

**MINUTES OF MEETING  
DELLWOOD CITY COUNCIL  
NOVEMBER 14, 2017**

The regular monthly meeting of the Council of the City of Dellwood was held at City Hall, 111 Wildwood Road, Willernie, MN on November 14, 2017, at the City Hall Offices located at 111 Wildwood Road, Willernie, MN.

Mayor Nuffort called the meeting to order at 5:30 p.m.

**PRESENT:** Mayor Nuffort; Councilpersons - Frank Pazlar, Edwin McCarthy, James Cuff, Scott St. Martin; also present were City Clerk Joanne Frane, City Attorney Richard Copeland, Treasurer Mike McGill, City Planner Nate Sparks and City Engineer Cara Geheren; and also the persons shown on the Sign-In Sheet attached to these Minutes.

Mayor Nuffort asked for public comment. Steve Wolgamot spoke briefly about the status of the proposed bike/pedestrian trail. Final design of the trail has not yet been completed. He will have more information at the December Council meeting.

A Deputy Sheriff was present to give an update on activities within the City. There was nothing major to report. Reports of a man with a rifle most likely involved a duck hunter in Grant. The Sheriff's Office has had a presence at the intersection of Apple Orchard Road and Tamarisk on a regular basis.

Mr. Cuff asked about speed limits. The Deputy said if the road is not otherwise posted, the limit is 30 mph. The City can impose a limit greater or lower than 30. The Statutes also have a provision whereby unreasonable speed under certain conditions is unlawful. This is known as the Due Care Standard.

Mr. Pazlar noted that there appears to have been increased speed on Apple Orchard Road between the railroad tracks and Tamarisk. The Deputy stated that his office will check on this.

Mayor Nuffort asked for approval of the Agenda. Upon Motion by St. Martin, second by McCarthy, the Agenda for the meeting was unanimously approved as submitted with no changes.

The Minutes of the October 10, 2017 Council meeting were reviewed. Cuff pointed out a typo on page 4 where the word Board was misspelled. Mr. McCarthy noted that he voted against allowing an Amendment to the IUP issued to Dellwood Country Club for the purpose of allowing an outdoor concert next July. Pazlar moved to approve the Minutes of the October 10, 2017, Council meeting with the foregoing changes noted. St. Martin seconded the Motion and it was unanimously approved.

**22 HIGHWAY 96 / JON AND JULIANA BIXBY APPLICATION FOR VARIANCE:** Jonathan and Juliana Bixby are requesting a variance to allow for the construction of an addition to their existing home at 22 Highway 96 E, which includes an attached 2-car garage of 624 square feet, an office, a mud room and a bonus room above the garage. There is currently an existing 3-car garage which is located about 250 feet from the main house, and the Applicants are asking that they be allowed to leave that building "as is" with no changes. There is also a small playhouse on the property of about 150 square feet in size. The existing detached garage is 880 square feet. The proposed attached 2-car garage will add 624 square feet of garage space. The Ordinance allows total garage space up to 1200 square feet. The Planning Commission held a public hearing on this request on November 7, 2017. The Planning Commission determined that there were practical difficulties present here with regard to the location of the existing detached garage. The Planning Commission recommended that the Application be

approved on condition that one of the doors on the detached garage is removed so that it may not be used for parking space. The Applicants stated that they did not intend to use the detached building for parking, but for storage purposes only. Mr. Nate Sparks, City Planner, discussed his Memorandum dated November 9, 2017, copy on file.

Much discussion followed about what to do about the existing garage structure. Jon and Julie Bixby spoke about their situation and their desire to keep the detached garage as is with no changes. They confirmed that they intend to use the garage for storage of personal items and household equipment. They stated that the associated costs to remove one garage door are about \$7000.

Mr. Pazlar stated that he appreciated the work which the Planning Commission had done on this matter. Mr. Pazlar stated that it appears that there is a practical difficulty with regard to the distance between the existing garage and the home. He stated that he had concerns about the fact that allowable garage sizes and accessory building sizes are the same throughout the City, although there is great diversity as to property sizes and uses in the various Zoning Districts. He does not believe that "one size fits all" is proper for the City of Dellwood. Nate Sparks stated that the size of buildings can be regulated according to the size of the particular property and the amount of useable land space. He said that some Cities use that sort of approach.

Mr. St. Martin noted that the Bixby's bought the property as is and did not realize the difficulty at the time. The property is unique, and the distance between the existing garage and the home constitutes a practical difficulty. He asked whether the existing play house could be removed. Bixbys stated that they would like to keep it.

Mr. Pazlar stated this would be a good time for the City to take another look at its building size and location limitations. The Planning Commission should study this based upon what other Cities are doing; that the City should try to adopt a reasonable policy based on lot size rather than a hard figure. The limitation now may be reasonable for a one-acre lot, but not for a lot of 2-acres or more. He stated that the Planning Commission should review Section 152.6 of the Ordinance, as well as other provisions which may limit building sizes, and make recommendations to the City within 6 months. The Planning Commission can recommend to 1: Maintain the existing 1200 square foot garage limitation for all Districts, 2: Increase the garage square footage for all Districts or 3: Establish different garage square footage requirements for each District considering lot size, R1, R2, Farm/Estate/Winery. He stated that he would be in favor of approving a Building Permit for the new attached 2-car garage according to the plan on file with the City; also an access drive in compliance with City requirements as recommended by the Planning Commission.

Mr. St. Martin stated that he wants the existing play house structure to remain as a recreational use and not be used for storage purposes. Mr. and Mrs. Bixby agreed to that condition.

Mr. Sparks noted that a Building Permit for the new garage should be obtained within one year's time.

Mr. Pazlar made a motion to approve the Variance to allow the Bixby's to proceed with construction for an addition to their home, which includes an attached 624 square foot 2-car garage, an office, a mud room and a bonus room above the garage, with an access driveway constructed according to code requirements, all as shown on Plans filed with the City. Additionally, the existing detached garage building be allowed to remain as is with no changes; the existing play house structure be allowed to remain as is and to be used for recreational uses and not for storage purposes; the detached garage

building to be used for storage purposes only, as stated by the Bixby's in their Application. The motion was seconded by Mr. Cuff. The Mayor and all Councilpersons voted in favor of the motion.

**APPLE ORCHARD ROAD:** The next item was a discussion about safety issues on Apple Orchard Road. Mr. Mithula Perera of 75 Apple Orchard Road described his concerns about the poor sight lines for motorists stopped at the sign on Apple Orchard Road looking south on Apple Orchard. There is considerable vegetative growth along the Easterly side of Apple Orchard which blocks the view of the roadway and vehicles approaching the intersection from the South.

Mr. Cuff noted that removal of vegetation from a distance of 15 feet from the Easterly edge of the road would greatly improve the sight line. Cara Geheren stated that she had looked at this intersection and found it to be clearly a sight-line problem. The first approach would be to remove vegetation. Mr. Perera stated that clearing 10-feet back from the road may be sufficient. He also stated that the sight line for motorists stopped at Apple Orchard Road and Highway 96, looking to the East, is every poor. Mr. Cuff agreed, but stated that the right of way is owned by the State of Minnesota, and that private property may also be involved. Mr. Perera stated that the City should contact the State about this issue.

Mr. Copeland noted that he had discussed this problem, as well as the short sight-line looking Westerly on 96, with a MNDOT representative in connection with the City's efforts to reverse MNDOT's decision to raise the speed limit on Highway 96 to 45 mph.

**STREET IMPROVEMENTS QUAIL STREET AND DWINNELL STREET:** Mahtomedi will be doing improvements to its Streets in the Briarwood area. Mahtomedi is proposing to include work on portions of Quail Street and Dwinnell Street which are situated in the City of Dellwood. Preliminary cost estimates proposed by Mahtomedi, to be charged to the City of Dellwood, are in the amount of \$122,500.

Cara Geheren believes this figure to be excessive because it is based in part on cost estimates of almost \$40 per square yard; whereas Dellwood's actual costs for 2013 street improvements to Quail Street in 2013 were about \$20 per square yard. She believes the cost figures should be questioned, and that her firm should work up the City's own cost estimates; after reconciling those issues, then proceed with the shared cost agreement with Mahtomedi. There is also the fact that Dellwood had earlier agreed to contribute about \$32,000 to improvements on Quail Road to be performed by Mahtomedi in 2018. This issue must be resolved with the City of Mahtomedi.

**WATER MANAGEMENT PLAN:** The next item was an update on the City's Water Management Plan. Mr. Copeland had earlier provided a preliminary draft to Rice Creek Watershed District. He provided a letter outlining the things which RCWD raised in its review of the preliminary draft. One of the changes required was the inclusion in the Plan of a section which addresses the procedures for amending the Plan. He presented a proposed section to be added entitled "Plan Amendments". This section follows the requirements of MN Administrative Rule 8410.0140. He will include this in the draft of Dellwood's Water Management Plan.

In addition, RCWD has asked for maps including a Zoning map, a map of stormwater drainage systems including lakes, wetlands, culverts, pipes and ditches. Mr. Sparks can provide a map of lakes and wetlands. Mr. Copeland has a map of culvert locations.

We do not have a “land Cover Map” or a map of pipes and ditches. We also do not have a Capital Improvement Program specifically for Water Management Facilities. Some items are a part of the Road Budget such as culvert maintenance and repair, street sweeping, etc. RCWD wants a table which clearly details the scheduling, cost and funding sources of each component of the Water Management Plan. The City cannot provide this; RCWD also wants the Plan to include a discussion of geologic features and groundwater sensitivity, and identification of potential land uses affecting groundwater. The City does not have information at hand in this regard and should not have to incur the expenses of obtaining it. The City is about fully developed and no future development is foreseen which would impact groundwater.

RCWD is asking for an Ordinance addressing erosion and sediment control for sites less than five acres in size. The City addresses each proposed land use request individually and those issues would be addressed under existing controls in our Ordinances. Further, RCWD is the LGU for Dellwood and is involved in any land use request which falls within its purview.

Cara Geheren stated that she will provide a copy or copies of documents which show Dellwood’s participation in the MS4 SWPPP Program. The City does not have an Ordinance, per se.

Mr. Copeland stated he would make the changes to the City’s Water Management Plan which have been required by RCWD, except those which the City cannot provide at this time. He will submit the City’s proposed Plan to RCWD for comment, and the Plan can be adopted at the December Council meeting.

**RIGHT OF WAY ORDINANCE:** This involves revision of the existing Right of Way Ordinance to address Small Cell Wireless Facilities. Nate Sparks discussed his Memorandum to the City Council dated November 9, 2017, copy on file. He presented a proposed new Ordinance to replace the existing Ordinance which is outdated. The proposed amendment applies to “public rights of way within its jurisdiction.” Right of Way is defined in the Ordinance as being the area on, below, or above a public roadway, highway, street, bicycle lane or public sidewalk. The enabling Statute M.S. 237.163, Subd. 2(b) states that the City has the authority to manage “its” public rights of way and to recover the rights of way management costs. The Statute does not define what is meant by “its” public rights of way. For purposes of Dellwood’s Ordinance, the City is assuming that its authority also extends to rights of way which are owned by the State, that is, Highway 96 and Highway 244, within the City limits of Dellwood.

Mr. Copeland noted that the proposed Ordinance, at Section 56.18, allows the City to deny a permit and the reasons for which a denial may be made. Section 56.31 sets forth the process by which an applicant for a permit can contest a “Director’s” decision to deny or to remove a permit. In that case, the applicant or permit holder may have the Director’s decision reviewed by the City Council. Director is defined in the Ordinance as being, in Dellwood’s case, the City Clerk or designee of the City Clerk. Mr. Copeland expressed his concern over the fact that Minnesota Case Law decisions have held that persons affected by the actions or decisions of a City must have the right to have those actions reviewed by an impartial and meaningful process. Courts have held that reviews by a City Council of actions taken by its own staff are neither impartial nor meaningful. Mr. Copeland is recommending that the City establish by Ordinance a process by which decisions made by City Officials may be reviewed or appealed by an independent, impartial person. The City can require payment of a reasonable fee by the applicant seeking review to help defray the cost of the appeal.

Upon Motion by Cuff, seconded by McCarthy the Council resolved unanimously to approve the proposed Ordinance number 2017-03 as submitted, and to publish a summary of the Ordinance according to the proposed summary as submitted.

**NEW SIGN ORDINANCE:** Mr. Copeland stated that he believed this Ordinance satisfies the objections of the attorneys for the real estate brokerage industry and gives the City sufficient control over the placement, size and location of commercial signs. He needs to complete a final section to address appeal and review procedures. He will have the final version for consideration at the December Council meeting. The authority of the City to regulate signs is conditioned by constitutional requirements of equal protection and due process.

**WHITE BEAR LAKE CONSERVATION DISTRICT:** Mayor Nuffort spoke in favor of the appointment of Marty Rathmanner to serve as one of the City's representatives on the WBLCD. George St. Germain, a current representative is retiring. Upon Motion by Pazlar, second by St. Martin, the Council unanimously resolved to appoint Marty Rathmanner as one of its representatives on the WBLCD Board.

**APPLICATION BY DELLWOOD COUNTRY CLUB AND WHITE BEAR YACHT CLUB LIQUOR LICENSE RENEWAL:** The Applications of Dellwood Country Club and White Bear Yacht Club for renewal of their respective Liquor Licenses for year 2018. The respective applications were deemed to be complete. The Washington County Sheriff's Office confirmed in writing that background checks had been made on each applicant and were clear.

Upon Motion by St. Martin, second by McCarthy, the Council voted unanimously to approve the renewal of the respective Liquor Licenses for Dellwood Country Club and White Bear Yacht Club for the year 2018.

**CLAIMS AND RECEIPTS LIST** was presented and reviewed for October 2017. Upon Motion by Pazlar, second by St. Martin, the Claims and Receipts List for the month of October 2017 was unanimously approved.

**REPORTS OF COMMISSIONERS:**

**St. Martin** reported that he is continuing discussions with the WBL Fire Chief regarding a turnaround at the north terminus of Echo Street. To date, the WBL Fire Department has not indicated that a turnaround area is needed.

**Cuff** reported that a Tour of the City with Mr. Copeland disclosed many violations of City Ordinances regarding outside storage of equipment and vehicles. Mr. Copeland stated that he believes the City should coordinate Mr. Cuff's list with City Inspector Jack Kramer and have a letter sent to each perceived violator describing the nature of the violation and the Ordinance sections which apply, with a reasonable time limit within which the person is to bring his property into compliance. After that, there should be a follow up letter from the City Attorney to all those still in violation explaining that legal action will be taken within the following five days. The nature of the action would probably be by way of a formal Court complaint together with a request to the Court for an Order to allow the City to correct the violation as needed with the costs of doing so charged to the violator. An Administrative Citation process will probably not work satisfactorily as it would not give the City the authority to remove the equipment or vehicles, etc. on its own.

**Pazlar** reported 13 remodel permits and one new house permit (Barbara Erickson at 32 Dellwood).

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**McGill** reported a bank balance of \$419,979 after payment of October bills.

**Mayor Nuffort** mentioned the request by Linda Pohl to have her property detached from the City of Grant and annexed to the City of Dellwood. Mr. Copeland stated that the City of Dellwood cannot consider annexation without the consent of Grant, or an Order from the Municipal Board. Grant has reviewed the request and has resolved not to agree.

There being no further business, the meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Joanne Frane  
Dellwood City Clerk / Administrator