

**CITY COUNCIL WORK SESSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA**

The Ramsey City Council conducted a City Council Work Session on Tuesday, October 23, 2012, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present: Mayor Bob Ramsey
Councilmember Randy Backous
Councilmember David Elvig
Councilmember Colin McGlone
Councilmember Sarah Strommen
Councilmember Jason Tossey
Councilmember Jeffrey Wise

Also Present: City Administrator Kurtis Ulrich
Finance Director Diana Lund
Human Resources Manager Colleen Lasher
Development Services Manager Timothy Gladhill
Management Analyst Patrick Brama
City Attorney William Goodrich
Development Manager Darren Lazan
Interim Engineer Shane Nelson

1. CALL TO ORDER

Mayor Ramsey called the City Council Work Session to order at 5:35 p.m.

2. TOPICS FOR DISCUSSION

2.01: Sunwood Drive Project – Review Funding Package, Expenditures to Date and Construction Challenges

Interim Engineer Nelson reviewed the staff report and described the funding scenarios for the Sunwood Drive and Armstrong Boulevard project. He stated he had reviewed the Council's meeting minutes and did not find any indication that the actual budget for this project had been approved but found The COR grading at Market Place was a separate line item. Interim Engineer Nelson reviewed the Council's past discussions related to this project's funding, potential shortfall of \$200,000, and funding via future land sales.

Councilmember Wise noted this project started initially as an HRA project with funding coming from the City.

Councilmember Strommen stated the budget was a Council consideration because it was discussed that the HRA would not be making a contribution.

City Administrator Ulrich stated that was also his recollection and that the Council had decided on the budget.

Mayor Ramsey noted the Council should have taken action to officially approve the budget for this project.

Councilmember Elvig stated he recalled a \$5.35 million budget number but that number had varied and there had been discussion whether the number would still be moving. He stated he thought the Council had approved a budget.

Mayor Ramsey stated the Council approved a project dollar amount, but perhaps not the actual budget.

Councilmember Wise noted the numbers were changing because the project went from a partial taking to full property acquisition.

City Attorney Ulrich advised that approval or non-approval of the project budget is not a legal issue.

Interim Engineer Nelson agreed and stated he had been asked whether the project was over or under budget so he had researched the project file to determine the budget that had been approved. He noted the budget was discussed several times, but a final contribution with funding sources had not been formally approved by Council action.

Councilmember McGlone stated if the numbers and potential funding sources were discussed, it is his opinion that the budget was approved if the project moved forward, so that is a moot issue.

City Administrator Ulrich stated the Council determined to eliminate land proceeds and decided to use grant funding along with MSA to fill the gap.

Finance Director Lund indicated the Equipment Revolving Fund was to also fill the gap.

Interim Engineer Nelson displayed a slide showing the bid with two schedules (Schedule A and B). He reviewed past City Council meeting minutes, noting there had been discussion; however, the motion approved was to enter a construction contract. He presented the final spreadsheet, noting land acquisition is not final but he thinks it will be within budget at \$2.7 million. The construction, after bids were received, with a \$2.35 million budget, would be about \$100,000 over the construction portion of the budget presented on June 26, 2012. On the expenditure side, the original budget estimate was at \$470,000 and is now at \$497,000 (including the requested \$15,000 of additional services).

Councilmember McGlone asked Interim Engineer Nelson whether his calculations factor in a project contingency when saying the project is over budget.

Interim Engineer Nelson explained it depends on how you look at it but if looking at the \$5.642 million revenue sources presented at the June 26, 2012, meeting, then there is a \$135,000 shortage. However, the \$210,000 was originally included as a separate line item. At one time, \$1.2 million was budgeted from the revolving equipment fund resulting in a funding overage of \$74,000.

City Administrator Ulrich asked whether there was a budgeted contingency of 10%.

Interim Engineer Nelson stated there was not a contingency budget line item. However, the initial budget included higher costs that would have allowed for a contingency but if using a \$5.642 million budget then there is a shortage.

Councilmember Elvig asked to see the slide of the meeting minutes, noting it indicates the former City Engineer had reviewed a \$5.35 million funding package in March.

Interim Engineer Nelson stated this reflects discussion at a meeting and he had also viewed this meeting video to be sure the budget was not separately approved. He indicated the Council's motion was to enter into a construction contract, not to approve the budget. The \$5.35 million budget was from an early meeting in March and he had found 8-9 versions of the project budget so it is hard to determine the actual approved budget.

Councilmember Strommen stated she still has many of the paper budget versions but when the construction project was approved and moved forward, that was the basis on which she made her decision.

Interim Engineer Nelson reviewed the revenue sources presented of \$5.642 million at the meeting of the bid opening. He explained the \$5.642 million budget had not been shown on the screen; however, the former City Engineer had indicated it was passed out to the Council before the meeting. The bids were opened after the case reports were written and that distributed budget was at \$5.642 million.

Mayor Ramsey stated if using the \$5.642 million budget, then the project is at a positive \$74,000.

Councilmember Strommen stated that is not correct because the project is at \$5,777,990 and the \$210,000 was wiped out when the bids came in.

Finance Director Lund explained the original documents pre-bid included an additional \$210,000 and then it was included in the bid document. The original equipment revolving fund had an additional \$210,000. The prebid amount included an additional \$210,000 for the Northstar Marketplace grading, but was included in the construction bid with North Pine. If using the project construction bid, the overall project was estimated at \$5,642,000, leaving the current project budget short by \$135,990. If the Council chose to use the amount that had originally been incorporated to come from the equipment revolving fund (prior to actual bids received and when it was believed that the Northstar Market Place grading would be extra) the equipment

revolving fund would contribute a total of \$1,206,697 and leave a fund balance estimate at year end 2012 of \$1,762,050. Using the extra \$210,000 from the equipment fund would make the project budget positive by \$74,000.

City Administrator Ulrich asked what is the industry standard for a project contingency.

Interim Engineer answered it is usually 5-10% but he has seen it as high as 15%.

City Administrator Ulrich noted if there would have been a budget, it would have included a contingency.

Interim Engineer Nelson stated that is typical and most always something is encountered during the project that you didn't anticipate.

Councilmember Elvig stated as he recalls, the budget was \$5.35 million and it looks like this project is a "run away freight train" with \$400,000 in overages and more add-ons are being asked for tonight.

Mayor Ramsey asked why the project is over budget.

Councilmember Wise stated it sounds like the engineer presented \$5.642 million, not \$5.35 million, so the project is within 10%.

Councilmember McGlone stated everybody approved what the former City Engineer handed out so the project is not over by \$400,000 and is still within the contingency and standard protocol.

Interim Engineer Nelson displayed a map exhibit depicting areas where changes occurred during construction and described each modification.

Mayor Ramsey asked whether the cost of Change Order #4 is included in these figures.

Interim Engineer Nelson stated it is within the calculations he presented but not yet approved by the Council. Change Order #4 is on the Council's agenda for tonight.

Councilmember Wise asked whether the issue with the drain field at 8019 146th Avenue was a survey error and should be covered by the contractor, not the City.

Interim Engineer Nelson stated he is not sure any of the fault is with the contractor but questioned whether the design engineer should have been aware of the drain field in that area. He explained if the contractor is culpable, that would have to be pursued elsewhere.

Councilmember McGlone asked if the City Engineer approved the ultimate plans and how long it took Interim Engineer Nelson to discover the issue and figure it out.

Interim Engineer Nelson stated they found the location of the drain field in about 10 minutes.

Councilmember McGlone asked if City engineering staff missed the drain field so now the Council has to consider a change order.

Interim Engineer Nelson stated there are other drainage issues on the Billmark Electric property. He presented an overview of issues relating to the Sunwood Drive project: a trail conflicts near Round Lake Boulevard; installation of the signal cabinets, trail bid at 8-foot width when Code requires 10-foot width; utility conflict with the signal base; Connexus transformer; discrepancies between COR TWO retail plans of Landform versus WSB plans; irrigation box is damaged; storm sewer was stubbed to the north side of Sunwood and located within a building site; existing utilities conflicting with road realignment and need to be relocated; ownership of the street lights; crosswalk location; storm sewer pipe was stubbed for future development that was not needed; signage for COR TWO retail area conflicts; Connexus transformer locations; proposed route for Connexus to install cables to serve properties but the COR TWO plat has not yet been recorded; and issues with easements for utility companies.

Mayor Ramsey asked who paid to take down and reinstall a fence.

Interim Engineer Nelson indicated there have been no additional charges itemized for that work.

2.02: Sunwood Drive Project – Consider Change Order #4

Interim Engineer Nelson reviewed the staff report and presented Change Order #4.

Mayor Ramsey asked whether WSB should have known about the drain field location.

Interim Engineer Nelson stated he does not think so unless WSB had knowledge of the City's records for review. He explained there were no pipes showing the location of a drain field. However, the City did take easements and between the City and WSB, the drain field could have been caught in the design but it was not.

Mayor Ramsey asked if the City is expected to "eat" this cost because someone neglected to check this.

Interim Engineer Nelson answered in the affirmative.

Councilmember Wise stated he does not want the City to pay for it if it is not the City's fault. He noted this project has budget overruns and this is the County's part of the project so it should be on WSB, not at the City's expense.

Development Services Manager Gladhill indicated WSB requested records on what parcels had septic systems and he would have to research whether there are missing records where it was not filed with the City.

City Administrator Ulrich asked whether the City has the ability to retain fees from WSB at a certain point.

Interim Engineer Nelson stated the City can do so with the construction contract. He asked the Council whether it wanted to proceed with the change in the construction contract, noting that is the discussion. Interim Engineer Nelson stated he had asked WSB to comment on the two drainage issues and provided an e-mail response on Monday. He indicated he could follow up whether the City had provided that information.

City Attorney Goodrich stated he can review contract specifications to determine whether WSB has obligation to determine easements.

City Administrator Ulrich explained that if the drain field had been found, the City would have done that work anyway so “damages” are considered to be the extra charges for a Change Order. That additional expense is the issue.

Interim Engineer Nelson stated the original project design would have been different if the drain field location had been known. He displayed pictures of the project area depicting the excavation on the Wiser Choice Liquor property and described the change needed to avoid the drain field. He also displayed pictures of large utility cabinets located on a private easement, resulting in the need for the project to go behind the cabinets. Interim Engineer Nelson explained that depending on the purchase terms, the project could proceed with a ditch to wipe out the drainfield and take it out of service.

Councilmember Wise stated his understanding from the owner is that he would be interested in leasing back the property until the building needed to be removed so taking the septic is not an option. He noted the change order cost is not significant enough to offset the rent.

Interim Engineer Nelson estimated about \$8,000 for that piece. He displayed a slide depicting the Billmark Electric parking lot, noting there is no room for a ditch so it is proposed to install a drantile around the parking lot that discharges into a ditch north of the Billmark Electric property.

Councilmember Wise stated the recent rain left Arnie Billmark’s parking lot under water. He asked if the drain tile was enough to address the issue in the spring.

Interim Engineer Nelson agreed that drantiles are not the most ideal drainage solution and more subject to freezing than a storm sewer pipe. Ideally, an open cut ditch would have worked better; however, there is not sufficient room to install a ditch. He explained an overflow could be installed. Interim Engineer Nelson displayed pictures of the irrigation box, noting areas of damage, and indicated the plans call for the contractor to pick up the box and move it to a new location. This would increase the project cost so if not approved, the existing box would be relocated to the new site. Interim Engineer Nelson reviewed the construction signage issue that was an oversight in the construction plans. The plans allowed for road closed advance warning signs before the contractor started work but contained no provision to change out those signs after construction. Additional signage had to be ordered with a changed message that eliminated the “follow detour” wording from the bottom plate. Interim Engineer Nelson stated those items are included in Change Order #4 that is on the Council’s agenda. He stated he just found out about another item relating to relocation of utilities into a new easement along Sunwood.

Connexus is planning its new relocation, and the telephone cable will be relocated; however, Zayo was unresponsive and has now informed him that it has a contract with the City requiring the City to pay to relocate their fiber optic lines. Interim Engineer Nelson stated he reviewed the final contract and found it is not specific to that relocation but does discuss that for non-routine maintenance, the City is responsible for paying two-thirds of their cost to relocate the fiber optic line. Interim Engineer Nelson stated he does not have an estimate on how much it will cost but it needs to be resolved because the existing alignment conflicts with the approved development plans.

Councilmember Elvig asked if it will be considered routine maintenance.

Interim Engineer Nelson indicated it would not.

Finance Director Lund stated the City entered into that agreement in April 2012 and asked whether Sunwood Drive had been realigned at that time.

Development Manager Lazan stated we made some changes to the actual right-of-way width and radius points were moved marginally but the realignment to Sunwood Drive with a roundabout to the north was known at that time. Development Manager Lazan stated he had substantial discussion with the former City Engineer at the time Zayo was urgently trying to get this piece in. They knew the road would be realigned and he had told the former City Engineer it would be in conflict with any future development. Development Manager Lazan stated the former City Engineer considered providing a new realignment and his solution was to allow Zayo to install with the understanding that when Sunwood Drive was realigned, Zayo would have to move the cable at that future date. Development Manager Lazan indicated this is not documented in the right-of-way permits although other things were also not documented and poorly described in alignment documents. He stated this issue was discussed, he had advised the former City Engineer that it would be a conflict, and it had been his understanding that the former City Engineer coordinated with Zayo and Zayo knew the cable would have to move once Sunwood Road was realigned.

Mayor Ramsey asked if there was no documentation of that conversation.

Interim Engineer Nelson stated he reviewed the project file and found no discussion about future relocation of this cable.

City Attorney Goodrich recommended contacting the former City Engineer to gain his recollection as well as e-mail correspondence.

Interim Engineer Nelson stated Change Order #4 includes the 146th storm sewer item, daintile swale related to 14700 Armstrong Boulevard (Billmark Electricity), irrigation service related to the new irrigation system on Sunwood Drive, additional construction signage, irrigation box relocation, and additional pipe removal. Interim Engineer Nelson explained that the City has the choice whether or not to approve the irrigation box relocation. He stated he had discussed with the City Attorney regarding municipal bid laws. For smaller projects, the City can enter a contract by obtaining quotes, unless not practical. In this case it is not practical to obtain quotes

because the City already has traffic control, right-of-way permits, and NPDES Permits that are under the prime contractor's name. In this case, he recommended the Council approve a change order instead of going out for quotes.

Councilmember Wise asked about the project cost savings since there will not be a cul-de-sac north of his store.

Interim Engineer Nelson stated there will be a project cost savings for not constructing the cul-de-sac of about \$5,000 to \$6,000.

2.03: Consider Change Order #5 – Sunwood Drive

Development Manager Lazan reviewed the staff report and previous HRA approval of soft costs associated with this effort and direction to staff and the Development Team to outline and present hard costs at a future meeting. The work included in Change Order #5 is public watermain, public sanitary sewer, and common stormwater mains (exclusive of infiltration facilities). This work is covered under the current NPDES permit so it is geographically part of the same project area. If approved, construction of these deep utilities will commence almost immediately and be available for connection by Lots 4 and 5 per the HRA agreement with those buyers. Development Manager Lazan noted the bid law precludes the City from adding to their contract or creating a new project in excess of \$100,000 without going out for bids. He had asked the contractor whether utilities could be included under this project and a quote was received of \$99,999.70. These costs are in line with the estimates prepared and provided to the buyer of Lots 4 and 5, who will be responsible for their pro rata share. The funding would be accomplished by having the HRA pay and add it to the project cost within COR TWO, as originally contemplated. Or, there could be an agreement reached between the City and HRA to barter as previously done with the soil provided from HRA property to the project resulting in significant cost savings (\$11/yard versus \$2/yard). Development Manager Lazan stated a second option is to consider this utility work in exchange for the soil provided for Armstrong Boulevard. He explained that since receiving the quote, he talked to North Pine Aggregate and developed an alternate proposal in case the Council feels this bid is too close to \$100,000 maximum. Development Manager Lazan stated in the alternate proposal, he had removed the storm sewer work, which resulted in a deduct of \$34,225 and bid estimate of \$65,774. If approved, it would enable deep utility work to be completed quickly, allows Lot 5 to start construction without having to tear up the site, and stay on schedule for construction this fall.

Councilmember Wise asked if Scenario #2 would cost another \$55,000.

Development Manager Lazan explained it would provide sanitary sewer, watermain, and storm sewer piping as shown on the exhibit being displayed. He had arrived at the lower price of \$65,774 by removing storm sewer from the project, which could be installed by the Lot 5 user and credited to closing costs.

City Attorney Goodrich asked Development Manager Lazan whether he will get another quote.

Development Manager Lazan stated he held discussion with City Attorney Goodrich about needing two quotes, but believed there was some “gray area” in the League’s interpretation about whether this was an add-on project or a new project. He explained the difficulty with bringing another contractor into the first contractor’s bid area under which the permits were issued. Development Manager Lazan pointed out this is a public improvement project and continuation of the two stubs so he found it was a continuation, not a new project. He stated he can’t imagine that a second quote to mobilize would be less expensive than this quote.

City Attorney Goodrich advised that Bond Counsel Tom Bray had stated it is not a “gray area” and if the project cost \$100,000, it is mandatory to obtain two quotes. He explained that change orders with special assessment projects are in a different category and can be up to 25%. This is a different contract so two quotes are required.

Councilmember Strommen agreed this is a separate project, it was originated separately, and she supports getting a second quote.

Councilmember McGlone agreed with the need for a second quote, noting it will probably be higher but is required by the law.

Councilmember Wise questioned whether a contractor will be willing to put the work into preparing a quote knowing it is probably a waste of time.

City Attorney Goodrich advised if the City cannot obtain a second quote, it will have to bid the project.

Development Manager Lazan noted it is possible to approve a change order subject to the second quote being at or lower than this amount.

City Attorney Goodrich stated he can craft motion language to address contingent approval, if desired.

Councilmember Strommen expressed concern with that option and stated it is a question of how the City does business and it should not participate in “gray areas” around the law.

Councilmember Backous noted the price of this quote has already been stated into the record.

Mayor Ramsey stated he values the legal opinion and agrees with the need for a second quote.

Councilmember Elvig suggested repackaging the project so it can be competitively bid since the amount of the current quote is known.

Development Manager Lazan stated it can be bid for spring work or these items can be included with Lot 5 to do the work.

Councilmember McGlone stated he does not advocate rebidding the project but to follow the City Attorney’s recommendation and seek a second quote in the market.

City Administrator Ulrich stated if the Council wants to keep the project on track as scheduled, staff can obtain a quote within the next week and a special meeting can be called for next Tuesday.

Councilmember Backous asked City Attorney Goodrich when he had advised Development Manager Lazan of the requirement for a second quote.

City Attorney Goodrich stated he got an e-mail last week.

Councilmember Backous noted this issue is already a week down the road and the Development Manager is overruling the opinion of the legal counsel.

Development Manager Lazan clarified he did not overrule the opinion of legal counsel and had reached out to two other contractors to get quotes but they were not interested. He noted there are practical problems with putting another engineer within this contractor's project.

Councilmember Strommen stated she does not think this is a policy decision the Council can make tonight and she is not supportive of scheduling another special meeting if staff could have obtained the required second quote within the last week. She stated this situation is frustrating because if staff had obtained that second quote this past week, the Council could have taken action tonight.

Councilmember Wise asked if SuperAmerica can take on this work as part of its project. He noted if SuperAmerica can take the lead on this project, it would be a simple solution.

Development Manager Lazan advised that has always been an option but his suggestion presented itself as a way to install the deepest utilities quicker and still meet the schedule.

Councilmember Wise noted that is the option that had been discussed when Wiser Choice Liquor was going to lead the project.

Councilmember Tossey asked whether there was a legal problem with SuperAmerica doing the work.

City Attorney Goodrich stated there is not and that option has been approved with other developers. The developer would take on the project, guarantee it, and the City would accept the project at a later date. However, that is an HRA decision.

Development Manager Lazan agreed that is an option and his suggestion is for a parallel option to install the deepest utilities but if the Council is not comfortable with it, then it does not need to move forward.

Councilmember Strommen clarified it is not an issue of what the Council is comfortable with, legal counsel had advised it is not legal.

Councilmember McGlone noted if the City gets a second quote, it is legal.

Councilmember Strommen pointed out that tonight staff has presented only one quote and that is not legal.

Mayor Ramsey stated this case will be removed from the Council agenda.

3. FUTURE TOPICS FOR DISCUSSION

3.01: Review Future Work Session Topics / Calendar

Councilmember Strommen requested discussion of the Anoka dam prior to the December LRRWMO meeting. She indicated she will be leaving the LRRWMO after the November meeting.

4. MAYOR / COUNCIL / STAFF INPUT

None

5. ADJOURNMENT

Mayor Ramsey adjourned the Work Session of the City Council at 6:50 p.m.

Respectfully submitted,

Kurtis G. Ulrich
City Administrator

ATTEST:

Jo Ann M. Thieling
City Clerk

Drafted by Carla Wirth
TimeSaver Off Site Secretarial, Inc.