

**CITY OF NOWTHEN
CITY COUNCIL MEETING **DRAFT MINUTES**
TUESDAY, AUGUST 11, 2015 @ 7:00 PM**

The Nowthen City Council held its Regular City Council Meeting on Tuesday, August 11, 2015 at 7:00 PM, at the Nowthen City Hall, 19800 Nowthen Blvd NW, Nowthen, Minnesota.

Present: Mayor Jeff Pilon
Councilmember Randy Bettinger
Councilmember Mary Rainville
Councilmember Paul Reighard

Absent: Councilmember Jim Scheffler

Others: Lt. Andy Knots
Liz Stockman, City Planner

Approve/amend the meeting agenda – Bettinger added item 7. G. Offer to purchase Lot 1, Block 1 Burns Town Center. **Rainville made a motion to approve the amended agenda; Bettinger seconded. All in favor; motion carried.**

- 1). **Sheriff Update** – Sgt. Andy Knots provided an update of calls for Sheriff's services for the month of July 2015.
- 2). **Floor Items** – No floor items were presented
- 3). **Planning and Zoning**
 - a). **Adopt Amendment to Chapter 9 of the City Code** – Ordinance 2015-04– *to be consistent with the MN Pollution Control Agency requirements of the municipal separate storm sewer systems general permit for **Erosion/Sediment Control and Post Construction Stormwater Management***. – **Bettinger made a motion to approve Ordinance 2015-04 with the removal of Section 3 and to fix the typo on page 2.B; Reighard seconded.**

Rainville disagrees with removing Section 3. That section allows the City to recover their costs on inspections for erosion and sediment control. The Building Official told them that there is an issue of people not adhering to the erosion and sediment control regulations.

Rainville said that it is important to have the ability to recoup costs for site inspections; otherwise the general tax payer covers the costs.

Bettinger hasn't seen any evidence that this has been an issue in the past. He thinks they are just anticipating a problem. It is just another layer of government and another fee. It will also take more staff time to administer the escrows. He said that the permit fees are covering the costs of the

inspections and the Building Official can use the CO over their head or shut them down.

Rainville said that the Building Official was real clear of the issues surrounding this. She doesn't think that we are looking to increase the checkbook. They are just looking to recoup costs for contracted staff to inspect this. This is to deal with the progress of the construction. It wasn't required of everyone and the disturbance of vegetation is what warrants the need to do this.

Bettinger said that this fee doesn't indicate that it is only for people that disturb one acre or more. It is set up so that everyone has to put in an escrow. It hasn't been a problem in the past and it hasn't cost the City anything. He hasn't seen the building permit fees go in the hole because of erosion control.

Reighard said that his understanding of the fee is that it is not limited based on the amount of area disturbed on the lot. It basically applies to any single family home. We are requiring a certain amount of money to go into escrow. At what point is it enough? The way the economy is, are we going to deter people from wanting to build in the City by forcing more escrows on them? Some people that build are going to be limited on funds. This could restrict them financially.

Pilon's concern is that we do have high runoff and the storm runoff becomes our concern, as it is going into the stormwater ponds. Then we have to monitor the ponds, as the material that does go into the ponds will be at a cost to the City to remove. The City Engineer has been asking the City to put in a Stormwater Fee for the cleanout of the ponds. Pilon said that the \$75 administrative fee is to administer this. He said that none of them want to add costs to living out here, but ultimately as a City, we have to realize more things are coming onto the taxpayers in a different way. What is working out in Nowthen is a pay for services plan.

Pilon said that those who are using the services are paying for them and that cost isn't distributed to all the other taxpayers. In a case like this, if they are causing the erosion, monitored and followed up on, they need to pay for it. He stated that if there isn't a problem, then the money goes back to them. If there is a problem and they don't have an escrow, then the money goes to the taxpayers in general. It also gives people the motivation to abide to the regulations, so they get their escrow back. Pilon would be in favor of keeping it, but stated that maybe the amounts need to be readdressed. He thinks that it is the only leverage they have. If there is a violation, there should be recourse. Without it, they have no recourse.

Bettinger said that he doesn't think it has cost taxpayers anything in the past. This is more of an enforcement to make sure they do it. There are different inspections on the properties as the project moves along, and they can stop those inspections until they come into compliance with the erosion control. This is just creating more work for the City. He doesn't think that it is necessary at this point in time. The Building Inspector will already be out there to do other inspections.

Pilon said that he doesn't know if it is factual that it hasn't been a problem. The City hasn't had the ponds evaluated yet. What they are trying to do is put things in place now, before the building boom comes, so they are not playing catch-up. If there isn't a problem, we just give them their money back. This gives them some leverage.

Bettinger said that we don't have small building lots and don't have curb and gutter.

Rainville said that the Building Official told them that just because you don't see curb and gutter, you don't think about this. It does have a detrimental effect to the land. She would defer to the Building Official and the Engineer in saying that this is an issue, and their expertise.

Bettinger and Reighard in favor of Bettinger's motion; Pilon and Rainville opposed. Motion failed. Rainville made a motion to approve Ordinance 2014-04, as submitted, with the correction on page 2; Pilon seconded. Rainville said that our City staff said that this is an issue and we should have this in place. The minimum is \$75 and they will get the escrow back if they adhere to the policy.

Rainville and Pilon in favor of Rainville's motion; Bettinger and Reighard opposed. Motion failed.

- b). **Adopt Amendment to Chapter 10 of the City Code – Ordinance 2015-03 (Subdivision Ordinance) to revise the language pertaining to *flag lots and access easement*.** – **Rainville made a motion to adopt Ordinance 2015-03; Pilon seconded.** Rainville said that both internal and external staff, committees and Council have spent a considerable amount of time on this. As presented, was the best option for this. It still allows a CUP, which allows the neighborhoods to be notified as to what is happening, and it allows the City to put legal conditions on it. By having a CUP, it removes influence and burden on staff. Without an ordinance, it would be different every time. This way we can treat each request the same.

Reighard doesn't have an issue with the amendment, if they are willing to waive the second escrow. By doing this, you are requiring a second

escrow account. Based on staff's comments, it has been common practice in the past to waive that additional escrow.

Rainville said that if they do vote to remove the second escrow, she would like something in the Ordinance that states, "Staff has the discretion to remove any additional escrow, if deemed unnecessary".

Rainville amended her motion to adopt Ordinance 2015-03, with the addition of language that states, "Staff has the discretion to remove any additional escrow, if deemed unnecessary and the correction to page 2, #5 removing the words (excluding the easement or "flag pole" acreage). Pilon seconded the amendment.

Bettinger said that he is opposed to this because it costs extra money and takes longer to process.

Pilon thinks it is important to have the Public Hearing as it allows the neighboring property owners the ability to weigh in on the request.

Rainville, Pilon and Reighard in favor; Bettinger opposed. Motion carried.

Rainville made a motion to approve the summary ordinance for publication; Bettinger seconded. All in favor; motion carried.

- c). **Comprehensive Plan Amendment to Long Range Urban Service (LRUS) District** – *Tabled from July 14, 2015 City Council Mtg.-* **Rainville made a motion to table this to a further date until they have additional information regarding the grant possibilities; Pilon seconded.** Rainville believes that they should wait on this. If we look at history, we received a grant for \$7,500. That would go a long way towards the cost of the Comp Plan Updates required. We don't know if Met Council will require that no work be started prior to applying for the grant. She doesn't want to move forward on something without knowing if that could risk our eligibility of getting a grant. They also have not budgeted money in 2015 for the Comp Plan amendments. Until the Council completes the 2016 budget, it is foolish to commit ourselves. She thinks that it is foolish to commit ourselves to \$21,000 without knowing where that is coming from.

Bettinger said that the Council is not committing to \$21,000. It is a \$3,000 interim update to the Comp Plan, which can be used towards the required 2040 Comp Plan updates. The City already has a developer waiting to split his lot. Is the City going to make him wait or pay the \$3,000? Bettinger feels that it is the City's responsibility. The zoning is wrong and it doesn't fit the land and it is the City's responsibility to take care of it.

Rainville said that Met Council put us in this position. Her fear is that by starting this process, it could jeopardize us from getting the grant money. She doesn't want to risk losing the \$7,500. This late in the game, the property owner wouldn't be able to do anything this year anyway. She believes they should look at what is best for the City, not the builder or developer.

Pilon would rather go after Met Council and tell them that they either bare this burden or forgive it. Let us amend the Comp Plan and not impose those costs on our taxpayers. This was not something that we asked for. He thinks that it is worth the fight. We have already paid for this amendment when they required it, now Met Council should pay to change it back.

Bettinger said that the City Council could start the process and ask Met Council if they can help cover the cost. But just sitting doing nothing is going to delay it. It is going to take at least 4 months to get through the whole interim amendment process.

Bettinger stated that even if they did start the process and didn't get the grant for the interim amendment, the City would essentially be out a \$1,000 based on the costs associated with the full Comp Plan update. Pilon would like to present it to Met Council and see what they will do.

Rainville thinks that we should have our 2016 budget in place first before we commit ourselves. If the City Council starts anything, Met Council can say that they already started the amendments, so we are not eligible for the grant. Rainville thinks that it is foolish to start anything prior to having discussions with Met Council.

Reighard said that he is not opposed to talking with Met Council, but we need to set a date or timeline to get started on this; this way we are not holding anyone up. No one knows when the grant information is going to become available. Reighard doesn't think that we want to wait too long.

Pilon would like to meet with Met Council as soon as a meeting can be scheduled and find out what they can about the grant. If they can get something set with the Met Council, they would know by the September meeting. It would just delay it a month.

Rainville said that the Council doesn't have to do anything with the Comp Plan Amendments until 2018. Moving forward and incurring costs that aren't budgeted and could jeopardize a grant is not a wise choice.

Bettinger said that Stockman has talked to Met Council already and there is no money available now. Starting the interim amendment is not going to

kick the City out of getting a grant for the rest of the Comp Plan Amendments. We are not losing out on a grant. We still would be eligible to apply for and get a grant. This is a minimal expense and it is the City's responsibility. The zoning is wrong and it is up to the City to change it.

Rainville amended her motion to table the Interim Comp Plan Update discussion so they can have discussion with Met Council and research grant information; Pilon seconded. Rainville is willing to research the grant information. Bettinger asked when this will be coming back to Council. Rainville asked the internal staff to request a meeting with Met Council by Sept. 1st and then bring it back to the City Council at their September meeting.

Three in favor of Rainville's motion; Bettinger opposed. Motion carried.

- d). **Amend/Update Floodplain Management Ordinance – (required by FEMA) – Bettinger made a motion to have staff draft a Floodplain Ordinance, not to exceed \$700; Reighard seconded. All in favor; motion carried.**
- e). **Council Direction - Scott – Barrow – Rohach –**

Scott property (21830 Xenon Street)– Reighard made a motion to have staff move forward with obtaining 3 bids for: 1. Removing the buildings, 2. Removing buildings and contents and 3. To clean up the property; Rainville seconded All in favor; motion carried.

Barrow property (18554 St. Francis Blvd.)– Rainville made a motion to move forward with the Administrative Citation Fines and impose the fine retroactive back to the timeline presented and assess the property taxes if unpaid. Rainville would also like to ask the attorney about the fastest action to get this matter resolved; Reighard seconded. All in favor; motion carried.

Rohach property (21202 St. Francis Blvd.)– Rainville made a motion to direct staff to contact the DNR, Anoka County and the MPCA for pollution violations and move forward with the administrative Citation Fines retroactive back to the timeline presented and assess the property taxes if unpaid; Reighard seconded. All in favor; motion carried.

- f). **P&Z Commission Member opening – Bettinger made a motion to table this until the next workshop; Rainville seconded. All in favor; motion carried. Bettinger made a motion to publish the opening in the City Newsletter; Rainville seconded. All in favor; motion carried.**

4). **Road and Bridge**

- a). **Road Maintenance Tracking Device** – Rainville said that this was placed on the agenda at the request of a Road and Bridge Committee Member. It was a request that staff look at tracking options versus the handwritten log for grading.

It is up to the Council to choose if they decide anything. The discussion at the workshop was just to receive and file this information.

Reighard said that it has been brought up several times that the Committees are not to focus on day to day operations. He feels that this discussion is about day to day operations. Rainville said that this was a one-time discussion referring it to the Council to make a decision. This wasn't something that the Road and Bridge Committee members were going to discuss in the future.

Pilon made a motion to file this discussion; Rainville seconded. All in favor; motion carried.

- b). **Road Management & Street Study** – The Road and Bridge Committee discussed looking at the Road Management and Street Study and assisting Glaze to see if the order of the streets in the study are still in the same valid order of replacement or improvement. The estimated costs are a few years old. They also discussed improvements to the ditches.

Bettinger said that if they don't start budgeting for road repairs, they can plan all they want, but the money isn't there for repairs.

Pilon said that if we don't do something to show what are our immediate needs are, we cannot budget accordingly. Having Glaze do an update of the current conditions of the roads, will influence what the City needs to budget.

Reighard said that if we take the time to update the road plan it, we need to make a commitment to use it.

Pilon made a motion to have Glaze identify the current condition of the roads that were rated below an 80 in the 2012 Street Study and have the Engineer update his costs associated with the improvement/repairs of those roads; Bettinger seconded. All in favor; motion carried.

- c). **Request for Proposals** – The Committee would like to work with Glaze to develop a standard Request for Proposals Form. **The Council consensus is for the Committee to work with Glaze on a form.**

- d). **204th Culvert Repair** – *Residents request for further discussion* – Rainville said that at the workshop, Mr. Hoemberg presented his concerns in regards to the lack of drainage of water from his property on 204th Ave. The Council was to consider the option of replacing just the culvert, but for staff to discuss this matter with the attorney and get his legal opinion.

Rainville stated that it was the engineer's opinion that the culvert has been buried or plugged for 23 years or more. The attorney stated in his memo, "Given the length of time that has passed since this culvert was last operational by the City, the alterations of the natural drainage patterns made by the property owner, and the concern of an inverse condemnation claim from the adjacent property owners who would receive any water flowing through the new culvert, he would advise the City against replacing or unplugging the culvert at this time. Further, according to the engineer, if this work were performed it may negatively impact the adjacent property owner's buildings. Therefore, with regard to the drainage issue on 204th Street near Basalt Street, it is my recommendation based on the current facts that the City not take any action to modify the existing drainage conditions."

Rainville stated that Hoemberg's concern is that he has lost many trees because of the water and if we open up the culvert that would help with drainage issues.

Pilon said that lacking any facts and based on what the attorney has said, if the City chooses to redirect the water, there could be an inverse condemnation claim against the City. Pilon said that in the road plan, there was an evaluation of ditches. When the road plan comes into play, this is certainly one of the ditches that can be evaluated, as part of that plan.

Rainville made a motion to receive and file the memo from the attorney and not to move forward with anything on the culvert, per the City Attorney's recommendation; Bettinger seconded. Mr. Hoemberg asked why was the culvert put there in the first place then. It was also assumed that the culvert has not been maintained in 23 years. In 2014, the water was starting to go over the road. If the water would have gotten a little higher it would have washed the road out. If that would have happened, it would have been a City matter. There is a swamp to the northeast and that is why the culvert was put in.

Mr. Hoemberg said that there was a reason the culvert was there. He thinks that the City is responsible for maintaining the culvert. Pilon suggested that Mr. Hoemberg go to the Road and Bridge Committee meetings when they discuss the streets and ditches. **All in favor of Rainville's motion; motion carried.**

e). **Ebony and Garnet Asphalt quotes** – Rainville stated this was put on the agenda because they received some quotes. Bettinger said that the motion at the July meeting was for Glaze to get three quotes for the asphalt and Glaze then would make the decision on who to use based on those quotes.

5). **Park and Recreation**

a). **Human Foosball** – The Park and Rec. Committee just wanted the City Council's blessing on moving forward with this item.

6). **Consent Agenda:**

1.1 **Approve the July 14, 2015 Regular Council Meeting Minutes.**

1.2 **Financial Report**

1.3 **Approve All Audited Bills Claim # 9571 through Claim # 9619, plus Net Distribution reports dated July 13th, July 14th, and July 27th, 2015**

Bettinger made a motion to approve the Consent Agenda items as presented; Rainville seconded. All in favor; motion carried.

7). **Council Items:**

a). **Council participation at Committee/Commission Meetings** – Reighard wanted to know if they need a policy or guidelines of participation for Council Members at committee meetings, in which they are not liaisons for. It was discussed that with multiple Council members participating at the committee meetings, it could possibly influence other committee members.

Pilon said that generally City Council members don't participate at committee meetings unless the committee chair asks them to speak. When the chair asks questions of the residents this could also include Council members.

Pilon stated that generally if you have more than two Council Members present, it is advised that the Council Members in the audience keep quiet. He thinks it is up to the chair of the committee to manage the meetings.

Reighard said that in reading past committee meeting minutes, there were times when Council Members added input, but nowhere in the minutes, could you read or see the fact that the chair or anyone had addressed them.

Pilon thinks it is important for the chair to clarify this in the meeting minutes. He thinks discretion is the better part of that.

DRAFT MINUTES — NOWTHEN CITY COUNCIL MEETING OF AUG. 11, 2015

Reighard said at the workshop it was discussed that it could be looked upon an influence.

Pilon said that he would be more concerned at a Planning and Zoning Meeting because they are making recommendations on land use issues. The Road and Bridge and Park and Rec. Committee Meetings are slightly different in severity.

Reighard commented that at the Planning and Zoning Meeting there were some times Council Members, who weren't part of the committee, were an influence to others.

Rainville stated that she had commented, as a resident, at the public hearings when asked for public comment. It wasn't her fault that there wasn't anyone else there or willing to speak.

Pilon said at a public hearing, the Council should be able to weigh in as a resident.

Bettinger said he had read through the League of Minnesota Cities website and they recommend Council members sit in the committee/commission meetings as a liaison, but not as voting members. Bettinger thinks this is something that the Council should look into. We have plenty of people who want to be on the committees. He feels with two Council Members being on the Planning and Zoning Commission, they do have an influence. It might be better to just have one Council member as a liaison and a non-voting member.

Pilon said that this is certainly worth more discussion.

Reighard said when he started on the Park and Rec. Committee years ago; this is what he thought the liaison was to be.

Rainville said in the research that she has done, 95% of the Council Liaisons were not voting members. This is something they should look at down the road.

- b). **Handicap Ramp Repairs – Bettinger made a motion to move forward with the ramp improvements with the installation of the handrails on both sides of the lower ramp, spindles on the south side of the handrails and to install the handrails to the steps; Rainville seconded. All in favor; motion carried.**
- c). **Tentative additional budget meeting dates – *If needed* – September 14th and September 21st. 6:00 PM.**

DRAFT MINUTES — NOWTHEN CITY COUNCIL MEETING OF AUG. 11, 2015

- d). **Policy/Procedure for filling Committee Vacancies** – Rainville thinks there needs to be a policy to fill committee/commission vacancies. She asked that this item be placed on the September City Council meeting agenda for discussion.
 - e). **Roanoke St.** (*Issues with park land and Oak Grove Resident*) – Council consensus is to have Glaze keep an eye on this property and to cut open a path so residents can have access to the park land.
 - f). **Threshing Show Booth** – Council Consensus was to not rent a booth at the Threshing show and to give the City’s information to the Heritage Committee to display.
 - g). **Offer Received to Purchase City Lot 1, Block 1, Burns Town Center** – Rainville made a motion to table the offer until September 8th; Pilon seconded. Rainville’s motion was withdrawn. **Rainville made a motion to approve the offer from John Curtis for \$98,000 to purchase Lot 1, Block 1, Burns Town Center contingent upon attorney review, formal purchase agreement, and buyer pays all closing costs; Bettinger seconded. All in favor; motion carried.**
- 8). **Introduction of New Items:** No new items were presented.

Rainville made a motion to adjourn the meeting at 10:47 PM; Bettinger seconded. All in favor; motion carried.

Respectively submitted by:

Corrie LaDoucer, City Clerk

Mayor Jeff Pilon