



**City of Newport
City Council Workshop Meeting Minutes
July 16, 2015**

1. ROLL CALL -

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

Council Absent –

Staff Present – Deb Hill, City Administrator; Bruce Hanson, Superintendent of Public Works; Curt Montgomery, Police Chief; Steve Wiley, Fire Chief; Renee Eisenbeisz, Executive Analyst; Fritz Knaak, City Attorney;

Staff Absent -

2. DISCUSSION REGARDING SAUL/PARRISH BERM ISSUE

Mayor Geraghty - The first item is regarding the berm at the Saul property. I know it's been going on for a while and have been hearing lots of different things and spoke with Mr. Saul and felt it was a good idea to have it at a workshop to talk about the issue and hear each other's side of the story. I believe the berm went in last fall and it was brought to the City's attention and I understood that it was supposed to be removed in May and things mushroomed from there. I want to give you the opportunity to present your side. I guess the main issue was that it was put in without the City's approval.

Don Saul, 301 10th Street - There has been a lot of confusion on this and when we spoke, I was under duress because there was a letter saying either I take it out or the City will. The issue is obstructing the normal flow of water. Here is the normal flow of water as it is today. I circled three different areas and two of the areas next to the berm have been obstructed intentionally. The third area, in front of my house, because of a patch of tar, is flooding my property as well. All three of these spots are obstructing the normal flow of the water. These were taken a couple weeks ago when it was raining. This is some of the damage, water gets in there and floods it. I get all types of weeds. This is the third time that Bonnie has had to lay seed. I wish we had a picture before the berm. I literally have 1,000 gallons of water sitting in front of the boulevard from the Parrish's and street. Now, anytime it rains, it comes in those three spots, I'm just flooded. I have to dig up weeds every year. To me, that's not normal. This is Bonnie's berm, you can't even see it.

Mayor Geraghty - I drove by and you have to look for it. What is the berm accomplishing for you and what is it doing for the Parrish's?

Mr. Saul - Barry has built himself a barrage of railroad ties in the back of his yard. I will show you this. He told us himself that he stole the ties in Cottage Grove 18 years ago. Here's the horrific story of that backyard. He literally has 1,000 - 5,000 gallons of water in that backyard and has blocked off the water flow going in and out of his property. He has it dug done and expects us to accept this water.

Councilman Lund - What does that have to do with what's going on in the front.

Mr. Saul - He pumps the water into the street. There are laws saying he can do that but it's a self-made dilemma and is ruining the City streets and properties intentionally. I regret, there's a family at the end of the block who are still mourning over their suicidal daughter and he's flooding their property. There's a party across the street with a handicapped child, he's flooding their property.

Councilman Lund - Did you add any fill?

Mr. Saul - We leveled ours out with the adjoining neighbors. Not one other yard is being flooded, we aren't being flooded but the yard that he blocked is flooding our yard. He intentionally did that. That's definitely a civil matter. When it touches City property, then we have an issue with the City. This little berm stops all of that water plus the City water and runs it back to the street. I was watching it yesterday. It's not blocking the property water. Here's the clincher of those two spots, Cary Kissner, their stepson, went from one side of the property, dug up snow from their property, dumped it in my yard. That white post you see is the dividing line. He intentionally did that, I've caught him twice. I know he did it a third time but couldn't get pictures. That's his driver's license plate in 2012 and 2013. He digs it up so that Barry can flood the front of our property.

Councilman Lund - I spent an hour looking at this and couldn't understand why the City got involved. I think we should get out of it as soon and clean as possible. I think it's clear that you don't get along with Mr. Parrish.

Mayor Geraghty - The only thing we can address is the berm and whether we think it's reasonable or not.

Councilman Lund - I think we have a legal opinion that says we're in charge of the boulevard and can tell them to take it out. I would be interested in hearing from Bruce, the City's position.

Mr. Saul - Before we even started redoing the lawn, this is my house when I bought it 22 years ago, it was perfectly pitched. 22 years later, I have a sunken boulevard from the water. Bruce okayed the dirt and sod and the berm because of so much water coming in. I had one tree go down because of the water. I have two, very nice looking trees and would hate to lose them. Along the line, Bruce did not tell anyone about this, Scott Freemyer said that Bruce told him that the berm has to go because Barry complained. I got this information, I got Scott lying on camera saying that Parrish wasn't screaming and yelling and a police report that says Parrish was quiet as a mouse. I have a false police report and lying Police Officer.

Councilman Lund - Let's not make this night any longer than it needs to be. The question that we're here for is to figure out what we need to do about the berm. I understand there's a long history and you get very agitated over things but let's talk about this berm and go home.

Mayor Geraghty - Is the berm causing any problems or issues for the City in terms of drainage or the Parrish property?

Supt. Hanson - It's not allowing water to get off the street.

Mayor Geraghty - I thought it was directing water to the street.

Supt. Hanson - It is basically. In this area, we have 20-25 feet of boulevard, which was a ditch at one time.

Councilman Lund - Did you see this picture?

Mr. Saul - There wasn't a culvert.

Supt. Hanson - There was. The point is that this berm goes above the level of the road so it's impeding the flow.

Councilman Sumner - Where would it flow? Through their yard?

Supt. Hanson - The boulevard, parallel to their house.

Mayor Geraghty - Is it causing an issue for the Parrish's?

Supt. Hanson - In my opinion, if it's not flowing down, it's an issue.

Councilman Lund - The Parrish's have a driveway that's not a natural grade and is effectively a berm. If you drive down the street, many of the houses are raised and lead directly to the street. There should be some way for the water to get to the street and that should be shared.

Councilman Ingemann - It sounds like the water is going down the City's portion of the boulevard, you want it off the street.

Councilman Rahm - We don't have storm sewers in that area and that's the main issue with water. I'm not saying we're going to put them there but that's the issue.

Mr. Saul - When all the water hits my yard, it stays there and when I have two different sources plus the sky, my wife has to get out there and dig out all of the weeds every year and that's not normal. The Parrish's take that back water and flood my yard with 1,000-5,000 gallons of water every time it rains. To me, I think you're getting into a civil issue. If he would level out his property, there would be no problem. It's hellacious when it rains, you have 5,000 gallons of water. He's ruining my yard.

Councilman Ingemann - All we can deal with is the berm.

Councilman Sumner - The backyard is a civil issue?

Attorney Knaak - Most of what you're hearing is a civil issue and it's not unique. There have been other episodes where water has caused disputes between neighbors. My advice is to discuss the berm. If you obstruct any portion of the boulevard, technically that's a crime. You can decide that it's not an obstruction and Bruce has said it is.

Mayor Geraghty - Dan talked about the driveway, is that an obstruction?

Attorney Knaak - I haven't reviewed it.

Mayor Geraghty - I'm sure this isn't the first case and a lot of stuff has been adjusted in the boulevard that we don't know about.

Mr. Saul - Here are 10 other properties in Newport that have hellacious blockages compared to the berm I have. Right now, it looks like discrimination at me to remove this berm compared to these other properties that are obstructing water.

Councilman Lund - Difference might be that those people aren't fighting with their neighbor.

Mayor Geraghty - No but if they're in the boulevard. I don't want to get involved in the civil issues, I want to focus on the berm. We can't make any decisions tonight, it's a workshop. The main purpose was to give you a chance to talk.

Mr. Saul - I appreciate it, you're the only one that's listened, everyone else has said get rid of it.

Councilman Sumner - Is it allowable to pump water into the street?

Attorney Knaak - Yes.

Mr. Saul - This is a man-made dilemma.

Supt. Hanson - I don't see anything here that is obstructing flow.

Mayor Geraghty - Did they seek permission from the City?

Supt. Hanson - In the right-of-way, it cannot impede traffic or flow. That's when we deal with it.

Mr. Saul - I have one more here, when you told me I couldn't have a berm I thought about putting a rock barrier around there and needed your permission. You took too long and that's when Dan and Tracy came around. I went around town and saw this one rock formation that isn't any good. When you okayed that six days later, which looks like a third grader.

Councilman Lund - Let's try to stick to the question. You're not doing yourself any favors with the insults from the Police Department, to the Parrish's, to our Director of Public Works. When the whole world is against you, at some point, you need to look in the mirror.

Mr. Saul - I have been.

Admin. Hill - Is there anything else to say.

Mayor Geraghty - I want to hear him out and let him voice his opinion. The first time I drove by, I couldn't see it. I want to know if it's causing problems to the Parrish's or pushing it out to the street.

Mrs. Saul - Don, did you bring that picture of where it was raining so much that you took a picture next to the berm and there wasn't any water next to the berm.

Councilman Sumner - Can you put a rain garden in? Is this on the bedrock?

Mr. Saul - It's limestone underneath.

Mayor Geraghty - Alright.

Councilman Lund - I've driven by in the rain and didn't see any issues in the Parrish's yard.

Mayor Geraghty - Thanks for coming.

Mr. Saul - Thanks for listening, no one else has.

3. DISCUSSION REGARDING RENTAL INSPECTIONS AGREEMENT WITH COTTAGE GROVE

Admin. Hill presented on this item as outlined in the July 16, 2015 City Council packet. Matt Aune, Newport Fire Department, will take over rental inspections for the City of Newport. Captain Aune will shadow Cottage Grove inspectors for the first couple inspections until he is comfortable with performing the inspections solo. In terms of compensation, Captain Aune will receive an hourly rate while he's working with Cottage Grove inspectors and will receive a flat rate once he goes solo.

4. DISCUSSION REGARDING HOURLY RATE FOR FIREFIGHTERS

Admin. Hill and Chief Wiley presented on this item as outlined in the July 16, 2015 City Council packet and attached.

Councilman Sumner - We can make a decision to move the differentials ourselves, we don't need Springsted to do that.

Admin. Hill - Correct, you can direct us tonight and we'll bring something forward at the August 6th meeting. I think a differential is needed. Everyone is at \$9 right now.

Councilman Ingemann - We're the lowest paid in the County.

Chief Wiley - In the Twin Cities. The request is to increase the differential, right now Captains and Engineers had the same pay rate and there's a big difference in responsibility and duties. Same goes for Assistant Chief to Chief. The request is to mirror what St. Paul Park has. The survey is from 2014. The average pay for base firefighters is \$13.05.

Councilman Ingemann - We're quite a bit below that.

Chief Wiley - Yes. I understand the budgetary impact which is why we're looking at the one-hour callout.

Councilman Sumner - I wouldn't want to be paid for less than one hour for being on-call. I think at least one hour, if they had the two hour and it's a shorter call, they're getting \$18 per call. That's more than the \$13.05 average.

Chief Wiley - For the calls that are less than one hour but not for training or meetings.

Councilman Sumner - There's no pay for meetings?

Chief Wiley - There is but there's no minimum.

Councilman Sumner - Do we have hourly blocks for that?

Councilman Ingemann - 72 hours of training per year is mandatory. Every Tuesday is a two hour training.

Admin. Hill - Right now, we have \$37,000 for wages. If we kept the differential the same with a one hour call out, it would go up \$12,000 but if we followed St. Paul Park, it would go up \$21,000, which is a 1% levy.

Councilman Sumner - I'm thankful for the firefighters and am not opposed to this but am thinking that if we have to pay more here and more for staff, where is that going to come from? The average income is less than \$40,000. I'm trying to be realistic and think of all of the increases on the City's budget. I don't want to short the firefighters. I understand that we can't retain them like we have in the past so we should like at this as a retention strategy.

Chief Wiley - Summer work for Public Works gets paid more. To be allowed to go into a structure, there is a minimum of 200 hours of training. There's a lot of education and training that goes into this. We're just asking to be brought up to the second lowest paid department in the cities.

Admin. Hill - Do you want to mirror St. Paul Park or go with the pay study?

Councilman Ingemann - I would say no and mirror St. Paul Park.

Councilman Sumner - I think so too.

Councilman Lund - This is pretty good and a one hour callout.

Mayor Geraghty - So we'll go from \$37,000 to \$58,300?

Admin. Hill - Yes. We'll bring this forward at the next Council meeting.

Mayor Geraghty - We'll defiantly implement the \$9 minimum wage but I'm not sure when we'll decide on the differential. Maybe we'll take a look at it during the budget.

Chief Wiley - There needs to be a differential between the different ranks.

Admin. Hill - So you want this at the next Council meeting?

Mayor Geraghty - When are we taking action on the budget?

Admin. Hill - In September.

Executive Analyst Eisenbeisz - So a resolution for those wages at the next meeting?

Mayor Geraghty - I would say the second meeting in August, I want to see how the budget shapes up.

Admin. Hill - Ok.

5. DISCUSSION REGARDING 2016 BUDGET

Admin. Hill presented on this item as outlined in the July 16, 2015 City Council packet. The next workshop discussion will be the second meeting in August. The City should be receiving information on local government aid in the next couple weeks.

Councilman Lund - We expect the transfers of \$200,000 to be sustainable? We've had about \$600,000 the last few years.

Admin. Hill - That was to beef up the funds. The equipment CIP isn't looking to good in the future but I feel good about it now.

Councilman Lund - The big new item is the debt service?

Admin. Hill - Yes and it comes down next year and levels off after that. One thing that Bruce and I were talking about is trees, we have a lot of empty spaces around town. We do have room in the Parks Fund to replace some of the dead trees. We're going to propose some sort of tree program.

Supt. Hanson - We've lost somewhere between 200-300 trees and I think we'll put back around 100. Susan Lindoo did a fantastic job on her tree survey, we're really only down about 15%.

Councilman Rahm - We had some droughts too.

Executive Analyst Eisenbeisz - One question I had is if I could look at increasing the election judge rates. We pay election judges \$9 per hour and the County average is \$9.38 and the head judge is paid \$10 and the County average is \$11.50. It's an extra \$100 per year.

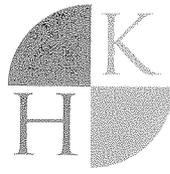
Mayor Geraghty - Yes.

6. ADJOURNMENT

Signed: _____
Tim Geraghty, Mayor

Respectfully Submitted,

Renee Eisenbeisz
Executive Analyst



Frederic W. Knaak*
Wayne B. Holstad**

**Also Licensed in
Wisconsin & Colorado
Qualified Neutral under Rule 114

***Also Licensed in Iowa &
Federal Court of Claims*

HOLSTAD & KNAAK PLC
"Local in character, national in reputation, international in reach"

Of Counsel
Donald W. Kohler
Thomas M. Dailey, P.A.
Matthew E. Ludt
Joseph B. Marshall

Paralegals
Michelle E. Hagland
mhagland@klaw.us
Jacqueline M. Stai
legalassistant@klaw.us

July 13, 2015

Ms. Deb Hill
City Administrator
City of Newport, MN.
596 7th Street
Newport, MN. 55055

RE: Right-of-way Obstruction

Dear Ms. Hill:

Recently you asked me to research and develop an opinion regarding the following set of facts:

A resident has used fill and materials to raise the level of a platted right-of-way immediately adjacent to a paved City street within the City. The effect of this action has been to create a berm that obstructs the flowage of water from its previous course has caused some damage to neighboring properties.

You have asked whether a resident, without permission, can dam or modify the land in a public right-of-way to affect the flowage pattern over that right-of-way.

The short answer is "no."

Minnesota Statutes Section 609.74, subdivision 2, provides,

609.74 Public Nuisance

Whoever by an act or failure to perform a legal duty intentional does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor:

.....

(2) Interferes with, obstructs or renders dangerous for passage, any public highway or right-of-way, or waters used by the public.....

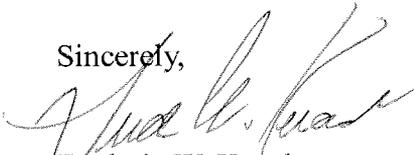
Ms. Deb Hill
July 13, 2015
Page Two

In other words, it is a crime to interfere with or obstruct a public right-of-way. So long as the materials are being placed on the platted right-of-way and that action has a consequence of obstructing or interfering with the expected ongoing use of that right-of-way, that action is a crime punishable with up to 90 days in jail and a \$1000 fine. "Ongoing use" in this context would include normal, historical drainage or water flowage patterns over the right-of-way.

As an aside I would note that this is not an obscure, little-used provision of the law. Just this past year we successfully prosecuted a person under this statute in another city where the actions an individual to "repair" a right-of-way in a manner detrimental to his neighbors resulted in a conviction.

If you should have further questions regarding this matter, please do not hesitate to contact me at your earliest convenience.

Sincerely,



Frederic W. Knaak
Newport City Attorney

Firefighter Pay Survey

2/4/2014

<u>City</u>	<u>Firefighter</u>
Andover	\$14.55
Apple Valley	\$14.27
Arlington	\$10.00
Brooklyn Park	\$15.00
Chanhassen	\$10.00
Chaska	\$13.49
Columbia Heights	\$14.39
Coon Rapids	\$12.00
Cottage Grove	\$13.00
Edina	\$12.85
Elk River	\$14.70
Faribault	\$17.08
Farmington	\$10.57
Forest Lake	\$13.00
Fridley	\$16.49
Golden Valley	\$14.54
Hastings	\$13.53
Hopkins	\$14.07
Inver Grove Heights	\$12.50
Lake Johanna (Shoreview)	\$13.88
Lakeville	\$11.00
Maple Grove	\$14.33
Minnetonka	\$13.59
New Brighton	\$13.96
Northfield	\$16.17
Oakdale	\$10.00
Prior Lake	\$11.25
Ramsey	\$12.88
Red Wing	\$10.00
Rosemount	\$10.00
Roseville	\$14.60
St. Paul Park	\$9.00
Savage	\$12.59
Shakopee	\$10.50
St Louis Park	\$16.19
West Metro Fire (Crystal & New Hope)	\$15.21
Waconia	\$11.15
White Bear Lake	\$11.75
Woodbury	\$15.00

Average Pay for Firefighters (39 Departments) = \$13.05