

**MEETING MINUTES**  
**PUBLIC SERVICES COUNCIL COMMITTEE**

**Monday, July 26<sup>th</sup>, 2021**

**Via Microsoft Teams**

**This meeting was held electronically because of the State Public Health Emergency Declaration regarding Covid-19 and will be conducted pursuant to Iowa Code 21.8 and the Proclamation of Governor Kim Reynolds dated March 19, 2020.**

In Attendance via Microsoft Teams:

Council Member – Matthew McKinney  
Council Member – Kevin Trevillyan  
City Manager – Tom Hadden  
Deputy City Manager – Jamie Letzring  
City Attorney – Richard Scieszinski  
Assistant City Attorney – Greta Truman

City Engineer – Brian Hemesath  
Deputy Public Services Director – Joe Cory  
Principal Engineer – Ben McAlister  
Principal Engineer – Nick Rentel  
Development Coordinator – Linda Schemmel

Guests in Attendance:

**Item #1:** Levi and Laura Byers – 3937 Commerce Drive West Des Moines, IA 50265

Meeting was called to order at 11:31 AM by City Engineer, Brian Hemesath.

**1. Disposition of Excess Property – East ½ vacated 40<sup>th</sup> Street, Anderson and Vannerstrom’s Addition – Commerce Area (RS)**

***Issue Summary:***

City Attorney Richard Scieszinski was contacted by Councilmember Trimble regarding a request by Laura and Levi Byers regarding the sale of the east ½ of vacated 40<sup>th</sup> Street located in the Commerce Area. The Byers, who are owners of the adjacent property located at 3937 Commerce Drive, expressed interest in purchasing the property to make it part of their lot.

Per current policy, this item is being brought to the Subcommittee to determine if this is excess City property that can be sold. Mr. Scieszinski explained that if determined excess, City policy would require that an offer to purchase at the fair market value would be made to the four adjacent property owners and sold to the highest bidder. If no bids were received, the property would be offered for sale to the general public.

Although the Parks department did not object to its sale, Engineering department Staff recommended that the City retain the property due to its potential use in addressing current or future drainage issues in the Commerce Drive and High Street area.

Councilmember Trevillyan stated that the City should maintain ownership of the property at least until the drainage issues have been resolved. Councilmember McKinney agreed.

City Engineer Brian Hemesath reiterated Mr. Scieszinski's comments regarding the significant drainage issues and how important it is to keep options available to construct storm sewer if High Street is paved in the future.

Levi and Laura Byers stated that they purchased their property in February 2021 and were aware that the adjacent lot was owned by the City. The Byers wanted to address the matter and advocate for the sale of the property to them or one of the surrounding property owners.

Mr. and Mrs. Byers provided photos and explained that the property currently functions as a part of their residence. The lower portion of the lot contains the current driveway and it is the only place to park vehicles. There is a retaining wall behind their home and 1/3 of that retaining wall is located on the City's property.

Councilmember McKinney inquired if they had an easement to use the property.

City Attorney Dick Scieszinski responded there is no easement and the City was not aware until now that the property was being used in this manner. Mr. Scieszinski suggested that if determined by the subcommittee not to be excess property, a lease agreement be put in place to protect both party's interest.

Councilmember McKinney then asked about the potential of partitioning the property.

Mr. Scieszinski did not recommend partitioning ownership and stated that a lease providing the Byers the right to use the property would be a better option, especially if storm sewer for drainage may be installed in the future.

Councilmember Trevillyan was not interested in partitioning the lot but was in agreement with a lease allowing the Byers use of the property. He inquired if the Byers had purchased their property knowing where the property line was located. The Byers stated that they knew the location of the lot lines before they purchased their property, and had been told by the previous owners that the previous owners had used the property for many years.

***Direction:*** Committee members were supportive of Staff leasing the property to Levi and Laura Byers. Staff will draft a lease and bring this matter back to the committee for review.

## **2. Permitting for use of Public Property (RS)**

### ***Issue Summary:***

The City has been approached by the developer of 304 5<sup>th</sup> St for use of public parking areas on 5<sup>th</sup> St and 311 6<sup>th</sup> St for staging of materials and equipment during construction. Staff has reviewed the request and provided the developer with a list of requirements for safety, maintenance, and restoration of public facilities. Although this project is driving the current need, the overall permitting process for this type of request is not clear. As Valley Junction continues to redevelop, Staff anticipates similar requests will also be made.

After review with the City Attorney's office, it appears that an option for this project and future Valley Junction projects is to modify the Special Event Permit to include construction related

activities on City owned property that is not public right-of-way, similar to how the City issues a Temporary Use Permit for batch plants on private property. Construction activities within street or alley ROW would still be reviewed and permitted with the ROW Work Permit and the Street/Lane Closure Notice. Staff would review the recommended permitting process for construction projects in Valley Junction and other limited area sites with the Subcommittee.

Development Coordinator Linda Schemmel explained that the issue of construction staging is not specific to just the 304 5<sup>th</sup> Street project and that the City will need to have a formal process in place to handle these requests as they come in.

City Attorney Richard Scieszinski mentioned a May 2021 construction project in the Valley Junction area where the building had zero lot lines and the building took up most of the lot, providing no area for staging. The contractor used a lot that was purchased in a residential area for staging, bringing this construction staging issue to the forefront. A memo was provided to the Mayor and Councilmembers at the time stating that for private property there is a permit process the City can use but the City doesn't have a formal process for public property.

Mr. Scieszinski suggested an amendment to City code to allow the use of public property for private staging areas through the issuance of a special use permit, which would require the payment of rent and the establishment of parameters for use of the property.

Councilmember Trevillyan asked if this staging included the use of public streets.

Mr. Scieszinski responded that it could include the use of City streets, but that the permitting process for streets is different. Although Staff would attempt to limit that use as much as possible, when necessary the City could permit use of both a portion of the City street and also permit the use of public property.

Councilmember Trevillyan stated he was not comfortable with this type of permit due to the current parking issues in Valley Junction. He suggested that contractors should bring in the materials as needed.

Mrs. Schemmel explained that due to the limited area of the site, when framing begins contractors will need to store materials off site to allow for necessary space to maneuver cranes and get construction above grade. Contractors would also need to barricade the area for construction activities on 5<sup>th</sup> Street and have plans in place to install a removable fence. When the crane is on-site, street parking would be barricaded, with the intent to move the crane at night to limit the impact on the public street and make those parking spots available for evening or weekend events.

Mrs. Schemmel explained Staff is proposing that the developer provide the specific times it needed for use of the public property, and that Staff would work to provide only as much time as necessary. Currently the area of the public parking lot proposed for construction staging is not significantly utilized, with the exception of use at Farmer's Market. Mrs. Schemmel stated that in updating the ordinance to allow for private use, the impacts to parking and the manner in how private use could be limited to the least amount of time necessary would be discussed.

Mrs. Schemmel noted that this ordinance amendment would pertain to zero lot line buildings that are next to or right up against the property line, causing limitations on construction and onsite staging. The construction staging problems on these types of sites impact not only new construction, but repairs/maintenance as well as additions.

Councilmember Trevillyan viewed maintenance issues differently as they do not typically take as long to complete as new construction.

Mr. Scieszinski asked committee members if they had any issue allowing developers to utilize City streets, with the intention of limiting the use as much as possible.

Councilmember Trevillyan was opposed to the idea and added that the City should also limit the use of blocking sidewalks. He commented that the buildings in Valley Junction are not being built right up to the sidewalk, so there is some sort of a front yard that can be fenced behind the sidewalk to provide construction staging.

Mrs. Schemmel explained that utilizing a public property permit process would allow the City to put the necessary constraints in place. The City would have regulations and performance standards in place, and if the developers/contractors don't meet those performance standards the City would be able to take action.

Councilmember Trevillyan stated that even with fines accruing, the materials or equipment would be allowed to sit there. He suggested developers access the properties from the rear. Councilmember Trevillyan was comfortable if a situation arose and a street closure permit was needed to place a piece of equipment for a few days or a week, but was not comfortable with leasing space on public property for any number of days.

Mrs. Schimmel commented these are two different processes and any kind of street construction would go through the right of way permit process which has been in use for years. The area that the 304 5<sup>th</sup> Street developer would use for staging is City owned property, but it is not part of the right of way.

Councilmember McKinney asked Staff to provide information on what our policy is today for on-street staging versus enforcement of the policy, what our policy may be in the future, the enforcement of that policy with respect to streets, and what our policy is regarding parking and construction staging on City owned property.

He also mentioned that other than during the Valley Junction Farmer's Market, the parking lot where the developer would like to stage construction materials is essentially vacant.

Councilmember McKinney suggested proposing different standards during the months that the Farmers market runs, including how the construction staging would impact traffic.

Mrs. Schemmel clarified what was being brought before the committee is the ability for a private entity to temporarily use City owned property. This temporary use would not include right of ways or alleys, and that mechanisms are currently in place for right of way and lane closure permits.

Councilmember McKinney inquired about changes to staging on the street and parking issues as a result of the staging along 5<sup>th</sup> Street.

Mr. Scieszinski responded that Staff is not proposing any changes to the current process for construction staging on streets but mentioned it because the City intends to get a tighter handle and make sure developers are abiding by our permitting process.

Councilmember Trevillyan asked who would be responsible for damages to City parking lots when used for construction staging.

Mr. Scieszinski explained that prior to permit approval Staff would examine and document the condition of the parking lot and include a provision in the lease that the developer would be responsible for any damages. A penalty provision would also be included in the lease if the developer exceeded the allowed time period.

**Direction:** Committee members would like to review an example of the specific parameters included in the lease before moving forward with an amendment to the ordinance regarding construction staging on public property. Staff will work on a draft and bring this matter back to the subcommittee for review.

### **3. Review of Items for Council Meeting (August 2<sup>nd</sup>, 2021)**

#### **ENGINEERING COUNCIL AGENDA ITEMS:**

##### **CONSENT AGENDA**

#### **Motion – Approving Change Order #6**

- **NE Basin Storm Sewer**  
(0510-056-2015) Absolute Concrete Construction 500.000.000.5250.495 *Stormwater Utility Fees and Road Use Tax*

#### **Resolution – Approving Professional Services Agreement**

- **ArcFlash Study Phase 3**  
(0510-034-2021) IMEG Corporation 500.000.000.5250.495 *General Fund*

#### **Resolution – Approving Professional Services Agreement**

- **Facility Assessment Phase 3**  
(0510-035-2021) Shive-Hattery, Inc. 500.000.000.5250.495 *General Fund*

#### **Resolution – Approving Professional Services Agreement**

- **Val-Gate District Signage**  
(0510-052-2021) Shive-Hattery, Inc. 500.000.000.5250.495 *General Obligation Bonds*

#### **Resolution – Approving Professional Services Agreement**

- **South 64<sup>th</sup> & Mills Civic Pkwy Intersection Improvements**  
(0510-053-2021) Snyder & Associates, Inc. 500.000.000.5250.495 *General Obligation Bonds*

#### **Resolution – Approving Professional Services Agreement**

- **South 88<sup>th</sup> & Cascade Ave Traffic Signals**

(0510-054-2021) Snyder & Associates, Inc. 500.000.000.5250.495 *Woodland Hills Urban Renewal Area TIF*

**Resolution – Approving Professional Services Agreement**

- **52<sup>nd</sup> Street & EP True Pkwy HAWK Beacon**  
(0510-055-2021) Short Elliott Hendrickson, Inc. 500.000.000.5250.495 *General Obligation Bonds*

**Resolution – Approving Amendment No. 1 to Professional Services Agreement**

- **8<sup>th</sup> Street RCB Repairs**  
(0510-031-2020) McClure Engineering 660.000.000.5250.495 *Stormwater Revenue*

**Resolution – Approving Amendment No. 1 to Professional Services Agreement**

- **Law Enforcement Center Air Balance & HVAC Improvements**  
(0510-058-2021) Resource Consulting Engineers, LLC 500.000.000.5250.495 *General Obligation Bonds*

**Resolution – Approving Amendment No. 3 to Professional Services Agreement**

- **West Des Moines Digital Enterprise Design**  
(0510-058-2021) HDR, Inc. 670.000.000.5250.495 *General Obligation Bonds*

**Resolution – Ordering Construction**

- **Digital Enterprise 2021 Single Family Drop Installation Phase 2**  
(0510-0069-2021) NewCom Technologies, Inc. 670.000.000.5250.495 *General Obligation Bonds*

**PUBLIC HEARINGS**

**Resolution – Awarding Contract**

- **Parks Maintenance Facility Abatement & Demolition**  
(0510-004-2020) Elder Corporation 500.000.000.5250.490 *General Obligation Bonds*

**4. Staff Updates:**

Brian Hemesath, City Engineer informed Committee members that as a result of Governor Kim Reynold's lifting the March 19, 2020 proclamation all future Public Service Council Committee meetings will be held in person in the Training Room located at City Hall. He noted a Microsoft Teams electronic meeting invite will continue to be provided.

**5. Other Matters:**

Councilmember McKinney mentioned that he was contacted by a resident regarding the location of a fire hydrant and inquired as to what role the City has regarding the placement of fire hydrants in the right of way adjacent to private property. The resident desires to relocate their driveway based on where they were told by Water Works the fire hydrant would be installed. They later found out that the fire hydrant was installed in a different location which impacts plans to widen the driveway.

City Engineer, Brian Hemesath responded that the City reviews all utility plans and as long as the location meets City requirements, the plans are typically approved. Speaking to this specific location Mr. Hemesath explained there may have been a conflict with the original location resulting in Water Works having to select a different spot in the same general location. Mr. Hemesath stated he would follow up with Councilmember McKinney and City Manager Tom Hadden regarding the matter.

The meeting adjourned at 12:32 pm. The next Public Services Council Committee meeting is scheduled for August 9<sup>th</sup>, 2021.

A recording was made. Respectfully submitted by Juanita Greer, Secretary.