

CITY OF WACONIA
January 21, 2020

Pursuant to due call and notice thereof, the regular meeting of the City Council of the City of Waconia was called to order by Mayor Bloudek at 6:00 p.m. The following members were present: Kent Bloudek Nicole Waldron, Marc Carrier, Charles Erickson, Pete Leo.

Staff Present: Susan Arntz, Lane Braaten, Craig Eldred, Ann Meyerhoff, Mike Melchert, Nicole Meyer, Jackie Schwerm.

Visitors: Steve Hebeisen, Jim Moras, Nik Feist, Al Lohman.

Pledge of Allegiance was led by Mayor Bloudek.

ADOPT AGENDA: Motion by Erickson, seconded by Carrier to adopt the agenda as presented. All present voted aye.
MOTION CARRIED.

VISTOR'S PRESENTATION: Mayor Bloudek recognized Nik Feist for his dedication and service on the Park Board from 2013-2019.

ADOPT CONSENT AGENDA

- 1) Approve January 2, 2020 City Council Meeting Minutes.
- 2) Authorize Payment of January 21, 2020 Expenditures.
- 3) Request for Lodging Tax Reimbursement.
- 4) Rink Management Corporation Expenditures for Waconia Ice Arena Incurred in December 2019.
- 5) Rink Management Corporation Expenditures for Safari Island Community Center Incurred in December 2019.
- 6) Use of Streets/Parks for Carver County Snowshoe Demonstration.
- 7) Use of Streets/Trails/Parking Lot for Don't Worry Be Hoppy 5 K and Kids Run.
- 8) Use of Streets for Frunge Festival for Children's Grief Connection.
- 9) Resolution No. 2020-30, Approving Liquor License Applications.
- 10) Resolution No. 2020-31, Appointing Election Judges.
- 11) Resolution No. 2020-32, Accepting Grant Proceeds from Carver County Environmental Services Solid Waste Grant.
- 12) Resolution No. 2020-33, Approving Purchase of Security Camera System for Safari Island.
- 13) Resolution No. 2020-34, Authorizing Survey and Topography Work for City Square Park.
- 14) Resolution No. 2020-35, Authorizing Trade of Cannon 710 Large Format Printer and Execution of Large Format HP Designjet-Z6drv Printer Lease Agreement with Marco.
- 15) Resolution No. 2020-36, Approving the Variance for Proposed Improvements for the Property located at 140 Oak Street North.
- 16) Resolution No. 2020-37, Authorize Advertisement for Bid Brook Peterson Park Improvement Project.
- 17) Ordinance 732 & Resolution No. 2020-38, Amending Section 900.12 Subd. 6 – Voting Requirements.
- 18) Ordinance 733 & Resolution No. 2020-39, Amending Section 900.12 Subd. 12 – Legal Nonconforming Uses.
- 19) Resolution No. 2020-40, Authorizing Application for Community Growth Partnership Initiative Grant.

Motion by Waldron, seconded by Leo to Adopt the Consent Agenda as presented. All present voted aye. **MOTION CARRIED.**

COUCIL BUSINESS: After the Fact Variance – 754 Old Beach Lane

Lane Braaten explained that the City has received an after-the-fact Variance Application submitted by Nathan Carlson/Highmark Builders on behalf of Daryl Hanzal & Valerie Pederson to allow for placement and construction of a retaining wall and fence within the bluff impact zone, grading and excavation within the bluff impact zone, and intensive vegetation clearing within the bluff impact zone for the property located at 754 Old Beach Lane.

Braaten explained the definitions of a bluff and bluff impact zone. He indicated that City Staff had worked with the applicants on plans for a new home on the undeveloped parcel at 754 Old Beach Lane. This resulted in a Steep Slope Permit. Subsequent to the Steep Slope Permit approval the applicants submitted a building permit application for the property. The building permit also included a retaining wall permit. After review by the City Engineer, the City Building Official and City Staff the new home permit and retaining wall permit were issued.

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On October 17, 2019 City staff received a complaint regarding the work being done on the property, which resulted in the City issuing a stop work order on the lake side of the property to better understand the work that had been completed. Subsequent to conversations with City staff, the City Engineer, the DNR and the Carver County Water Management Organization, staff sent the applicants and their builder an email on November 1, 2019 outlining the situation and providing a path moving forward based on the current site conditions.

The City received an additional complaint regarding the retaining wall permit that was issued, which identified concerns with the structural integrity of the proposed retaining walls on site, specifically the 12-foot retaining wall proposed on the lake side of the home. City staff determined that an assessment by an independent third-party engineer would be beneficial to insure the 12-foot retaining wall, as proposed, was designed correctly to insure public safety. Gray Engineering provided an email review which identified some concerns with the proposed 12-foot lake side retaining wall. City staff contacted the builder who in turn provided the comments to The Hanson Group, LLC, the engineering firm that did the original retaining wall design. Nick Hanson, Structural Engineer, responded with a revised plan set consistent with the recommendation of Gray Engineering.

Staff required the applicant/property owner to submit an Erosion and Sediment Control Permit application to the CCWMO to insure the necessary erosion controls were put in place and required restorative plantings within the bluff and buffer were completed. An Erosion and Sediment Control Permit was issued by the CCWMO which among other things, included a recommendation to diversify the plant species proposed in the bluff impact zone.

Additionally, staff required a fence along the west boundary, either along the top of the retaining wall or along the shared property line. The property owners and applicant have submitted a plan and fence details that proposes to extend a solid 6 ft fence along the shared property line, within the bluff impact zoned and terminating within the bluff at the intersection of the retaining wall and property line. The applicant has indicated that the fence will not obscure the views of the neighboring property owners.

Braaten concluded that all of these steps have led to the consideration of an after-the-fact variance for improvements within the bluff impact zone. It is the recommendation of the Planning Commission and City staff that the variance be approved due to the condition of the site upon inspection on October 28, 2019. Based on conversation with the City Engineer and other agencies it was determined that the appropriate path forward is to allow the retaining walls, as proposed to be constructed and require the regarding/removed section of the bluff impact zone to be restored via plantings.

Mayor Bloudek stated that he would like to see the applicant share the plans with the neighbors to let them know what is happening going forward and make sure the fence and wall will not be obstructing any views. He expressed his concern about the safety of the wall and would like to be reassured that it is built correctly so that in the future it will not deteriorate and cause erosion.

Council Member Carrier asked staff about the provision for inspections every 10 years, how will that be tracked to make sure it doesn't fall off the radar?

Mike Melchert responded that the Planning Commission did not go into detail on this issue so it is best to have the provision included in the variance because it will stay with the property. The plan will be to certify the resolution and it will run with the land which is consistent with state law. If the property were to sell this will come up in title insurance commitment as an exception.

Council Member Carrier wanted to address the neighbors comment about possible damage to the foundation of his house. Melchert stated that there is under state law obligation of support. If his property is damaged but what the neighbor is doing he may be able to take legal action. Not necessary to put a condition in the variance to make the City the enforcer since there is common law rights to protect that property.

Council Member Carrier expressed concerns that something happened that shouldn't have. The Council has been here before and the purpose of the bluff zones is to protect the land around the lake. Been in this position before where we are backed

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into a corner and have had to approve it. This is not in harmony with the ordinance which should be a no vote but if not approved having to remove the wall will cause more damage than is already done to the bluff.

Melchert responded that under MN Case Law there have been other after-the -fact variance requests. The courts have determined that you look at the variance factors as they exist the day you consider the variance not as of the day that they would have applied for if the procedure unfolded properly. If someone were to go forward fully knowing the ordinance and then ask for forgiveness should be grounds for denial. Here we are looking at the circumstances of the building permit being issued and the complaint being made. The factors of this variance are what need to be considered for approval or denial. It comes down to who you believe, if the builder absolutely knew what the requirements were and if this was a mistake from the beginning. If there is inconclusive evidence or believe that there was a misunderstanding or mistakes made, those are factors that should be taken into consideration.

Council Member Waldron communicated that when the steep slope permit was issued it was stated that the bluff would not be impacted. Very concerned about the neighboring properties and how this will affect how things are done in the future. The bluff impact zone is very important to the lake. Would like to hear about how we got here in the first place.

Jim Morris, Highmark Builders, came forward and explained that because of the different grades on the lot they had to go through 11 different designs that balance water runoff. There already is an existing retaining wall from the neighboring property that the wall needs to connect to. Nothing is different from what was presented in the steep slope permit.

Motion by Erickson, seconded by Leo to Adopt Resolution 2020-41, Approving the After-the-Fact Variance Request by Nathan Carlson/Highmark Builders for Improvements within the Bluff Impact Zone for the property located at 754 Old Beach Lane. All present voted aye. **MOTION CARRIED.**

ITEMS REMOVED FROM CONSENT AGENDA: None

STAFF REPORTS: Susan shared that the City received notification from MCFOA that for the 6th year in a row that we received Certificate of Achievement for Excellence for Financial Reporting. This is the first year there were no comments on things we should adjust or change.

BOARD REPORTS:

Councilmember Erickson – Attended the Planning Commission Meeting.

Councilmember Leo – Attended the Park Board Meeting. Inclusive Playground Fundraising event will be at Culver on February 3, 2019, 5 p.m. -8 p.m.

Councilmember Carrier – The School Board met last week and approved their contract with WEA, Attended Board Meeting with Metro Cities and went through legislative priorities of the Metro Cities Board.

Councilmember Waldron – Thursday will be the State of the Chamber at Freshwater Church.

Mayor Bloudek – Will be attending Carver County Mayors meeting.

ANNOUNCEMENTS: Winter Parking is in effect.

ADJOURN:

Mayor Bloudek adjourned the meeting at 6:59 p.m.

Kent Bloudek, Mayor

ATTEST: _____
Ann Meyerhoff, Office Assistant