

MOUND CITY COUNCIL MINUTES
August 13, 2019

The City Council of the City of Mound, Hennepin County, Minnesota, met in regular session on Tuesday, August 13, 2019 at 7:00 p.m. in the council chambers of the Centennial Building.

Members present: Mayor Ray Salazar, Council Member Jeff Bergquist, Sherrie Pugh, Phil Velsor and Paula Larson

Members absent: None

Others present: City Manager Eric Hoversten, Director of Finance & Admin Services Catherine Pausche, Community Development Director Sarah Smith, City Attorney Troy Gilchrist, City Engineer Brian Simmons, Officer Sonnek, Judge Ivy Bernhardson, Roger Schmitz, Larry Kastner, Sally Kastner, Mike Valleau, Mary Marrs, Paul Marrs, David Schulz, Doug Roberts, Lee Stedman, Bonnie Stedman, Dave Johnson, Bonnie Johnson, Joe Ruhl, Fire Chief Gregory Pederson, David Mueller, Terry Knight, Paul Heinan

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 Councilmember or citizen so requests, in which event it will be removed from the Consent Agenda and considered in normal sequence.

1. Open meeting

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

2. Pledge of Allegiance

3. Approve agenda, with any amendments

Hoversten modified agenda item 4G language to delete last part and added pages 1609 A, B, C for agenda item 8, Orono Police Department stats for July 2019.

MOTION made by Bergquist, seconded by Larson, to approve the agenda as amended. All voted in favor. Motion carried.

4. Consent agenda

Larson asked for Item 4D to be removed for discussion.

MOTION made by Velsor, seconded by Bergquist, 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 \$417,031.27

B. Approve minutes from 07-23-19 regular meeting

C. Approve Pay Request No. 2 & Final from Hydro-Klean Inc. for work completed on the 2018 Manhole Inspection Jetting & Televising Project from December 31, 2018 through July 3, 2019 in the amount of \$6,593.68

D. REMOVED

- E. Approve Pay Request #1 and final, from Fahrner Asphalt for work completed Crack Seal Contract in the amount of \$1,210.60
- F. **RESOLUTION NO. 19-50: RESOLUTION APPROVING OUTDOOR MUSICAL CONCERT PERMIT, 1-4 DAY TEMPORARY ON-SALE LIQUOR LICENSE AND SEASONAL AND PORTABLE PERMIT FOR 2019 OUR LADY OF THE LADY CATHOLIC CHURCH INCREDIBLE FESTIVAL TO BE HELD ON FRIDAY, SEPTEMBER 20, 2019 THROUGH SUNDAY, SEPTEMBER 22, 2019 AND FEE WAIVER FOR THE MUSICAL CONCERT PERMIT**
- G. **RESOLUTION NO. 19-51: RESOLUTION APPROVING MUSICAL CONCERT PERMIT FOR PRIVATE WEDDING AT 6000 BEACHWOOD ROAD**
- H. Approve Miscellaneous project pay requests from Wellens Agronomics in the amount of \$4,400 for turf restoration work 2016 Street and Utility improvement projects PW-16-01,02,03

4D. (Removed) Approve ADMIN POLICY XXX: Personnel Policy – Code of Conduct

Larson said she has a lot of questions regarding the Personnel Policy – Code of Conduct, including whether or not we have had one in place? Hoversten said there are policy statements in place, but that this is the LMC's version. Larson asked if this will apply to all employees. Hoversten said yes, both union and non-union. Larson asked if there is a division between union and non-union or managers vs workers and if non-union are represented. Hoversten clarified who is union and non-union.

Larson said the MN State Legislature tightened up sexual harassment language effective August 1st. Larson suggests before the new code of conduct is adopted, more specific language should be added with regards to timelines and the language made more clear and concise. Larson clarified that the City Manager is in charge of all hiring and firing and the City Manager is accountable to the City Council and the City Manager serves the HR role. Larson questions the policy as it is currently written, if a female experiences sexual harassment, for example, if the process for reporting could be more clearly spelled out.

Larson noted page 1560 second paragraph that states employees who feel or are aware of harassment can report to any of the following: supervisor, City Manager, Mayor or City Council. Larson says she feels this is ambiguous how the incident should be communicated. Larson feels it should be more specific and ensure that it is in writing, specifying the timeline and the format.

Pugh asked if the City Council members are to serve a role in this, that they be made aware of these policies and receive training as well.

MOTION by Larson seconded by Pugh to remand the ADMIN POLICY XXX: Personal Policy – Code of Conduct back to staff for review by City Labor Attorney who shall consult with Larson and incorporate training for City Council. All voted in favor. Motion carried.

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

None were offered.

6. **Judge Bernhardson providing an update to Council and Community regarding Hennepin County District Court activities.**

Judge Ivy Bernhardson said this is a new outreach effort by the court initiated by her. Judge Bernhardson went over the highlights in the handout, including that fact that Hennepin County is the largest court in the state. Bernhardson said juvenile cases are increasing and that Ridgedale and Brookdale are the two suburban locations. Judge Bernhardson said there were over 900 jury trials in 2018 and that as an urban court, there are lots of felony/ drug addiction related offenses.

Judge Bernhardson said she is proud of treatment courts, veterans court, criminal mental health court and restorative justice courts which are innovations, in addition to a strong self-help center and pro-bono attorneys. Judge Bernhardson invited the council to visit any of the courts.

Mayor Salazar thanks the judge for coming and noted it is the first visit of its kind.

7. **Roger Schmitz from CenterPoint Energy presenting a Community Partnership Grant in the amount of \$2,200 to the Mound Fire Department for multi-gas monitors and calibration cylinder gas.**

Roger Schmitz presented Fire Chief Greg Pederson a Community Partnership Grant in the amount of \$2,200.

Velsor asked what the monitors are used for. The Chief said they have 4 in apparatus and one in the dispatch center and if there is a call for CO2 detector, two are taken into the property to test, noting the units are blue tooth capable and can be left behind for extended monitoring.

Schmitz said their techs use them as well in any home they service.

MOTION by Bergquist seconded by Velsor to adopt the following resolution. All voted in favor. Motion carried.

RESOLUTION NO. 19-52: RESOLUTION TO FORMALLY ACCEPT A CENTERPOINT ENERGY COMMUNITY PARTNERSHIP GRANT IN THE AMOUNT OF \$2,200 TO PARTIALLY FUND MULTI-GAS ATMOSPHERE MONITORS AND CALIBRATION CYLINDER GAS

8. **Officer Tim Sonnek with Orono Police Department Activities Update for July 2019**

Officer Sonnek noted an updated statistical summary for July has been handed out. Sonnek highlighted the major reasons for calls, including apprehending vandals at Belmont Park and vehicle thefts, noting skate park issues have subsided. Sonnek said bike patrol began this summer and the bike was provided by the Crime Prevention Fund. Sonnek reminded the audience hands free started in August and only one touch is allowed, ending with the annual Guns (Orono Police Department) vs. Hoses (Mound Fire Department) softball game is at WRA this Thursday.

Pugh asked about the crime spree metro wide for which Mound was included and asked for an update. Sonnek said Orono and Minnetonka Beach was hit hard, noting that it is slowing down and that he does not recall any in Mound. Pugh asked if the 20 welfare checks are the norm and Sonnek said yes.

Larson thanked Sonnek for coming and noted that there were 3 new officers hired and she asked what was driving it. Sonnek said one was a new part-timer and the others either retirement or vacancy, but not new.

9. **Public Hearing to discuss and consider revocation of Conditional Use Permit (CUP) approved by Resolution No. 15-91 for property at 2642 Commerce Boulevard (continued from July 23, 2019 meeting)**

Sarah Smith gave background from July 23 meeting when staff did not recommend revocation but due to non-compliance staff amended the recommendation as an additional handout. Smith gave history of the CUP that was initially granted to Gekko Boats for up to 4 rentals in 2015. Smith said the current owner was given notice that they were not maintaining the required number of boats outside and required parking spaces in 2018 and it was brought into compliance for the remainder of the fall. Smith said the owner never proceeded with a request to change the conditions of the CUP which prompted Staff to reach out when a higher number of units were once again observed in the spring of 2019. Smith said a representative of Heinan's came to the July 23 Public Hearing who stated the fleet consists of 14 rental units and the Council heard from neighbors of the Chapman Place condominium association. The council opted to continue the Public Hearing, told staff to continue to monitor and to prepare a resolution revoking the CUP.

Smith said a draft resolution is included that begins on page 1612. Smith said observations have not shown more than 4 boats outside on the property at any one time, but they are not necessarily the same 4 and it is apparent boats are being stored inside. Smith said there is no evidence of marina sales and when 4 boats are observed on the property, there are more observed at make ready and Depot docks, which indicates more than 4 rentals in operation.

Smith said the owner is present and is available to provide comments and insights. Smith said the hearing was continued and is currently open.

Paul Heinan, 2642 Commerce Blvd, said he is here to answer any questions. Salazar said Heinan has too many rental boats for the CUP and that staging at make ready docks further exacerbates the issue. Heinan said the business started as an outlet for the Osseo boat sales location and said he is the 4th generation owner. Heinan said probably with Bay Rentals beside them, that people wanted to rent and not buy, so he is responding to supply and demand, and the operation moved to more rentals. Heinan says they cater to over 30 year olds, corporate and higher end.

Heinan said they leased it last year to another company and since taking it back, they have striped it to be up to code, noting that September – April only one boat was in the parking lot but of course there will be more boat traffic in summer. Heinan said when they purchased the property, their realtor and attorney talked to Sarah and she said it was just 4 boats outside and he challenges why the Council can control what is stored inside.

Bergquist said it says 'property.' Salazar went over the observed number of boats outside the property in June. Heinan said Paul Bergquist leased the property from him last year. Salazar said Heinan is the owner and the CUP is associated with the property. Heinan said the CUP was made for a corporate boat company and not a retail operation. Salazar said it will have to be revoked and then reapplied for. Gilchrist said the owner could bring it into compliance and keep it in compliance and then work to reapply to amend the CUP.

Pugh said she visited the business since July 23 and it was out of compliance and today when she went by there were 5 boats and no room for anyone to park. Pugh asked what is their intent. Heinan said there is no way to comply because they need to shuffle boats around.

Bergquist asked if he understood the CUP when he bought the property and that it is 4 rental boats total. Heinan said he did not understand that it was limited to 4 rental boats.

Pausche clarified it is 4 rental units, which is different than boats for sale, because of the intensity of rental activity and the impact on the public launch, the public beach and the public parking. Pausche further explained 16 jet ski's equals 16 people and 4 cars vs your associate said you have a fleet of 14 that can accommodate up to 14 or 15 people each, resulting in many more cars.

Heinan disagreed and stated different scenarios.

Pausche stated the primary intent of the CUP was for marina sales with the ability to demo models and that this level of intensity was not contemplated, so the question is what's a reasonable amount.

Larson stated item 2B in the CUP states Gekko shall be limited to four rentals of boats that it manufactured. Larson asked if the new owner has to manufacture the boats. Smith said Staff has interpreted it as Heinan is a direct representative of Tige and Coach and that it was similar because it was suppose to be both boat sales and boat rentals. Smith once again stated that the owner needs to request amendment to the CUP to see if it can work for them.

Salazar said the property can't accommodate 14 boats and parking your customers as well. Salazar said Heinan's has outgrown the space and is putting a burden on the City, public boat launch, public parking, make ready dock, adjacent condominium homes, and public park and beach.

Heinan said he would like to address one issue at a time. Heinan said of the 14 boats in rental fleet, 10 can be on-site with 4 outside and 6 inside and that others are at private docks for VRBO customers or at the Osseo location. Heinan thought the intensity is a joke and asked if Bergquist needs to recuse himself since his son is employed by a direct competitor next door to the property. City Attorney Gilchrist said that is not a conflict of interest.

Salazar said Rolly Hartman said the fleet was 14 and that some are stored offsite on a farm. Salazar asked how he is going to comply with the 4 rentals. Heinan said it will be easy in 2 weeks when the season is over. Salazar said Heinan is responsible for complying as the owner of the property. Velsor said there is no reason to go any further back than this boating season and 14 is not 4. Heinan said then let's make it 14. Velsor recalled Mahogany Bay and Heinan said they died. Heinan said he can fit 40 boats at a property up the road. Velsor said the CUP is unlikely to accommodate that.

Smith said Rollie Hartman came to City Hall yesterday and said that the off-site storage units are being brought elsewhere and Smith asked Heinan if that was the case. Heinan

said he has not talked with him about that.

David Schultz, 2670 Commerce Blvd, said he lives in the condos facing the park/launch. Schultz said that since the July 23rd meeting, they have used different vehicles and are parking them in the public parking lot. Schultz saw a black suburban SUV and a gray Cherokee and noted on July 24th there were 3 pontoons sitting at the make ready dock, noting one was there at 10:30 am and not taken until 1:30 pm on the side of the dock where people launch. Bergquist asked how Schultz knew it was Heinan's. Schulz said he offices from home and that it is the same staff, with clip boards and going back and forth from the property.

Larry Kastner, 2670 Commerce Blvd., said he has observed up to 3 pontoons at the dock with a 4th boat trying to use it. Kastner acknowledged the new lines for parking spaces but said there are only enough for 6 vehicles and 2 out of 3 are always used by one of the pontoons, therefore the parking is not in compliance, including no handicapped parking. Bergquist asked where they park. Kastner said Chapman Place and the Surfside Park parking lot.

Terry Knight, 2670 Commerce Blvd, noted Heinan's rents a slip at Chapman marina, which does not allow commercial boats, but said they clearly using it for commercial proposes. Knight said he has been here for 12 years and they have never had the issues like these past 2 years. Knight said one boat in the slip was removed last week as it did not fit according to the lease requirements for size. Salazar asked to clarify. Knight thought it was going to be a private boat and at one point a 28' pontoon replaced it and it was obvious available for rental. Knight said the jet ski rental place makes their customers move if parked in the condo's private lot.

Lee Stedman, 2670 Commerce, said he is confused about the relationship between Heinan and Rollie Hartman. Steadman said if you modify the CUP there are still going to be the same complications at the launch and on the public docks and he does not see how it can be done.

Paul Heinan said 25' is the biggest boat he has and that he leased the slip and that nothing in the lease said it can't be a rental boat. Heinan said they told Dock and Lift who manages the slips that they would be doing rental activities.

Salazar said the primary issue is 4 boats for rental at the property and that both Heinan and Hartman indicated that it is not possible. Salazar said he does not see where compromise is possible. Heinan asked why 16 jet skis are permitted next door.

Heinan said it does not appear the operation is wanted and that this is a small piece of his business.

Sarah Smith noted Chapman Place docks are subject to Lake Minnetonka Conservation District (LMCD) rules and that she believes they are for residential use and not commercial and that follow-up may need to be done with that agency.

Terry Knight said the lease calls for the boat to fit fully in the slip and the boat was 26' and it overhung 6 feet, noting lessees must provide DNR registration which was a Bryant runabout that fit and then was replaced with a larger boat.

Mayor Salazar closed the public hearing at 8:35 pm.

Salazar said the resolution is on page 1619 and he asked for any questions or comments. Velsor corrected the new resolution is on page 1612 and Salazar read the title. Bergquist repeated that the property owner said 4 boats did not work and that the owner needs to go through the proper channels to request an amendment.

Salazar asked Heinan what would be a number of boats. Heinan said 6 boats can fit outside and there are a lot of different scenarios in the building to fit comfortably. Velsor asked where customers park. Heinan said the public parking or Uber. Heinan said if he parked them on the property they could only have one boat. Velsor said businesses are supposed to park their customers on their property. Heinan said with 14 customers on one boat that is not possible.

Pugh said she feels Council should move forward with the resolution and that she is happy to hear Heinan is willing to compromise but that she is hearing a lack of reality and acknowledgement of the impacts on the residents and local public park. Pugh said she feels the owner has not been responsible and can't blame the renter, noting the owner was not responsive when he was the owner operator either.

MOTION by Pugh, second by Salazar, to approve the following resolution. Discussion followed and Larson asked the time limit for when he has to comply. Gilchrist said it is effective immediately. Larson asked what if he continues to operate. Gilchrist said it is a zoning violation subject to criminal or civil action. Hoversten said if they observe continued activities, this is where the City has written code to set up a process to be successful in court and that Staff will seek advice from the attorney as to how many notices are necessary prior to filing for a court order. Hoversten said the City has to go through the due process. Larson said she is concerned that the City took all this time and nothing is going to happen. Gilchrist said he has been involved in civil actions, but there is also a misdemeanor in the criminal prosecution process and that a temporary injunction is also an option. Gilchrist said nothing happens overnight, but the City will need to think through the options. All voted in favor. Motion carried.

A. RESOLUTION NO. 19-53: RESOLUTION REVOKING CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 2642 COMMERCE BOULEVARD

Mayor Salazar paused the meeting to allow for a change in tape at 8:50 pm.

Mayor Salazar reopened the meeting at 9:01 pm.

10. City Engineer Brian Simmons requesting Public Hearing, discussion and action on resolution approving the City's Wellhead Protection Policy and Plan (Part 2)

Simmons said the Department of Health requires cities to amend the Wellhead Protection Policy and Plan and that this Part 2 is a document identifying potential sources of contamination of public drinking water. Simmons said fractured hydrogeological modeling was used on one of two aquifers and noted no comments were received during the 60 day public comment period.

Mayor Salazar opened the public hearing for the Wellhead Protection Policy and Plan (Part II) at 9:03 pm and upon receiving no comment, closed the public hearing at 9:04 pm.

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

RESOLUTION NO. 19-54: RESOLUTION APPROVING THE CITY’S WELLHEAD PROTECTION POLICY AND PLAN (PART 2)

11. City Engineer Brian Simmons requesting discussion and action on Resolutions to approve City infrastructure improvement project contracts

- A. Simmons presented bid information for the Swenson Park Tennis Courts Improvements, PW-19-06, stating the Original Engineer’s Estimate (OEE) was between \$130-140K to reclaim and resurface with professional grade tennis acrylic surface, new fence, and new parking lot, but they revised the estimate to \$145-155K and noted \$162,490 Midwest Asphalt was the only bid. Salazar asked comparable quality. Simmons said there is one standard based on surface, non-glare color and markings in acrylic, noting it will be a big improvement. Salazar said the old one is over 40 years old and the new one will be striped for pickle ball and he suggests a practice wall / backstop or two be included. Salazar said it will be a great improvement and amenity.

Bergquist asked about the process. Simmons said the old court gets ground up and reused and new asphalt is put on top. Bergquist asked if parking lot is curbed and Simmons said he believes the design includes bituminous curb. Bergquist suggested a sign to limit gross vehicle weight since he has witnessed coach buses parking there. Simmons agreed that large vehicles would be detrimental to storm sewer management and gave details on the timing and 2-year warranty.

Pugh said there should be a ribbon cutting ceremony and all agreed.

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

RESOLUTION NO. 19-55: RESOLUTION ACCEPTING BID FOR THE SWENSON TENNIS COURT PROJECT (PW-19-06)

B. Seal Coat

Simmons noted the OEE was \$120-130K and the low bid was \$108,840 from Allied blacktop.

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

RESOLUTION NO. 19-56: RESOLUTION AWARDING CONTRACT FOR 2019 BITUMINOUS SEAL COAT IMPROVEMENT PROJECT (PW-19-08)

C. Crack Seal

Simmons noted the OEE was \$20- 25K and the low bid was \$17,495 from KAMCO INC.

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

RESOLUTION NO. 19-57: RESOLUTION ACCEPTING BID FOR THE 2019 CRACK REPAIR PROJECT (PW-19-07)

D. Manhole Rehab

Simmons noted the CIP was \$105K, the OEE was \$80-85K and the low bid was \$41,860 from Thul Specialty Contracting. Simmons said Staff will pursue a change order to increase the scope to satisfy Met Council's surcharge requirement of \$84,500.

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

RESOLUTION NO. 19-58: RESOLUTION ACCEPTING BID FOR THE 2019 MANHOLE REHABILITATION PROJECT (PW-19-09)

E. Retaining Wall repairs

Simmons noted CIP was \$85,750, OEE was \$80-90K, and low bid was \$69,985 from Advanced Wall Solutions. Simmons said Piper/Warner retaining wall is starting to fail and they will do some additional grading and clean up and reduce the height of wall for cost savings. Velsor said that will clean it up nicely.

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

RESOLUTION NO. 19-59: RESOLUTION ACCEPTING BID FOR THE 2019 RETAINING WALL IMPROVEMENTS PROJECT (PW-19-10)

Velsor noted the favorable bid outcomes as they are hard to come by these days and complimented staff on working with repackaging the projects.

12. Information/Miscellaneous

A. Comments/reports from Council members/City Manager:

Hoversten noted the following dates:

State Fair 8/22 – 9/2

Westonka School District resumes classes 9/3

Running of the Bays Half Marathon and 5K – 9/7

Hoversten also noted second council meeting in December is normally cancelled due to the holidays and that October 15 is the budget workshop.

Pugh said she went to the Mound community play and she learned that she was in the cast of the 1969 Music Man. Pugh said it was a wonderful production. Pugh said she went to 6 Night to Unite parties. Salazar said he did as well. Pugh said she was surprised to see the number of families with small children. Salazar agreed that it is great to see. Salazar said he travelled with the police and Pugh said she followed the fire department. Salazar said participation seems to grow every year and the food and turnout is great.

Larson said she saw on television former Mound graduate Shane Wiskus take 4th place overall in the men's gymnastics championship and noted he may qualify for the summer Olympics.

- B. Reports:
- C. Minutes:
- D. Correspondence:

13. Adjourn

MOTION made by Larson, seconded by Pugh, to adjourn at 9:33 p.m. All voted in favor. Motion carried.

Mayor Raymond J. Salazar

Attest: Catherine Pausche, Clerk