

**MINUTES  
REGULAR WASECA CITY COUNCIL MEETING  
TUESDAY, DECEMBER 1, 2009**

**CALL TO ORDER/ROLL CALL**

- 1 The regular Waseca City Council meeting was called to order at 7:00 p.m. by Mayor Roy Srp.

Councilmembers present:

Mayor Roy Srp	Allan Rose
John Clemons	Cindy Coy
Larry Johnson	Mark Christiansen
Les Tlougan	

Staff present:

Crystal Prentice, City Manager  
Mary Buenzow, Records Secretary

Also present was City Attorney Mike Kennedy.

**MOMENT OF SILENT PRAYER/PLEDGE OF ALLEGIANCE**

- 2 A moment of silent prayer was observed. The Pledge of Allegiance to the Flag was recited.

**APPROVAL OF AGENDA**

- 3 The City Manager requested the addition of item 10d, Change Order #4, Project #0803.

It was moved by Coy, seconded by Tlougan, to approve the agenda as amended; the motion carried 7-0.

**VISITORS, REQUESTS, AND COMMUNICATIONS**

- 4 None

**Mayor Srp asked if there was anyone in the audience, not on the agenda, who wished to address the Council at this time.**

**David Taylor, 928 3<sup>rd</sup> Street SW**, addressed the Council with a request to use the County Fairgrounds property area to park his semi trailer, as there is nowhere in the City for drivers to park their trailers. Mr. Taylor stated he and other truck drivers would be willing to pay a nominal fee in order to have a place to park that would not upset their neighbors.

There was some discussion that the Fair Board may be willing to offer parking space at the fairgrounds for this purpose.

Mt. Taylor stated he would like the Council to consider designating no parking on the north side of Johnson Avenue SW, as the visibility coming off 3<sup>rd</sup> Street SW is very poor. He felt this is a safety issue. *This request will be referred to the Traffic Safety Board for consideration.*

Mr. Taylor thanked the Council for their consideration in these matters.

**CITY MANAGER’S REPORT**

- 5 The City Manager provided a brief update regarding the Small Cities Development Program grant application. She also stated the City’s membership with SMMPA will expire in 2030 and she has scheduled December 15<sup>th</sup> for discussion of a 20-year extension to the City’s membership with SMMPA.

**COMMISSION REPORTS**

- 6a Councilmember Clemons updated the Council regarding activities of the EDA.

**PUBLIC HEARINGS**

- 7a **Liquor violation hearing**

- 1) Katie O’Leary’s  
**Resolution No. 09-48**

City Attorney Mike Kennedy explained that a series of alcohol compliance checks is conducted by the Police Department and, if there are violations, a legal process is followed, which includes disciplinary action by the City Council. Mr. Kennedy further explained the Council sits as the jury, and notices were provided by Staff to the licensed liquor establishments, with the exception of Chance Bar, and information regarding the hearing has also been provided to the licensees.

Mr. Kennedy stated in each case this evening, the violations will be consider first offenses, as the City policy states that the dates of offense must occur within 12 months of each other. None of these offenses came within 12 months of another offense.

**The hearing opened at 7:21 p.m.**

**Rusty Anhorn**, 821 East Elm Avenue, stated he is the owner of Katie O’Leary’s. He reviewed the security camera tape and saw what happened, and the employee was terminated on the spot.

**The hearing closed at 7:23 p.m.**

It was moved by Clemons, seconded by Rose, to concur with the Staff recommendation and adopt Resolution No. 09-48, imposing a \$250 fine and require proof of implementation of a detailed Minnesota liquor law employee compliance program be submitted within 90 days, by March 1, 2010;

**DISCUSSION**

Councilmember Johnson commented he will abstain on the motion as he is the manager of a licensed facility.

The City Attorney questioned whether the Council wished to place a due date for the fine.

**AMENDED MOTION**

Councilmembers Clemons and Rose stated they would amend the motion to include that that the \$250 fine is due within 90 days;

Councilmember Clemons commented Mr. Anhorn has been before the Council several times, for rehab of his building, installing an outdoor deck, etc., and he is sure Mr. Anhorn takes this issue very seriously.

VOTE ON THE MOTION

The motion carried 6-0-1 (Johnson abstained as employee of licensed liquor establishment).

2) Lindner Discount Liquor

The City Attorney explained there are unusual circumstances in this case, as the violation took place in November 2008 and the present license holder is different than at the time of the offense. Staff is recommending no action be taken with this license holder. The Council can go forward if it wishes, but he would recommend no further hearing and this issue be dropped.

Councilmember Clemons stated he felt we should have taken the previous license holder to task and make him pay, as it is wrong to let him go without paying.

**The public hearing opened at 7:31 p.m.**

**Tae Born, 905 9<sup>th</sup> Street SE**, addressed the Council and explained she purchased Lindner Liquor in July 2009 and was not the owner at the time of the violation. She added the employee in question no longer works at Lindner Liquor.

**The public hearing was closed at 7:32 p.m.**

It was moved by Tlougan, seconded by Rose, to take no action on the Lindner Liquor violation; the motion carried 6-0-1 (Johnson abstained as an employee of a licensed liquor establishment).

It was moved by Clemons, seconded by Srp, to pursue violation against the previous owner of Lindner Liquor;

DISCUSSION

Councilmember Christiansen inquired how we would go after the previous owner and if it would cost more money. The City Attorney suggested a fine could be imposed. Councilmember Coy stated we would need to find out who it is, whether that party is living, or if we would be notifying an estate, etc.

The City Attorney commented City Staff also did not provide notice to the owner of Chance Bar, as there is currently no license issued to that establishment. Mr. Kronebusch, former licensee for Chance Bar, is present this evening because he became aware this item was going to be on the Council agenda.

Councilmember Clemons reiterated he felt the City should go after the previous license holder. The Council takes licenses very seriously and we need to pursue this. The license was granted in good faith and he did not feel these were unreasonable terms.

After further discussion, Mayor Srp stated he will vote against the motion, because by the time we get done with this, it will cost the City more. He would be willing to adopt a policy that addresses this issue specifically.

VOTE ON THE MOTION

The motion (to pursue the violation against the previous owner) failed 1-5-1 (nay-Tlougan, Rose, Coy, Christiansen, Srp) Johnson abstained as an employee of a licensed liquor establishment.

- 3) Casey's General Stores, Inc.  
**Resolution No. 09-50**

The City Attorney explained a violation occurred at Casey's General Stores # 1777 (North) in November 2008. No other violations have occurred within the past five years, so this will be treated as a first offense.

**Mayor Srp opened the public hearing at 7:45 p.m.**

**Michael Meyer, 1500 Viola Road, Rochester, MN**, addressed the Council and explained he is the District Manager for Casey's General Stores. Casey's has policies and procedures. The employee in question did sell and failed the compliance check. Within one week a meeting was held and employees were retrained. Mr. Meyer stated Casey's has a zero tolerance policy and this employee is no longer with Casey's.

Councilmember Clemons commented that while going through the City's list of expenditures, he noticed a refund to Casey's and wondered if they are choosing not to renew for 2010. Mr. Meyer stated that is true, Casey's is not renewing Off Sale 3.2 licenses at the stores in Waseca. However it has nothing to do with this violation, it is just not cost effective.

**The public hearing was closed at 7:46 p.m.**

The City Attorney asked the Council to determine this matter. A \$250 fine was recommended and part of the requirement is proof of employee training. If Casey's is no longer selling beer, it probably doesn't make sense to include that requirement.

It was moved by Clemons, seconded by Srp, to impose no penalty for this violation;

DISCUSSION

Councilmember Clemons explained Casey's felt the pinch enough by going through the legal process. Since they are not renewing for 2010, Councilmember Clemons thought it was too much.

Councilmember Coy recalled there was a reason why the City imposes a fine. The City Attorney explained he has heard of cities who do not impose a fine and the State then imposes and keeps the fine. He stated there is no required amount.

Councilmember Coy stated she will support imposing a fine and feels that, in the spirit of consistency, it makes sense to vote against this motion.

Mayor Srp stated he is impressed that people came to this hearing from Rochester.

Councilmember Tlougan agreed with Councilmember Coy and stated he felt we should be consistent and follow guidelines and not be cherry picking who should be fined. In this case these are the current owners and the license is still in place and we should impose the fine.

VOTE ON THE MOTION

The motion failed 2-4-1 (nay-Tlougan, Rose, Coy, Christiansen) Johnson abstained as an employee of a licensed liquor establishment.

It was moved by Christiansen, seconded by Rose, to concur with Staff recommendation and impose a \$250 fine for Casey's General Stores, Inc. *and remove the requirement for proof of employee training*; the motion carried 6-0-1 (Johnson abstained as employee of licensed liquor establishment).

4) Chance Bar

City Attorney Mike Kennedy explained this is for informational purposes only. He discussed this with Staff and the bar is closed, no license was issued so it was determined not to pursue this matter. The City Attorney recommends leaving this file open for two years, and within two years if the same or a related license holder comes back for the license, this matter should come back to Council. So no action should be taken unless the Council wishes.

7b **Tobacco violation hearing**

Sportsman Stop  
**Resolution No. 09-51**

The City Attorney explained in July 2009 a tobacco compliance check was conducted by the Police Department and Sportsman Stop was cited for selling tobacco to a minor. This is a first offense.

**Mayor Srp opened the hearing at 8:01 p.m.**

**Jay Nicolin, 828 5<sup>th</sup> Avenue NE**, explained he is the owner of Sportsman Stop and will accept whatever disciplinary action the Council deems appropriate. He explained that every employee is required to read and sign the policy and he wondered what more he can do or if there is some assistance available. Mr. Nicolin stated he is looking for a recommendation as to what can be done in the future.

The City Attorney stated compliance programs are set up so the employee has training, but the age group of customers is a factor. There is no sure fire answer.

Police Chief Hiller stated the Police Department is willing to work with the establishments, to go through policies and procedures and help at any time.

**The hearing was closed at 8:06 p.m.**

It was moved by Rose, seconded by Tlougan to concur with Staff recommendation and adopt Resolution No. 09-51, imposing a \$100 fine to Sportsman Stop;

DISCUSSION

Councilmember Johnson wondered if a 3-day suspension were imposed, would the Council have the option of picking the three days, in lieu of a fine. The City Attorney stated for liquor violations the three days are required to be consecutive, but in this case they would not have to be done consecutively.

VOTE ON THE MOTION

The motion carried 6-1 (nay-Johnson).

- 7c **Adoption of Ordinance 951** – Amending Chapter 155 of the City Code re: Historic Preservation Commission

The Community Development Director explained the Historic Preservation Commission met in November and discussed changing its name from Historic Preservation Commission to the Heritage Preservation Commission in order to be more in line with others in existence in the State of Minnesota. An ordinance is required to make this change.

**Mayor Srp opened the public hearing at 8:10 p.m.** There were no public comments. **The public hearing was closed at 8:10 p.m.**

It was moved by Coy, seconded by Christiansen, to adopt Ordinance No. 951, AN ORDINANCE OF THE CITY OF WASECA AMENDING CHAPTER 155 OF THE CITY CODE RE: HISTORIC PRESERVATION COMMISSION; the motion carried 7-0.

ROUTINE BUSINESS

- 8a **Set 2010 City Council meeting dates**

It was moved by Rose, seconded by Christiansen, to approve the 2010 City Council meeting dates as presented; the motion carried 7-0.

- 8b **Designate official City newspaper for 2010**

It was moved by Tlougan, seconded by Rose, to approve Waseca County News as the City's official newspaper for 2010; the motion carried 7-0.

- 8c **Designation of depositories for City funds**

It was moved by Rose, seconded by Tlougan, to approve the City depositories as presented by Staff; the motion carried 7-0.

- 8d **Resolution No. 09-52-** Adoption of the 2010 Annual Budget

It was moved by Rose, seconded by Coy, to adopt Resolution No. 09-52, A RESOLUTION OF THE WASECA CITY COUNCIL ADOPTING THE 2010 ANNUAL CITY BUDGET (1.5% decrease); the motion carried 6-1 (nay-Clemons).

Councilmember Rose commented this is the first time in history that he can recall a decrease of this amount in the budget.

- 8e **Resolution No. 09-53** – Approving the 2009 Tax Levy Collectible in 2010

It was moved by Tlougan, seconded by Christiansen, to adopt Resolution No. 09-53, A RESOLUTION OF THE WASECA CITY COUNCIL APPROVING THE 2009 TAX LEVY COLLECTIBLE IN 2010;

DISCUSSION

Councilmember Christiansen commented he felt we may have put ourselves in a corner with a decrease in revenue, and maybe should have gone with a 1.35% decrease. The City Manager replied there were a number of factors, and the Council had indicated they wanted a 0% levy or better. Councilmember Christiansen stated at that time we didn't know that the school referendum wouldn't pass. The City Manager stated in 2011 we will still be under the State levy limits.

Mayor Srp stated there are people who would like to see an even bigger decrease, and we are approaching a point of living within our means. The City is fortunate to have gotten the water park and the trail completed when we did. Mayor Srp stated this is not an easy thing to do, but he commended the Council for doing the best we can do to keep the quality of life in Waseca.

VOTE ON THE MOTION

The motion carried 6-1 (nay-Clemons).

UNFINISHED BUSINESS

9a **Wentau**

The City Manager provided background information regarding the request from Wentau LLC for reimbursement for costs incurred on Harvest Ridge Project. On the advice of legal counsel, Staff recommends settling this matter by approving reimbursement to Wentau, LLC for 50% of the incurred costs, \$15,323.07, plus legal fees not to exceed \$2,500.

The City Attorney explained there is no litigation pending at this time, and he gave an analysis of the strengths and weaknesses of the claim. He stated he did not wish to provide any information that would be detrimental to the City's position.

The City Manager repeated Staff's recommendation to reimburse \$17,823.07. Councilmember Rose asked if this is a not-to-exceed amount. The City Manager stated that is correct.

Councilmember Tlougan clarified the recommendation is to reimburse 50% of the incurred costs and legal fees, in an amount not to exceed \$17,823.07. The City Manager stated that is correct.

It was moved by Clemons, seconded by Johnson, to reimburse an amount of \$17,500 plus attorney fees in the amount of \$2,500 for a total of \$20,000;

DISCUSSION

Councilmember Tlougan wondered why a motion was made to spend additional money. Councilmember Clemons stated to pay the full amount would cost the City a lot more. When the City makes mistakes or does something that leads to a mistake, we should own up to it. The City Manager stated she met with Mr. Wendland, who asked for \$20,000 and agreed on \$15,000 plus legal fees.

Mayor Srp commented he didn't think there is anything wrong with a cushion. Councilmember Rose reminded everyone this is the taxpayers' money.

Councilmember Clemons stated he felt the City should “man up” and admit we made a mistake.

Councilmember Coy stated there is an inference that the City acted uninformed and that there was a mistake made. She recalls there were some things the Council was privy to that cannot be discussed this evening, but she is concerned this motion gives inference we acted wrongly and she does not believe that we acted wrongly in denying Mr. Wendland’s request. Councilmember Coy further stated she has concerns about paying \$20,000. Mr. Wendland is willing to accept \$17,823.07. She will be voting against this motion as it may be making a statement that the Council does not support Staff or themselves in a decision that was made previously.

Mayor Srp commented he will vote against the motion, but wants to make it clear that there are times when the City makes decisions that are incorrect and we are not perfect and we do make mistakes.

The City Attorney stated if this issue gets resolved there will be a release signed that says neither party was wrong.

Councilmember Tlougan stated he will vote “no” on this motion. Staff has put together a package to get this settled, and anything beyond that amount is money we shouldn’t be spending.

Councilmember Johnson stated he agrees with Councilmember Clemons. He was on the Council when this issue began and it left a bad taste in his mouth. This is an opportunity to right a wrong and settle some things. Councilmember Johnson stated he felt \$20,000 is a fair amount.

Councilmember Clemons stated he believes the City Manager did the best job she could in a situation she didn’t create and did an excellent job in negotiating. The City led a person to expend more money, and if we are admitting that \$17,500 is okay, then \$20,000 is okay too. The City wronged people and he is just trying to right some wrongs.

#### VOTE ON THE MOTION

The motion failed 2-4-1 (nay-Tlougan, Rose, Coy, Srp). Christiansen abstained as an employee of ALM Builders.

It was moved by Rose, seconded by Tlougan, to concur with Staff recommendation and authorize payment to Wentau, LLC in the amount of \$17,823.07; the motion carried 6-0-1 (Christiansen abstained as an employee of ALM Builders).

#### NEW BUSINESS

10a **Change Order No. 2 – WWTP Improvement Project #0812**

It was moved by Rose, seconded by Tlougan, to approve Change Order No. 2 for the WWTP Improvement Project #0812 as presented; the motion carried 7-0.

10b **Change Order No. 3- Wastewater Conveyance Project #0803**

It was moved by Rose, seconded by Coy, to approve Change Order No. 3 for the Wastewater Conveyance Project #0803 as presented; the motion carried 7-0.

10c **Application Process for Staffing for Adequate Fire and Emergency Response (SAFER) Program Grant**

It was moved by Rose, seconded by Tlougan, to approve the application process for the SAFER Program Grant;

DISCUSSION

Councilmember Clemons questioned what the program is about. Fire Chief Gary Conrath explained this is a FEMA grant designed to increase staffing. He cautioned the Council that the grant puts a full-time fire chief at the fire station for three years. Two years are paid for by the grant, but the third year is paid by the City. He further explained the City cannot cut any existing staff and cannot change any staffing. The purpose of the grant is to bring people back who were laid off.

*After further discussion, Councilmember Rose withdrew his motion.*

Councilmember Clemons questioned whether the City has a need for the extra position, as there have not been any discussions about increasing staff. The City Manager stated that is true, but public safety is a council priority and there are certain things a full-time position can do that part-time cannot. There is no staff recommendation on this issue based on budget projections.

Mayor Srp commended the City Manager and Fire Chief for their candor and for leaving this decision to the Council.

Councilmember Tlougan commented he had seconded the motion for discussion purposes, but felt this does not seem to be the best time to do this, as we may not have the money. He wondered if this program is likely to come back, and he would like to look at it again if it does. Chief Conrath stated he would definitely look at it again next year.

Councilmember Johnson questioned whether we would be able to delete a position or what would happen if someone would retire. The City Manager stated we would have to bring funding back. There are very clear guidelines for the grant program.

No Council action was taken on this issue.

10d **Change Order No. 4 – Wastewater Conveyance Project #0803**

It was moved by Tlougan, seconded by Rose, to approve Change Order No. 4 for Wastewater Conveyance Project #0803 as presented; the motion carried 7-0.

Councilmember Coy commented she thought the Council had previously authorized the City Manager and Staff to approve change orders to a certain dollar amount. The City Manager stated that amount is up to \$20,000, but Staff has continued to bring substantial change orders to Council.

CONSENT AGENDA

11 It was moved by Coy, seconded by Rose, to approve the Consent Agenda as presented; the motion carried 7-0 and included the following actions:

- a. Minutes – Regular City Council meeting – November 17, 2009 – were accepted and placed on file.

- b. Payroll & expenditures – November 2009- were authorized for payment.
- c. Payment request – Robert L. Carr Co. – Project #0812 – was authorized for payment.
- d. Payment requests – Invoice #173596, #173598 – Bonestroo - were authorized for payment.
- e. Payment request #4 – S.M. Hentges – Project #0803 – was authorized for payment.

### **ANNOUNCEMENTS**

12 The following announcements/miscellaneous items were discussed:

- Councilmember Rose requested information regarding minutes of the Water Park Advisory Board, as he has some numbers to compare with other water parks.
- Councilmember Coy reported that Thrivent Financial distributed 185 Thanksgiving baskets in Waseca County this year. The largest population increase for those baskets was in our senior population aged 65 and older.
- Councilmember Clemons reminded the audience of the Christmas Train which will be coming through Waseca on Monday, December 7<sup>th</sup> at 7:00 p.m. He stated this is a big event for young and old, and is a food shelf fundraiser. He encouraged everyone to attend.
- Councilmember Tlougan commented his article in this week's County News is about the season of hope, and he hopes this coming year will be a better year than last year for everyone.
- Mayor Srp stated Congressman Walz was in Waseca yesterday and his visit will be broadcast. Local residents Grove and Carol Brown were present and spoke eloquently about how thrilled they are about the WWTP project and the positive impact it will have on their household. Mayor Srp also stated two young local men who are working on the project also gave powerful presentations regarding why they are grateful for their jobs on the project.

### **ADJOURNMENT**

13 There being no further business to be brought before the Council, it was moved by Coy, seconded by Tlougan, to adjourn the regular meeting at 9:08 p.m.; the motion carried 7-0.

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R. D. SRP  
MAYOR

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MARY BUENZOW  
RECORDS SECRETARY