

MINUTES
Regular Meeting of Lake Shore City Council
Monday, February 28, 2011
7:00 PM Lake Shore City Hall

Mayor John Terwilliger called the February 28, 2011 Regular City Council meeting to order at 7:00 p.m. The pledge of allegiance was recited.

Roll Call: Mayor John Terwilliger. Council Members present: Susan Amacher; Doug Miller and Lyle Kline; City Attorney Steve Qualley; City Engineer Dave Reese; Police Chief Steve Sundstrom; City Administrator/Planning and Zoning Administrator Teri Hastings; Public; Works Jim Thomes and City Clerk Patti McDonald. John Bukovich was absent. There were 11 people in the audience.

APPROVAL OF MINUTES

MOTION BY LYLE KLINE TO APPROVE THE JANUARY 24, 2011 REGULAR CITY COUNCIL MINUTES AS PRESENTED. JOHN TERWILLIGER SECONDED THE MOTION. MOTION PASSED.

REPORTS

Police/Fire Report – Chief Steve Sundstrom

Incident Report – From January 24, 2011 to February 27, 2011 there were 129 incidents in the City. There were 77 traffic-related incidents and 52 were miscellaneous department activity.

Mayor's Report– John Terwilliger had nothing to report.

Clerk/Treasurer's Report – Patti McDonald

MOTION BY DOUG MILLER TO APPROVE THE FINANCIALS AS PRESENTED. LYLE KLINE SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

City Administrator/Planning & Zoning Administrator – Teri Hastings

Board of Review Date – The Board of Review is scheduled for Friday, April 8, 2011 at 12:00 p.m. at City Hall.

Fire Contract 2011 – The total contract amount is \$49,444.00, which includes the cost for the Fireman's Relief Association (\$2,976.00).

MOTION BY DOUG MILLER TO APPROVE THE 2011 FIRE CONTRACT AS PRESENTED. SUSAN AMAHCER SECONDED THE MOTION. MOTION PASSED.

Nisswa PTO Donation – Nisswa Elementary PTO is requesting a donation for the 6th Bloom Fool's Auction Benefit for Nisswa School to provide educational programs at the school.

MOTION BY LYLE KLINE TO DONATE \$150.00 TO THE NISSWA PTO TO SUPPORT EDUCATIONAL PROGRAMS AT NISSWA ELEMENTARY SCHOOL EXTENDING THE OFFER TO PEQUOT LAKES AND PILLAGER SCHOOL DISTRICTS IF REQUESTED. SUSAN AMACHER SECONDED THE MOTION. MOTION PASSED.

EDA Activity Report – The January News Flash was included for review.

Wastewater/Road Committee – John Bukovich

Resolution Approving Plans & Ordering Advertisement for Bids – Dettbarn Road – Resolution # 2011-02-01 approving plans and specifications and ordering advertisement for bids for Dettbarn Road.

MOTION BY SUSAN AMACHER TO ADOPT RESOLUTION # 2011-02-01 APPROVING PLANS AND SPECIFICATIONS AND ORDERING ADVERTISEMENT FOR BIDS FOR DETTBARN ROAD. DOUG MILLER SECONDED THE MOTION. MOTION PASSED.

Appointment of Wayne Anderson – Wayne Anderson submitted an application with an interest of being a member of the Wastewater/Road Committee.

MOTION BY LYLE KLINE TO APPOINT WAYNE ANDERSON TO THE LAKE SHORE WASTEWATER/ROAD COMMITTEE. SUSAN AMACHER SECONDED THE MOTION. MOTION PASSED.

Crack Filling for 2011 (Rardin – Time & Material) – The committee recommends hiring Rardin Excavating again this year to crack fill the city streets as they came in \$2,000.00 less than previous bids in the past. They charge time and materials.

MOTION BY SUSAN AMACHER TO HIRE RARDIN EXCAVATING TO CRACK FILL THE CITY STREETS FOR TIME AND MATERIAL. DOUG MILLER SECONDED THE MOTION. MOTION PASSED.

January Minutes – The January minutes were included for review.

Park and Recreation Committee – Lyle Kline reported that after the spring flooding the construction of the handicapped fishing pier would start. People are using the cross-country ski trails. Susan Amacher asked about the trail to go through Lake Shore. Teri said that John Sumption is still working with the trail committee.

Park Benches – John Poston asked Jim Thomes to price out the construction of 3 park benches (total of nine) to put around each fire ring that were placed in the park last fall. Jim found that he could make the benches for approximately \$80.00 to \$90.00 each.

MOTION BY LYLE KLINE TO PURCHASE NINE PARK BENCHES AT A PRICE OF APPROXIMATELY \$90.00 EACH. DOUG MILLER SECONDED THE MOTION. MOTION PASSED.

October 2010 Minutes – The October minutes were included for review.

Environmental Committee – Doug Miller said that the committee met and they accepted Pat Rafferty's resignation from the committee. The committee elected Ron Faust to the chair position and Rosemary Goff as co chair.

They are working with the Crow Wing River Forage Basin Council and the Leader Lions to help with an area shoreline restoration and farm tour that will take place in July.

September 2010 Minutes – The September minutes were included for review.

Personnel – John Terwilliger/Susan Amacher – No personnel business for the month.

City Attorney – Gammello & Qualley – Steve Qualley has nothing new to report.

City Engineer – Widseth Smith Nolting – Dave Reese said the road projects are moving forward.

OLD BUSINESS

Draft Liquor Ordinance Changes – Set Public Hearing Date – The date for the public hearing is March 21, 2011 at 6:30 p.m. at Lake Shore City Hall.

Cartway – Gustafson – Steve Qualley said the last action taken was to establish the location of the cartway. The next step is to determine the damages that will be awarded to Mr. Weaver. The city hired William Ludenia for an appraisal, which determined (\$399.00) in damages; Mr. Weaver hired Everett Strand for his appraisal, which determined (\$30,000.00) in damages; and Mr. Gustafson hired James Runberg Appraisal, which determined (\$510.00) in damages. There were additional letters submitted one from Ludenia Appraisals and one from James W. Nelson Attorney At Law who is a real property law specialist. The Mayor said there were different methods used in determining the damages.

Mr. Glen Gustafson, applicant for the cartway, commented on the three appraisals and Mr. Weaver's appraisal is rather large compared to the appraisals from Ludenia and Runberg; the appraisal prepared by Mr. Strand appears to be very flawed in comparison. The entire allegation of Mr. Stand is that Mr. Weaver is being denied access to Home Brook. The survey shows that the Weaver property doesn't have river frontage or access in this area other than that portion which is under the right of way of County Road 107. Mr. Gustafson had the lot re-surveyed by WSN before the appraisals were completed; he supplied a copy of the site survey to Goodrich, Ludenia and Runberg before they did their appraisals. It is a theory that this being a 10-acre river lot at a value of \$40,000.00 with the cartway decreasing the land value to \$18,000.00 leaving the damages equal to \$30,000.00. The wrong assumption of fact is being used regarding the river. A cartway in general doesn't block anything; it is strictly an easement. Mr. Gustafson supplied an opinion from James W. Nelson a real property law specialist certified by the MN State Bar Association confirming the Weaver property has no river frontage for river frontage appraisal. Mr. Goodrich disagrees with the letter from Mr. Nelson and said it is unfair and immaterial. Mr. Goodrich supplied the Weaver appraisal on Wednesday and Runberg and Ludenia were not available to attend this meeting on such short notice. Mr. Goodrich said they should be in attendance to defend their appraisal methodology. Teri confirmed that the meeting date was tentatively set for February 28, 2011 provided the appraisals were received from all three parties and the Weaver appraisal wasn't received until February 23rd. Mr. Gustafson said that land values have dropped since the land used for comparison by Mr. Stand. He said there is no evidence that the Weaver's are going to use this property for anything other than hunting property. Mr. Gustafson supplied an aerial map of the Weaver property showing that the cartway takes up less than 1/4-acre of property (an actual of 2/10ths of an acre). His recommendation is to set the damages at the appraisal of \$530.00.

Mr. Bill Goodrich and Mr. Everett Strand came before the council to review the appraisal of Mr. Weaver's property. Mr. Goodrich referred to the exhibit binder that they provided at the last meeting and will present a couple more exhibits. The determination of the cartway placement by the city council at the last meeting was not agreed to by Mr. Weaver as he felt it should have been the proposed alternate route. He hopes that in Mr. Gustafson using WSN for his survey it certainly isn't a conflict of interest as WSN is the engineering firm that represents the City. Moving forward he referred to Mr. Qualley telling them to submit their paperwork before the meeting and Mr. Gustafson supplied a document at the meeting with an opinion from Mr. Nelson who has nothing to do with this issue. Mr. Goodrich wants to know why the other appraisers are not available for cross-examination. Everett Stand MAI Appraiser for Nicollet Partners gave his credentials to support his appraising ability. He said as he looked at Weaver's 71 acres he saw the river; he asked Steve Kuepers who he should talk to in his town to give value to the brook (Home Brook). Although there is minor frontage he said it has value he didn't see before. Even the lots selling off the brook have value and the neighboring sales prove this; these lots have more value than a wooded lot; so the value is somewhere between a river lot and a wooded lot. He used two comparable land sales in Home Brook Twp in determining the value of his appraisal; one was a river and the other was not. He said it was difficult to find comparable lots because there haven't been a lot of sales. He referred to his chart in the appraisal of comparables that he found to use. He commented that he prepared this appraisal by the Uniform Appraisal Standards for Federal Land Acquisitions; this is how he made his comparisons for damages. He said that in his calculations he came up with the highest best use of land being a 10-acre parcel, which is allowed in Lake Shore. He then selected 6 comparables and came up with an adjusted land value average \$49,383.00. So his before value was \$48,000.00 and the after value with the cartway in between the building site and the river and it's not the same mental

perception you would have as a buyer. He questioned if someone would go through with subdividing that land to make a 10-acre lot with a cartway sitting between you and the river. He said it loses its pizzazz. Mr. Goodrich asked the value of the stream access and its influence of the subject property. Even though there is some land that is not owned between you and the brook you do have access to it, it kind of becomes yours. It's not necessarily in the value but it's a perception of value. Mr. Goodrich asked if the influence of the river was used as the premise of the appraisal and based on the perception of value and the amenity of having access to Home Brook and the use of access to the brook as being in the county road right of way. Mr. Strand said 'yes'. Mr. Goodrich compared the easement of the cartway and the county road easement and how they affect the use of the brook frontage. He asked Mr. Strand if he has made some charge to Mr. Weaver for his services. The cost for this appraisal was \$3,500.00 plus the cost of his testimony this evening.

The Mayor asked Steve Qualley to comment. Steve said that there may be some procedural questions about what was submitted and what can be reviewed. He said the city council is in a cartway hearing; this is not a court proceeding and the rules of evidence that are procedure don't necessarily apply. He said he has made comments about the cartway statute as a whole and the statute doesn't give specific guidelines and the city has used appraisals in the past. Mr. Weaver said that the rebuttal letters state that this is just hunting land. He said that the land may not be developed; but he sat in on all the comprehensive planning of the city and his intentions for the property are obvious with his concern about developing the ag land. Mr. Goodrich asked why the Weaver's purchased land in Lake Shore. Mr. Weaver said that number one it has the woods but there is magic in water. Mr. Goodrich asked how the proposed cartway would affect the 10-acre site. Mr. Weaver said it takes away from the sanctuary aspect of the property; he purchased the property for future commercial real estate development 16 years ago and keeps the taxes paid. Mr. Goodrich asked what dollar amount he is being damaged. Mr. Weaver thought the damages would be higher because it's the key piece to the whole ground, but will accept Mr. Strand's appraisal. Mr. Goodrich asked if there has been contact between the two parties. Mr. Weaver said he made contact to offer an alternative route; which was turned down.

Doug Miller asked for clarification of the cartway placement. He asked if it would take away passage for the Weaver's. Steve Qualley said it is a grant of an easement to the cartway petitioner; it doesn't sever ownership.

Lyle Kline said that some of the comparisons were unfair and not true to form. He has been a part of this process before he feels there a lack of ethics and principle and that this request is all about the dollar. He said there is unnecessary money being spent to bicker over access to a piece of property.

Susan Amacher was a realtor herself and finding comparison properties are sometimes difficult to find. She said both parties have an investment in their property and the detraction from the appeal of the property is difficult to put a price on.

John Terwilliger has property in the area that is on and off the lake; he doesn't agree with the appraisals. He doesn't agree with the method of devising value using large tracts as Mr. Weaver could sell off a 10-acre parcel. John commented on the exhibits used for comparison and didn't agree with using them for devising value. He shared his concerns with the comparisons that were used. He suggested with the range of values that were used in the appraisals he came up with approximately \$2,400.00. What is the value with detracting from the stream? What value do council members suggest should be used? He doesn't think that \$30,000.00 or \$530.00 is reasonable damages. Steve Qualley said that if a different number is chosen the council should state some reasons for the difference and should have something to back it up. John used \$3,000.00 to \$12,000.00 per acre for value and said it isn't like a fence is being put up to detract from the stream use. He said that the ability to use the access isn't being taken away; you have to remember that the access to the stream is in the road right of way. Doug said that he agreed using \$40,000.00 for a 10-acre lot; which would be \$4,000.00 per acre; being \$1,000.00 for the land damage for the cartway. Do you add stream value? Again, the stream is in the road right of way. Mr. Gustafson clarified that the easement and ability to get to the river is in the county road of way for

access. John said that the land isn't lost to the owner; they would just have to watch traffic pass by once in a while. Susan said that she agrees to \$5,000.00 because it is in between what is being discussed. Lyle thought between \$4,000.00 and \$6,000.00. John said the appraisers are using procedures that are recognized. He doesn't listen to the opinions of the letters provided tonight; he will make his determination based on his experience of buying and selling land. Steve Qualley said that what is eventually passed is a resolution that contains a damage finding. He said what he is hearing is the council will make a motion to determine a dollar value per acre for the cartway, then deciding to add a premium for impact the cartway will put upon the burden property.

MOTION BY DOUG MILLER TO USE THE VALUE OF \$4,000.00 PER ACRE TO DETERMINE THE VALUE OF \$800.00 FOR THE CARTWAY AND ADD \$2,200.00 FOR THE IMPACT OF CARTWAY TO THE LAND FOR A TOTAL OF \$3,000.00. SUSAN AMACHER SECONDED THE MOTION. MILLER, AMACHER AND KLINE, VOTE YES. TERWILLIGER OPPOSES. MOTION PASSED. The Mayor thought \$2,200.00 wasn't enough for the impact.

MOTION BY DOUG MILLER TO APPROVE RESOLUTION # 2011-02-02 ESTABLISHING A CARTWAY AND ESTABLISHING DAMAGES AT \$3,000.00. SUSAN AMACHER SECONDED THE MOTION. MOTION PASSED.

Mr. Goodrich understands that the damages were determined but asked to follow the statute and in addition to the physical damages the appraisal and legal fees of Mr. Weaver must be awarded. Mr. Qualley said he is of the opinion that the statute is the award for the physical damages and compensation for the city fees that will be taken out of the deposit that Mr. Gustafson sent to the city. Mr. Weaver didn't ask to have this and now he has a \$3,500.00 appraisal bill and it isn't fair. Mr. Qualley said that this issue could come up in an appeal. Susan said that Mr. Weaver's chose his own appraiser.

Steve Qualley said that the next step is for the city along with both the parties to designate this as a private cartway. Mr. Gustafson said that it makes no difference to him. John Terwilliger asked if it would someday affect Mr. Gustafson's ability to subdivide his property. Mr. Qualley said that in that instance the before the city would maintain a road it would have to be built up to certain standards and accepted as a city roadway; this being a 33-foot cartway would probably never meet city standards. By naming it a private cartway would allow both parties to possibly put up a shared gate. Dave Reese said he understands that the default is that it's a public easement and the city could require the right of way to city standards of 66-foot width if deemed necessary. Teri said that her thoughts are that there are no possibilities of future development then it would have to meet city standard of 66-feet. Her opinion is that it should be designated private. Mr. Weaver didn't have a position on the designation.

NEW BUSINESS – There was no new business.

ANNOUNCEMENTS/PUBLIC FORUM – Ryan Amacher said that in labor disputes particularly in professional sports the best/last offer binding arbitration to get the parties to negotiate and both sides put in their final offer and the arbitrator has to pick one.

MOTION BY DOUG MILLER TO PAY THE BILLS AS SUBMITTED (CLAIM NUMBERS 29367 THROUGH 29462 - TOTAL \$52, 142.43). LYLE KLINE SECONDED THE MOTION. MOTION PASSED.

MOTION BY LYLE KLINE TO ADJOURN THE REGULAR CITY COUNCIL MEETING OF FEBRUARY 28, 2011 AT 9:01 PM. SUSAN AMACHER SECONDED THE MOTION. MOTION PASSED.

Transcribed by Patti McDonald
Lake Shore City Clerk