



Trail to the Past. Road to the Future.

REGULAR CITY COUNCIL MEETING MINUTES

MANTORVILLE CITY COUNCIL CHAMBERS

21 5TH STREET E, MANTORVILLE, MN 55955

MONDAY, August 14, 2023

6:30 PM

1. Call to Order

Mayor Bradford called the meeting to order at 6:30pm

Present: Mayor Chuck Bradford
Councilmember Lyle Hoaglund
Councilmember Jeff Ingalls
Councilmember Greg Rud

Absent: Councilmember Jessica Bradford

Others Present: City Clerk-Treasurer Gretchen Lohrbach
Deputy City Clerk Stephanie Arnold
Public Works Lead Joe Adams
Public Works Wade Schroeder
Fire Chief Duke Harbaugh
Scott Huneke & Bill Angerman - WHKS

2. Pledge of Allegiance – Everyone stood and recited the Pledge of Allegiance

3. Adopt the Agenda – Council approved the agenda as presented

4. Consent Agenda

Motion made by Councilmember Hoaglund and seconded by Councilmember Rud to approve the Consent Agenda as presented:

- A.** Accounts Payable August 14, 2023
- B.** County Board Regular Meeting Draft Minutes July 11, 2023
- C.** County Board Regular Meeting Draft Minutes July 25, 2023
- D.** County Board of Commissioners Committee of the Whole Draft Minutes July 25, 2023
- E.** Mantorville Chamber of Commerce Regular Meeting Minutes July 2023

Karen Steele addressed the Council with some questions on the Accounts Payable list.

She feels residents would like more definition of what the items are.

She was wondering about what the Kennedy and Graven attorney fees listed as Annexations/General in the Accounts Payable were for. City Clerk Lohrbach clarified that they were for Annexation costs related to the Wilcox Annexation. Steele asked if this had been advertised in the paper and Lohrbach said that it had been.

Steele had a question about how the Joint Ventures money works. Mayor Bradford stated that each entity contributes (City of Kasson, City of Mantorville, and the K-M School District Board) their dues and a project can be proposed to this group. The group looks at the project and if they'd like to pursue it, the group discusses what cash they have on hand and funding. For example, if the City of Kasson proposes a project, they may pay for half and Joint Ventures may pick up the other half. Joint Ventures does not borrow money. If the project fits the parameters, a vote is taken.

Steele had a few more questions about what some of the Accounts Payable are and Public Works Lead Joe Adams and City Clerk Lohrbach were able to clarify a few more things.

Motion carried: 4 ayes / 0 nays

5. Proclamations, Presentations and Recognitions

None

6. Public Concerns

William Reding said the water is still running across the road by his house and that none is going down the drain. Another look at this will be done and Mayor Bradford said it will not fall off the radar.

7. Public Safety Update

Karen Steele asked for clarification on what the list of calls are in the packet and they are the calls that were responded to by the Sheriff's Departments. Steele inquired if this is something the City has to pay for and Mayor Bradford stated that it is included in our contract with the Sheriff's Department for coverage in Mantorville.

8. Public Hearings

None.

9. New Business

A. Summary of WHKS discussion of their firm and work done for the City.

- Bill Angerman stated that there are 41 employees at their Rochester office and that 13 of them live within 10 miles of Mantorville City Hall.
- According to Minnesota Statutes, as City Engineer, they are an extension of City staff and are construction observers, not managers. These are performance-based contracts that are awarded and the contractor must perform this work. WHKS does not direct them or their staff in how to work. WHKS's duty is to look at what the contractor has done and if it is not completed to satisfaction, the contractor is told to fix it. If it is still not satisfactory, they are told to fix it again until WHKS is happy and they can then be paid.
- Angerman addressed a comment that WHKS doesn't finish their projects. These are the City's projects and the contractor is the one under contract to complete them, not WHKS. There is a "punch list" that must be completed before the contractor can be paid and if areas are deficient, they must first be fixed. Also, there are statutes that cover how it will be paid and how the City has to pay it. Payment cannot be withheld for work done to get a contractor to do some other work. Example: Pipe was put in and completed, but seeding is not completed, therefore we won't pay you for that pipe. This is not allowed by law.



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- Third Street Project talking points
 - Overage of final costs
 - Project has a scope set out by the City Council. WHKS write instructions and specifications for the project. Then the project is publicly bid. WHKS is then required to prepare a construction cost opinion brief and the goal is to be plus/minus 10% of that number. Final cost is determined by the actual dollar amount of every single unit of product put into that project.
 - \$834,750.00 was the cost opinion of the 3rd Street Project. Actual price was \$769,730.16, so the project came in under budget.
 - Angerman addressed the issue that engineer costs should be under 10%, but that the industry standard is typically 15-18% of a projects cost. This is for design, staking, and observation. With MNDOT projects, they dictate the percentages. For example: the HWY 57 MNDOT project percentage is 22%. Fees for WHKS on the 3rd Street project were \$128,446.88, which is 16.6%.
 - Extra costs, such as the ditch fixes, were extra costs that the City Council incurred and WHKS was not paid for.
- 2021 Walnut Street Project talking points
 - Overage of final costs
 - Project estimate was \$341,000.00, bid was \$298,000.00, and actual price was \$309,000.00. Sometimes there are justified changes once a project has begun such as a better way to do something, or if something must be fixed. Engineering fees were \$40,000 which are about 11.7%.
- HWY 57 Project talking points
 - Project began January of 2021 and the previous City Council made the decisions. One of those decisions was the formation of a Technical Advisory Committee, which consisted of Mayor Bradford, Luke Nash, Jane Olive, Terry Eckstein, Don Pappas, and Cami Reber, WHKS staff and MNDOT staff and they went over the concept design and details. A schedule was set out that for the next, almost three, years that there would be a series of project management team meetings, Technical Advisory Committee meetings, and citizen meetings. These included obtaining easements and following MNDOT's plan submittal and review process. MNDOT does not design this project, the provide context, scope, etc. but it is up to the City to design the project.
 - There was a question about the bid date changing to January 2025, but the projected bid letting date is January 25th, 2024 and the project is scheduled for next summer. MNDOT has not changed these plans. WHKS would like to come back and have the Project Manager go more in depth for the Council to have a description of that.
- Third Street Culvert talking points
 - There were concerns that a proper permit was not obtained. WHKS does not obtain permits. A permit was correctly submitted and obtained by the City. There have not been issues with the DNR.
- Bill Angerman wanted to reiterate that WHKS has 6 offices in 3 states and 41 employees at their Rochester office.

- The 2021 and 2022 projects have not been signed off on yet. What recourse does WHKS have? One is that they don't pay them, which makes people unhappy, but how long do you wait; how much time do you give them before you take the next step? The City cannot just withhold money and go hire someone else. You could, but it would void the warranty and you would still have to pay the contractor for the work they did complete. We could call the bond in, but this would result in delays and legal fees. This is a balancing act on how long do we delay before we get so sick and tired that we call the bond in. The contractors have been called multiple times and have been asked to fix things multiple times and WHKS may have to discuss with Joe Adams a "Drop dead date".
- 2019 Project Ditches
 - It had been brought up that the sod wasn't put down for five days and why did the City pay for it? WHKS doesn't have the ability to tell the contractor when to put the sod down. It is a performance-based contract and so if everything looks good and the sod is still growing a year and a half later and looks green, then they would accept the project as completed. In this case, the sod died after the warranty expired.
- Records and Records Retention
 - Anything WHKS has, the City has. But if the City can't find it, WHKS will find it for the City. Since 2000, the City has had 4 City Clerks and 6 Public Works Directors. WHKS tries to provide continuity, history, and context for them.

Lastly, Angerman checks with his staff if there are things that can be changed or things they can do better. They are willing to have Scott Huneke here more often or more in the field if that is necessary.

Mayor Bradford asked if a project has been bid for \$100,00.00 and a bid is accepted, but then we get in there and see the sewer line is old and that now would be the perfect time to replace it, but it will cost \$20,000.00; if that would make us automatically go over 20%? Angerman's answer was that it would, and that you can't add more than 20% on to a project; you can't keep adding more things as the project progresses, the State says the project would have to be re-bid.

Councilmember Ingalls asked how the HWY 57 project would work if we were to get new bids and a different engineering company.

Angerman said that they follow State Statutes and that all plans have to be certified by a professional engineer. If we would start over, the plans that were certified by one engineer cannot be used by another engineering firm. They would have to redo them because they cannot sign off on another's plans.

Councilmember Ingalls asked what the cost of the HWY 57 project will be. WHKS was not certain. The costs that we have paid WHKS for equal about \$335,000.00. Ingalls then asked that if we switched engineers, would we be responsible for all of that plus the new costs? WHKS answered yes and that it would also set our time frame back. Right now everything is on schedule.

Councilmember Hoaglund asked what part of the engineering design WHKS is responsible for and what part is MNDOT (Minnesota Dept. of Transportation) responsible for? Angerman answered that MNDOT gives input but WHKS is responsible 100%, so the City of Mantorville is responsible for 100%. MNDOT leaves it up to the City's Engineers because they know the City's needs the best.



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Councilmember Ingalls suggested that City Clerk Lohrbach gather together any questions that residents may have and they can be passed on to Council and WHKS.

WHKS will work with City Clerk Lohrbach on getting a meeting set in September for discussion of the HWY 57 project.

Virgil Andrist brought up a question about why they would have to go through the City Clerk when WHKS is siting right here and questions could be asked. Mayor Bradford said that questions can be asked and if the information is available at the moment, they will be answered.

Jim Potter addressed WHKS and said that the 3rd Street numbers they used had came directly from City Clerk Lohrbach and WHKS and if they were incorrect to please advise Lohrbach on how to get the correct numbers. Also, the 3rd Street Project waterways were proposed by Tim Hruska, recommended by Tim, and the City Council relied on Tim; but the waterways were unnecessary.

Virgil Andrist said WHKS were overseers of the project on 3rd Street and that he had voiced concerns about the sewer valve by his property to the contactors and WHKS. He feels it was not put in correctly and that is why it cost him \$25,000 when his basement flooded.

Bill Reding had a question for City Council about why they don't hire someone to manage the project that can tell the contractors what to do. He feels this would have saved a lot of problems for the City if there was someone directly managing the project. Angerman said this type of contracting has been experimented with by some cities, but they found that it did drive up the costs and wasn't as successful with street projects; it worked better with construction for buildings.

Virgil Andrist added that he felt the 3rd Street project was a disaster and that it cost the City a lot of money to completely redo it. He wants to know who will take responsibility for the City losing around \$200,000.00. Angerman said that ultimately the responsibility lies with the City's decisions. Mayor Bradford said the project was discussed at length about whether or not to go with curb and gutter and assess the property owners or to go with the ditches, which is what was decided. He said the Council didn't really know what the depth would be with some of the ditches until the contractor's really got in there. At the end, the Council was able to fix the problem instead of just leaving it the way it was so that everyone could be happy with the work.

Councilmember Ingalls wanted to know what they can do as a Council to prevent this type of thing from happening again; if some cities seek independent opinions? Angerman said that most cities have curb and gutter, so it's not as much of an issue. He also said that in hindsight, they are able to look at it and think of what could have been done better.

Bill Reding feels that if the residents were told how deep the ditches would drop, such as 2 feet or 1 ½ feet, it would be easier for everyone to understand. Councilmember Ingalls also said a three-dimensional image that could be put on the large screen in the Council chambers would be helpful.

- B.** Koreen Seim presented the Saloon's plans for Marigold Days. There will be a band Friday night and they would like to close the street around 5 or 6pm. Mayor Bradford asked how the car show is going for them Thursday evenings. Koreen said it is going well and she's cooking between 42-47 burgers those nights.

Councilmember Hoaglund made a motion and Councilmember Rud seconded to allow the Saloon to close the street:

Motion carried: 4 ayes / 0 nays

- C. Will Lambert represented the Marigold Days committee and asked for permission to close the streets for the festivities again this year. He also said the stop signs on 4th Street are working out great.

Motion was made by Councilmember Rud and seconded by Councilmember Hoaglund to give permission for the requested street closures:

Motion carried: 4 ayes / 0 nays

City Clerk Lohrbach will let Sheriff Rose know about the social area where participants can have alcohol.

- D. Karen Steele agreed with Will Lambert about the stop signs. She also had some questions for Council to address. She wondered how long WHKS has been the City's engineers. Bill Angerman said since 2000. She expressed concern that after a long time, in this case 23 years, people can become complacent and wondered if the City has interviewed other engineering firms? Mayor Bradford said early in his career they may have, but was not sure. Angerman said that a long term relationship with an engineering firm can be beneficial because it is a better value and they can be relied upon for getting information and answers to the City.

Steele also asked about if the City can sue WHKS if the job was not done according to the City's standards. Mayor Bradford said that he believed WHKS could be held responsible if they violated professional standards or were negligent.

Steele also had questions about some previous subject matter pertaining to how a contractor who is not doing a good job or completing a project is handled. Angerman said that you keep giving them time until you can't take it, then you can call in the bond. Gary Reihl stated that a general contractor may have sub-contractors doing the seeding and sodding also and this affects a project.

Steele asked what the City's criteria is for selecting an engineering firm; if we just go down a list and check things off? Mayor Bradford said there is not a list or ordinance that states the criteria that must be met for a City Engineer; Council determines what is the best strategy and goes with that. Steele wondered why this is not in an ordinance. Angerman said that he has not seen this done because engineering firms follow the State's Statutes.

Steele asked about the Brewery and, if it was an MRA project, why did the City have to put money towards it? Councilmember Hoaglund said that the City did not put money toward the project, but that the Mantorville Economic Development Authority did put money toward it because of the tourism aspect. She also expressed concern about soil erosion because of the removal of vegetation. The fence was also questioned because people can still go around it if they want to and Councilmember Hoagland said that the fence does deter people.

Steele asked about the cannabis moratorium the City has in place. She asked if Council is going to do a study or gather more research for this. Mayor Bradford said the moratorium is in place through January for us to see how this will all go with the legislature and for us to decide



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what we want to do in our community. Councilmember Hoaglund agrees and that this should go slowly so that the legislature can decide what they're going to do with the new laws.

Steele had some questions about how Joint Ventures operates and about their projects. She wondered why we are looking at spending \$80,000.00 on a basketball/hockey rink. Public Works Lead Joe Adams said that Alexandria from CEDA is looking at getting grants for it and that the Park Board has been setting aside money for this project. He said the City won't be paying for the whole thing. The project also won't be started unless the City has secured funding for it.

- E. Fire Chief Duke Harbaugh said that James Tibbals is retiring and said City Clerk Lohrbach is looking for a plaque to be made for him in appreciation of his 20 years of service.

Motion was made by Councilmember Ingalls and seconded by Councilmember Rud to accept James Tibbals's retirement.

Motion carried: 4 ayes / 0 nays

- F. Fire Chief Harbaugh also asked the Council to approve a Temporary 1-4 Day On-Sale Liquor License Application for the Mantorville Fire Department Relief Association. He also wanted Council to be aware that they will not be letting people leave the dance with alcohol.

Councilmember Rud motioned and Councilmember Ingalls seconded to approve Resolution 2023-22 Approving A Temporary 1-4 Day On-Sale Liquor License for the Mantorville Fire Department Relief Association for September 9-10 at the Mantorville Fire Hall:

Motion carried: 4 ayes / 0 nays

- G. Councilmember Ingalls motioned and Councilmember Rud seconded to approve Resolution 2023-21 Accepting National Night Out Donations from the MRA for hot dogs, brats, and buns and from Casey's General Store for cookies and ice:

Motion carried: 4 ayes / 0 nays

10. Old Business

The year-long moratorium on edible cannabinoid products in the City of Mantorville will be expiring in early January of next year. With the recent passing of Minnesota's new laws regarding cannabis use, City Clerk Lohrbach enclosed Resolution 2023-05 and Ordinance 2023-04, which were passed by Council on the 9th of January this year, for Council to review for future discussion. Also enclosed was a sample cannabis use in public county ordinance. Sheriff Scott Rose will be at the Council Meeting on the 28th of August to talk more about these new laws.

Motion was made by Councilmember Hoaglund and seconded by Councilmember Ingalls to table this until the 28th of August:

Motion carried: 4 ayes / 0 nays

11. Tabled Items – *No Items*

12. Reports

A. Public Works Report

1. Roto Rooter is in town cleaning and televising some mains and so far, no news is good news. Public Works Lead Adams said they should be finished by Wednesday. He will try and do another quarter of our mains next year.
2. At the Park Board Meeting, it was discussed using the \$2800.00 set aside for mulch for concrete at Denneson Park. Council approves.
3. Adams said a resident was first okay with the work the City had done when he and Scott Huneke knocked on their door, but later, their spouse said they were displeased. Unfortunately, the contractor had already completed their additional work. Adams said this has happened about three times with different residents and would like to know how to proceed in the future. Councilmember Rud suggested having the resident sign off on the work. Councilmember Hoaglund suggested taking the Infrastructure Committee along with to check the work. Bill Angerman suggested calling the contractor and getting them to come back and see what they can do. Mayor Bradford said that if it doesn't meet our standards, we should then have them fix it.

B. City Clerk Report

1. City Clerk Lohrbach thanked everyone present who helped with National Night Out.
2. The Workman's Comp Audit was started today and should be done by the end of the week.
3. The preliminary budget for 2024 will be in the next Council meeting packet.
4. City Clerk Lohrbach also presented the quote from On-Site Computers for a new laptop in the office. Council instructed Lohrbach to find out more information regarding mark up and if the licenses are perpetual or charged every year.

C. Consultant Report – *No Items*

D. Committee Reports

1. Chamber – Councilmember Hoaglund said the trolley to Mantorville from Rochester will be starting up again after Labor Day. They are also making plans for Fall Festival and will have a refreshment stand at Marigold Days.
2. EDA – approved payment toward the Marigold Days Fireworks
3. Finance/Budget
4. Fire Department
5. Infrastructure
6. Joint Powers – Short meeting, went over grants and funding for the basketball court.
7. MRA – Merry Hour will be happening in December
8. Park Board – Went over some budget information
9. Personnel
10. Township

E. Mayor's Report – *No Items*

13. Executive Session – *No Items*

14. Adjourn – Councilmember Ingalls moved and Councilmember Rud seconded to adjourn at 8:43pm.