

**Public Meeting
St. Stephen City Council
Agenda – May 9, 2022**

Call to Order: 6:30 PM

Pledge of Allegiance

Approval of Agenda

Business:

Discuss the progress and finalization of the
12th Avenue NE Road Project

Meeting Adjourned

2 6th Avenue SE
St. Stephen, MN 56375
320-251-0964

CITY OFFICIALS

Lisa Marvin
Mayor

Gene Skaj
Council Member

Danita Traut
Council Member

Steve Trobec
Council Member

Tom Vouk
Council Member

Kurt Niemeyer
Treasurer

Julie Jacobs
City Clerk

Website:
cityofststephen.com

SPECIAL MEETING MINUTES

St. Stephen City Council

May 9, 2022

CALL TO ORDER: 6:30 P.M.

PLEDGE OF ALLEGIANCE: Led by Lisa Marvin

MEMBERS PRESENT: Lisa Marvin – Mayor, Gene Skaj, Danita Traut, Steve Trobec, and Thomas Vouk

ALSO PRESENT: Julie Jacobs, City Clerk

GUESTS: Jason Ferche, Liz Halet, City Attorney, Randy Sabart, City Engineer, and Dan Schultz

APPROVAL OF AGENDA: A motion was made by Steve Trobec, seconded by Danita Traut, to approve the agenda. All in favor, motion carried.

Lisa Marvin thanked Jason Ferche for attending the meeting.

BUSINESS:

Discuss the Progress and Finalization of the 12th Avenue NE Road Project. Lisa Marvin stated there are three areas in question, 1) reconstruction expectations of 12th Avenue, 2) executed copy of the development agreement, and 3) completion deadline update.

Jason Ferche shared with the East Crest development negotiations he offered and agreed to pave the street. Jason stated Randy Sabart, city engineer, stated the City needed 12th Avenue widen too. Jason stated he agreed to widen 12th Avenue too, and the City would take care of receiving easements from residents. Jason shared there was discussion about the culverts, and to complete this project he would take care of the culverts. Jason stated he was not going to take care of any soil or graveling of the road. He felt these conditions were already there. This will go up to 2nd Street NE entrance. This was Jason's understanding of the agreement when the plat was approved. Jason is happy to do these items...widen the road, fix the culvert, if need be, and do the paving as required.

Randy Sabart stated as for timeline and what Jason is describing, Randy agrees. At the time of the Developers' Agreement the City had not acquire all the Right a Ways for 12th Avenue. Which was an ongoing process from 2018 to 2020. Also, the soil borings weren't collected until 2020. When the City executed the Developer's Agreement, the City didn't know what type of soils existed. A better understanding came when the soil borings were conducted. Randy contacted Jason last fall, and this spring, to schedule the construction improvements. Jason and Randy disagreed with the understanding of the work. The 32 feet was correct, the discussion was like 6th Avenue. What does reconstruct or construct entail. Randy understood differently relative to the grading and the gravel. Commonalities were on the paving, the culverts, and the limits to 2nd Street and County Road 5. The differences being the grading and gravel portion. Randy recommended a meeting with Jason and the City Council.

Lisa Marvin asked council members what they remembered, and old Planning Commission and City Council minutes were reviewed. Jason clarified he doesn't have a problem with the grading, it's the soil corrections. Jason stated there was discussion about this.

Noted by council members...1) made to specifications and design requirements; 2) never had all easements, didn't have soil tests, unknow of what's underneath; 3) wasn't on council at this time, what are soils like, a cost difference from what we thought and to now. Randy shared there was not before and after costs. At the time it would have been a developer's driven project, there wasn't even an engineer's cost at the time. Costs were put together in 2021, when plans were shared with Jason.

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Lisa asked Dan Schutz, Chair of Planning Commission, what he remembers. Dan stated there were lengthy discussions with the 12th Avenue project. It's a City Council request of Planning Commission that streets are brought up to specifications. Dan remembers a past mayor stating the City wouldn't allow a road not to be improved when a development is put in. Jason would like to see the minutes. Jason doesn't remember some of these conversations and he wouldn't have agreed to subgrade discretion. Jason asked why the City ordered the plans and specifications if it was the developer responsibility to have these ordered. Jason state the City is admitting some responsibility in this. Randy shared it was understood the City would design the improvements, and to Jason's point, if Jason had to design the improvement it would have been part of Jason's original submittal. Lisa explained this didn't occur due to the City didn't have easements at the time and this needed to be solved before the City could advance with this project. Jason commented its almost four years ago, we would have anticipated doing work shortly thereafter their construction. Not only the cost of asphalt has doubled, but there's substantial costs applied on him now because it's been so long. Jason stated it's not fair to receive this four years later saying he's responsible no matter what. Lisa stated its important to acknowledge there has been a lot of discussions over the years, and this shouldn't be a shock for Jason because Randy did speak with him this past fall and spring. It was apparent nothing was going to happen unless the City received all the easements. This was in process the whole time, and this took time. There's a lot of minutes to review that this was talked about, and Jason can look at these.

Lisa asked Liz Halet, the City Attorney, if she had comments. Liz shared she was not the City Attorney at this time, and hasn't had a chance to read the minutes, but from a legal standpoint, with her review of the Developer's Agreement and the ordinance how its referenced in the Developer's Agreement she looks at this how a court would look at it, and from her perspective unless the specifications that are referenced are dramatically different it seems clear, particularly provision 3.0 on page 2. Liz stated from a legal point, they wouldn't be looking at meeting minutes, they'll be looking at the Developer's Agreement. Jason referred to 3.3 (completion deadlines) and stated this goes into detail of what 3.0 states and requires. Jason stated to keep in mind when this was drafted the plat was phase one. Jason stated it wasn't until this was drafted that they platted the whole property, phase one and two at one time. Liz commented there was an amendment for completion deadlines.

Inquired when the City received the Right A Way for this road. Date unknown. Inquired why this date was needed. Summarized if the City didn't have to wait so long for things, it would have been completed correctly. Jason stated this hasn't benefited him. Lisa commented the price of asphalt is what it is, and we can't control that. The problem here tonight is that fresh asphalt can't be placed on a road that's not going to hold it. Inquired if the development would have been allowed to go forward without improvements to 12th Avenue, being its access to the other addition. Randy stated they want sub developments to have two forms of ingress and egress. Randy doesn't recall if this was discussed. Lisa stated while she was on the Planning Commission, she remembers this being discussed. Inquired how do we resolve this. Dan Schultz suggested cost estimates based on full improvement of the street. Hard for council to decide on a course of action without seeing numbers. What is the City looking for from the developer, looking for from the City. Lisa thinks were at a different predicament, Liz has stated the legal action and it simply doesn't fall on the City. Jason has a different opinion. Jason stated he didn't bring his attorney, but his attorney would have said there should have been something as an exhibit showing this with the development agreement. Jason stated you can't hold a developer for eternity. Unfortunate we are here four years later, Jason wished he could have been paved the road right away. Lisa asked Jason why he thinks the City didn't want him to tar it right away. Jason answered he's assuming because it wasn't going to last.

Lisa asked Randy and Liz for ideas, the City wants to work with Jason. Randy stated what's different today than 2020, the Developer's Agreement clearly states a 32 wide street and the limits from County Road 5 to Second

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Street. Randy said what is different is the amount of subgrade correction needing to be done, it wasn't quantified until plans were prepared. Randy and Jason disagree about the gravel. You can't widen a 32-foot road without the gravel. The cost difference is the agria base happens for subgrade correction. Jason agreed this is the difference. Randy stated there's estimated quantities from last fall with Jason. Jason was asked how much more this is going to cost him with the fill and the gravel leveling. Jason doesn't want to guess he'd have to put some numbers together. Lisa shared tonight we are trying to conclude how to move forward. Randy stated if it helps, he can tell the City what the estimate were in June 2021. Baring what Jason's cost would be today. Randy shared estimations for gravel \$35,000, sandy soils beneath the gravel \$136,000, sub grade excavation under the gravel \$65,000, total cost \$235,000 to widen the road and correct the subgrade. Lisa asked Jason what thoughts he had for widening the road. Jason shared there were excess materials on the project at that time. Build the road and gravel the edges to match the existing. Unfortunate its four years later.

Jason suggested having an amendment to the Developer's Agreement to clarify things. Jason inquired if all easements are in place. Randy stated the City has 66 feet up to Second Street acquired. Lisa stated the City received what was needed from the DNR. Jason inquired if the City has some place to put the excess materials now. Randy stated the City does not, most of the materials would have been hauled out. Jason asked if soil borings were completed. Randy shared with Jason the three borings that were taken between 2nd and 5th Streets. Jason inquired what happen with the peat subgrade. Randy stated it's like 6th Avenue using geogrid. Could do one of two things, 1) build over the poor soils, or 2) excavate deep. Most economical point would be a geogrid to provide the stability. With the peat the City wasn't proposing to dig through the peat, but to keep it stable. Jason stated he didn't know there was peat there. Jason shared a county project they filled 20 feet deep or use geogrid, which isn't cheap. Real cost why he wasn't saying he would take this project on. We had this discussion. Randy shared Jason and him had discussions about the subgrade plans, but he agrees the presence of peat and geogrid was not part of that discussion. Randy can't comment on what Jason was planning for 12th at the time of the Developer's Agreement. Liz stated she's confident there is not a prevision in the Developer's Agreement stating if something unexpected shall arise up to a certain numerical limit cost, that we would re-evaluate, often this is requested, but that wasn't done here. Tom Vouk stated if the road was not going to be built to specifications, and the City wouldn't have purchased all the Right a Ways, he would not have agreed to this development. Lisa agreed with Jason there was a lot of discussions about this road, but the City would follow the road ordinance due to having bad experiences in the past with roads, and developers leaving before the project was complete. Danita stated it does state in the Developer's Agreement they agreed to construct a 33-foot roadway.

Lisa commented roads are a touchy discussion with the City and are aware the City has big projects coming with 30 year old roads. Timing is never good for a road. Lisa doesn't know how to resolve this when there's two ways of how to construct a road. Liz shared there's always the option to amend the Developer's Agreement, unsure what the City would want and gave a few examples. Liz stated the City can take action from what is stated in the Developer's Agreement so the road is built to the specifications. Lisa asked Jason with his contacts and ability as a developer what can he do, and what is he willing to do. Jason shared there are three parts in the Developer's Agreement, change in conditions or not, we could argue this all day long, the geogrid was not discussed or anticipated, and the sand. The last thing Jason wants is another fight. Jason stated there are things in the Developer's Agreement that are wrong, that he didn't agree to. Jason wanted this road done. Lisa commented Jason knew better before signing the Developer's Agreement. Lisa asked when the City takes the road, what is the responsibility and how does that work. Randy stated even with the improvements Jason's filled, once there's mutual agreement the construction is complete, and original documents have been filled, with recommendation from the city engineer and the City can accept the public improvements. Once the City accepts, the developer designates to the City. The City takes ownership and responsibility of the road.

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Jason stated in the Developer's Agreement it originally stated phase 1 and phase 2. When this changed to do in one plat it didn't get referenced in the Developer's Agreement. Randy stated yes this was the 2020 amendment the City Attorney sent to Jason, a revision in the completion dates. The record of this will need to be looked up. Jason's concern is how it's being referenced in the description of the plat in the Developer's Agreement, the way it is interpreted. Jason wants more clarification that he's not liable to build more beyond this. Lisa wants to know what Jason is worried about. She wants it clear and to be able to answer him. Jason stated in the Developer's Agreement it states he must make it all one, that he's to construct it up until the end. Randy believes there's mutual understanding that Jason agreed to pave up to 2nd Street and the City accepted this. Jason is saying it doesn't say this in the Developer's Agreement and he wants it clarified. It's a common understanding that everyone agrees 2nd Street is the limit. Danita referenced 3.1, this is where the clarification needs to be made. Dan Schultz shared the discussion about 12th Avenue having an in and out. Noted everyone agrees that Jason isn't expected to go north. Lisa stated the City wants to see this done right.

Jason asked Randy the reason for two different types of gravel. Randy stated it's a typo, it's not intended to be reclaimed, it was intended could we salvage 4 inches and reuse it. Jason inquired if the geogrid would be in certain locations, not the whole street. Randy anticipating adjacent to where the wetlands are on the west side where geogrid would need to be used. Randy's estimating 6,800 square yards, assume that its 40 feet wide, which is 1,500 feet long.

Jason shared there were discussions of the culvert, which was put in new by the County. What's the reason to replace it. Noted it wasn't set right. Randy shared there was additional culvert in there due to the widening of the road. Jerome Supan was passionate about this culvert, not a true grade in that culvert. Validated that claim. The amount of water it holds back is one and a half inches. Does it rise to level of reconstruction, that we should tear this out. Pipes have been in the ground for several years, not aware of any instability per Randy. Council agrees to add only to the end of the culvert. No need to replace the whole culvert.

Jason inquired if the soils are suitable soils could he construct this road without the sand if this is acceptable. Obviously, the peat area will need it, but once they start higher ground is that something that is necessary. Randy thinks it's necessary, go back to the discussion we had of building the roads as you have built. Your plan showed zero to two feet select granular borrow, when Jason chose to grade or farm the silty sands. Jason worked a lot with this, and many times they were tested and didn't pass subgrade. Yes, some of these silty sands if present could they be dried or compacted. How much time does Jason want to spend. Jason shared not a lot of time, but in the development, it was good material just a little moist. Worked well and the roads are good roads. Randy stated Braun Intertec was present to test, at least three or four road tests it took work.

Completion Date Update. Lisa Marvin stated if we can come to an agreement tonight that Jason will do the road as how the City envisioned, one thing that needs to be decided is a completion date. Randy commented with completion dates the City wants to work with the developer's plans. Jason stated the summer is almost full, probably next year. Jason will know more tomorrow. Lisa asked even how this has impacted him. Jason shared he can only do what he can do.

Lisa asked if there's agreement with the road and what it means to construct the road, asked if Jason could update Randy or Julie what he finds about completion. Jason will get the City more information about timeline this week. Can we agree on this road. Jason stated he's having a hard time accepting and agreeing with the geogrid and all the sand needed. Jason stated we had all these discussions, a little unfortunate we didn't have

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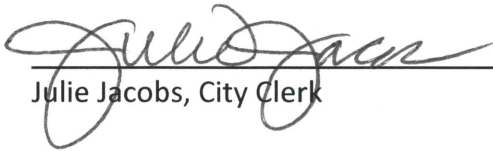
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more in writing for all our benefits. Jason wants to go back and quantify some of this and see what it looks like. Randy stated in fairness to Jason to allow him to assemble an estimate.

Lisa inquired with Liz if Jason agrees how to build the road would this require another special meeting. Liz stated this could happen at a regular meeting with a simple approval. The City paid for this special meeting and asked Jason to attend. Lisa asked Jason to do what he needs to do and to contact Randy. Randy shared if, to the extent, Jason and him aren't on the same page another special meeting may be necessary.

ADJOURNMENT: A motion was made by Gene Skaj, seconded by Tom Vouk, to adjourn the meeting. Meeting adjourned at 7:45 p.m.

Respectfully submitted,



Julie Jacobs, City Clerk



Lisa Marvin, City Mayor