

MOUND CITY COUNCIL MINUTES
July 14, 2015

The City Council of the City of Mound, Hennepin County, Minnesota, met in regular session on Tuesday, July 14, 2015, at 7:00 p.m. in the council chambers of the Centennial Building.

Members present: Mayor Mark Wegscheid, Council Members Heidi Gesch, Ray Salazar, Kelli Gillispie, and Jennifer Peterson, Tim Olson

Members absent: None.

Others present: City Manager Kandis Hanson, Director of Finance/Clerk/Treasurer Catherine Pausche, Director of Public Works Eric Hoversten, Director of Community Development Sarah Smith, Attorney Melissa Manderschied, Katie Morford, Justin Rock, Laura Mattioli, Robert Mattioli, Mark Saliterman, Beth Saliterman, Pete Hamlin, Mary McKinley, John McKinley, Kris Williams, Russ Bothern, Tom Lundquist, Rod Pettit, Tim Litfin, Brian Nelson, Scott Beckman, Dan Swanson, Al Leach, Kathy Leach, Kraig Kuck, Darren Neuman.

Consent agenda: All items listed under the Consent Agenda are considered to be routine in nature by the Council. There will be no separate discussion on these items unless a Council Member or citizen so requests, in which event it will be removed from the Consent Agenda and considered in normal sequence.

1. Open meeting

Mayor Wegscheid called the meeting to order at 7:00 p.m.

2. Pledge of Allegiance

3. Approve agenda

Hanson asked for the wording on Consent Agenda Items 4J and 4K be restated to say "Approve a" and not "Action on a Resolution Approving."

MOTION by Salazar, seconded by Gesch, to approve agenda as amended.
All voted in favor. Motion carried.

4. Consent agenda

MOTION by Salazar, seconded by Gesch, to approve the consent agenda as amended.
Upon roll call vote, all voted in favor. Motion carried.

A. Approve payment of claims in the amount of \$1,409,478.36

B. Approve minutes: June 23, 2015 regular meeting

C. Approve Pay Request No. 3 from Geislinger & Sons, Inc. in the amount of \$457,973.51 for the 2014 Street, Utility and Retaining Wall Improvements - West Three Points Blvd. Utilities, City Project No. PW-14-01

D. Approve Pay Request No. 5 from GMH Asphalt in the amount of \$170,500.11 for the 2014 Street, Utility and Retaining Wall Improvements - East Three Points Boulevard, City Project No. PW-14-01

E. Approve Pay Request No. 1 from Geislinger & Sons, Inc. in the amount of \$150,654.80 for the 2015 Street, Utility and Retaining Wall Improvements - Grandview Boulevard and Tuxedo Boulevard, City Project Nos. PW-15-02 and PW-15-01

F. Approve Payment of Invoice from Precision Seal Coating in the amount of \$6,187.50 for the 2015 Crack Seal Project, City Project No. PW-15-07

G. RESOLUTION NO. 15-73: RESOLUTION AWARDED THE 2015 SEAL COAT PROJECT TO ALLIED BLACKTOP COMPANY IN THE AMOUNT OF \$24,148.00, CITY PROJECT NO. PW-15-08

H. Approve Policy FIN-003 Procurement Policy

I. RESOLUTION NO. 15-74: RESOLUTION APPROVING THE ELIMINATION OF PARCELS FROM TAX INCREMENT FINANCING DISTRICT NO. 1-2 WITHIN DEVELOPMENT DISTRICT 1 OF THE CITY OF MOUND

J. APPROVE A PUBLIC GATHERING PERMIT FOR 2015 FULL THROTTLE FISHING TOURNAMENT SPECIAL EVENT AT CENTERVIEW PARK AND BEACH

K. APPROVE A PUBLIC GATHERING PERMIT FOR 2015 RIVER VALLEY CHURCH PICNIC AT SURFSIDE PARK & BEACH

L. RESOLUTION NO. 15-75: RESOLUTION APPROVING PUBLIC GATHERING PERMIT FOR BOY SCOUT TROOP NO. 569 - FLAG RETIREMENT CEREMONY SPECIAL EVENT AT THE HARBOR DISTRICT WITH FEES WAIVED

M. RESOLUTION NO. 15-76: RESOLUTION APPROVING SECOND AMENDMENT TO SUBDIVISION AGREEMENT FOR THE LANDINGS ON LOST LAKE

5. Comments and suggestions from citizens present on any item not on the agenda.

Pete Hamlin, 6370 Bay Ridge Road, stated that approximately two weeks ago a moving truck snagged the overhead lines at 1pm on a Thursday and that the line was not repaired until 11 am the next day. Hamlin stated 14 homes could not either access or leave their home via auto and that the mail and garbage services were suspended. Hamlin offered the following remarks and suggestions for the Council's consideration: (1) County Roads require a minimum height of 19 feet between wires and the street and the City should evaluate low hanging wires and pass something similar. (2) Homeowners were left to determine the owner of the wire which was thought to be Mediacom but was actually Frontier. Hamlin suggested the City take responsibility to ensure the repair is properly prioritized by the responsible agency. (3) Hamlin said the wire was cordoned off by yellow police tape but that the wire was not live and did not pose a threat. Hamlin suggested use of cones to direct traffic if necessary, but to allow access to homes by auto. Hamlin said not only for public safety considerations, but also for the convenience of residents who were affected.

John McKinley, 5948 Hillcrest Road, stated Hillcrest was on the 2008 street improvement project for the portion west of Sycamore to Grandview Boulevard and was part of the 2013 sealcoat project. McKinley said with all the construction traffic damage has resulted with cracks 1 - 2 inches wide, curb to curb. McKinley said there are options to use other routes for streets that have not been improved and asked for the City to divert construction traffic and repair the cracks to prevent further damage.

Eric Hoversten, Public Works Director, stated that the timing did not allow for Hillcrest to be included in the 2015 crack repair project, but that Staff is aware of that and it is a priority. Hoversten said a single repair job will cost more and that the City does not have the equipment to do it. Mayor Wegscheid asked if it makes sense to wait until the construction is

done and Hoversten replied yes. Salazar asked if it would be done as part of the 2016 project and Hoversten said yes. Hoversten added that it had been the intention to add the crack repair project as an alternate/change order for 2015 but that the contractor's schedule was unable to accommodate the work.

Mary McKinley, 5948 Hillcrest, noted that concerns were raised both last year and this year and were told Superintendent Ray Hanson would be responding but he never did. She was also told Staff was too busy with high water events and that repairs were not in the budget. McKinley said Hoversten confirmed damage and that she is questioning why construction traffic would be allowed on new roads.

John McKinley, 5948 Hillcrest, suggested the City post a "NO CONSTRUCTION VEHICLES" sign as other cities have done on some of their roads.

6. Visit and presentation by Tim Litfin regarding 2015 Tour de Tonka annual special event

Litfin showed a video and Power Point presentation showing highlights from last year's race, the planned routes for the August 1, 2015 ride, and thanked the City for its support of the event.

7. Public Hearing & Planning Commission Recommendation

Sarah Smith, Community Development Director, requesting review of street vacation application for north 1/2 of unimproved portion of Galway Road abutting property at 4730 Galway Road and consideration/action on variance application for lack of minimum required frontage on improved road
Planning Case No. 15-09 and 15-10
Applicant: Justin Rock

Smith showed a diagram of the property and gave background on previous events, including the purchase and granting of a public lands permit and variance to allow the building footprint to encroach on the front set-back. Smith stated conditions contained in the variance and public lands permit included an agreement to address the improvements and protect the City's interests and that those actions still stand. Smith said the Council denied a request for a full vacation of the 30 feet of unimproved portion of Galway Lane submitted by Rock and his neighbor, the Mullers. Smith noted that the vacation process required notifications to the DNR and that the DNR recommended denial because the public was using it as access to the commons and Lake Minnetonka.

Smith said that following the denial, Mr. Rock submitted a new application to vacate the north portion of Galway Lane (partial vacation) and a new variance application to address one condition regarding the minimum required frontage. If the new variance is approved, the setback variance would no longer be required.

Smith noted MSS 412.851 requirements were conducted including notifying the DNR, as well as the publication, posting, and mailing of the public hearing notices. Staff recommended approval as frontage on an improved road and elimination of one of the two variances were deemed favorable as Mr. Rock will have fee title rights to the middle of the road, noting that the City will still holds an easement. Staff noted the ability to have a conforming house is favorable and the fact that the south portion of Galway Lane would still be available for public access. Smith noted the Docks and Commons Commission recommended approval and that the Planning Commission recommended denial of both requests as they felt there was public benefit to retaining right of way and they thought the existing approvals were sufficient. Smith noted the

Planning Commission minutes were included in the packet that contain testimony from the area neighbors and that there was also a letter from the neighbors on the south side that was received earlier in the day and distributed as additional information.

Smith noted if the vacation was approved, Galway Road would be considered the front of the building. All setbacks would be relative to that change and orientation and setbacks would change accordingly. Smith noted applicant did some staking and there are more pictures to share.

Mayor Wegscheid asked for the statutory requirement for vacations. Smith read an excerpt from statute stating that no vacation shall be made unless it appears in the public's interest to do so and a public hearing is conducted. Smith noted this case does not have a qualified petition approved by a majority of the property owners, so it requires a 4/5th vote for the vacation and a simple majority for the variance.

Gesch asked to clarify what the markers meant. Gesch also asked to clarify that with the new request for the vacation the building pad increased from 3,000 to 3,700 SF and that the plan as presented has shifted location of the building closer to the south property line. Smith said yes.

Mayor Wegscheid opened the public hearing at 7:50pm.

Justin Rock, 4730 Galway Road, applicant, said he regrouped with staff when the original full vacation request was denied by the City Council. Rock said his objective is to gain width on the lot by making the house wider toward the lake and that lot orientation is his biggest concern. Rock said if this is not approved, he wants to dispute the ruling on the orientation and corresponding set-backs. Rock would like to see the west side considered the front, east side the rear and north and south the side lot lines.

Rock said the driveway will already hinder public access to the road and that the south side is the flatter area and that he feels 15 feet would be adequate for access. Rock noted the grade increases significantly on north side which also lessens the ability for public use.

Mayor Wegscheid asked for the conditions on the driveway. Smith said it had to be on the north half only and it had to be minimal impact on the right of way as well as the footprint behind the 20 foot setback.

Darren Neuman, DNR representative, thanked the Council for the opportunity to provide comments and for the access the city provides to Lake Minnetonka. Neuman reiterated the requirements for vacation and the need for public benefit to do so per MSS 412.851. Neuman said the benefits in favor of vacation need to be weighed against the benefits of retaining the access and noted that it is not just boating/access to the commons, but other uses such as fishing and snowmobile access during the winter.

Neuman stated the 1913 road dedication was to the public use forever and for 100 years has provided public access to the commons. Neuman cautioned about assuming the remaining 15 feet is sufficient based on current uses without knowing the potential future uses.

Kathy Leach, 2645 Shannon Lane, said she can't see how vacating is in the interest of the public, as it only appears to be in the interest of one property owner. If this vacation is granted, Leach assumes the Mullers would apply and wonders how the Council could grant to one and not to the other. Leach highlighted the building pad increase with the new request and noted that plans and other requests continue to shift.

Alan Leach, 2645 Shannon Lane, said there are three access points to Excelsior Commons but this one is used the most because the grade is steep on one and the grade of the other results in poor conditions and flooding. Leach says users intentionally use the middle to respect the privacy of the Muller's. Leach said retaining city access is important for public safety and maintenance like dredging and tree removal. Leach said Rock and his associates have been driving large vehicles and trailers on the unimproved road, changing the nature of the area disturbing the peaceful nature.

Dan Swanson, 2560 Wexford Lane, said he is a non-abutting site holder who has lived in Mound for over 18 years and uses the right of way during all seasons. Swanson noted that concerns were raised when the lot was sold for development and his fears are being realized.

Brian Nelson, 2620 Tyrone Lane, said dump trucks used the right of way for access to do a dredge in the past and that won't be possible in the future. Nelson said losing the 15 feet of the public access would prevent the use of ATVs and access by maintenance vehicles as the north side of the access provides the flatter area toward the commons.

Scott Beckman, 2628 Tyrone Lane, said he is a non-abutting site holder who has lived in Mound for over 15 years and that he and his daughter fish on their dock 3 – 4 times a week and use the right of way to access it. Beckman noted the applicant bought the lot knowing what the layout was.

Rod Pettit, 2647 Shannon Lane, said he uses the access in all seasons and questions why it is taking this long to make a decision as the dedication of the access is permanent.

Laura Mattioli, 4730 Galway Road, stated that she wanted to remind the City that they were coached by the City Attorney and Staff to take this route. Mattioli stated that they just want the orientation changed because the 70 foot lot is only 35 feet buildable and that the corner lot was not considered. Mattioli said they are not trying to be greedy or upset people, but that they just want the same orientation/set-backs that everyone else got.

Mayor Wegscheid said everyone can respect an individual's desire to make their property what they want.

Tim Olson, owner of 2647 Shannon Lane, highlighted that the original dedication was permanent. Olson questioned the decision to allow the sellers who split the lot to retain abutting status on a non-abutting property. Olson said although the applicant said he moved the house further from the Mullers in this round, it was only 6 inches while he increased it 14 feet on the other side. Olson said granting approval would be a detriment to him as a landlord because the current access to the Lake increases the value of his property.

Mayor Wegscheid closed the public hearing at 8:20pm.

Mayor Wegscheid said he keeps returning to the state statute and the public good test and feels there is an obvious public benefit to not vacating. Salazar concurred with that statement and said the original dedication was maintained for over 100 years and feels the original resolutions approved on 10/28/14 should stand.

Gillispie asked why Staff chose the orientation they did and Smith said the planning report included an explanation of the interpretation. Smith said that due to the time constraints for the closing, Staff recommended the public lands and variance option at that time, but understood that the applicant may eventually pursue a vacation application which takes more time.

Mayor Wegscheid noted that each vacation stands on its own, but it is hard to anticipate denying the vacation application on the south side if the north was vacated.

Smith said a resolution was not prepared in advance and the requested action is to direct staff to bring back a resolution regarding the vacation and variance.

MOTION by Salazar, seconded by Gesch, to direct staff to prepare a resolution denying the vacation of Galway Lane citing the findings presented in the packet and coupled with the testimony provided at the meeting tonight. All voted in favor. Motion carried.

Wegscheid commented neighborhoods are an important thing and he hopes that the neighborhood will put this aside and move on.

MOTION by Salazar, seconded by Gesch, to remove the variance application from consideration on the agenda. All voted in favor. Motion carried.

8. Sarah Smith, Community Development Director, requesting discussion/action on proposed amendment to the Limited Use Agreement between the City of Mound, Mound HRA and Mound Westonka Rotary Club

Smith gave background on the project and stated they were looking for direction from the Council as to whether the City is willing to share in the legal fees. Smith summarized the options provided in the packet.

Mayor Wegscheid said he was leaning toward option number one. Gillispie agreed as the Limited Use Agreement template could be used at other locations. Gesch questioned whether a cap should be placed on the amount of legal fees the City would pay for but it was agreed that the legal work was essentially complete. Hanson asked if the title work will be relevant during future development and Attorney Manderschied stated yes but said it was also a point in time analysis.

MOTION by Salazar, seconded by Gesch, to direct staff to amend the Limited Use Agreement to reflect option one where the City will pay for legal fees related to the creation of the Limited Use Agreement. All voted in favor. Motion carried.

9. Eric Hoversten, Public Works Director, requesting discussion/action on Extra Work Order No. 1, with Insituform Technologies USA, LLC, in the amount of \$198,623, for work anticipated on the 2014/2015 Sanitary Sewer Rehabilitation Project, City Project No's. PW-14-05 and PW-15-06

Hoversten stated that the requirements of the new FIN-003 Procurement Policy require change orders over 10% of the contract amount to be brought back to the Council and that is why this item was not on the consent agenda. Hoversten said the favorable bid results allowed for an increase in scope for pipe lining and that the net increase will be approximately \$40,000, which is within the statutory guidelines for not having to rebid. Hoversten said Met Council is changing its measurement of exceeding the limits of Inflow & Infiltration (I&I) and that it will now be based on hourly flows versus the average over a 24 hour period. Hoversten stated Met Council will reduce any penalty amount for overages by the amount invested in pipe lining so this is money well spent.

Attorney Manderschied clarified the 25% cap on having to rebid relates to Chapter 429 special assessment projects and not utility projects and that the change order route was chosen because of the similar scope of work as the contract that was bid. The other project that is

being bid is small enough to allow for use of the quote process. Salazar said he likes the idea of paying for investments versus penalties.

MOTION by Salazar, seconded by Gillispie, to approve the following resolution. All voted in favor. Motion carried.

RESOLUTION NO. 15-77: RESOLUTION APPROVING EXTRA WORK ORDER NO. 1, 2014/2015 SANITARY SEWER REHABILITATION PROJECT - CITY PROJECT NOS. PW-14-05, PW-15-06

10. Jennifer Peterson, Council Member, opening discussion on Dakota Regional Trail Safety, with City Manager Kandis Hanson reporting

Peterson said a meeting with Three Rivers and Hennepin County was organized to discuss Dakota Regional Trail safety at the Shoreline Drive crossing. Hanson stated changes were made years ago in an attempt to improve safety, but concerns still exist. The modifications at that time targeted the trail users but now short, near and long term solutions were discussed to target motor vehicle driver behavior. Hanson noted trail crossing are different from pedestrian crossings and vehicle traffic is not supposed to stop at trail crossings. Hanson said tonight's broadcast is the first opportunity to educate the public, and articles in the paper and newsletter will also address rules of the road for drivers and trail users. Hanson read the language provided by Three Rivers that was included in the packet.

Hanson also highlighted the other solutions and options to educate in the near-term and long-term. Mayor Wegscheid said he is happy the conversation has begun. Salazar said he would like education for bicyclers to warn them cars will not stop but that he does not like the idea of narrowing the road to two lanes as that would cause other problems.

11. Eric Hoversten, Public Works Director, requesting discussion/taking comments on the 2015 Minnehaha Creek Watershed District (MCWD) Capital Investment Plan (CIP)

Hoversten said the city was given the opportunity to comment on the MCWD CIP and project list and said they are divided between Focus and Response Tracks. Hoversten said that although none of the projects are in Mound, there are opportunities to collaborate with the Response Track funds that were increased from \$500,000 to \$1,000,000 and may be available to help with things like repairing the Wolner Field parking lot or maintaining the Lost Lake Channel.

Hoversten requested any specific feedback be forwarded to him and recommended the City input be to concur with the plan but with the comment that the City would like to hold open the opportunity to propose projects or set requirements that are relevant to projects in Mound.

MOTION by Wegscheid, seconded by Salazar, to provide input on the MCWD CIP for 2016 - 2018 as Staff has suggested. All voted in favor. Motion carried.

12. Information/Miscellaneous

- A. Comments/reports from Councilmembers/City Manager

Hanson said the Spirit of the Lakes Festival is July 16, 17 and 18th and that buttons and T-shirts are available at Walgreens, Jubilee and Mound True Value. Hanson said the Thursday night kick-off begins at 5pm.

- B. Minutes:
- C. Reports: Harbor Wine & Spirits: June 2015
- D. Correspondence: Orono Public Safety Open House: July 11, 2015

13. Adjourn

MOTION by Peterson, seconded by Gesch, to adjourn at 9:01 p.m. All voted in favor.
Motion carried

Mayor Mark Wegscheid

Attest: Catherine Pausche, Clerk