

Common Council Minutes
Wednesday, June 15, 2022—7:00 p.m.

The Common Council of the City of Neenah, Winnebago County, Wisconsin, met in regular session at 7:00 p.m., June 15, 2022, in the Council Chambers of Neenah City Hall.

Mayor Lang is the chair.

Present: Alderpersons Boyette, Borchardt, Hillstrom, Lendrum, Erickson, Skyrms, Steiner, Stevenson, and Weber. Staff present Assistant Comptroller Kahl, Director of Community Development & Assessment Haese, Director of Public Works Kaiser, City Attorney Westbrook and City Clerk Nagel.

Also present: Director of Parks and Recreation Kading.

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

- I. The Clerk called a voice roll call as the Mayor/Alderpersons recorded their attendance on the RollCall-Pro System.

PROCLAMATION OF JULY 2022 AS PARKS AND RECREATION MONTH

Mayor Lang read and presented the Proclamation of July 2022 as Parks and Recreation Month to Director Kading.

In recognition of Parks and Recreation month, the Parks and Recreation Department will have yard signs for anyone to display their support of the Parks and Recreation month.

- II. Introduction and Confirmation of Mayor's Appointment(s)
 - A. None.
- III. Approval of Council Proceedings
 - A. Approval of the Council Proceedings of June 1, 2022 regular session. **(UC)**
There being no objections the proceedings were approved as written by unanimous consent.
- IV. Public Forum
 - A. Speakers should give their name and residential address (not mailing address) and are allowed five minutes to speak on any topic.
There were no appearances.
- V. Mayor/Council consideration of public forum issues
 - A. None.
- VI. Consent Agenda
 - A. Approve Bergstrom-Mahler Museum Inc., 165 N Park Drive, to be held on June 23, 2022 the Council approve the Street Use Permit for Ark After Dark, sponsored by The from 5:00 PM to 9:00 PM. **(PSSC)**

- B. Approve Temporary Class “B” Picnic License Application for the sale of fermented malt beverages to Bergstrom-Mahler Museum Inc., for Art After Dark to be held on June 23, 2022 from 5:00 PM to 9:00 PM. **(PSSC)**
- C. Approve Temporary Class “B” Picnic License Application for the sale of fermented malt beverages and wine to Bergstrom-Mahler Museum Inc., for Art Fest to be held on August 12, 2022 and August 13, 2022. **(PSSC)**
- D. Approve Street Use Permit for the Farewell Party, sponsored by St. Margaret Mary Parish, 620 Division Street, to be held on June 26, 2022 from 10:30 AM to 2:00 PM. **(PSSC)**
- E. Ratify Mayor Lang’s approval of Special Events Permit for Special Olympics Torch Run sponsored by Neenah Police Department, 2111 Marathon Avenue, to be held June 29, 2022 at 9:00 AM to 11:00 AM.
- F. **(UC)**
There being no objections the Consent Agenda was approved as written by unanimous consent.

VII. Reports of standing committees

- A. Regular Public Services and Safety Committee meeting of June 7, 2022: (Chairperson Lendrum/Vice Chairperson Hillstrom) (Minutes can be found on the City web site)
 - 1. Committee recommends Council adopt Resolution No. 2022-10 - Compliance Maintenance Annual Report CMAR for Sanitary Sewer. **MSCR P Lendrum/Borchardt to approve Resolution 2022-10, all voting aye.**

Discussion: The CMAR annual report is reviewed by the DNR on the financial health of the utility. The report is clean again this year.

- 2. Committee recommends Council approve contracting with GRAEF for engineering, design and construction management services for the construction of a new bridge over Neenah Creek connecting the Bridgewood Golf Course redevelopment project to Jewelers Park Drive in a not to exceed cost of \$149,878.39 with the funding source coming from TIF #7, with staff presenting a preliminary location of the bridge at the Council meeting on June 15, 2022. **MSCR P Lendrum/Skyrms to approve the agreement with GRAEF as presented.**

Discussion: Director Haese identified the location of the bridge which is approximately 200 feet north of the entry to Valley Management Building which is the first building north of Jewelers Mutual. This location is estimated to be about 400-500 feet south of the old bridge and about 800 feet from the existing Cameron Way Bridge. A pinpoint location will be given during the survey work. The concept plan for the development shows two townhouse buildings on fairway 9. The proposed road would come in south of these two townhouses and just south of the last condominium unit.

At the resident informational meeting, it was made clear that the exact location of the bridge would be defined in the site plan approval which has yet to be done. Director Haese spoke with Condo Association #1 President who indicated that the residents understood where the proposed bridge would be located. However, if Council has concerns on the location of the bridge, there could be a more formal discussion and action with the condo associations prior to final approval of the site plan.

Director Kaiser advised this agreement is for design, engineering, and construction administration services, not the actual bridge construction. The actual construction of the bridge is estimated to be in the half million dollar plus mark. The total bridge project package is estimated to be around \$750 thousand depending on the bids.

The developer proposed that the connection to the road into this site be located just to the east end of the Carmon Way bridge. The city proposed a separate road and bridge into the site. The comprised location was re-routing the road into the site over the existing pond. The preference of the residents is the bridge be located further to the south which is the location now being considered.

Director Haese understands that the developer agreement for the entire project is based on the creation of TIF #12. The agreement also specifies that if TIF #12 is not created, the developer's agreement is null and void. However, there would be costs incurred moving the project forward until TIF #12 is created. Director Haese would rather the recommendation be to use TIF #7 funds with TIF #12 as a backup.

By statute, TIF #12 needs to be created by September 1, 2022. If the TIF is created by September 1, 2022, the effective date would be January 1, 2022, and any costs incurred would be funded by TIF #12. TIF #12 is currently being written.

Attorney Westbrook advised that to use TIF #7, the money would have to be allocated to TIF #7 prior to the expiration date of July 5, 2022.

Clarification: TIF #7 cannot incur the costs of the construction of the bridge; TIF#12 must fund the construction of the bridge. TIF #7 can incur the engineering, design, and construction management services if the contract is entered into prior to the closing of TIF #7 costs deadline which is July 5, 2022.

Friendly amendment to the motion by Lendrum/Skyrms to approve contracting with GRAEF for engineering, design and construction management services for the construction of a new bridge over

Neenah Creek connecting the Bridgewood Golf Course redevelopment project to Jewelers Park Drive in a not to exceed cost of \$149,878.39 with the funding source coming from TIF #7 unless the creation of TIF #12 is successful before the funds are to be disbursed in which case the funding will come from TIF #12, all voting aye.

3. Committee recommends Council approve a budget amendment to provide for sewer lateral replacements done in conjunction with the lead service line replacement program using \$520,000.00 budgeted funds remaining from the S. Commercial Street and Grove Street sanitary sewer replacement projects.
MSRCP Lendrum/Borchardt to approve the budget amendment as presented, Roll Call Vote 8-1 with Boyette dissenting.

Discussion: Director Kaiser gave a summary of the action. Director Mach was successful in receiving grant money for lead service line replacement. When he was working toward that end, the staff discussed possible locations to use those funds with the possibility of coordinating that work with sanitary sewer lateral replacement. As options were looked at, the preferred locations were where partial replacement of both water services and sewer laterals had been completed. The Reddin and Betty Avenue area had partial replacement of both water and sewer done in the late 2000. When partial work is completed, mains are replaced just to get them out of the roadway to avoid any disturbance to the road with future work. There were no special assessments for the sewer laterals and the water service work was completed to the stop box which is a water utility cost. During a follow-up investigation of the Reddin and Betty Avenue area, the anticipated iodized reduction levels were not realized for the work that was completed. Another investigation since that time revealed the iron is coming from the private sewer line portion that was not replaced. Hence, this project would allow the iron issues to be taken care of together with the replacement of the lead water service.

Alderperson Boyette had many questions, sent out an email to the Council, and handed out the policies. The policies seem to contradict one another and the policy and ordinance lacks a specific formula to decipher special assessment costs. The ordinance states that the amount would be charged by the last lateral bid. Alderperson Boyette would like to know how the public is going to be notified about this project.

Director Kaiser advised the special assessment process will be followed which requires for a public hearing. A preliminary resolution and assessment report is required to be approved by Council. At this point a public hearing would be held. A final resolution would also need Council approval as well. There was discussion of the sixty-day notice to property owners, as well as

the established costs for the project. Alderperson Boyette would like more time for to research this issue and bring it back to Council next meeting.

Director Kaiser advised that this is a budget amendment, there is no obligation to the Council to spend funds. The budget amendment allows the process to move forward with the established timeline. Since the water utility funding deadline ends at the end of year, the concern is pushing up against the availability of contractor at the time a contract is ready to be taken on. There was an extensive amount of time invested in the DNR approval process prior to any knowledge that this project was ready to move forward. Alderperson Boyette can meet with staff to get her questions answers as the project moves forward and prior to the final approval of the project.

Boyette dissented because she did not agree with the “no cost volunteer” sign up on the water side and adding the mandated cost sewer laterals on the sewer side of the project.

- B. Regular Finance and Personnel Committee meeting of June 6, 2022: (Chairperson Erickson/Vice Chairperson Skyrms) (Minutes can be found on the City web site)
 - 1. No report.
- VIII. Reports of special committees and liaisons and various special projects committees
- A. Regular Plan Commission meeting of June 7, 2022: (Council Rep Steiner) (Minutes can be found on the City web site)
 - 1. Commission recommends Council approve the proposed 2 Lot CSM at 7001 Woodenshoe Road and accept the land dedication for public right-of-way.
MSRCP Steiner/Stevenson to approve as presented, all voting aye.

No discussion.
 - B. Board of Public Works meeting of June 9, 2022: (Vice Chairperson Hillstrom) (Minutes can be found on the City web site)
 - 1. Information Only Items:
 - a. The Board approved Change Order No.1, Contract 5-22, CTH CB/CTH JJ, Utility Installation, De Groot, Inc., Green Bay in an amount of \$6,433.44.
 - b. The Board approved Change Order No.2, Contract 5-22, CTH CB/CTH JJ, Utility Installation De Groot Inc., Green Bay in an amount of \$12,449.81.
 - c. The Board approved Pay Estimate No.2, Contract 2-22, Sanitary, Water Services and Street Construction, Grove Street and Dieckhoff Street, Donald Hietpas & Sons, Inc., Little Chute, in an amount of \$162,398.89
 - d. The Board approved Pay Estimate No. 2, Contract 4-22, Sanitary Sewer and Water Main Construction, S. Commercial Street, Robert J. Immel Exc. Inc., in an amount of \$55,611.62.

- e. The Board approved Change Order No. 1 for Shattuck Park Fountain Reconstruction Contract to Janke General Contractors, Athens, WI in the amount of \$9,440.20
 - f. The Board approved Pay Estimate No. 2, for Shattuck Park Fountain Reconstruction Contract to Janke General Contractors, Athens, WI in the amount of \$322,747.85
2. Council Action Items:
- a. The Board recommends Council award Contract 8-22, HMA Pavement Repairs to Northeast Asphalt, Inc. in the amount of \$94,268.00. **(RollCall-Pro)**
MSRCP Hillstrom/Borchardt to approve as presented, all voting aye.

 - b. No discussion.
 - b. The Board recommends Council approve Final Payment, Contract 5-22, CTH CB/CTH JJ, Utility Installation, De Groot Inc., Green Bay in an amount of \$51,750.59. **(RollCall-Pro)**
MSRCP Hillstrom/Stevenson to approve as presented, all voting aye.

Discussion: Director Kaiser advised that the utility work is completed. The road work is being managed by Winnebago County. Estimated project completion date is late September.

- C. Reports on neighborhood groups.
- 1. Business Improvement District Board (BID Board) – Alderperson Skyrms
 - a. Reporting on the May 17, 2022 Meeting.
 - b. Director Wenninger gave an update on the downtown WIFI installation and made himself available for any questions.
 - c. Deputy Director Brad Schmidt discussed the latest news about the Downtown Plan. RDG will work with Neighborhood Investment Partners to complete the plan. The BID will be contributing \$5,000. The committee held its kickoff meeting on May 19th.
 - d. Work began toward finding the best location for the Valley Transit transfer station. A grant is being pursued to hire a consultant for that work.
 - e. Executive Director Hanneman handed out the summer concert and farmer's market flyer. The schedule can be found online.
 - f. Marketing Committee recognized the flower bed decorating was very successful.
 - g. Maintenance Committee will host a board walk through of the district on June 21, 2022.
 - h. Recruitment and Retention Grant was awarded for 106 W. Wisconsin Avenue in the amount of \$5,000.
 - i. Next scheduled BID Board meeting is scheduled for Tuesday, June 21, 2022.

- D. Community Development Authority
 - 1. Report from the CDA – Director Haese
 - a. Cancelled, no report.
- E. Library Board
 - 1. Report from the Library Board – Alderperson Erickson
 - a. Reporting from the June 15, 2022 meeting.
 - b. As of the Library Board meeting, 2,781 kids are signed up for the Summer Reading Challenge. Sign up is still available.
 - c. The Library will be handing out free lunch for children through the age of 18 on during summer school days which are Monday-Thursday, June 13-30th and July 11-21st in the Shattuck Room.
- F. Neenah Arts Council
 - 1. Report from the Neenah Arts Council – Alderperson Erickson
 - a. Reporting from the June 8, 2022 meeting.
 - b. June 18, 2022 will be at the Farmer’s Market with a butterfly activity.
 - c. July 4, 2022 will be at CommunityFest with an art project.
 - d. July 16, 2022 will be at the Farmer’s Market with a beach activity.
 - e. September 17, 2022 will be at the annual Pow Wow.
 - f. December 2, 2022 will be at the Very Neenah Christmas.
 - g. Arts Council is looking for volunteers to assist with user friendly art activities. Please sign up to volunteer.
- G. Landmarks Commission
 - 1. Report from the Landmarks Commission – Alderperson Steiner
 - a. Reporting from June 8, 2022 meeting.
 - b. Approved the Certificate of Appropriateness for the site at 106 W. Wisconsin Avenue.
 - c. Discussed the canoes available for a free tour on Saturday, August 20, 2022 as part of the Farmer’s Market. This is a first come, first served event.
 - d. There was discussions on collaboration of the 150 anniversary celebration of both Neenah and Menasha becoming cities since they are within a year of each other. Neenah’s is March 2023, and Menasha’s is the following year. There was discussion that the 100-year anniversaries were celebrated together and the hope of continuing that collaboration.
- IX. Presentation of petitions
 - A. Any other petition received by the City Clerk’s Office after distribution of the agenda.
 - 1. No petitions.
- X. Council Directives
 - A. None.
- XI. Unfinished Business
 - A. Attorney’s opinion on video gaming devices.

Attorney Westbrook provided a memo regarding video gaming device enforcement which was discussed. Per Attorney Westbrook's memo, no establishments are allowed to have video gaming devices that payout, it is illegal in the State of Wisconsin unless the establishment is a tribal gaming facility. Only Class B establishments are allowed to have five gaming devices, but they cannot give anything of value in exchange for the use of the gaming devices. Only the Department of Revenue can enforce video gaming devices in Class B establishments. Therefore, any bar paying out can only be enforced by agents of the Department of Revenue. Other establishments, like a gas station for example, could be enforced by the local police department.

The Department of Revenue only deals with bars that have video gaming devices. The majority of bars in Neenah have video gaming devices that pay out, which is completely illegal, but only the Department of Revenue has jurisdiction over Class B establishments. In non-Class B establishments, the Department of Revenue does not have jurisdiction. The Department of Revenue would refer a complainant to the local police department or the Department of Justice at the state level. The Neenah Police Department, like many other police departments across the state, choose not to enforce these provisions. The Council and Mayor, has statutory authority over the police department and the ability to require enforcement of this provision.

More discussion needs to take place on this issue and a policy and/or plan for enforcement would need to be established prior to any action taking place. The Department of Revenue and the police department understand this is an issue that needs to be addressed. Having video gaming machines in non-Class B establishments is a criminal offense, therefore this issue is not a code enforcement issue. A sworn officer would have to issue citations.

The Council is requesting some type of public education regarding video gaming machines at establishments other than Class B. A bar can have up to five video gaming devices, gas stations cannot have any video gaming machines even if the devices do not pay out.

No action taken.

- B. Attorney's opinion on Beverage Operator License appeal after deadline. Attorney Westbrook provided a memo regarding allowing an appeal of a beverage operator's license after the appeal deadline has expired. Attorney Westbrook advised the Council not to allow an appeal after the appeal deadline has expired as the deadline would then become moot and the allowance would set a precedent for all future appeals.

The Council has no desire to pursue modifying the established beverage operator procedure. There is a responsibility for applying for a beverage operator license and there is an opportunity to appeal if the application is denied. The applicant knew of that appeal process and did not follow through.

This matter is considered closed. No action taken.

XII. New Business

- A. Scheduling of 2022 Council photo.
Council President Stevenson recommended July 20, 2022 as all members indicated they would be in attendance.
- B. Any announcements/questions that may legally come before the Council.
 - 1. Future Neenah Concert for The Britins has been rescheduled (due to weather) to Monday, June 20, 2022 from 6:00pm-8:00pm.

XIII. Closed Session

- A. Adjourn into closed session pursuant to Wis. State Statute §19.85(1)(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved (Ullrich vs. City of Neenah—Lake Shore Avenue Litigation and Lake Shore Avenue Reconstruction Project)
- B. The Council may remain in closed session pursuant to Wis. Stats §19.85 (1) (e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session relating to downtown parking.
- C. May reconvene into open session pursuant to Wis. Stats. § 19.85(2) to consider or act on closed session recommendation(s).

Motion by Boyette/Stevenson to adjourn into closed session for the above referenced items, all voting aye.

At 8:10 pm., the Council recessed to prepare for the closed session.

At 8:17 p.m., the Council reconvened into closed session.

Council adjourned the meeting within the closed session at 9:33 p.m. No action taken.

XIV. Adjournment

Motion by Stevenson/Borchardt to adjourn, all voting aye. Meeting adjourned at 9:33 p.m.

Respectfully submitted,



Charlotte Nagel, City Clerk