented on this item as outlined in the August 7, 2014 City Council packet.

**Motion by Gallagher, seconded by Ingemann to approve the City's Strategic Initiatives with the caveat that the City Council review it every six months and directing the City Administrator to give it to the City's Commissions and Boards. With 5 Ayes, 0 Nays, the motion carried.**

### **B. Ordinance No. 2014-9 - Amending Section 811.07(E)**

Admin. Hill presented on this item as outlined in the August 7, 2014 City Council packet.

**Councilman Sumner** - These do include the permeable surfaces that I've been concerned with?

**Admin. Hill** - Yes.

**Councilman Sumner** - I had a comment on point 3.g, driveways must have three feet of landscaped separation between any adjacent driveways, do we know if there are any non-conforming driveways? Obviously, they would be grandfathered in?

**Executive Analyst Eisenbeisz** - Yes. That language was already in the Code, we just restructured it.

**Councilman Sumner** - Should we add language stating that they are grandfathered in?

**Admin. Hill** - Usually it's already covered.

**Attorney Knaak** - Yes.

**Motion by Gallagher, seconded by Ingemann to approve Ordinance No. 2014-9. With 5 Ayes, 0 Nays, the motion carried.**

## **10. ATTORNEY'S REPORT -**

### **A. Arbitration Settlement for Officer Freemyer**

**Attorney Knaak** - This has to do with Officer Freemyer's arbitration and we have a tentative agreement subject to your approval to resolve the matter in the amount of \$4,500. This is a halfway point between the calculated amount of benefit that he would have received if he prevailed and a substantially lower amount that the City thought the claim might have been worth. We've discussed this with the Labor Relations Committee and it seems that it's a reasonable offer and is less than the City would have spent by going through the arbitration process and it contains the issue to one officer. This complaint came up as a dispute related to the cap of sick leave. In this case, an individual had accumulated substantially more than that even though this was an ongoing policy. The argument was that the policy didn't apply in a case of a collective bargaining agreement where the agreement was silent, I didn't agree with that interpretation. There were some correspondences that would have provided some evidence in favor of that argument that gave the City an incentive to seek common ground. I had discussions with the attorney representing the officer and they accept that 900 hours is the cap, notwithstanding the silence on the topic in the agreement and this would be the buyout for this individual. It's my recommendation you accept this offer.

**Councilman Sumner** - This doesn't set precedence?

**Attorney Knaak** - No, this was the only individual.

**Mayor Geraghty** - What about Bruce or John or anyone else?

**Attorney Knaak** - They are not in the bargaining unit. This was arbitration.

**Mayor Geraghty** - Didn't we argue that the cap was there?

**Attorney Knaak** - Yes, they had some exposure too.

**Mayor Geraghty** - Why should we do this?

**Attorney Knaak** - It'll cost us more to arbitrate the case than the settlement.

**Mayor Geraghty** - What if the other employees come forward?

**Attorney Knaak** - There is no precedence, this really is unique. This is pure cost-benefit. I think the City's position was strong but there was a possibility that the City would not prevail and you would have been out \$8,000 or \$9,000 with the arbitration fees. My recommendation is that you take the offer.

**Councilman Sumner** - That's not based on sick time that he lost?

**Attorney Knaak** - It technically is. If he had prevailed, it would have been just under \$6,000.

**Mayor Geraghty** - Will he still have the 900 hours?

**Attorney Knaak** - Yes.

**Motion by Ingemann, seconded by Rahm to pay Officer Freemyer \$4,500. With 4 Ayes, Geraghty voting Nay, the motion carried.**

### **B. Discussion Regarding Previous Copier for City Hall**

**Attorney Knaak** - This item has to do with a copier that was previously here and was purchased with a company. The previous administration determined that they no longer wanted the copier and got a new one. The company is stating that

we are in violation of the lease and were asking for payment of \$,5400 for a copier that the City is not using. We've been going back and forth for at least a year. We determined that the City would purchase the previous copier for \$800 for Public Works.

**Councilman Gallagher** - So we're buying a copier for \$800?

**Attorney Knaak** - Yes.

**Councilman Gallagher** - Who was the original company?

**Attorney Knaak** - De Lage Landen, they held the lease.

**Mayor Geraghty** - DO you know when the lease started?

**Attorney Knaak** - No.

**Mayor Geraghty** - Was there a 30-day provision that we didn't do?

**Attorney Knaak** - The argument was that by virtue of moving it, it was a violation of the lease. They were unaware that it had been moved originally. They were demanding the accelerated payment in full and this is the end result. I would recommend this solution.

**Councilman Sumner** - Do we have a maintenance agreement with them?

**Attorney Knaak** - No.

**Councilman Gallagher** - As long as we don't use a company that tries to do things like this.

**Attorney Knaak** - No and one of the topics was when I should contact the Attorney General regarding their practices.

**Councilman Gallagher** - Absolutely, I've dealt with a few copier companies and they have a few tricks up their sleeves.

**Mayor Geraghty** - I remember the original discussion and was strongly in favor of keeping the cap so I won't support this.

**Councilman Sumner** - If we don't support it we'll have to go to arbitration?

**Attorney Knaak** - Yes.

**Motion by Ingemann, seconded by Gallagher to settle the account for \$800. With 5 Ayes, 0 Nays, the motion carried.**

## **11. POLICE CHIEF'S REPORT -**

**Chief Montgomery** - I want to thank everyone for attending the National Night Out.

## **12. FIRE CHIEF'S REPORT – Nothing to report**

## **13. ENGINEER'S REPORT –**

### **A. Partial Payment #2**

Jon Herdegen, City Engineer, presented on this item as outlined in the August 7, 2014 City Council packet.

**Councilman Rahm** - The only issue I heard was that the mailboxes didn't get numbered right away so people didn't get their mail right away but I think it's been resolved.

**Engineer Herdegen** - Yes, there was a miscommunication about who was supposed to mark the mailboxes but that has been resolved.

**Councilman Sumner** - Has anything more happened on the driveway where gravel is washing down?

**Engineer Herdegen** - We sent a letter that they had 45 days to at least submit a plan and the 45 days is up on August 14. We have not heard from either party to date.

**Councilman Sumner** - Will they start putting pavement in even though that issue hasn't been resolved?

**Engineer Herdegen** - We'll resolve that issue before paving Ford Road.

**Motion by Geraghty, seconded by Gallagher, to approve Partial Payment #2 for \$331,607.60. With 5 Ayes, 0 Nays, the motion carried.**

**14. SUPERINTENDENT OF PUBLIC WORKS REPORT** - Nothing to report

**15. NEW/OLD BUSINESS**

**16. ADJOURNMENT**

**Motion by Gallagher, seconded by Rahm, to adjourn the regular Council Meeting at 6:32 P.M. With 5 Ayes, 0 Nays, the motion carried.**

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

Respectfully Submitted,

Renee Eisenbeisz  
Executive Analyst



08/06/2014 17:59