

**BAXTER CITY COUNCIL MINUTES**  
**October 17, 2017**

**1. Call Meeting to Order**

Vice Mayor Todd Holman called the meeting to order at 7:00 p.m.

**2. Roll Call**

Vice Mayor Todd Holman and Council Members Quinn Nystrom and Mark Cross.  
Mayor Darrel Olson and Council Member Steve Barrows were absent.

Staff present: City Administrator Bradley Chapulis, Assistant City Administrator Kelly Steele, Community Development Director Josh Doty, Sergeant David Timm, Finance Director Jeremy Vacinek, and Public Works Director Trevor Walter

**3. Pledge of Allegiance**

All joined in the Pledge of Allegiance

**4. Public Comments**

None

**5. Consent Agenda**

Vice Mayor Holman explained the council ran out of time during the work session to discuss the BLAEDC unified fund and consideration of setting a public hearing. Vice Mayor Holman asked the council to consider adding the unified fund discussion to Other Business.

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to amend the agenda to include the BLAEDC unified fund discussion under Other Business.  
Motion carried unanimously.

**A. Approve City Council Minutes from October 3, 2017**

**B. Approve City Council Work Session Minutes from October 3, 2017**

**C. Approve the Payment of Bills and Finance Report**

**D. Accept with Gratitude a \$1,000 Donation from the Kiwanis Club for the 2017 Children's Triathlon**

**E. Adopt Resolution 2017-102, Setting the 2017 Improvement Projects Final Special Assessment Interest Rate and Financing the Projects in 2018**

**F. Authorize Staff to Execute Memorandum of Agreement for Student Training Internship with St. Cloud Technical and Community College and Approve Appointment of Student Intern**

**G. Accept the Utilities Commission Minutes from October 4, 2017**

**1. Approve the 2017 Lift Station No. 3 Re-route Improvements Project Plans and Specifications and authorize staff to bid the project**

**2. Approve the SEH Agreement for Professional Services in the not to exceed amount of \$9,880.00 for the 2020 Fairview Road, Golf Course Drive, Excelsior Road and Trail Connection Improvements Feasibility Report Additional Services**

3. **Approve the SEH Agreement for Professional Services in the not to exceed amount of \$1,500.00 for the 2019 Greenwood Road Improvements Feasibility Report**
4. **Approve the DeChantal Excavating, LLC Change Order No. 2 in the amount of \$6,814.30 for the 2017 Elder Drive Improvements Project**
5. **Approve the Tri-City Paving Inc. Partial Pay Estimate No. 1 in the amount of \$97,900.47 for the 2017 Mill & Overlay and Full Depth Reclamation Improvements Project and 2017 Excelsior Road Residential Full Depth Reclamation Improvements Project.**
6. **Accept the Baxter Drive Improvements Feasibility Report with the addition of the replacement of the 42-inch storm sewer line within city right-of-way**
- H. **Approve the Crow Wing County Classification to Non-Conservation and Future Sale Thereof for the Tax Forfeited Lots 17 and South-Half of Lot 18, Block 1 Kirkwood and Lots 1-3, Block 1 White Sand North Parcels with the Outstanding Special Assessments Reaffirmed**
- I. **Accept Planning Commission Minutes from October 10, 2017**
- J. **Adopt Resolution 2017-107 Approving Plans and Specifications and Ordering Advertisement for Bids for the 2018 Excelsior Road Project**

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to approve the Consent Agenda with the exception of consent agenda item G6. Motion carried unanimously.

## **6. Pulled Agenda Items**

Vice Mayor Holman asked to pull consent agenda item G6 to inquire about the replacement of the 42" storm sewer. Based on the work session discussion, this storm sewer line would only be replaced if needed. Public Works Director Walter confirmed the line would be televised and only replaced if needed.

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to approve Consent Agenda item G6 Accepting the Baxter Drive Improvements Feasibility Report with the addition of the replacement of the 42-inch storm sewer line within city right-of-way, if needed. Motion carried unanimously.

## **7. Other Business**

### **A. Planning and Zoning Actions**

#### **1. Adopt Resolution 2017-103 approving a Variance to the front yard setback for a covered front entry way for property located at 6569 Mary Street**

Community Development Director Doty explained the request is for a nineteen-foot front yard setback variance. The applicant is proposing to construct a 7' by 5' covered front entryway to the home. The home was moved onto the property in 1985 and was placed with a 26' front yard setback when 30' was required at the time. Since then, the zoning code has been changed to require a 40' front yard setback. The applicant is requesting the variance to allow for the front covered entryway. The Planning and Zoning Commission has recommended approval.

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to adopt Resolution 2017-103 approving a Variance to the front yard setback for a covered front entry way for property located at 6569 Mary Street, subject to the findings of facts. Motion carried unanimously.

**2. Adopt Resolution 2017-104 approving a Variance to the side yard setback for an existing single family home and Adopt Resolution 2017-105 denying a Variance for an existing window well for property located at 14534 Grand Oaks Drive**

Community Development Director Doty explained the request is for two variances. In May 2017 the city issued a building permit to allow the construction of the new home. On August 23, 2017 the city issued a certificate of occupancy. On the same day the city received a complaint regarding the southside setback to the home and the window well. The city required the builder to complete an as built survey after the home was completed to determine the existence of setback encroachments. There are different ways to interpret the ordinances, so staff took the conservative approach to require the variances. The building permit plans did show a ten-foot setback and it was measured during the foundation inspection. The foundation has insulating foam added which contributes to the setback variance to the home and foundation. Based on a 30” encroachment of a window well there is a need for a variance to meet both the city code and building code. To meet the requirements, the home would have been moved 1’-3” further to the north. The Planning Commission has reviewed the variances and has recommended approval of the setback variance and denial of the window well setback variance.

The City has received two emails regarding the variance request.

The staff recommendation was for approval of both variances.

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to Adopt Resolution 2017-104 approving a Variance to the side yard setback for an existing single-family home for property located at 14534 Grand Oaks Drive. Motion carried unanimously.

The Planning and Zoning Commission had recommended denial of the window well variance and staff had recommended approval. Vice Mayor opened the meeting for discussion on the 6.2’ window well variance request.

Community Development Director Doty explained the Planning and Zoning Commission discussion found there are other options such as removing the window well. To remove the window well it would require modifications to the home due to the bedroom requiring a window well. The applicant could also purchase additional land to the south. Staff prepared the findings for the resolution between the Planning and Zoning Commission meeting and the Council meeting.

Staff recommended approval to the Planning and Zoning Commission due to practical difficulty of meeting the ordinance for both the home and window well. The window well is encroaching 6.2'. The window well is at grade and is not an excessive variance. There was a staff error with the zoning comment that was made stating the window well cannot exceed 30" into the required 10' setback. The applicant cannot meet the zoning code and also meet the building code without the house moving further north. Staff should have called this out on the plans. Due to the discrepancy, staff anticipates an ordinance change in the future to address the window well challenge. Staff will also review the foam measurement.

The council discussed if the window well is impacting the neighboring view.

Shawn Thayer, 14516 Grand Oaks, explained the window well is five to six inches above grade. The builder was aware of the situation. City staff did not make an error because the plans note the window well cannot exceed thirty inches.

Judith Norton, 14534 Grand Oaks Drive, inquired if the council reviewed her letter and questioned why Mr. Thayer waited until the end of construction to file a complaint since he has watching the home construction. The window well is needed for a bedroom. Ms. Norton offered to install a fence along the lot line to eliminate Mr. Thayer's view of the window well. Ms. Norton explained Mr. Thayer has had a medium sized trailer in his backyard.

Mike Hormann, Preferred Construction of St. Cloud, submitted a letter for the council to review. Mr. Hormann discussed the window well with the building official and the building official allowed the window well to be installed. Mr. Hormann explained by state code, a window well cannot be less than 36". A layer could be removed from the window well, but rain water would flow into it.

Mr. Thayer explained he has the letter from the building official and that the building official made the statement after his complaint was filed.

Mr. Hormann explained the issue was brought up long before.

Community Development Director Doty spoke to Mr. Thayer before the council meeting and is not aware of any conversations the builder had with the building official before Mr. Thayer filed of the complaint.

Vice Mayor Holman explained if the council decides to approve the variance then the council needs to develop their own findings to support a change. The City has the authority to impose relevant conditions on a variance.

Council Member Cross inquired if landscaping or a fence would alleviate Mr. Thayer's concerns opposed to removing the window well.

Mr. Thayer explained landscaping will not make it better and that it should have never been done. Mr. Thayer still has not received an answer from the city about the placement of a window well.

Attorney Person explained in his experience it is standard practice to measure the setback and to not consider foam and other items that make an incidental impact. The practical difficulty to move a house is very expensive. In other cases where the home owner purposefully built over the lot line, and by a significant amount, the local government made findings to start construction over again

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to grant the variance in resolution 2017-105 to allow the window well variance of 1.3' and the findings be that the ordinance conflicts with the building code and the city should look at it as a separate issue. Attorney Person explained the setback variance should be based on the information submitted in the variance application and the council should repeat staff findings for approval presented to the Planning and Zoning Commission. A friendly amendment to include staff's recommendation presented at the Planning and Zoning Commission to support the variance. Motion carried unanimously.

**3. Adopt Resolution 2017-106 approving a Variance to the lake setback of White Sand Lake to allow the construction of a paver patio at 14270 Memorywood Drive**

Community Development Director Doty explained the applicant is proposing to construct a paver patio where a freestanding deck/porch is currently located and has requested a variance to allow a 27.37-foot encroachment into the 75-foot setback to the ordinary high-water level of White Sand Lake. The change from a deck to a porch increases the pervious surface which requires a variance. There is a slight reduction from the lake setback. The Planning and Zoning Commission has recommended approval. The applicant is compliant with the 25% resulting in not requiring other best management practices to treat storm water runoff.

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to Adopt Resolution 2017-106 approving a Variance to the lake setback of White Sand Lake to allow the construction of a paver patio at 14270 Memorywood Drive, subject to the findings of facts. Motion carried unanimously.

**B. BLAEDC Unified Fund – Continued Discussion**

Staff sent out a draft resolution for consideration for scheduling a public hearing. City Administrator Chapulis wanted time for an internal conversation. The city has approximately \$435,000 that can be contributed to the fund. Federal funds would have to meet federal lending requirements the first time the funds are lent. The BUF board would review loan requests. The City can keep the funds or participate with the BUF board. A public hearing is required before the city can allocate funds to a local development organization. Baxter tends to receive economic impact from

development in neighboring areas. Some questions asked by the council have not been answered. Those questions include what is the criteria used by the BUF board to make their decisions, how is the process transparent, if the BUF board is assisting with gap funding, is the board building businesses that create jobs. Partnering with the BUF board is a permanent decision.

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to table until the questions asked tonight can be addressed and to allow the discussion with the full council. Motion carried unanimously.

## **8. Council Comments**

**Quinn Nystrom:** Will be absent for the October 25 work session.

**Todd Holman:** Will be absent for the October 25 work session.

**Mark Cross:** Reminded motorists to watch out for motorcycles and deer.

## **9. City Administrator's Report**

City Administrator Chapulis explained staff is seeking to reschedule the October 25 work session to either November 13 or 15. The council consensus was to hold the work session on November 13 at 7 p.m. to review the utilities budget and capital improvements plan. City Administrator Chapulis reminded the council of the administrative hearing on November 3 at 9 a.m. at Land Services.

## **10. City Attorney's Report**

### **A. Closed Session, Minnesota Statute 13D.05, subd. 3 (c), Purchase of Property**

City Attorney Person asked the council to motion to enter into a closed session under Minnesota Statute 13D.05, subd. 3 (c) to discuss the purchase of property.

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to enter a closed session under Minnesota Statute 13D.05, subd. 3 (c) at 8:09p.m. Motion carried unanimously.

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to return to open session at 8:17 p.m. Motion carried unanimously.

### **B. Adopt Resolution 2017-108 Authorizing the Presentation of Offers to Property Owners and to Acquire the Remaining Property Areas Needed for the Cypress Drive Improvement Project**

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to Adopt Resolution No. 2017-108 Authorizing the Presentation of Offers to Property Owners and to Acquire the Remaining Property Areas Needed for the Cypress Drive Improvement Project. Motion carried unanimously.

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to accept the purchase agreement for the Cypress parcel. Motion carried unanimously.

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to accept the offer to reimburse the tenant in a city owned home for relocation benefits. Motion carried unanimously.

**11. Adjourn**

**MOTION** by Council Member Cross, seconded by Council Member Nystrom to adjourn at 8:18p.m. Motion carried unanimously.

Approved by:

Respectfully submitted,

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Darrel Olson  
Mayor

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Kelly Steele  
Assistant City Administrator