

## **MINUTES OF THE OKOBOJI CITY COUNCIL MEETING HELD MAY 8, 2018**

Mayor Mary VanderWoude called the meeting to order at 6:00 pm on May 8, 2018. All those present stood and recited the Pledge of Allegiance. Councilmembers Jim Hentges, Julie Andres, Jerry Robinson, Walter Mendenhall and Jim Delperdang were all present for Roll Call. Others present were City Administrator Michael Meyers, City Attorney Dave Stein, City Engineer, Brad Beck, Chief of Police Jason Petersen, Brian Bright, Patrick Boggees, Gordie Mairose, Mary Mairose, Leo Jochum, Bev Jochum, Molly Scott, David Scott, Dalton Kidd, Joe Fitzgibbons, Steve Schwaller, Phil Petersen, Michael Jensen, Mike Hepner, Mark Jensen, Kay Hoppe, Steve Moore, and Char Eckard . Notice of the meeting was distributed and posted at the Okoboji City Hall, the U.S. Post Office located in Okoboji, and on the City of Okoboji website.

Motion by Councilmember Hentges and a second by Councilmember Mendenhall to adopt the agenda. The following Councilmembers voted "YEA": Hentges, Andres, Robinson, Delperdang and Mendenhall. The following Councilmembers voted "NAY": None. Motion passed 5-0.

### **CONSENT AGENDA**

Motion made by Councilmember Mendenhall and a second by Councilmember Robinson to approve the Consent Agenda. The following Councilmembers voted "YEA": Hentges, Andres, Robinson, Delperdang and Mendenhall. The following Councilmembers voted "NAY": None. Motion passed 5-0.

### **CITIZEN APPEARANCES**

Mayor VanderWoude provided opportunity for citizens to address the Council. Mr. Phil Petersen addressed the Council to requesting further consideration to the Dixon Beach seawall reconstruction project.

### **NEW BUSINESS**

Mayor VanderWoude moved Agenda Item G to the front of New Business.

Mayor VanderWoude opened a public hearing at 6:07 P.M. to consider a request by Whitecap, LLC (the owner of the Inn Resort property) for vacation of Eden Street and parts of Fairfield Avenue (which border the former Inn Resort property), and conveyance/sale of the same to Whitecap, LLC by quitclaim deed, with consideration and conditions to be established by the Council.

Mr. Petersen addressed concerns regarding the sidewalk which runs parallel to the lakeshore of West Okoboji Lake. Mr. Petersen requested that this be taken into consideration to remain as a public sidewalk in perpetuity. Mr. Michael Jensen, representing the Developer, advised the sidewalk would remain with an easement.

Mr. Gordon Mairose addressed concerns relating to parking within the proposed cul-de-sac and on Fairfield Street. Mr. Mairose expressed his concern that he may not be able to adequately back out of his driveway. Mr. Jensen advised that the Developer does not dictate parking. Councilmember Hentges advised that the cul-de-sac would have no parking.

Mr. Gordie Bright continued addressing parking concerns relating to parking on Fairfield Avenue.

Mr. Leo Jochum inquired about Lot 1, specifically asking the Developer regarding the wall that is in-between his property and Lot 1. Mr. Pat Boggess, representing the Developer, advised that the plan was to have minimal grade change compared to existing. Desired to match as best as possible.

Mr. Mike Hepner discussed the promenade and the need for an easement over the pedestrian walkway. Mr. Hepner also expressed concern over the City of Okoboji deeding away property that has a significant amount of utilities underneath. Mr. Jensen advised there would be sufficient utility easements. Mr. Hepner advised that the Council should not consider deeding the street due to the utilities.

Mr. Dalton Kidd, representing Mr. Patrick Kelly (not present), spoke to Mr. Kelly's property adjacent to Indian Mound Drive. Mr. Kidd requested confirmation that Indian Mound Drive was not being considered for vacation at this time. Mayor VanderWoude confirmed Indian Mound Drive was not under consideration.

Mr. Hepner addressed the proposed park. Mr. Hepner inquired that the Developer was proposing to entirely furnish, pay for, and endow the park in perpetuity. Mr. Hepner inquired about an endowment agreement and what happens if the endowment ceases to exist. Mr. Jensen advised that there would be catches in place to help protect the City. Mr. Jensen advised that the land could go back to the City. Mr. Hepner added that the City should have the right to resell if that situation were to arise. Mr. Hepner added that things change, people go away, and money dries up and to proceed with caution.

Ms. Kay Hoppe addressed the Council regarding her concerns that details remained unanswered. Mayor VanderWoude expressed her desire to iron out the details during this meeting.

Mr. Mark Jensen spoke to seek clarification on how the vacation of Eden Street and on how the park land were or were not tied together. Mr. Jensen expressed that it would be nice to know that all of the I's are dotted and that the T's are crossed. Mr. Jensen would hate to get to a point where the City is so far along that the City can no longer turn back.

Mr. Michael Jensen advised that the Developer has had park architects on site. Mr. Jensen advised that they do not have a completely final plan at this point but have a good start. Mr. Jensen advised that all of the balls were in place to make it happen.

Mr. Joe Fitzgibbons, representing the Developer, advised that the Developer does not see this as a quid pro quo where the vacation of Eden Street is some kind of trading chip for the park. Mr. Fitzgibbons advised that these are two separate pieces. Mr. Fitzgibbons advised that what the City of Okoboji was getting was the elimination of a long standing non-conforming use.

Mr. Mark Jensen advised that the discussion has always been about the park and that it would be nice to know exactly what the details are prior to the Final Plat. Mr. Jensen then also expressed concerns regarding parking on the west end of the project.

Mr. Steve Moore spoke about his concerns relating to parking and the number of individuals who use that area for diving and walking. Mr. Moore asked the Council to consider additional parking.

Mr. Mairose complimented the Developer's construction company on a job well done during the demolition of the property.

Mr. Michael Meyers, City Administrator, acknowledged submitted letters from Ms. Marla Smith, Ms. Camille Smith, Mr. Dennis Smith, Ms. Candace Foreman, Mr. Ted Stuart, Mrs. Kathy Stuart, Ms. Dee Pyle, Mr. Gordon Mairose, Mr. Robert McAlpine, Mr. Patrick Kelly, and Mr. Palmer Moe.

Mr. Moe, in writing, asked that his letter be read out loud. Mr. Meyers read Mr. Moe's letter.

Ms. Char Eckard asked why part of Fairfield was included in the vacation. Mr. Michael Jensen advised that the cul-de-sac needed to sit further towards Fairfield as to not disturb existing trees. Mr. Jensen advised that no trees were to be removed during this process.

Mr. Mairose advised that the location of the cul-de-sac will create issues with headlights shining into their property at night.

Mayor VanderWoude closed the public hearing at 6:38 P.M.

Mayor VanderWoude requested that the City Attorney and that the City Engineer report on the Development.

Mr. Brad Beck, City Engineer, reminded the Council on the conditions set forth by the Planning and Zoning Commission. The first of which was pump house access, Mr. Beck advised the Developer had a good solution for that. The second was an added filtration trench to help protect the lake, Mr. Beck advised that it has been added. Mr. Beck clarified that Lot 7 was assumed to be green space in perpetuity, however advised that it was likely to be greenspace but there was no permanent guarantee of that in the future. Mr. Beck advised that he was working with the Developer's engineering team relating to storm sewer design. Mr. Beck advised that the sidewalk easement was 5' in width which concerned him. Mr. Beck advised that 5' was a too small if the City ever needed to reconstruct the sidewalk and mentioned that the language in the easement which addresses reconstruction was a bit vague. Mr. Beck requested a minimum of 10' easement be considered. Mr. Beck advised on the waivers granted by the Planning and Zoning Board relating to the length of a dead end and blocks.

Mr. Meyers advised that he spoke to the Fire Chief that afternoon and that the Chief had no issues with the waiver of these requirements.

Councilmember Delperdang asked for clarification on the water mains running underneath Eden Street. Mr. Beck advised that the City does not have an easement presently due to the fact that the City owns the property. Mr. Beck advised that the easement is shown on the preliminary plat. The easement would be done at the same time as the vacation.

Councilmember Andres inquired about the sidewalk citing the fact that the City has received multiple comments and concerns relating to the sidewalk. Councilmember Andres inquired about what the City owns and what the Developer owns. Mr. Beck advised that looking at straight property lines, parts of the sidewalk do veer onto private property before coming back to public property. Mr. Beck advised that now was the time to clear this up. Councilmember Andres agreed.

Mr. Boggess advised that the Developer is planning to reconstruct and pour the sidewalk as close to the shoreline as they believe to be adequately safe for individuals.

Mayor VanderWoude asked why the City cannot have a larger easement to cover repairs and replacements.

Councilmember Andres asked why the lot lines cannot be redrawn to leave the sidewalk entirely on City property. Mr. Boggess said that was not possible on the lakeside as the land owner owns that. Mr. Michael Jensen said that the Developer would be willing to take ownership of the entire lakeshore.

Mr. Jensen advised that there was no question that the sidewalk would remain public in perpetuity.

Mr. Fitzgibbons advised that only a small portion of the sidewalk as it relates to this project is on the City of Okoboji property. Mr. Jensen outlined where the sidewalk was located.

Mr. Fitzgibbons advised that he felt the Developer was making a major concession in allowing for the easement to be over the sidewalk.

Councilmember Andres asked if they would redraw the property lines to entirely place the sidewalk on the City of Okoboji's property.

Mr. Michael Jensen advised that the sidewalk will remain and the easement will be recorded.

Mr. Brad Beck again advised that there should be a 10' easement.

Councilmember Hentges requested that the language be figured out to accommodate the 10' easement request or an equivalent.

Councilmember Andres requested more information on the area between the cul-de-sac and the sidewalk and how pedestrians can access. Mr. Boggess advised that there is a driveway that makes connection with the sidewalk.

Councilmember Hentges asked about the tree and if the cul-de-sac could possibly be reconfigured with the tree still fitting. Mr. Jensen advised that multiple options were looked at but the proposed was considered to be the best.

Councilmember Mendenhall asked if the tree had been assessed for oak blight. Mr. Jensen advised that it had.

Councilmember Hentges asked for what a perfect world easement would look like. Mr. Beck advised 20' but since we are working near the lake shore that 10' would be minimum. Councilmember Hentges acknowledge that 20' would not be a good fit and requested that the attorneys continue to work on the language.

Councilmember Delperdang asked about the land between the lakeshore and the sidewalk and what improvements would happen there. Mr. Jensen advised no structures would be allowed and only on-grade landscaping.

Councilmember Mendenhall expressed concern about the need for the City to do work on the sidewalk within the easement and that even on-grade landscaping could cause problems in the future. Mr. Jensen advised that the property owners would be held liable for anything placed within a City easement.

Mr. David Stein, City Attorney, advised as to why the vacation of the street is being consider with the preliminary plat. Mr. Stein advised that Iowa State law dictates that the City receive a fair value for the vacation of the property. Mr. Stein readdressed what Mr. Fitzgibbons had mentioned regarding the elimination of a non-conforming use on one end and mentioned the trade of the park for the street on the other. Mr. Stein advised that should the City proceed with vacation of the park this evening that the quit claim deed have a reversionary clause and a dedicated line of credit for the improvements contained within the preliminary plat should the park not be fulfilled. Mr. Stein advised that we are in an unusual circumstance given the vacation of a street to fulfill the proposed preliminary plat. Mr. Stein advised that there is still uncertainty in the details of the park considering ownership, restrictions, and completion.

Mayor VanderWoude asked Mr. Stein what the letter of credit were to cover entirely. Mr. Stein advised that his recommendation would be for a letter of credit to complete the improvements contained within the preliminary plat. Mayor VanderWoude inquired about the park. Mr. Stein advised that he was gray on the

park issue. Mr. Stein advised that he believed there needed to have more solid details in his estimation should the Council believe this to be a vacated street for the park.

Councilmember Robinson asked if the Developer were willing to deed the park to the City. Mr. Jensen advised that they would be open to that with conditions. Councilmember Robinson advised that the City would act as a landlord. Mr. Jensen advised that the park would be managed by another entity.

Councilmember Robinson addressed an email from a representative of the Sherwood Foundation which allegedly outlined the Foundation's agreement to purchase the park. Mr. Jensen advised that they are the ones who take over the park project once Whitecap LLC conveys the property.

Councilmember Hentges asked if we have had any communication with the Sherwood Foundation. Mr. Jensen advised that the letter was the communication between the Foundation and the City outlining their intents.

Councilmember Robinson asked the City Attorney what concerns the City should have with accepting 70.00 acres of land. Mr. Stein advised he would like to see the deed and what the details are. Mr. Stein advised that a letter was not an enforceable agreement. Mr. Stein advised that this needs to be figured out should the Council decide that the vacation of the street was reliant on the park.

Councilmember Andres addressed Mr. Fitzgibbons and advised that the City was excited about the project. However, Councilmember Andres approached the precedent being set by the City. Councilmember Andres was concerned about going down the path of multiple individuals asking for City owned property. Councilmember Andres mentioned when Mr. Fitzgibbons mentioned that the park was no longer considered part of the transaction for Eden Street and asked for clarification as to if that was still the intent or not.

Mr. Fitzgibbons advised that the Developer should not be considered a Developer but instead an environmentalist. Mr. Fitzgibbons advised the lessening of density with the demolition of The Inn property. Mr. Fitzgibbons advised that the Developer did not desire any legal entanglement for the park. Mr. Fitzgibbons advised that the foundation was willing to move forward with the plans to convert the park land into perpetual green space. Mr. Fitzgibbons advised that the park for the street is a conventional idea but it cannot be a legal concept. Mr. Fitzgibbons advised that these are complex situations. Mr. Fitzgibbons mentioned that the elimination of the Inn property should be considered quid pro quo for the vacation of Eden Street.

Councilmember Andres considered the future prospect of another Developer asking the City vacate property and how The Inn property could be considered in the future. Mr. Fitzgibbons brought up the non-conforming use of The Inn property existing under a special use permit and mentioned that someone else would not be able to offer that. Mr. Fitzgibbons mentioned the density, the use of the land, and the services provided by the City which would be eliminated.

Councilmember Mendenhall asked how far away legally we were from figuring out the vacation and how the park would work. Mr. Fitzgibbons advised that he does not represent the foundation representing the future park but that the wheels were in motion. Mr. Fitzgibbons advised on its complexity. Mr. Jensen advised that 30-60 days after the Final Plat is likely when the property would transfer from the current property owner to the Foundation.

Councilmember Mendenhall asked knowing the Council's concerns, what was the Developers expectation from the Council. Mr. Fitzgibbons advised an approved preliminary plat and that they would continue to work on the details.

Mr. Fitzgibbons advised that understandably the project has morphed into something more complex since the Planning and Zoning Board. Councilmember Mendenhall mentioned we are on the same page but need to get over the hurdles.

Councilmember Hentges asked on the process and advised that he was a firm believer or erring on the side of caution and slowing it down. Mr. Jensen advised the slower the City moves on vacating the street the slowing the process regarding the park. Councilmember Hentges advised he did not want to jump ahead. Mr. Jensen mentioned he did not see a need for two more meetings.

Councilmember Delperdang asked why the progress of the park was contingent upon the vacation of the street. Mr. Jensen advised they need the street to be vacated first. Councilmember Delperdang advised that previously it was said that the park was not part of the vacation.

Mr. Jensen offered to escrow the value of the street. Councilmember Andres advised that the Council would just like to see the park solidified. Mr. Jensen advised of the architects and attorneys working on the project. Councilmember Hentges said that perception is that this is a trade. Councilmember Hentges again said he was going to err on the side of caution. If they do not approve it gives both parties an opportunity to continue to iron out the legal detail.

Councilmember Delperdang asked on the process. Mr. Stein advised that the approval of the preliminary plat coexists with the vacation of Eden Street. The options would be to approve, deny, or table. The Council could also have one reading of the Ordinance and bring it back the next Council meeting.

Councilmember Andres advised that the manner in which the City vacates the property is the standard the City will be held to for the rest of their lives and their children's lives. Councilmember Andres asked if the City has created a high enough bar given Mr. Fitzgibbon's explanation regarding the elimination of a non-conforming use and existing special use. Mr. Stein advised that the City is wise to continue to do their due diligence and that if the park is the consideration than there are still loose ends to tie up.

Councilmember Delperdang asked on what the next step for the park would be. Mr. Jensen advised that the Council approve the preliminary plat, then they would go back to the Planning and Zoning Board, then they would come back to the Council for Final Plat. The park land could then be transferred approximately 30 to 60 days later. Councilmember Delperdang asked what the transfer to the Foundation entailed. Mr. Jensen said they would legally deed it to the Foundation. Councilmember Hentges inquired about deeding it to the City and Mr. Jensen advised that legally it had to go first to the Foundation.

Councilmember Andres asked how long the park would take to complete and transfer to the City. Mr. Jensen was unaware of the total length of construction. Mr. Jensen advised that the park would be transferred to the City after the Foundation has completed their work.

Councilmember Delperdang asked if this who process could be put in some legal document to help protect the City. Mr. Fitzgibbons advised that conversations have been had with the Foundation and that the provided letter was as far as the Foundation can go.

Councilmember Delperdang asked for a quantification on the total cost of the park and the proposed endowment. Mr. Jensen advised that the Foundation would have these facts and figures. Mr. Fitzgibbons advised that this would be conversations once the Foundation takes over.

Councilmember Delperdang advised of his caution because the City would be legally vacating the street on a promise from the Developer that the park was going to happen.

Councilmember Delperdang asked where the language was going to be held that the park land could never be developed. Mr. Fitzgibbons advised that the Foundation would be able to provide those details.

Councilmember Hentges inquired about the revisionary clause that potentially could be placed into the deed should they decide to vacate this evening. Mr. Stein advised it was a positive step in the right direction but then what happens to the land if it comes back to the City if everything falls apart.

Councilmember Mendenhall said that the plan seems great. He also advised that vacating Eden Street would require moving forward with some degree of faith. Councilmember Mendenhall advised that he believes it would be difficult to vacate the street tonight without a little bit more commitment and would prefer just the one reading.

Councilmember Hentges advised that there is a lot being asked of the City without any assurances presently put in place.

Mr. Fitzgibbons advised on the reversionary clause within the Deed. Councilmember Hentges asked what the property would look like once reverted back to the City. Mr. Fitzgibbons advised that the City would receive it in an as-is condition.

Mr. Meyers advised that the bottom half of the park property is zoned R-1 similarly to most of the City of Okoboji and condos are not a permitted use in R-1 zoning. The top half is R-2 which something like a duplex is permitted but high density residential is a conditional use.

Mayor VanderWoude presented and discussed Ordinance No. 241 first consideration for vacation of Eden Street and parts of Fairfield Avenue and conveyance of the same by quit claim deed to Whitecap LLC subject to certain terms, conditions, and consideration to be established by the Council. Motion made by Councilmember Robinson and a second by Councilmember Mendenhall to approve subject to the reversionary clause. The following Councilmembers voted "YEA": Delperdang, Hentges, Andres, Robinson, and Mendenhall. The following Councilmembers voted "NAY": None. Motion passed 5-0.

Mayor VanderWoude presented and discussed the consideration to waive the 2<sup>nd</sup> and 3<sup>rd</sup> reading of Ordinance No. 241. No motion made.

Mayor VanderWoude advised that the Council would continue to consider the 2<sup>nd</sup> and 3<sup>rd</sup> reading at the next Council meeting and for the requested questions have more complete answers.

Mayor VanderWoude presented and discussed a new 6 month Special Class C Liquor License (BW) with Outdoor Services and Sunday Sales for the Okoboji Summer Theatre. Motion made by Councilmember Delperdang and a second by Councilmember Andres to approve the Okoboji Summer Theatre's liquor license. The following Councilmembers voted "YEA": Delperdang, Hentges, Andres, Robinson, and Mendenhall. The following Councilmembers voted "NAY": None. Motion passed 5-0.

Mayor VanderWoude presented and discussed the Board of Adjustment's decision to grant a variance for Leo Parks at 1203 Lakeshore Drive. Motion made by Councilmember Hentges and a second by Councilmember Mendenhall to approve the variance and decision by the Board of Adjustment. The following Councilmembers voted "YEA": Delperdang, Hentges, Andres, Robinson, and Mendenhall. The following Councilmembers voted "NAY": None. Motion passed 5-0.

Mayor VanderWoude presented and discussed the need for the City to set a May 30<sup>th</sup> public hearing for the amendment of the City budget for FY17/18. Motion made by Councilmember Delperdang and a second by Councilmember Robinson to set the public hearing. The following Councilmembers voted "YEA":

Delperdang, Hentges, Andres, Robinson, and Mendenhall. The following Councilmembers voted “NAY”: None. Motion passed 5-0.

Mayor VanderWoude presented and discussed obtained quotes for minor repairs at multiple street locations. Mr. Meyers advised that the Streets Committee met to tour the town to review the condition of the streets. Quotes were obtained to repair several areas throughout town. Mr. Meyers recommended the quote from Kruse Pavement Solutions. Motion made by Councilmember Robinson and a second by Councilmember Mendenhall to approve the quote from Kruse Pavement Solutions for \$16,181.40. The following Councilmembers voted “YEA”: Delperdang, Hentges, Andres, Robinson, and Mendenhall. The following Councilmembers voted “NAY”: None. Motion passed 5-0.

Mayor VanderWoude presented and discussed the resignation of Mr. Dennis Colton from the City’s Board of Adjustment. Motion made by Councilmember Robinson and a second by Councilmember Hentges to accept the resignation. The following Councilmembers voted “YEA”: Delperdang, Hentges, Andres, Robinson, and Mendenhall. The following Councilmembers voted “NAY”: None. Motion passed 5-0.

Mayor VanderWoude presented and discussed the appointment of Mr. Steve Dulin to the City’s Board of Adjustment to expire January 9, 2023. Motion made by Councilmember Robinson and a second by Councilmember Mendenhall to accept the appointment. The following Councilmembers voted “YEA”: Delperdang, Hentges, Andres, Robinson, and Mendenhall. The following Councilmembers voted “NAY”: None. Motion passed 5-0.

## **REPORT OF OFFICERS**

### **Police Report**

Police Chief Jason Petersen requested that speed limit reductions be considered on Sanborn Avenue. Chief Petersen also requested that the City consider more stringent parking restrictions on Lakeshore Drive. Council asked staff to review.

### **Mayor Report**

None.

### **Council Report**

Councilmember Hentges congratulated one of the Arnold’s Park / Okoboji Fire Department’s members on placing first in a national competition.



**City Administrator Report:**

City Administrator Meyers advised that City Hall is currently operating with one staff member and advised of upcoming interviews. Meyers advised on a meeting with Dickinson County Trails and advised of their plan to add new signage and street markings throughout the City.

**ADJOURNMENT**

---

Mayor Mary VanderWoude

---

Michael Meyers, City Clerk / City Administrator

APPROVED –

PUBLISHED -