Minutes
Minnetonka City Council
Monday, Aug. 6, 2018

1. Call to Order

Mayor Brad Wiersum called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Councilmembers Bob Ellingson, Patty Acomb, Mike Happe, Deb Calvert, and Mayor Wiersum were present. Councilmember Tim Bergstedt was excused.

4. Approval of Agenda

Calvert moved, Happe seconded a motion to accept the agenda with addenda to items 10B, 13B, and 14A. All voted "yes." Motion carried.

5. Approval of Minutes: None

6. Special Matters:

A. Appoint Rebecca K. Schack as Ward 2 Councilmember and administer Oath of Office

City Manager Geralyn Barone gave a staff report.

Calvert moved, Acomb seconded a motion to appoint Rebecca K. Schack, 3201 Plymouth Road, to replace Tony Wagner as the Ward 2 Minnetonka City Councilmember, and will fill the term of office through the end of 2019. All voted "yes." Motion carried.

City Clerk David Maeda administered the oath of office to Schack.

Schack thanked the council and staff for the guidance through the appointment process.

7. Reports from City Manager & Council Members

Barone reported on upcoming meetings and city events.

Calvert said she attended the League of Minnesota Cities Improving Service Delivery Policy Committee meeting.
Wiersum said he and Barone attended the League of Minnesota Cities Improving Fiscal Future Policy Committee meeting. He also attended his first League’s Executive Committee meeting. He noted the Tour de Tonka event was canceled the previous weekend due to a forecast for stormy weather. He said it was the right decision because it was in the best interest of the safety of the riders.

8. Citizens Wishing to Discuss Matters not on the Agenda

Mary McKee, Baker Road, said she was concerned about the proposed franchise “tax” that was being discussed. Currently there was an infrastructure “tax” on the city’s water bills. She was concerned with paying for recreational items on the utility bills. The funds should be for something that the city really needs, or to pay for an emergency.

Wiersum said the issue would be considered by the council in the near future, and there would be opportunity for public comment.

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

   A. Resolutions approving use of Hennepin County Affordable Housing Incentive Funds by Homes Within Reach

   Ellingson moved, Calvert seconded a motion to adopt resolution 2018-095 approving use of 2017/2018 Hennepin County Affordable Housing Incentive Funds by Homes Within Reach and resolution 2018-089 approving use of 2018/2019 Hennepin County Affordable Housing Incentive Funds by Homes Within Reach. All voted “yes.” Motion carried.

   B. Resolution awarding sale of approximately $10,000,000 General Obligation Utility Revenue Bonds, Series 2018A

   Ellingson moved, Calvert seconded a motion to adopt resolution 2018-090 awarding the sale of approximately $10,000,000 General Obligation Utility Revenue Bonds, Series 2018A. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes:

   A. Resolution approving a conditional use permit for an accessory apartment at 2201 Hillside Circle

   Ellingson moved, Acomb seconded a motion to adopt resolution 2018-xxx approving a conditional use permit, with wetland setback variance, for an accessory apartment at 2201 Hillside Circle. All voted “yes.” Motion carried.

12. Introduction of Ordinances:
A. Ordinance amending the Minnetonka Corporate Center Master Development Plan for a two level parking ramp at 12501 Whitewater Drive

Assistant City Planner Susan Thomas gave the staff report.

Happe moved, Schack seconded a motion to introduce the ordinance, refer it to the planning commission. All voted “yes.” Motion carried.

B. Ordinance regarding senior citizens advisory board member terms

Barone gave the staff report.

Calvert moved, Happe seconded a motion to introduce the ordinance. All voted “yes.” Motion carried.

13. Public Hearings:

A. Surplus CDBG Block Grant Funds from program years 2015, 2016, and 2017

Community Development Director Julie Wischnack gave the staff report.

Wiersum opened the public hearing at 7:04 p.m. No one spoke. He closed the public hearing at 7:04 p.m.

Happe moved, Calvert seconded a motion to adopt resolution 2018-092 reallocating the 2015, 2016, and 2017 CDBG funds and to approve the agreement between Hennepin County and the City of Minnetonka to administer the 2015, 2016, and 2017 Small Projects Rehabilitation funds on behalf of the city. All voted “yes.” Motion carried.

B. Items related to grant funding agreements for Newport Midwest LLC, dba The Mariner, at 10400, 10500 and 15500 Bren Road E.

Wischnack gave the staff report.

Wiersum opened the public hearing at 7:08 p.m.

Jim Fallon, 4149 Baker Road, asked for the location of the proposal. He asked if there were project agreements in place that included hiring local contractors. Wischnack said because city funds were not being used, the city would not regulate the contract language.

Wiersum closed the public hearing at 7:11 p.m.

Calvert moved, Acomb seconded a motion to approve the Demonstration Account Development Grant Program -TOD Program- (Metropolitan Livable
Communities Act Grant Agreement) with Metropolitan Council for TOD funds, and the subrecipient agreement between the City of Minnetonka and Newport Midwest; and to approve the Local Housing Incentives Account (Livable Communities Act Grant Agreement) with Metropolitan Council for LHIA funds, and the subrecipient agreement between the City of Minnetonka and Newport Midwest, LLC; and to adopt resolution 2018-093 for the 2018 funds authorizing the use of Hennepin County Affordable Housing Incentive Funds in Minnetonka by Newport Midwest, LLC. All voted “yes.” Motion carried.

C. Temporary on-sale liquor license for The Rotary Club of Minnetonka Foundation, 12401 Wayzata Blvd.

Barone gave the staff report.

Wiersum opened the public hearing at 7:12 p.m.

Chris Rosenlund from the Minnetonka Rotary Club Foundation provided information about the city sponsored Rock at Ridgedale event.

Wiersum closed the public hearing at 7:14 p.m.

Acomb moved, Schack seconded a motion to grant the temporary liquor license in connection with the event for The Rotary Club of Minnetonka Foundation. All voted “yes.” Motion carried.

D. Temporary on-sale liquor license for The Rotary Club of Minnetonka Foundation, 14350 County Road 62

Barone gave the staff report.

Wiersum opened the public hearing at 7:15 p.m.

Rosenlund provided information about the Links and Libation fundraising event.

Wiersum closed the public hearing at 7:19 p.m.

Acomb moved, Schack seconded a motion to grant the temporary liquor license in connection with a fundraising event, including outdoor events, for The Rotary Club of Minnetonka Foundation. All voted “yes.” Motion carried.

14. Other Business:

A. Consideration of petition for environmental assessment worksheet for Lone Lake Park – Mountain Bike Trail

Barone, Recreation Services Director Kelly O’Dea, City Attorney Corrine Heine, and Natural Resources Manager Jo Colleran gave the staff report.
Acomb asked how long the EAW process took for the Dominium development. Wischnack said it took around five months. Acomb asked what would happen with the project if during the U.S. Fish and Wildlife visit of the site in the spring the Rusty Patch Bumble Bee was spotted. Colleran said it would really depend on the details. She said if the U.S. Fish and Wildlife felt there was an issue with the habitat, they might issue a permit with requirements to allow the work to occur. Acomb asked if there were herbaceous plants, would they be transplanted or avoided. Colleran said it would probably be a combination of both and that transplanting the plants in other areas had been successful.

Ellingson asked for more information about the size of the park and the size of the trails. Colleran said the park was 146 acres. The area of undeveloped land was 132 acres. The finished trail would be between 18 and 24 inches wide but the initial construction would be three feet wide. This equated to 1.7 acres of initial disturbance. Ellingson said that it felt like this was minimizing the area of the park that had trails when most of the park would have trails. Colleran said she was only speaking to the potential new trail area construction. Currently there were three miles of informal trails in the park. These informal trails were areas people adopted that had been deer paths or areas where water ran down the hills. Some of those would need to be restored, some would be comingled with the new proposed trail. There would be 4.7 miles of new trail with 1.7 acres of disturbance.

Happe said Ellingson made a good point. If a circle were drawn around all the trails, he asked how much of the 136 acres would be taken up. It looked like nearly all the park. Colleran said she was speaking about the area of disturbance. In talking about construction, there would be a walk behind grader that was three feet wide to actually construct the trail to be sustainable. Happe said one of the comments was related to minimizing the impact on critical root zones of the many legacy trees. He said staff was committed to minimize damage to trees, but questioned if it was possible that no legacy trees would be removed. Barone said this would be a question for when the council discussed actually approving the project. For the purposes of the EAW this might not apply. Heine said the working assumptions of the staff was that there would be no legacy tree removal. This was one of the purposes of the field siting, to insure that to the extent that tree removal was required, that this would be limited to smaller, insignificant trees.

Wiersum asked if the current informal trails had been mapped. He said the map included in the staff report made it look like it was a pristine park that had no existing trails when in fact it was full of 3.1 miles of informal trails. O'Dea said there was a map of the informal trails included in the mountain bike study. He said there were a number of these informal trails staff would recommend closing because they were not sustainable. The net gain in trails would be 2.7 miles.

Calvert said her understanding from previous meetings was that some of the informal trails would be rehabilitated. O'Dea confirmed this was correct and said his recollection was this would include around 1.7 miles of property. Wiersum
said the information presented indicated the informal trails were located throughout the park.

Acomb said it would be helpful as people came up to speak, if they would indicate if the EAW was required by the council, and the results supported the staff's findings, if the person speaking would then support the mountain bike trails.

Stu Grubb, from Emmons and Olivier, an environmental consulting company, said he was asked by residents to address the council on some of the environmental effects of a mountain bike trail. He said the EAW was necessary because the bike trail could have potential for some significant environmental effects in areas of erosion, water quality, noise and solitude, and wildlife habitat. Minnesota administrative rules require the regulatory governmental unit shall require an EAW if the evidence presented by the petitioners demonstrates because the nature or the location of the proposed project, the project may have the potential for significant environmental effects. He said the key phrase was “may have the potential,” and he felt some of the issues rise to the level that they will have significant environmental effects.

Grubb showed photographs of existing erosion in Lone Lake Park. He noted staff went to other locations with mountain bike trails but one location they did not visit was Battle Creek Park. He said there was significant erosion in that park despite the use of good trail building techniques. For the issue of water quality, he said Lone Lake was nearly a eutrophic lake, but was currently a mesotrophic lake. Eutrophic meant the lake had a lot of algae and other plants growing in it. A fully eutrophic lake does not have any open water. The concern was some of the proposed projects as well as ongoing projects will add sediment to the lake. For the noise and solitude issue, the park currently was designated for passive recreation. A mountain bike trail does not qualify as a passive use and would significantly affect quiet use and solitude. There was a safety concern with mountain bikers veering off the mountain bike trail and onto a hiking trail or a hiker veering onto the mountain bike trail.

Grubb said the EAW would allow time for the staking of the trail. He questioned if it was possible to avoid the critical root zones of all the legacy trees. The wildlife habitat issue would be affected by bikers bringing news seeds into the park from other areas. Garlic mustard was a particular concern. The wildlife areas between the mountain bike trails would be impacted as well. Songbirds would likely be the most affected. There would be collisions with small frogs, toads and turtles. He said everything was interconnected. If birds were lost, there could be a great increase in insects. If foxes were lost there might be a increase in the number of rodents. He said the entire effect on the ecosystem had not been adequately studied. The country was having a problem with the issue of pollinator loss. The Rusty Patch Bumble Bee was a poster child for the problem. The bee used to be found in many places from Minnesota to Georgia. Now it was found in only about 10 percent of that area. He described the colony cycle of the Rusty Patch Bumble Bee and how the mountain bike trail would effect it.
Grubb said on the topic of archeology and cultural resources, it was true there was no listed sites in Lone Lake Park but the reason was no one had ever really looked. A phase one archaeology survey needed to be conducted. The cumulative effects relate to the pickleball courts. He agreed the courts likely had no impact on the Rusty Patch Bumble Bee because the location was previously manicured turf. However there would be significant erosion due to the courts. There also would be an increase in impervious surface when the courts were completed. Another concern was increased traffic with cars bringing the bikers to the park.

John Mirocha, 5423 Maple Ridge Court, said there were many questions that had not been adequately answered regarding the proposed mountain biking trail. The report Grubb presented called into question many of the basic premises the city was using to support the proposal. He said both reports state there would be negative environmental consequences. They only disagreed on the amount. The actual impact had yet to be fully assessed and quantified. This could only be done with an EAW. He noted city staff had been quoted by the media as saying that the city could “hopefully mitigate many of the environmental concerns.” Hope was not a scientific method. Wishful thinking had no place in this decision.

Gary Lore, 12505 Ridgemount Avenue West, said an EAW was a much lower level of assessment than a full Environmental Impact Statement. He said his concern was the impact on the Rusty Patch Bumble Bee could result in requiring a full Environmental Impact Statement. This would be much more costly for the city. Spending $25,000 on an EAW would be a great insurance policy to ensure the city was doing the right thing.

Ben Marks, 4362 Avondale Street, said it was not a coincidence that the attorney representing the residents petitioning for the EAW submitted the documents to the city July 3 at 4 p.m. He fully knew the holiday schedule would prevent city staff from preparing a response in time for the July 9 council meeting. This caused the vote on the mountain biking trails to be postponed. He said this was a blatant delay tactic by residents who did not want to share the park. Everyone wanted what was best for the parks and environment but limiting access to a community park was not the answer. It would be more productive for the neighbors of Lone Lake Park to work together with the trail advocates in removing evasive species and increasing habitat for both bees and monarch butterflies. He said the process for the mountain biking trails began over two years ago and it was time for the lawyer games to end and for city leaders to move forward with a decision that was in the best interest of the entire community.

Maureen Hackett, 4919 Arlington Drive, said the Lone Lake Park mountain biking proposal was proposed on February 7. The proposal was rushed through with no comments being taken until the open house and then no questions were answered. She said she walked the informal trails. There was grass growing on them. There was Sumac growing over them. There were Indigo Bunting birds flying in the nearby shrubs. The trails were rarely used and if they were, it was by a handful a people a day. This didn’t equate with the mountain biking trails and
an EAW would probably show this. The residents requesting the assessment were doing so out of concern for the conservation of Lone Lake Park. The city has signed the ridges as being Glacial Moraine ridges. The hills were not agricultural. This was why the residents were fighting to protect the high valued habitat. They were not against mountain biking. They had proposed other locations that had been dismissed out of hand. She said there was extra due diligence required because of the conflict of interest. The city wanted the project, proposed it, and now the residents were asking that the local governing agent make sure the project was totally within the realm. The city had spent a lot of money restoring the park and now that restoration would be undone with stuff that may not be healable for a long time. She said the public health concerns with an increase in ticks and insects were real. It was shown that the red fox was most effective in breaking the Lyme disease cycle. She was worried about losing one of the most beautiful metro area parks ever.

Laura Brill, 11700 Vista Drive, asked that the EAW be done as a good faith gesture to make an impartial, informed decision on a very contentious issue. The more information the council had would make for a better decision and would lessen the potential for future conflict.

Jim Norris, 11817 Douglynn Drive, said he attended the park board meeting and heard a lot of discussion about the bike trail being used as a competitive site for high school meets. He couldn’t imagine doing an environmental appraisal without including this function.

Gary Fisher, 11814 Bren Road, said Walter Mondale had been quoted earlier in the year noting this year was the 50th anniversary of the St. Croix National Wild and Scenic Rivers Act. Mondale said the river would not be lost through some big dramatic destruction but rather through nicks and cuts. Fisher said the council had been overseeing nicks and cuts to Lone Lake Park for a while with the pickleball courts being a big cut. The apartments going in on the Music Barn site were a cut. The engineering department was working on bringing trails through the southern end of the park. He said the mountain biking trails were beyond a nick or a cut but were a gouge.

Trish Gardiner, 14409 Orchard Road, said people forget right down the road there were another 170 acres in Bryant Park that included all the things present in Lone Lake Park. It wasn’t like the proposal would take the very last park in the community. What was being asked for were mountain bike trails for everyone. She said the city had done extensive study of the proposal.

Caroline Smith, 11895 Douglynn Drive, said she had the city’s approval when she built her home. This was done on a property that already had a home, and she was asked to do an environmental study. She paid for the study. She was also asked to put in concrete that didn’t cause a lot of runoff. She put in rain gardens, wetlands, and native plants. She did this four years ago and she did it because it was the right thing to do. She loves her property and spent over $150,000 to make all that happen. She wants everyone to enjoy the park but she wanted the city to do right by her. If she was asked to do an environmental study
then she thought the city should be fair to everyone by requiring the same standard be met.

Jeff Ingram, 14400 Lennell Drive, said what was before the council was whether or not to accept the staff recommendation or to require an EAW. He said staff did a thorough job and the EAW would be a subset of the work that already had been done. The concerns had already been addressed.

Grace Sheely, 14325 Grenier Road, said she was a beekeeper. Bees were incredibly complicated. She has a swarm in her backyard. Bees were not predictable. There was an endangered species, the number in the park was unknown, and she would like to understand this better. By law, there was a mandate to protect the bees. She asked the council to carefully consider the process. The EAW was not needed if the mountain bike trail was not going to be approved. She questioned if the process was proceeding in the right order. She didn’t want the city to be sued.

Marianna Oliynyk, a St. Louis Park resident, said it had been stated there had been no studies related to mountain biking in Lone Lake Park or in other city parks. It also had been said the informal trails were similar to mountain bike trails. While the width of the mountain bike trails had been clearly stated, the width of the informal trails had not been clearly stated. The intention of the mountain bike trails was to bring more people to the park and to get people active in the park. It also had been stated animals can move and adapt. This was the difference between animal populations surviving and thriving. She questioned if it was a realistic assumption not knowing where the animals would move to. There was no scientific argument that had been made. Negative outcomes were being ignored. It was obvious putting in mountain biking was the priority without specifying where the actual trails would go.

Diana Houston, 12201 Minnetonka Boulevard, said a biking community document, “What is Urban and Suburban Mountain Biking” indicated a full environmental assessment should be conducted. She said the city’s ordinance requires that for any recreational trail, each person must provide for sufficient room for other trail users traveling in the opposite direction. The staff report indicated the trail width would be 18 to 24 inches. This would not be sufficient room for bikers traveling in opposite directions. Information from the biking community recommended a trail width between 36 to 48 inches. This would suggest the environmental impact would be greater than indicated in the staff report. A one way trail would only be for bikers since walkers tend to turn around and go the other way. There were a lot of issues involved due to the design. She noted Native American burial mounds had been discovered during the County Road 101 reconstruction.

Linda Russell, 5423 Maple Ridge Court, said the city had long valued the beautiful natural surroundings. The first value listed in the comprehensive guide plan was the natural environment. There are three goals listed under that value: were to protect and improve water resources and woodlands; facilitate open space preservation; and respect the natural environment while managing growth.
She said the city’s actions should match its words. Any decision made to substantially change one of the city’s parks deserves the highest level of scrutiny. The environmental impact of building mountain bikes in Lone Lake Park was not speculation. The only question was how much impact there would be and what the long term consequences would be. She questioned why the council would not want to know every possible outcome before making a decision. Residents deserved to have a council that was committed to using the highest standards of environmental assessment to inform them in making a decision that would affect the park for decades to come.

Lawrence Wade, 15524 Day Place, said he disagreed with two points in the staff report. There was no way to know of knowing how many trees would be removed because the trail had not been sited. He said there were not a lot of small trees in the park and many of the trees were 80 to 100 years old.

Petra Marquart, 18523 Covington Road, said being stewards of the land, she didn’t think there could ever be enough information. Once nature was changed or gone, it could never be gotten back.

Iris Gaillard, 5222 Beachside Drive, said in 1970 Minnesota made a pledge to protect the environment by declaring that each person had the responsibility to contribute to the protection, preservation and enhancement of air, water, land and other natural resources. One concern that was raised at the last meeting was noise and the potential increase in the number of overall trail uses increasing the noise. She said staff provided a short response stating the increase in noise would be limited. She thought it was an unsatisfying answer because it didn’t take into account the change in acoustics. She cited a 2016 study that looked at the impact of noise in a Palo Alto park. The study showed noise affected many endangered species.

Tom Davis, 5316 Dominick Drive, said this was a precious piece of land and it was important to understand everything that was there for the potential impacts and potential positives. He thought the EAW would make a difference.

Sam Russell, 5325 Dominick Drive, said Lone Lake Park was a huge part of her childhood. She wanted the city to conduct an EAW because only three percent of the city’s land had not been developed. Lone Lake was arguably the highest quality park in the city because of the long term sustained restoration investment. The park was extremely biodiverse and supported a significant number of bird species and provided unique nature based experiences for people of all ages.

Luke Vansanten, 2148 Sheridan Hills Road, said Lone Lake Park was situated within one half mile from I494, Highway 62 and Shady Oak Road. The average daily traffic load on I494 was just south of 100,000. Highway 62 has over 37,000 vehicles a day. Shady Oak Road had over 13,000. He said the proponents of the EAW seemed to be operating on unfounded aspirations like all mountain bikers do not care about the environment.
Joel Maynard, 5544 Sanibel Drive, said he walks in Lone Lake Park daily. There are extraordinarily tall ridges all around the park. Because of the acoustics of the park one can go in the park daily and hear nothing but the chirping of birds. The highway traffic can scarcely be heard.

Heidi Gray, 13800 Knollway Drive South, said legally, the city must move forward with the EAW if it was determined there were significant environmental impacts. The criteria for determining if there were significant environmental impacts were the impacts could be mitigated, how long the impacts would last. She said all the processes the city staff had gone through determined the EAW was not needed. The footprint of the trails was very small and the majority of the impacts could be mitigated. What the council decided to do with this EAW would determine what would happen with many other future projects. If a precedent was set for this project, it would set a precedent for future projects.

Tom Stockert, 5524 Dominick Drive, noted the resolution included in the council packet indicated the trails were expected be a local resource and not a regional recreational destination. Local bikers would likely bike and not drive a car to the park. The proposal stated Lone Lake Park was the finalist in part because there was adequate parking that it apparently did not need and thus there was no need for a traffic study. He said staff's conclusions in an expedited process needed to be carefully reviewed. He asked the council to scrutinize every clause in the draft resolution.

Heather Holm, 15327 Lake Shore Avenue, said she was a biologist who had been researching and studying bees for over a decade. She was the one who originally documented the Rusty Patch Bumble Bee in 2016. This year she has seen many worker Rusty Patch Bumble Bees that were females. There was a very vibrant and good population of Rusty Patch Bumble Bees in Lone Lake Park. She said it was very possible there was one, and maybe more, active colonies nesting in the park. One of the primary reasons she co-authored the EAW petition was because the conclusions of the SEH report regarding the Rusty Patch Bumble Bees were incorrect. She said it was essential that a careful and thorough survey for additional foraging and nesting sites be conducted prior to any alterations to habitat. The survey should cover one full growing season.

Bill Ehmke, 5391 Maple Ridge Court, said it was better to obtain an EAW now rather than to live with the unintended consequences.

Lynn Davis, 5316 Dominick Drive, said she would like the city to do the EAW because she thought it was important for the council to see absolutely everything that was present in the park and what could be impacted.

Mary Beth Potruss said up until recently she had lived in Minnetonka for nearly two decades. She said she wanted everyone to understand that the request to do an EAW was not about mountain biking. If the proposal was to do a paved trail she would have the same reaction. There were far too many beautiful things in Lone Lake Park.
Jim Fallon, 4149 Baker Road, said he’s seen the decline of wildlife in the community over the years. He said the city was trying to attract young families to live in the community and it would be nice for them to go see some of the nature. The quandary was there was another side that wanted mountain bike trails. Both groups could not be satisfied. People shouldn’t be fighting with each other but instead trying to get together. Things change but the park system should be dedicated to satisfying everybody’s needs. He thought the EAW would establish the minimums not the maximums.

Rosann Fischer said the thing that made her emotional was it was a federally endangered species being discussed. She didn’t want to be the one to tell her children or grandchildren that she was the one that wiped the bees out. The city had a treasure that could be publicized.

Calvert said she really wished the attendees had answered the question Acob posed at the beginning of the discussion. She said the U.S. Fish and Wildlife staff would be present at critical junctures of the project to make sure the city was following federal protection regulations about endangered species. She asked if an EAW was done, what would be different than the biological assessment that already had been done. Colleran said the assessment of the Rusty Patch Bumble Bee and ensuring the protection of the bee could occur outside an EAW. The U.S. Fish and Wildlife Service was charged with enforcing the endangered species act. Whether or not the petition for an EAW had been submitted staff would have proceeded with securing approval and consulting with the U.S. Fish and Wildlife staff ensuring the right thing was being done. Calvert said her question was about the difference between an EAW and the assessment that already had been done. The council would hire the consultant for the EAW so she wanted to understand if something different would be looked at. Colleran said the EAW would look at the endangered species, the habitat present, and when it was identified. Further quantifying impacts to habitats would come under the purview of the U.S. Fish and Wildlife Service.

Happe said if the council approved the proposal, it would be really important to have a follow up environmental assessment a couple years down the road to see if the concerns actually came to pass. He said he would not support doing an EAW at this time because he felt staff had done a thorough job at evaluating the issues and potential environmental impacts.

Schack said she wanted to confirm that the EAW would not address the cultural or archeological concerns. Colleran said in the EAW, the historical sites would need to be addressed. Schack asked if there would be anything done beyond the research that was already done. Colleran said staff would follow up with the state archeologist. Based on the fact that the site was used for agricultural purposes in the past, staff believed the requirements had been met. Schack asked if SEH was the type of consulting firm that would also do an EAW. Colleran said there were multiple consultants that could do the EAW and SEH was one of them. Schack noted if an EAW was done, there would not be a proposed site plan that would be provided. The trail marking would be done afterward. Colleran said the
field siting would be done after the EAW because if anything came out of the EAW, staff would want to know about it.

Acomb said staff indicated regardless of if an EAW was done, it work with the U.S. Fish and Wildlife Service to determine impacts to the Rusty Patch Bumble Bee. Colleran said what she proposed to the U.S. Fish and Wildlife Service was that the city would field site the trail and the U.S. Fish and Wildlife Service would look at the corridor where the trail was sited. Discussions would occur about the timing of the trail construction. The U.S. Fish and Wildlife Service had not committed to being present at the time of trail construction. Acomb asked if Colleran saw anything the U.S. Fish and Wildlife Service might discover that would prompt the closing down of the project. Colleran said in her preliminary discussions with the staff of the U.S. Fish and Wildlife Service, they indicated that a permit may need to be issued because the Rusty Patch Bumble Bee may be identified in the prairie area, it may be in the woodland area, the exact nest site may not be determined. A permit may be issued to allow the work to occur because there still might be some unknowns about intrusion into the habitat.

Ellingson said it was important to look at the legal standard. The rule stated the governmental unit shall order an EAW if there may be the potential environmental effects. He said he was a state legislator for 10 years and the reason for administrative rules and environmental law was to allow residents to require government to consider the environmental impacts of actions of the government. He said the rule stated “may have” environmental impact. Calvert clarified the rule also said “significant” environmental impact.

Wiersum asked for Heine to comment. Heine said the question in the rule was if the evidence that was presented, that included all the reports that had been provided both by the petitioners and by city staff and the consultant, demonstrate that because of the nature or location of the proposed project, that the project may have the potential for significant environmental effects. If the council determined the project had the potential for significant environmental effects, it must order the EAW. If the council determined it did not have that potential, then it could deny the request. She said part of this was determining what significant environmental effect was. There was some dispute on this on the part of the petitioners. There had to be evidence to support and demonstrate, not just fears, that something may happen. She said city staff identified that the Rusty Patch Bumble Bee had been found in the park and may rely on some habitat in the park. She said one of the factors the council had to consider was the extent that potential environmental effects were subject to mitigation by ongoing public regulatory authority. The staff was focused on this in terms of the bee in particular. The bee had been identified in the park but a nesting site had not been located. The U.S. Fish and Wildlife Service had an ongoing regulatory obligation that staff would work with to follow any recommendations and requirements they might suggest. The council could order the EAW in any case because it was responsible for authorizing the funding.

Ellingson said the history of the Endangered Species Act involved animals that people never heard of that prevented major projects. It seemed to him if there
was an endangered species that there may be a potential effect on, the rule said
the council shall order the EAW. Calvert said the rule also provided that to the
extent the environmental effects might be mitigated by ongoing public regulatory
authority, in this case, the U.S. Fish and Wildlife Service had to be considered.

Schack said she worried that an EAW wouldn’t further satisfy residents or her
concerns that weren’t already addressed by the previous assessment. Her
concern was that that the city would end up in the same place six months to a
year from now with the same level of unknowns because the EAW wouldn’t go
further in depth from what was already known. She was heartened by the steps
that would go into place to protect the bees and making sure the mitigation would
occur. Her instinct was that the EAW would not be particularly satisfying in the
end.

Calvert said the staff report included a table that showed what the biological
study and what the conclusions were and to some extent how it compared to an
EAW. She said it showed it was virtually identical. She was married to a person
who spent his entire 37 year career to protecting endangered species. She had a
deep appreciation for environmental issues. She had gone on walks in Lone
Lake Park with residents in the room. She had read all the information presented.
She was inclined to take the staff recommendations because she felt staff had
done its due diligence and she agreed with Schack that an EAW would not
provide any further information.

Acomb said her decision went back and forth several times during the
discussion. She asked the question if the results of the EAW would impact
people because her fear was that it wouldn’t. She thought there were a number
of people wanting the council to require an EAW to prevent the project. She
supported the mountain biking project. That said, she was concerned about the
Rusty Patch Bumble Bee. She said the petition for the EAW was like looking for a
needle in a haystack. This was where she was stuck. She wished that there
would be no impact to the Rusty Patch Bumble Bee and this was her inner
struggle with what to do. Part of her thought was that this was a great location for
the outdoor activity and that people needed the opportunity for the activity.

Calvert said she runs with her dogs in Lone Lake Park nearly every other day.
When she went on the informal trails, she was with dogs not on leash. She said
the mountain bike supporters had committed to invasive species abatement and
trail maintenance, and many hours of volunteer time. This was also a chance to
rehabilitate the eroding trail in the park and to provide a use that didn’t exist
anywhere else in the city. She said there were uses of the park that weren’t that
healthy and this was an opportunity to make things better.

Wiersum said the decision was difficult because there were passionate people on
both sides. There were good people that cared about the environment, the city
and the parks. He said as he looked at the question, one side focused on the
term “may have the potential.” Another group focused on significant versus
minimal. He looked at it as more of a strategic issue than a tactical one. Staff
convinced him that they did a thorough job and that they care about the
environment. Doing an EAW would not teach very much. He said there were people that would say the EAW taught a lot if it said what they wanted it to say but wouldn't teach very much if it didn’t tell them what they wanted to hear. The EAW could be done and the city could find itself in the exact same place six or nine months from now. One thing would have been accomplished to the opponents of the project was they would have had one more year of not having mountain biking in the park. This may be an end in itself, but it was not good policy. The city had never done an EAW on trails in the past. There were trails in the city that everybody says they love to use, but were far more invasive than a single track mountain bike trail. He didn’t think an EAW was warranted but he was concerned about the Rusty Patch Bumble Bee. Just because the council decided not to do an EAW didn’t mean they city should stop worrying about the bee. If it was determined the impacts to the bee were significant, something needed to be changed. He said an EAW would be a waste of taxpayer money and would not tell anything new because the due diligence had already been done.

Happe moved, Calvert seconded a motion to adopt resolution 2018-094 determining that the project does not require a discretionary environmental assessment worksheet. Happe, Schack, Calvert and Wiersum voted “yes.” Ellingson and Acomb voted “no.” Motion carried.

B. New Park at Ridgedale community outreach process & timeline

Park and Trail Planner Carol Hejl gave the staff report.

Acomb said she appreciated the timeline and the process that was laid out. She thought it was a good opportunity for people to get involved and engaged. She also appreciated the attention with all abilities. The sustainable aspect was also important.

Calvert agreed the sustainability was important. Having native plants would be wonderful. Anything that could be done to incorporate artwork and the arts would also be wonderful.

Wiersum said he was curious to think about what a signature community level park looked like. Other cities have done those and if those analogs could be found, that would be great. His only suggestion related to the public outreach. He suggested stretching the public outreach out a couple of weeks because people were gone in August and school began in September. He agreed with Acomb about the importance of it being handicapped accessible.

15. Appointments and Reappointments: None

16. Adjournment

Calvert moved, Happe seconded a motion to adjourn the meeting at 10:21 p.m. All voted “yes.” Motion carried.
Respectfully submitted,

David E. Maeda
City Clerk