

**CITY OF HAM LAKE
CITY COUNCIL AND ECONOMIC DEVELOPMENT AUTHORITY MINUTES
MONDAY, DECEMBER 19, 2022**

The Ham Lake City Council and Economic Development Authority met for its regular meeting on Monday, December 19, 2022 at 6:00 p.m. in the Council Chambers at the Ham Lake City Hall located at 15544 Central Avenue NE in Ham Lake, Minnesota.

MEMBERS PRESENT: Mayor Brian Kirkham and Councilmembers Gary Kirkeide, Al Parranto and Jesse Wilken

MEMBERS ABSENT: Councilmember Jim Doyle

OTHERS PRESENT: City Attorney, Scott Baumgartner; City Engineer, Tom Collins; City Administrator, Denise Webster; and Deputy City Clerk, Dawnette Shimek

1.0 CALL TO ORDER - 6:00 P.M. – Pledge of Allegiance

Mayor Kirkham called the meeting to order and the Pledge of Allegiance was recited by all in attendance.

2.0 PUBLIC COMMENT

Chad Bakkene, 18046 Concord Drive NE, stated that he was issued a Special Home Occupation Permit on September 6, 2022 to operate a machine and fabrication shop. Mr. Bakkene stated that he is unable to obtain his Federal Firearms License until the City changes the City Code to allow customer traffic. Mr. Bakkene asked if the City could amend his permit at this time regarding customer traffic so he can proceed in obtaining his Federal Firearms License and not be held up any longer. Administrator Webster explained that the process for amending the City Code. Administrator Webster stated that once the Ordinance to amend the City Code is adopted by the City Council and published in the City's qualified newspaper, the Ordinance will go into effect 30 days from that publication date, which would be February 18, 2023.

3.0 SPECIAL APPEARANCES/PUBLIC HEARINGS

3.1 Commander Paul Lenzmeier, Anoka County Sheriff's Office Monthly Report

Commander Lenzmeier gave a summary of the Sheriff's Report for the month of November 2022.

4.0 CONSENT AGENDA

These items are considered to be routine and will be enacted in one motion. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Agenda and considered in normal sequence. (All items listed on the Consent Agenda are recommended for approval.)

4.1 Approval of minutes of December 5, 2022

4.2 Approval of claims in the amount of \$716,121.09

4.3 Approval of the Position Classification and Compensation Study

4.4 Approval of Resolution No. 22-46 replacing City-Wide Outdoor Warning Sirens using Cable Funds and American Rescue Plan Act (ARPA) Funds

4.5 Approval of not waiving the monetary limits on municipal tort liability coverage

4.6 Approval of Resolution No. 22-47 for the State of Minnesota Agency Agreement for Federal Participation in Construction

4.7 Road Committee Recommendations:

- 1) Approval of the Plans and Specifications for the 2023 overlay projects and authorization to advertise for bids

Mayor Kirkham requested that item 4.3 be removed from the consent agenda. **Motion by Kirkeide, seconded by Parranto, to approve the December 19, 2022 consent agenda with the omission of item 4.3 Approval of the Position Classification and Compensation Study. All present in favor, motion carried.**

Mayor Kirkham stated that he would like to Position Classification and Compensation Study referred back to the Personnel Committee for review.

5.0 PLANNING COMMISSION RECOMMENDATIONS – None

6.0 ECONOMIC DEVELOPMENT AUTHORITY – None

7.0 APPEARANCES – None

8.0 CITY ATTORNEY – None

9.0 CITY ENGINEER

Engineer Collins stated that he and Administrator Webster met with the community members of the SRWMO (Sunrise River Watershed Management Organization) and the revised budget amount for the City of Ham Lake for 2024 rose from \$4,400.00 to \$5,300.00. Engineer Collins asked the City Council the following questions being asked by the SRWMO:

1. Does the City agree with the proposed funding formula? The Ham Lake City Council does not agree with the proposed funding formula (scenario 4) for the purposes of determining the proportionate share of the SRWMO budget each member community would contribute annually.
2. Does the City intend to withdraw from the SRWMO and its Joint Power Agreement (JPA) and if so, the timeline which you intend to pursue this action. Ham Lake intends on pursuing withdrawal from the SRWMO. There will be discussions with the Minnesota Board of Water and Soil Resources (BWSR) and the Coon Creek Watershed District in the near future regarding the Council direction to pursue withdrawal. If the City is withdrawing, because there is no other option, then the City will withdraw November 1, 2023 per item 4.2 of the Joint Powers Agreement.
3. The City does not plan to participate in the 2024 budget process, including timely ratification and utilizing the funding formula agreed to by the three JPA cites present at the December 6, 2022 meeting. As previously discussed, the City would only participate in the budget process if Scenario 1A was chosen. The City may also participate if Scenario 4A was chosen.
4. The Ham Lake City Council approved the payment of the invoices for the SRWMO and the agreed upon \$2000 for the work involved in updating the current JPA document at their December 19, 2022 meeting.

Engineer Collins stated that the SRWMO is also proposing to change the JPA to change the requirement of a unanimous vote for approvals to a majority (3/4 cities approval) vote. **It was the consensus of the City Council to move forward with the process of withdrawing from the Sunrise River Watershed Management Organization.**

10.0 CITY ADMINISTRATOR – None

11.0 COUNCIL BUSINESS

11.1 Committee Reports - None

11.2 Discussion of dredging the channel between South Coon Lake and Coon Lake and the pathway
Mayor Kirkham stated that this was last discussed on June 20, 2022 and residents had questions for the City Council that the Council did not have answers for at that time. Mayor Kirkham stated staff was directed to further review the subject. Mayor Kirkham stated at that time the City Council agreed that the City does not do dredging of any ditches in the City of Ham Lake. Mayor Kirkham stated some residents believe that the City had done some dredging on this ditch. If so, it was done in the late 1990's and if it was done, it was not done legally. Mayor Kirkham stated that this was forwarded to the Sunrise Watershed Management Organization (SRWMO) and they came back and stated that this is not a project that they would do. Mayor Kirkham stated in October the City Council did a bus tour to look at City Streets and also to stop and look at the channel. Mayor Kirkham stated that one thing they could see is that we are in a drought as they could see the stain on the concrete that appears to be three-feet above the current water level. Mayor Kirkham stated that Attorney Baumgartner and Engineer Collins were asked to review the history of the ditch.

Attorney Baumgartner stated that they have met with staff on various occasions to talk about the history of the ditch. Attorney Baumgartner stated that when reviewing the plat of Hiawatha Beach which goes back to 1928, the plat shows a ditch and path; the question was whether or not the City had an obligation to maintain that as some type of water course, waterway or to travel between the lakes. Attorney Baumgartner stated that historically, there is no documentation that obligates the City to maintain or make that a navigable waterway. The plat map shows it as a ditch and the purpose of a ditch was to alleviate some flooding from one side to the other, like a spillway. Attorney Baumgartner stated that the channel in question is actually a ditch and the purpose of the ditch is to move water to alleviate any potential flooding concerns; not for navigable purposes or to traverse between the lakes. Attorney Baumgartner stated that the City's prior Attorney, Bill Dorn, reviewed this matter in 2011 and had the same conclusion that there is no obligation for the City to maintain this for any navigable water purpose. Attorney Baumgartner stated that the permit from the Department of Natural Resources (DNR) is a permissible permit; meaning it is not a mandatory obligatory permit, it is permissible to do dredging one-time. Attorney Baumgartner stated staff followed up with the DNR to inquire if dredging the ditch is something that should be done and the DNR does not recommend dredging and actually tends to be more hands-off to keep things more natural and not touched. Attorney Baumgartner stated that the DNR would be more concerned if it were an actual waterway, which the criteria is identified in the permit. Attorney Baumgartner stated that he would not envision the DNR to be on board in any way to maintain the ditch as a navigable waterway, but as a ditch with the purpose to move water to alleviate any potential flooding concerns by moving water from one side to the other. Attorney Baumgartner stated from a legal standpoint the City undertaking any kind of obligation when they do not have to would be putting themselves in potential risk of liability. Attorney Baumgartner stated that the wood support wall is not in good shape, so the concern would be any dredging that disrupts the stability of the wall would now add risk of additional liability. Attorney Baumgartner stated he has seen nothing that obligates the City to maintain the ditch in any documentation. In addition, Attorney Baumgartner stated by doing anything permissibly or taking the position of doing something, they would be putting the City in a position to incur the costs and add the risk of additional liability. Discussion followed regarding the wall and who may have installed it, if it were the property owner then it would depend on the City Council and what steps should be taken to fix the wall, along with the property owner encroaching into the easement area of the pathway and the wall.

Engineer Collins stated that the plat only dedicates the ditch, but does not indicate the width of the ditch. Engineer Collins stated in 2011 when Attorney Dorn was reviewing this matter, it was related more to the access and there was discussion of the liability, as well as the slopes not being adequate and there is no protection of a child falling. Engineer Collins stated that the DNR permit allows the area to be up to 10 feet wide with 2:1 slopes. Engineer Collins stated to get the 2:1 slopes, the area would need to be filled in and with this it would not meet the intention of any navigable water. Engineer Collins stated that a concern would be not to have the correct slopes. Attorney Baumgartner added that if the City would decide to dredge, the City would have to build the area back-up to meet the 2:1 slopes before they could take anything out to dredge the ditch. Mayor Kirkham added that the DNR permit states you cannot dredge out a ditch just to make navigable water. Councilmember Parranto stated that the City would be made liable with any work they would do in there. Councilmember Kirkham stated he is not for dredging the ditch, nor does the City have the equipment or the proper easements. Councilmember Kirkham stated that 20+ years ago, the City had a verbal agreement with the property owner to access to clear the brush; the new homeowner is not willing to work with the City to obtain the land.

Mike Novack, 17438 Hiawatha Beach Drive NE, stated that if the channel is just for flooding, the bridge should include a gate. Mr. Novack stated that there should be a rock wind wall to the north of the ditch to prevent ice from pushing sediment into the channel. Mayor Kirkham stated that they could form a lake association and stated that the bridge is actually a box culvert. Mr. Novack thought that is why their taxes were raised. Mayor Kirkham stated that there would be an itemized line on the tax statements if that were the case. Mr. Novack stated the retaining wall is collapsing. Councilmember Parranto agreed that the wall needs to be repaired.

Danielle Williams, 17444 Hiawatha Beach Drive NE, stated that it looks like an easy out for the City. Ms. Williams added that if the DNR is willing to give a permit every 5-years, they are giving their blessing to work on the ditch. Ms. Williams stated when talking with neighbors, the intention was that they would have access to Coon Lake. Ms. Williams stated concerns regarding the wall coming down and overgrown trees and asked who is responsible to maintain these. Ms. Williams added that her worry is with the lack of activity on South Coon Lake, the lily pads are going to take over South Coon Lake and without the lake, their property values will go down. Ms. Williams stated in the past the Coon Lake Lake Association has not wanted to include South Coon Lake in their association. Ms. Williams added that there are 40 houses on South Coon Lake. Mayor Kirkham stated that as a lake association they can apply for grants to get the association going. Mayor Kirkham stated that maintenance of the ditch is not in the city budget. Ms. Williams stated that she feels disrespected and hurtful to not have the maintenance of Coon Lake done by the City. Engineer Collins stated that the trees are on private property on the northwest side of the channel. The City had a verbal agreement with the previous owner to access the property, but the property has since been sold. The City has spoken with the current owner and the owner is not willing to give permission to the City to access the property. Mayor Kirkham stated that the City does not do dredging; the City does not have the equipment or the easements. Attorney Baumgartner stated that the permit was issued one time, transferred and renewed every five years. Currently the permit is for 2020-2025. Attorney Baumgartner stated he did not see anything in the records regarding dredging. Ms. Williams stated that it was voiced in the past that there was lack of documentation regarding this matter. Mayor Kirkham stated that if anything was done in the past it was most likely done illegally. Ms. Williams asked if there is a new direction the City and residents of South Coon Lake can take together to continue conversation regarding rocks for a sediment break.

Mike Novack asked if the City could fix the wall and place rocks for a water break to stop the sediment from coming into the channel. Mr. Novack stated that everything went south when the bridge was installed. Discussion followed regarding the sand and sediment issue being alleviated by adding rocks for a water break, and it was determined that the DNR would need to do this. Discussion followed regarding the water level and that there has been a drought and snow and rain are needed to raise the water level.

Ted Ankrum, 17521 Interlachen Drive NE, sated he just read the minutes from the last time this issue was discussed and agrees that the wall needs to be repaired and the septic and pathway need to be addressed on the southeast side of the channel.

Jeff Wisner, 17439 Interlachen Drive NE, stated that he is not against the maintenance, he just does not want to pay for it. Mr. Wisner added that the Lake, City and DNR need to form a partnership and figure out a plan.

Ruth Novack, 17438 Hiawatha Beach Drive NE, stated she would like to be able to remove lily pads from the lake before it grows over. Mayor Kirkham stated that the DNR will need to let them know what can and cannot be done with the lily pads. Councilmember Wilken added that South Coon Lake is not classified as a recreational lake, but as a natural environmental lake and Coon Lake is classified as a recreational lake. Attorney Baumgartner stated that an association was recently formed for Crooked Lake located in Coon Rapids and the residents could contact them on the process of creating a lake association. **It was the consensus of the City Council to have staff look into costs to repair the retaining wall located in the channel between South Coon Lake and Coon Lake.**

11.3 Announcements and future agenda items

Councilmember Wilken thanked the Public Works Department for a good job of snowplowing.

Councilmember Parranto stated he has had conversations with residents regarding the failure at the State and Federal level of not getting ahead or moving forward to keep lower taxes. Councilmember Parranto stated that they do not want the City to fall behind and would rather give more. Councilmember Kirkeide has also received comments that people can live with a tax increase.

Motion by Kirkeide, seconded by Parranto, to adjourn the meeting at 7:07 p.m. All present in favor, motion carried.

Dawnette Shimek, Deputy City Clerk