

**MINUTES OF THE REGULAR MEETING
OF THE ZIMMERMAN CITY COUNCIL
MONDAY, JULY 10, 2017**

CALL TO ORDER

The regular meeting of the Zimmerman City Council was called to order at 7:00 p.m. at City Hall by Mayor Earenfight, followed by the Pledge of Allegiance.

ROLL CALL

Present: Mayor Earenfight, Council Members Brisbin, and Nathe. Members Smith and Whiting were excused absent. Also present were Administrator Piasecki Clerk/Treasurer Tillmann, Public Works Director Johnson, and Engineer Bittner.

AGENDA APPROVAL

Brisbin/Nathe unanimous to approve the agenda as presented.

APPROVAL OF MINUTES

Nathe/Brisbin unanimous to approve the minutes of the June 19, 2017 Regular Meeting of the City Council as presented.

CONSENT AGENDA

Nathe/Brisbin unanimous to approve the consent agenda as follows:

- a. Approve the payment of claims (check #39156 - #39198) in the amount of \$51,964.39 and electronic payments (e-checks #1508 - #1517) in the amount of \$299,899.20 as presented.
- b. Accept invoice #204483, authorizing payment to Bolton & Menk (ck #39199) in the amount of \$18,937.00 for Project Management Services related to the 2017 3rd Avenue South Improvement Project, for the period of April 22 – June 2, 2017, as recommended by staff.
- c. Accept Invoice #1088 in the amount of \$7,005.25 (ck #39202), authorizing payment to Metro West Inspection Services, Inc., for professional Building Inspection Services in the City of Zimmerman for the month of May, 2017, as recommended by staff.
- d. Approve payment to North Star Fence in the amount of \$9,550.00 (ck #39204) for repairs to the backstops at Fred Schultz and Ron Ehley Fields as identified on Invoice #41438, with funds to be paid from the Park Fund, as indicated by the Public Works Director.
- e. Approve payment to Midwest Machinery in the amount of \$12,150.00 (ck #39203) for a John Deere R280 Disc Mower as identified on PO #04915950, to be paid from account #101-43100-580, as recommended by staff.
- f. Accept the Investment/Funds Report for April 2017 as presented.
- g. Accept the Monthly Budget Report for April 2017 as presented.
- h. Accept the Investment/Funds Report for May 2017 as presented.
- i. Accept the Monthly Budget Report for May 2017 as presented.
- j. Accept the Building Permit Summary Report for June, 2017 as presented.

OPEN FORUM

There was no one present to address the Council during Open Forum.

FIRE PROTECTION REPORT

Fire Chief Ryan Maloney presented the Fire Department report for the months of May and June, 2017. Over the two month span, the Department provided assistance on 9 medical calls and 5 personal injury motor vehicle accidents, responded to a carbon monoxide report, 2 grass fires, a vehicle fire, a residential fire, a vehicle fire and provided mutual aid for 2 residential fire calls. The Department's annual golf tournament was a success. Engine testing was conducted at Zimmerman station today and all vehicles passed. Currently, there are several vacancies on the Department. Applications for volunteer firefighters are available by contacting the Chief or at City Hall.

Council accepted the Fire Protection Report for April, 2017 by unanimous consensus as presented.

PUBLIC WORKS REPORT – presented by Public Works Director Johnson

Introduction of New Employee

Public Works Director Johnson introduced Karl Anderson, Maintenance Technician, to the Council. Karl began his employment with the City on July 10th, coming to the City with many years of landscaping and snow removal experience.

Project Updates – presented by Kevin Bittner, City Engineer

3rd Avenue South Improvement Project

Comments were heard from **Cheri Singleton, 12595 – 3rd Avenue South**, who wished to address her dissatisfaction with communication between the project team and residents in the project area. She is upset that her mailbox was relocated and they were not given clear direction as to how to get their mail. She is also frustrated with how difficult it is to get to their property because the road is completely dug up. They have to park elsewhere and walk to their vehicles. Singleton showed pictures of the project area in relation to her house and their access. Singleton requested a written plan from the City Engineer detailing where she is able to park and how she can access a parking area from her house.

Engineer Bittner stated that the contractor is a few days behind schedule due to recent rains. He is confident that conditions will improve by the end of this week or early next week once the sanitary and storm sewer installation is complete in that area.

3rd Avenue South Improvement Project -- Pay Request # 1 – C & L Excavating

C & L Excavating was contracted to perform the 2017 3rd Avenue South Improvement Project, which includes reconstruction of a portion of 2nd Street West lying south of CSAH 4 and 3rd Avenue South, lying west of Main Street. Work completed to date totals \$67,082.51, less 5% retainage of \$3,354.13, leaving a balance owing for work on the project to date of \$63,728.39. The City Engineer and city staff have reviewed the pay request and recommend approval of Pay Request #1.

RESOLUTION #17-07-01 Nathe/Brisbin unanimous to adopt RESOLUTION #17-07-01, approving Pay Request #1 in the amount of \$63,728.39 (ck #39200), submitted by C & L Excavating for expenses related to the 2017 3rd Avenue South Improvement Project, as recommended by the City Engineer.

2017 Pavement Preservation

Engineer Bittner stated that the project is currently underway and chip sealing will commence today or tomorrow weather permitting. The entire project should be complete within a few days to one week. No action taken.

2016 Main Street Improvement Project – Pay Request #4 – La Tour Construction

LaTour Construction, Inc., was contracted to perform the 2016 Main Street Improvement Project, which includes reconstruction of 2 segments of Main Street, and storm sewer installation in 2nd Street East lying south of Main Street. Pay Request #4 has been submitted for work completed through June 30, 2017 totaling \$43,127.25. The City will retain \$33,685.74 of the contracted amount for the completion of the project, including project close out, which will begin the 2-year warranty period. Staff and the City Engineer and have reviewed the pay request and recommend approval of Pay Request #4.

RESOLUTION #17-07-02 Brisbin/Nathe unanimous to adopt RESOLUTION #17-07-02, approving Pay Request #4 in the amount of \$43,127.25 (ck #39201), submitted by LaTour Construction, Inc., for expenses related to the 2017 3rd Avenue South Improvement Project, as recommended by the City Engineer.

Advertisement for Bids for 2017 Plow Truck

In September 2016, Council authorized the purchase of a new plow truck to the City's fleet of vehicles. Since the new truck was added, the 1996 Kodiak plow truck continues to experience mechanical failures. Johnson stated it is becoming increasingly difficult to locate replacement parts as they are no longer manufactured and almost impossible to find in the recycled market. The most recent components necessary to repair the steering capabilities were sourced out of Canada. The truck is showing signs of metal fatigue which also negatively affects its ability to perform plow duties. It is also the only truck in the City's fleet with a belly blade used for ice removal.

Staff is requesting Council authorize the advertisement of bids for the possible purchase of a new 2017 snow plow truck. Competitive bidding is required by MN Statutes since the purchase price exceeds \$100,000, and staff does not anticipate purchasing off the State contract. The City Attorney assisted staff in developing a minimum set of truck specifications and bid notice, copies of which are attached. Advertising the bid, accepting sealed bids, and opening said bids at the published date and time meets the requirements of Statute, but does not obligate the City to purchase. The City reserves the right to reject all bids.

A 2017 truck purchase, while not budgeted this year, could be funded through existing General Fund resources, including \$40,000 levied for Capital Equipment, the committed truck fund and uncommitted reserves, which grew by approximately \$135,000 in 2016, as identified in the 2016 audit.

Brisbin/Nathe unanimous to authorize staff to advertise for bids for a 2017 plow truck.

Pump Control Valve Assembly for 6th Avenue Water Plant

The 6th Avenue Water Plant is over 20 years old and mechanical components are beginning to fail. The most recent component failure is a 6" pump control valve apparatus including switches, solenoid, flow control and other parts. Vessco Inc. has supplied the components for the plant from construction and through maintenance. Their technician has reviewed the plant and recommends the replacement of the existing pump control valve. While the technician was there, staff requested he inspect and quote the replacement of another isolation valve and a broken gearbox hand wheel.

The quote was provided in the council packet for review and consideration. Staff recommends authorization to purchase and install the pump control valve, butterfly valve and gearbox hand wheel as quoted.

Brisbin/Nathe unanimous to approve the purchase of a 6" Singer Model S106-BPC pump control valve assembly, a 6" butterfly valve, and a 6" gear box with hand wheel from Vessco Inc., for installation at the 6th Avenue Water Plant, at a cost of \$6,871 plus freight, with payment from the Water Fund (Fund 601), as recommended by staff.

WWTP Generator

Brief discussion was held regarding a replacement generator for the Wastewater Treatment Plant. Public Works Director Johnson advised that a temporary generator has been installed. The City's insurance company will pay the rental fee for one month for the temporary generator. More information on a permanent solution will be provided as it becomes available. No action taken.

ADMINISTRATOR'S REPORT –presented by Administrator Piasecki

Settlement Agreement – Isle Road Right-of-Way

Steven and Sandra Dank, property owners at 12400 Isle Road, filed a lawsuit against the City in 2016 alleging a portion of the Isle Road Right-of-Way has been abandoned or incorrectly utilized and should be in their possession, not the City's. It also alleges a taking of property when the City forcibly removed and related fencing

and private property placed on the portion of Isle Road. LMCIT authorized and provided legal representation for the City in the suit.

The Attorney for the City, Ken Bayliss, filed a summary judgement to dismiss the lawsuit, which granted in part and denied in part the City's motion for summary judgement. The Court found in the City's favor regarding the claim of abandonment of the right of way, the claim of right of way reverter, and removal of the private placement of benches, landscaping and fire pit from the right of way. The Court denied the City's claim that a white vinyl fence and boulders that were removed in 2005 were in the right of way.

After receiving the Court's decision, the Danks attorney contacted Attorney Bayliss to discuss settlement of the lawsuit. The property owners are willing to dismiss all their claims against the City in exchange for the City dismissing its counterclaim against them. The Danks property owners request the following issues be considered as part of the settlement.

1. That the City will agree that no additional fencing or barriers of any kind will ever be constructed or installed from Terrace Drive and Isle Road then east to the end of the Dank's white fence while they own their property.
2. That the Danks will be allowed to remove their large boulders and gravel and put them back on their property south of the right of way boundary, with a reference to the Randy Piasecki letter of May 2016 where the city makes no claim to any property south of the boundary line/right of way.
3. That as long as they own the property, the Dank's will be able to gain vehicular access from Isle Road to their property for servicing their beach, installing and removing their boat lift or other maintenance to their property.

After discussing the proposed settlement, both Attorney Bayliss and Administrator Piasecki recommend Council not include the 3 requests made by the Danks in the settlement. Those proposed issues can be addressed by staff working with the property owners. Attorney Bayliss and staff encourage the Council to accept the settlement with prejudice. The settlement eliminates a pending trial and the unknown outcome of that trial. The City retains the Isle Road right of way as platted and surveyed, which was the direction provided by Council. If settlement is approved, Attorney Bayliss will complete settlement documentation on behalf of the City.

Brisbn/Nathe unanimous to accept a settlement offer with prejudice in the case Dank vs. City of Zimmerman, with Plaintiff dismissing all claims against the City, and the City dismissing its counterclaim against Plaintiff, authorizing the Mayor and City Administrator to execute said agreement on file in the City Clerk's Office, on behalf of the City of Zimmerman, as recommended by the League of Minnesota Cities Insurance Trust.

Acquisition of Permanent Easement – 26069 – 2nd Street West

During the design of the 2nd Street West and 3rd Avenue South project, the base survey showed an irregular right of way width adjacent to Zimmerman Collision, located at 26069 2nd Street West. The Feasibility Study prepared by Bolton & Menk suggested the City acquire a permanent easement for right of way purposes across the street frontage of this property. The easement description and drawing for a 1,000 square foot (10 foot wide by 100 foot long) easement has been prepared by the City Engineer, and the City Attorney has prepared an easement document, which been signed by the mortgage company. The property owner has requested reimbursement for the land area lost to the easement. The City has purchased property, and in some cases easements, for past reconstruction projects, so this request is not out of the ordinary.

While the easement is not required to complete the project, it does provide for a better "end product" for the street alignment, finished grade, and snow storage. Based upon the assessed value of the property, the land is valued at

\$3.00/sf, and the easement totals 1,000 sf. The land owner has agreed to release the easement to the City and sign the appropriate paperwork for a \$3,000 payment.

Administrative staff recommends Council authorize the acquisition of the 1,000 sf permanent easement for public street purposes. Payment expense will become part of the 2nd Street West and 3rd Avenue South reconstruction project.

Nathe/Brisbin unanimous to approve the acquisition of a 10'x100' permanent right of way easement from Rod and Carol Properties LLC, for additional street right for the 2nd Street West reconstruction project, at a cost of \$3,000 (ck #39205), as recommended by the City Administrator.

Petition for annexation

Christopher Flor owns property in the northwest quadrant of the CSAH 4 and 136th Street intersection, identified as tax parcel 30-007-4400. This parcel is 34.15-acres in size and is located in an Orderly Annexation Area established with Livonia Township in 1999. The Zimmerman/Livonia Fire District has agreed to purchase a portion of this property for a future fire hall project. Flor is requesting the property be annexed into the City so the property subdivision can be completed per City regulations.

Staff has provided Livonia Township a draft copy of the Joint Resolution annexing the property for their review and approval. The Joint Resolution identifies the property as: being located in the orderly annexation area; the land area is well defined and does not need review by an administrative law judge; zoning will be R-1 Single Family Residential; and the Township is to be reimbursed for lost tax revenue per the Orderly Annexation Agreement in the amount of \$1,280.41. This reimbursement was calculated using the term of the Orderly Annexation Agreement, whereby the Township receives 100% of the township taxes generated on the property in the year of annexation, and then 90%, 70%, 50%, 30% and 10% of that amount for each subsequent year.

Both the City and Township must execute the Joint Resolution to annex the property into City limits. A copy of the Joint Resolution would then be provided to the State and County notifying them of the boundary adjustment. Since the property is in a state-approved Orderly Annexation Area, the property basically becomes "city" when the Joint Resolution is executed. Staff recommends approval.

RESOLUTION #17-07-03 Brisbin/Nathe unanimous to adopt RESOLUTION #17-07-03, approving a Joint Resolution to annex a 34.15-acre property located within the orderly annexation area and owned by Christopher Flor, identified as tax parcel 30-007-4400, generally located in the northwest quadrant of the CSAH 4 and 136th Street intersection.

MAYOR/COUNCIL ITEMS

Mayor Earenfight noted the following upcoming events:

- Farmer's Market – Zimmerman Bowling Alley - Tuesdays; 2:30 - 6 p.m.
- July 11 – Movie in the City Park – 8:30 p.m.
- August 1 – MN Night to Unite – City Park – 6 – 8:30 p.m.
- August 1 – Movie in the City Park – 8:30 p.m.
- August 26 – Passing the Bread Food Distribution
- September 9 – Community Shred Event – City Hall
- September 9 -- Zimmerman Youth Expo – St. John Lutheran
- September 9 -- Fire Department Open House and Dance -- Fire Station

Before adjourning, Mayor Earenfight asked for a moment of silence in honor of US military personnel and their families.

Brisbin/Nathe unanimous to adjourn the meeting at 7:41 p.m. Motion carried.

Approved this 24th day of July, 2017.

s/s Kary Tillmann, Clerk/Treasurer

Approved 07/24/2017