

Monday, June 27, 2016
Bloomington Civic Plaza
1800 West Old Shakopee Road
Bloomington, Minnesota 55431-3027

- 1 GREETING TO COUNCIL** City Council greeting videos were played, featuring Amanda Crombie and Norma Hauser.
- 1.1 CALL TO ORDER - 7:00 PM** Mayor Winstead called the City Council meeting to order at 7:00 pm.
Present: Councilmembers J. Baloga, T. Busse, A. Carlson, D. Lowman, and J. Oleson
- 2 INTRODUCTORY**
- 2.1 FLAG PRESENTATION** Mayor Winstead led the audience in the pledge of allegiance to the flag.
- 2.1.1 Recognition of Outgoing Planning Commissioners** Requested Action: Mayor recognize outgoing Planning Commission members.
Craig Nordstrom was recognized for serving on Planning Commission for six years, 4.5 of them as Chair. Provided Nordstrom with plaque. Roger Willette was recognized for serving on Planning Commission for six years, and was on Traffic and Transportation Advisory Committee. Provided Willette with plaque. Recognized Ted Fischer for serving on Planning Commission for three years.
- 2.2 Parks and Recreation Month Proclamation** Requested Action: Mayor read and present the Parks and Recreation Month Proclamation declaring the month of July as Parks and Recreation Month.
Mayor Winstead read the Proclamation, which was accepted by Jim McCarthy with the Parks, Arts and Recreation Commission.
- 2.3 External Auditor's Report on 2015 CAFR** Requested Action: Accept the City's Comprehensive Annual Financial Report for calendar year 2015.
David Mol, external auditor from Redpath, walked through the 2015 financial results via PowerPoint presentation. Gave an overview of the reports that were issued by auditor, opinion on financial statements, GFOA award for excellence in financial reporting, report on internal controls, report on Minnesota legal compliance, report on compliance with federal program requirements, communication to those charged with governance, pensions, 2015 financial summary – governmental funds, fund balance constraints, general fund working capital goal, monthly general fund cash flow, general fund revenues, general fund expenditures, tax rate considerations, city net debt, city net debt limit, and bonding rating. Explained that only one of 32 municipal governments out of more than 19,500 nationwide have achieved a AAA bonding rating.

Winstead clarified that Mol is an independent auditor, and this is the report from them, and they are not affiliated with the City finance department. Works with City staff to facilitate the audit. Work for City Council and meets with Council several times a year.

Motion by Baloga to accept the City's Comprehensive Annual Financial Report for calendar year of 2015.

Seconded by Carlson.

Motion carried 6-0.

3 CONSENT BUSINESS

3.1 Accept Petition to Abandon Watermain (2018-501) Adopt Resolution

Requested Action: Staff recommends that Council adopt a resolution declaring the adequacy of the petition (2018-501, 9545 Penn Avenue Water Service Abandonment Project).

Motion by Busse.

Seconded by Baloga.

Motion carried 6.0.

3.2 Encroachment Agreement Approval 8101 Normandale Lake Blvd.

Requested Action: Conditional approval for encroachment into public easements located at 8101 Normandale Lake Boulevard (Lot 1, Block 1, NORMAN POINTE BUSINESS CENTER 3RD ADDITION) is recommended by acknowledging the attached Agreement for Conditional Approval for Encroachment into Public Easements.

Item postponed indefinitely, per the City Engineer.

3.3 Accept Donations

Requested Action: Accept donations as listed.

Busse mentioned there are 50 donations listed and the value is thousands of dollars. Very thankful and grateful for this.

Motion by Busse, and requested that appropriate "thank you" messages be sent from staff to the donators.

Seconded by Baloga.

Motion carried 6-0.

3.4 Running Park Softball Field Naming Request

Requested Action: Approve the Running Park Softball Field Naming Request.

Motion by Busse.

Seconded by Baloga.

Motion carried 6.0.

3.5 Resolution of Support France Avenue Multi-Modal Trail Funding Application

Requested Action: The Council is asked to adopt the resolution of support of the request for federal funding for the France Avenue Multi-Modal Trail Project.

Motion by Busse.

Seconded by Baloga.

Motion carried 6.0.

- 3.6 Acknowledgement of Liquor & Lodging Tax Penalty and Interest Abatement - Country Inn & Suites** Requested Action: Staff recommends that the City Council acknowledge receipt of the report requesting penalties and interest abatement of \$939.60.
Motion by Busse.
Seconded by Baloga.
Motion carried 6.0.
- 3.7 Review Cultural Arts Funding Grant Recommendations** Requested Action: Council is requested to review and approve 2016 Cultural Arts Grant recommendations totaling \$173,000.
Motion by Busse.
Seconded by Baloga.
Motion carried 6.0.
- 3.8 2015 General Fund Positive Budget Variance Transfer to Strategic Priorities** Requested Action: Council is requested to approve a transfer totaling \$1,400,000 from the General Fund to the Strategic Priorities Fund for 2015 Positive Budget Variance.
Motion by Busse.
Seconded by Baloga.
Motion carried 6.0.
- 3.9 Meeting Minutes City Council - Approval** Requested Action: Approve the June 6, 2016 City Council Regular meeting minutes as presented.
Motion by Busse.
Seconded by Baloga.
Motion carried 6.0.
- 3.10 MOU with Bloomington Police Officer's Federation** Requested Action: The Council is asked to authorize the appropriate officials to enter into the attached agreement on behalf of the City.
Motion by Busse.
Seconded by Baloga.
Motion carried 6.0.
- 3.11 Performance Measurement Reporting Requirements Program - Adopt Resolution** Requested Action: Adopt Resolution authorizing reporting requirements for the Local Performance Measurement Program.
Motion by Busse.
Seconded by Baloga.
Motion carried 6.0.
- 3.12 MN Dept. Public Safety/Homeland Security Grant Contract Amendment Budget Adjustment** Requested Action: Staff recommends Council approve this contract amendment and budget adjustment.
Motion by Busse.
Seconded by Baloga.
Motion carried 6.0.
- 3.13 Amend July 2016 Council Meeting** Requested Action: Adopt a resolution amending the July 2016 City Council meeting calendar to change the July 18, 2016 study meeting to July 21,

Calendar 2016.
Motion by Busse.
Seconded by Baloga.
Motion carried 6.0.

- 3.14 Elfstrum Variances Resolution of Denial** Requested Action: On June 6, 2016, the City Council was unable to make the required findings for variances in Case PL2016-56 to allow a play apparatus/accessory structure in the front yard located at 9617 Wyoming Circle and directed staff to prepare a resolution of denial. Staff recommends the City Council adopt the enclosed resolution of denial.

Carlson stated that he will not be supporting the resolution of denial.

Motion by Busse.
Seconded by Lowman.
Motion carried 5-1, Carlson Opposed.

- 3.15 Memorial Plaque Installation Approval** Requested Action: Motion approving the installation of a plaque within right-of-way at approximately 420 American Boulevard memorializing the death of Tyler Lenort.

Motion by Busse.
Seconded by Baloga.
Motion carried 6.0.

4 PUBLIC COMMENT PERIOD

4.1 Response to Prior Meeting's Public Comments

Requested Action:

Speaker #1 - Larry Frost, 5123 W. 98th Street, #111:
 Came forward to raise issues on the data practices requests. Mentioned there are issues that are mentioned in the Minnesota Data Practices Act requests. Said there is problems that will continue to be a problem with the Dar Al Farooq, both legally and practically. Frost said the City Council has been advised that the Religious Land Use and Incarcerated Persons Act (RLUIPA) ['Institutionalized' is the correct verbiage, not "Incarcerated" as Frost stated] does not allow the City to do a number of things. Said the City Attorney said at a meeting that the CUP cannot be enforced. Frost said this is not true. Cannot find any cases where enforcement measures agreed to voluntarily by the City have ever been held to be unenforceable. Said the City has been told that fire code occupancy has to be the standard by which a CUP permittee has traffic and occupancy governed. Frost explained that CUP permittees can come back with information from Dar Al Farooq and request the same treatment as was given to Dar Al Farooq.

Frost said there are claims that there have been racist statements made by City staff members. His opinion is that could be considered a constitutional issue. Civil discussion is an essential part of civil discourse.

There are other problems regarding joint use agreement for Smith Park. There are glaring anomalies in the document. Paragraph 24 states it takes 6 months to resolve any complaint against Dar Al Farooq.

Frost claimed that Council minutes and video concerning Dar Al Farooq have been taken offline. Said synopsis should include everything that was said by Council. He claims that minutes get taken offline and come back

altered.

There were a very large number of situations where City staff were presented with an issue and staff said it's not an issue. Frost claims there are other organizations that could sue the City and win because of violation with RLUIPA. Said that on July 18th a petition will be brought to the City and will ask City Council to address the wrongs that the City has committed.

Speaker #2 – Tim Sandry, 9840 Colorado Road:

Discussed the Bloomington Sustainability Task Force status update via PowerPoint presentation. Provided list of task force members. The group has a deep and diverse expertise in a variety of areas of sustainability. All are long-term Bloomington residents. Most have experience working with Cities whether on staff or a consultant or lobbyist. Activities to date were listed, included lobbying Council, interviewing staff liaisons and commissioners from neighboring cities, identifying commissions, interviewing liaisons and commissioners from Edina, St. Louis Park, Edina.

Sandry gave an overview of the cities that were interviewed. These accomplishments might not have happened without the efforts of the cities and the creation of sustainability commission. Explained the recommendations for next steps of developing: vision, types of projects, structure, effective planning and governance processes, effective collaboration with residents, etc.

Mayor Winstead said sustainability is one of the priorities Staff has identified. Asked Staff to bring this back to find out if Formal Commission is required.

City Manager Verbrugge said City staff held six different action planning workshops. Will be brought to Study Session in July, and will include recommendations for how to proceed with Environmental Sustainability.

Sandry provided a copy of his presentation.

Speaker #3 – Senil Lachtigamani, 4609 Nine Mile Creek Parkway: Expressed how disheartened he is that our right to vote has been given up. To vote is the very essence of democracy. Asked that Bloomington let residents vote.

Closed public comment period at 7:50.

4.2 Public Comment

5 LICENSING DIVISION: PUBLIC HEARINGS

5.1 Hilton Garden Inn – New On-Sale Intoxicating Liquor License Application

Requested Action: Staff recommends approval of the on-sale intoxicating liquor license for W2005/Fargo Hotels (Pool C) Realty, L.P., doing business as, Hilton Garden Inn.

Baloga moved to approve the on-sale intoxicating liquor license.

Seconded by Busse.

Motion carried 6-0.

5.2 Sima Market – New Off- Sale 3.2% Malt Liquor License

Requested Action: Staff recommends approval of the off-sale 3.2% malt liquor license for Sima Market LLC, doing business as Sima Market.

Postponed indefinitely until proper documentation can be provided.

Motion by Baloga to postpone this item until proper documentation is provided.

Seconded by Carlson.

Motion to carried 6-0.

5.3 Ocean Dream Massage Nail & Spa – New Therapeutic Massage Enterprise License Application

Requested Action: Staff recommends approval of the therapeutic massage enterprise license for Ocean Dream Massage Nail & Spa LLC, doing business as, Ocean Dream Massage Nail & Spa.

Motion by Busse to approve the therapeutic massage enterprise license for Ocean Dream Massage Nail & Spa LLC.

Seconded by Baloga.

Motion carried 6-0.

5.4 VEAP – Special Event On-Sale Intoxicating Liquor License

Requested Action: Staff recommends approval of the special event on-sale intoxicating liquor license for Volunteers Enlisted to Assist People (VEAP).

Motion by Carlson.

Seconded by Oleson.

Motion carried 6-0.

5.5 Richfield/Bloomington Eagles #3208 - Special Event On-Sale Intoxicating Liquor License

Requested Action: Staff recommends approval of the special event on-sale intoxicating liquor license for Richfield/Bloomington #3208 Fraternal Order of Eagles.

Motion by Oleson.

Seconded by Baloga.

Motion carried 6-0.

6 DEVELOPMENT BUSINESS: PUBLIC HEARINGS

6.1 Master Sign Plan for Alpha B Planned Development

Requested Action: The Planning Commission and staff recommend the following motion:

In Case PL2016-86, having been able to make the required findings, move to approve the Master Sign Plan for the Alpha B planned development at 8100 and 8150 26th Avenue South and E. 82nd Street, subject to the conditions and Code requirements attached to the staff report.

City Planner Michael Centinario provided PowerPoint presentation on master sign plan for Alpha B.

Stated this is a planned development for signage on the southeast quadrant of Lindau and 24th Avenue South. Preliminary development plan was approved by Council over a year ago. The majority of the signs are code compliant. There are some signs that require flexibility from City Council.

Centinario explained what signs are being proposed, which do meet City Code. One sign may be in clearview triagle and will make sure it's set back enough to not reduce visibility. Some fine-grained location analysis will

need to be done before exact location is specified. Master sign plan is clear that it has to be outside the clearview triangle.

Phase II for the restaurant and retail building was explained. Certain elevations are allowed. These two elevations are within the Code allowance for those building elevations. On the other two, applicant is trying to have a cohesive plan throughout the stages. Parking structure is under construction and does meet Code requirement. AC Marriott Hotel will require flexibility. City Code does not permit roof top signage. The west side, two signs will require flexibility. Applicant wants to have brand identification and wants to identify the hotel from pedestrian standpoint. No signage is proposed along Lindau Lane.

Centinario explain the findings via PowerPoint. Staff said staff believes the proposed master sign plan meets the required findings. The character of South Loop will be maintained or enhanced with this. Recommending approval of master sign plan, subject to conditions and code requirements.

Centinario explained that this is located above a two-foot parapet wall and is four-sided, so it would be considered a rooftop sign and is permitted.

Busse asked if the rooftop was one cube. Centinario confirmed yes, it is one four-sided sign. 100 square feet each side. Busse asked about practicality for having it on all four sides. Centinario said he didn't think all four sides will be completely visible, but will be visible from various locations. The majority of the east-facing signs will be visible, and the applicant wanted to maintain a consistent look of other AC Marriott hotels.

Motion by Lowman.
Seconded by Oleson.
Motion carried 6-0.

**6.2 Alpha B Restaurant
8150 26th Avenue;
Final Development Plan**

Requested Action: Staff recommends the following motion:

In Case PL2016-85, having been able to make the required findings, move to approve the Final Development Plan for an 8,040 square foot, 271 indoor and 80 outdoor seat restaurant and a 3,416 square foot retail building within the Alpha B planned development at 8100 26th Avenue South, subject to the conditions and Code requirements attached to the staff report. Phase I and said Phase II is a restaurant and 2 tenant spaces.

City Planner Michael Centinario explained the preliminary development plan and provided final development plan overview. Considers this consistent with PDP. Applicant submitted landscape plan and the entire plan development exceeds Code for landscaping planning. Explained building elevations. Panels do not require special review.

West building elevation transparency requirements were explained. Would be subject to 50% transparency requirement. Code does have substitutions relating to wall design, display boxes, or some artistic element. Applicant has started working with an artist on an artistic element. The landscape plan does not include the living wall. The wall is screening the shared trash room. There would be a wall extending past that in brick, which is in harmony with the building materials.

Parking analysis was completed. There was a 3 parking stall deviation. With the applicant's proposal, they will continue to be Code-compliant.

Applicant spoke regarding Alpha B. There is a lot of opportunity for this

restaurant and has unique architecture with great prairie lines. Carlson asked applicant to speak to public art component that will be on west side. Applicant said there was specific feedback from a Planning Commissioner, the architect, and design team took time to develop designs. There is a possible die-cut metal structure to accommodate the green space to have a natural flow.

Oleson inquired about a grocery store with Phase III. Applicant said they're making progress. Indigo, Townplace, AC, MOA Phase II will contribute to the momentum Very optimistic about the component of grocery possibly in spring 2017.

Motion by Lowman.
Seconded by Oleson.
Motion carried 6-0.

Busse encouraged not losing sight of keeping pedestrian access in mind. The development is great, but figuring out how to get pedestrians across 6 lanes of traffic needs to be kept in mind.

6.3 Bengtson; 620 Mission Road; RV Permit Case

Requested Action: No action is required due to the withdrawal by the applicant.

7 TRANSPORTATION & UTILITY IMPROVEMENTS: PUBLIC HEARINGS

8 ORDINANCES: PUBLIC HEARINGS

8.1 Vacation of Public Easements 10541 Maryland Circle

Requested Action: Vacation of public drainage and utility easements and the reservation of a new drainage and utility easement located at 10541 Maryland Circle are recommended with the adoption of an ordinance approving the vacation and reservation of public easements.

Motion by Baloga.
Seconded by Lowman.
Motion carried 6-0.

8.2 Ordinance Amendment - Public/Utility Structures

Requested Action: Planning Commission and staff recommend the following motion:

In Case PL2016-91, move to approve an ordinance amending Sections 19.38.11 and 19.38.12 of the City Code to create an exemption from the development prohibition below the 760-foot elevation for public structures and public utility structures in the Bluff Protection and Bluff Development Overlay Districts. A summary publication ordinance is not needed given the short (one page) ordinance.

Planning Manager Glen Markegard provided PowerPoint presentation for code amendment that impacts BP-1 and BP-2 overlay zoning districts. Proposing to make an exception for public utility and public buildings within that area. Summarized recommendation.

Lowman asked if public buildings are allowed to have snack stand or coffee shop. Markegard said the use of the building depends on the underlying zoning districts. In these cases, the use would not be permitted. Could have an accessory use like restroom facility, but not an active storefront situation.

Baloga said there's no prohibition on size. Asked what would be required for a public utility building. Markegard said that in case of Centerpoint Energy on Old Cedar Road, requires a Conditional Use Permit. Would stop at Planning Commission unless it were to appeal for City Council. Markegard said he could add a limitation on square footage if Council feels there is a need.

Baloga said this is a very prestine recreation area. Would like to have jurisdicitional review. There may be a void where we don't get to see all those projects if approved by Planning Commission. Would like Council to review and comment on those.

Markegard said there are certain CUPs that have to come before Council and others only if there is appeal. If controversy, there would be appeal. Code can be amended to make all come before council. Otherwise only if appeal.

Baloga has concern for the Fish and Wildlife Service areas and would feel more comfortable if Council had approval rights for these types of proposed ordinance changes.

Council discussed whether this should be passed tonight and come back to a future Council meeting for amendment to the bluff and revisions for future.

Carlson said if there's an opportunity now to further define what is allowed there, now is the time to give this consideration. The concern is with a private entity building on this land.

Markegard said there is a large pipeline that comes up Old Cedar Avenue and they need to have a facility to clean out the line. It would be about a10x25 feet structure. Utilities sometimes need small structures to house communications structures. The most likely users would be the City of MN Fish and Wildlife Services.

Winstead said a large building is unlikely, but there needs to be checks and balances.

Oleson said he has had conversations with the owners. The Centerpoint structure is in City right of way, and some of it is on private property. Asked how it works when there is multiple ownership of land.

Markegard said the bulk of the facility would be on private property within a public utility easement which would be expanded to accommodate the structure. Said it would need a Conditional Use Permit, so should that come to City Council as well as Planning Commission.

Winstead said things will happen, and anything we can do to help regulate what it is, is appropriate. Suggested moving this to go forward, but have Staff come back with ordinance amendment that anything below bluff protection area will need to go through Council approval. Would not preclude Centerpoint from what they need to do. They will need to come before Council too.

Baloga said most standards are designed for wildlife sensitive areas and will

not support this item.

Carlson asked for a timeline how quickly the amendment can be brought forward. Markegard responded that the amendment would need to be advertised, so about 2 months but does not have the timeline for Centerpoint's timeline drop dead date.

Winstead said this ordinance amendment would give oversight through Planning Commission.

Baloga said he believes this is not a timing critical issue, because this work has to have been being done already. Winstead explained that this is structuring new capacity.

Markegard said there is a concern with the current location. If there are intersection improvements in that area, it's at the interchange.

Lowman asked if standards would be reviewed during that process.

Winstead said if we pass this ordinance amendment, it would only be reviewed to the Planning Commission level, but only if appealed. Asked what Centerpoint would be doing or not doing with what they're proposing. Markegard said it would delay the project.

Motion by Busse.
Seconded by Lowman.

Winstead said he would like to see it passed with a caveat that it does come back and direct Staff to come forward with an ordinance amendment saying that if anything gets approved or built below bluff protection area, it also needs to come before City Council for approval. Busse agreed. Lowman agreed. Carlson asked for this to be brought forward in a very timely fashion.

Motion carried 5-1, Baloga opposed.

9 OTHER: PUBLIC HEARINGS

10 ORGANIZATIONAL BUSINESS

10.1 City Council Policy & Issue Update

Requested Action: City Manager Verbrugge provided update on the Council vacancy and selection process. Explained the interview process for July 6th, 2016. Council to return on July 8th to make a decision on finalists. Monday, July 11th the finalists will interview in front of Council. Council may choose to make an appointment that night. If Council does not make a decision on July 11th, Council to meet July 14th to fill vacancy. Will not be broadcasting statements from July 6th but will be recording and will be shown later. The interview order will be done in random fashion.

City Manager Verbrugge thanked Lowman for his comments related to the League of Minnesota Cities/Transforming Local Government Alliance for Innovation Conference held in St. Paul. Explained what the conference was about. Thanked Schane Rudlang and staff at MOA for hosting the South Loop tour that proved to be a success. Thanked Councilmember Busse for being a theme coach at the conference.

Baloga mentioned the 86th Street bridge that will be reconfigured so eastbound and westbound lanes will be one lane in each direction. Busse

confirmed that it is now open. Baloga said it will remain open until 2017 until being torn down and reconstructed by MnDOT.

Oleson mentioned Summer Fete at Normandale Lake scheduled for Sunday, July 3rd. Amateur radio had an event this last weekend at Dred Scott. Will be located at parking lot north on American Blvd. north of the bandshell. They do a wonderful job for the city.

Lowman said that during the LMC/TLG Conference, he won \$500 for Bloomington to go toward registrations for staff or Council toward a future conference.

Lowman mentioned consent agenda item 3.10 – highlighted public engagement and finding creative ways for City staff and Police to work with community, with a creative way to get involved.

Lowman asked about item 3.4 regarding policies on commissions. Asked if staff is looking at this for other policies as well.

Mayor Winstead mentioned Sister City organization meeting he had last week. Oleson was a liaison to that organization. Requesting a Councilmember to volunteer to work on that board as a representative of City Council going forward. This is not an official appointment. Students will be coming here and would like to have interaction with Council. Next year with the Twin Cities Marathon, there will be a delegation coming here to participate in that marathon. Baloga said this would be worthwhile to continue and asked if this item can be deferred to a future meeting since Abrams participated in the past.

Lowman offered to cover the SCHSAC meetings until someone else is appointed.

10.2 Accept City Clerk's Certificate of Sufficiency but Rejecting Petition for Charter Amendment as Manifestly Unconstitutional

Requested Action: Adopt the Resolution accepting the City Clerk's Certificate of Sufficiency but rejecting the Petition for a Charter Amendment as manifestly unconstitutional.

City Clerk Janet Lewis briefed the City Council on the petition that was submitted. A committee of five registered voters submitted a petition titled "Ballot Questions Petition – Charter Amendment" that was submitted to Charter Commission Secretary on May 18th. Received by Charter Commission on June 9th. On behalf of City Council, City Clerk accepted the petition and began the verification process and completed on June 17th. Prepared a report.

Lewis highlighted the findings from the report. The areas of sufficiency that include that the form does meet all the requirements of Minnesota statutes and rules. Signed by 2,077 registered voters, which exceeded the minimum required.

Areas of insufficiency on petition: it was not properly attested. 8 pages of the 268-page petition were disqualified. The petition is sufficient, however legally deficient in that it is manifestly unconstitutional. This information was relayed to Mr. Reichert who represented the five registered voters. The petition is available for inspection upon request after redaction of private data. Hennepin County requires that ballot questions must be submitted by City before August 26th. Staff is recommending adoption of a resolution accepting sufficiency but declaring the petition legally deficient and manifestly unconstitutional.

Mayor Winstead said it speaks to unconstitutionality. While the memo was

confidential, looking for City Council approval to waive the confidentiality and have City Attorney explain the memo and why.

Ask for report from City Attorney for things that were outlined in the confidential memo.

Moved by Lowman.
Seconded by Baloga.
Motion carried 6-0.

City Attorney Sandra Johnson discussed the prior actions that were done by City. Initiative petition, using a charter tool to put an ordinance in front of the public for popular vote, bypassing elected representatives. This was rejected by City Attorney's office because the language of the ordinance tied the hands of government, prohibiting City Council to adopt any ordinance implementing solid waste management plan through 2016. Petitioners sued and went through District Court. Judge James Moore threw it out, saying they agreed with the City and was not in the form of an ordinance. The next attempt was to invalidate the December 21st ordinance adopting the solid waste management plan that allowed City staff to go forward to negotiate contract on the same agenda. That failed because petitioners failed to properly attest the signatures on the petition.

Mayor Winstead said in some areas of petitioning, if things aren't properly submitted, there is a time to cure, but under the referendum issue, there is not. It must be submitted properly, which is stated clearly.

Johnson confirmed yes. Right now, it is retroactively trying to invalidate the Legislative process and will divest certain entities of their legal rights and responsibilities, particularly the Bloomington Haulers LLC., with whom the City has a valid contract. Furthermore, under State Constitution, the Cities are a creature of the State and cannot have laws that are different or conflict or within an area occupied by the State. Our laws have to be subordinate to State Law. The Waste Management Act of the State is comprehensive. Neither City Council nor the petitioners have the right to add this additional step of a popular vote. City Council cannot do it, petitioners cannot do it. Technically, it's a second attempt to do a referendum that failed. There's no legal opportunity for it. These are essential concepts of due process. City Council does not have the luxury of determining to whom or to what the laws apply. Must accept the laws as they are and cannot fudge them at an ad hoc basis. The legal absurdity was properly thrown out by Judge Moore. City Council had no legal ability to place that flawed referendum on the ballot. The City cannot condone the dismantling of previous vested rights and responsibilities and its priori Legislative process. It's the opinion of the City Attorney's Office that the charter amendment be rejected as manifestly unconstitutional. The case law for that and the judicially created background is in memo. With the waiver of privilege, the memo can be made public and a public document subject to scrutiny, if the Council so chooses.

City Manager Verbrugge summarized saying that there's an opinion out there that Council has trying to be obstructionists and preventing something from being placed on the ballot. The process for doing so is well articulated, both in charter and in statute. The burden of responsibility is not on City Council, it is on the circulators of the petitions to make sure that what they circulate is properly processed and that the language is constitutional, and that signatures are gathered in the proper way. Circulators of the petition have not met the burden of responsibility. It would not be well advised for Council to put something like this on the ballot because it's language that is felt to be unconstitutional. The only action that's reasonable at this point is that the petition be rejected at this point.

Mayor Winstead said this has garnered a lot of conversation throughout the community. From a Mayor's perspective, he views this whole argument of organized collection as a Public Works process/procedure, and it is something that City Council is responsible for. More than 2/3 of every city in this country has an organized collection system. This is just demonstrated that it is a Public Works function. It's a way to prudently operate a community. Somehow it has taken on a negative view that some are not happy with or comfortable with.

Oleson said it's been a difficult issue to deal with because he considers it his job to get good information and to get all points of view. When this began, if it's organized, it has to be a savings in operational cost. Mentioned the community's ability to vote for four Councilmembers at the last election. It was an opportunity for people in the city not to vote for possible councilmembers that are for organized collection. This will be a cost savings for some, not all.

Lowman reiterated that this has been deemed unconstitutional. Recommended continuing to look for ways to work with the economically disadvantaged. Looks forward to seeing what this can do.

Motion by Lowman.
Seconded by Baloga.
Motion carried 6-0.

Bill Reichert approached podium and began speaking in disruption of the flow of the meeting, expressing his First Amendment rights. Mayor Winstead explained that they are not taking testimony and this is not a hearing.

Mayor Winstead recessed the meeting at 9:35pm.
 Mayor Winstead reconvened the meeting at 9:35pm.

10.3 Planning Commission Selection

Requested Action: The Council is asked to select three new Planning Commission members to replace the three outgoing Commissioners.

Council voted and the majority votes went to John Solberg with six votes, and Leone Snyder with five votes.

Busse moved to appoint Solberg and Snyder to Planning Commission.
Seconded by Lowman.
Motion carried 6-0.

Council revoted to achieve majority of votes for appointment of third open seat, which resulted in a 2-2-2 tie.

Council revoted and with no majority vote-getter, another vote was required after eliminating the applicant receiving only 1 vote.

Council revoted to achieve majority of votes, vote resulted in a 3-3 tie.

Council revoted, resulting in a 5-1 vote favoring Swanson.

Busse moved to appoint Kevin Swanson to Planning Commission.
Seconded by Lowman.
Motion carried 6-0.

Oleson asked to reopen Item 10.1. Mentioned concerns about ordinance 19.5 and 21.301.19. The issues being raised suggest that it would be appropriate to review those ordinances. Would ask that Staff look at them for issues on principal use. Asked if this can be added to a study session. Would appreciate if Staff can provide response that this be put in dormancy to look at for a period of time.

Mayor Winstead said if the rest of Council achieves Council consensus, it can be reviewed for consideration.

Oleson suggested giving each Councilmember an opportunity to tour each of the sites to become aware of what the issue is.

City Manager Verbrugge said Larry Lee and Lynn Moore have been providing information. Will share in an upcoming CMI and give Council an opportunity to review. Let Lee know if it's an issue worth pursuing.

Lowman would like to have Staff comment how this would fit in with strategic priorities.

City Manager Verbrugge mentioned City Attorney Sandra Johnson and Deputy Director of Public Works Jim Gates that both retiring. Thanked each of them for their years of dedicated service to the City of Bloomington.

Mayor Winstead expressed how insightful Johnson has been on issues that have arisen within the City. Stated that it has been a privilege working with both Johnson and Gates.

11 ADJOURN

Mayor Winstead adjourned the City Council meeting at 9:51 pm.

Denise Dargan
Council Secretary