

**WORTHINGTON CITY COUNCIL  
REGULAR MEETING, JANUARY 10, 2022**

The meeting was called to order at 7:00 p.m., in City Hall Council Chambers by Mayor Mike Kuhle with the following Council Members present: Chad Cummings, Amy Ernst, Chris Kielblock, Alaina Kolpin. Excused Absence: Larry Janssen.

Staff present: Steve Robinson, City Administrator; Matt Selof, City Planner; Steve Schnieder, City Engineer; Mindy Eggers, City Clerk.

Others present: Joni Harms, Daily Globe; Jason Johnson, Johnson Builders & Realtors; Holly Sieve, Johnson Builders & Realtors; John Landgaard, ISD 518; Nick Willman, ICS; Erin Schutte Wadzinski, Kivu Immigration Law; Emma McNamee, The Globe; Ryan McGaughey, Radio Works.

The Pledge of Allegiance was recited.

**AGENDA APPROVED WITH ADDITIONS/CHANGES**

Mayor Kuhle said Item *D.3.1. Designate Official Depositories* was amended and the new list would be added to the agenda.

A motion was made by Council Member Cummings, seconded by Council Member Ernst and unanimously carried to approve the agenda with the noted amended addition.

**CONSENT AGENDA**

A motion was made by Council Member Kielblock, seconded by Council Member Cummings and unanimously carried to approve the consent agenda pulling the *Item 5 National School Choice Proclamation* for further discussion.

- City Council Meeting Minutes of December 28, 2021
- Water & Light Commission Meeting Minutes of January 3, 2022
- Worthington Public Arts Commission Minutes of November 9, 2021
- Annual Appointments as follows:
  - ▶ Designated the time and place of meetings as 7:00 p.m. on the second and fourth Mondays of each month in City Hall Council Chambers, and special meetings shall be called as needed
  - ▶ Appointed Mindy Eggers as the City Clerk for the period January 1, 2022 through December 31, 2022 and Angela Thiner as the Assistant City Clerk for the same time period
  - ▶ Designated The Globe as the official newspaper for the publication of all matters required by law to be published
  - ▶ Annual Council Committee Appointments as presented
  - ▶ Appointed Jesse Flynn as the City Attorney and Jeff Flynn as Assistant City Attorneys, for a one-year period from January 1, 2022 until December 31, 2022

- 2022 License Renewal
- Application for Exemption from Lawful Gambling Permit - Whitetail's Unlimited - Southwest MN Chapter
- Bills payable and totaling \$3,580,904.22 be ordered paid

Mayor Kuhle stated that Worthington is lucky to have a great public school system and Catholic and Christian Schools as well.

Council Member Kielblock said he does not have a problem with a proclamation if it's a local initiative not a mass generic email that comes. He also doesn't think it should be buried in the consent agenda. He agrees that our community is lucky to have school choice between the public and private schools.

Mayor Kuhle asked for a motion and received none.

### **ELECTION OF MAYOR PRO TEM**

Section 2.02 of the Worthington City Charter states that at the Annual Meeting the City Council shall, from its number and by ballot, elect a Mayor Pro Tem who shall preside over the meetings of the City Council during the absence of the Mayor from the City, or upon the inability of the Mayor, from any cause, to discharge the duties of the office.

Following distribution of ballots and voting, the following votes were cast:

Council Member Cummings - 3  
Council Member Kolpin - 0  
Council Member Kielblock - 0  
Council Member Ernst - 1

Following vote tabulation by the Clerk, Council declared Council Member Cummings as Mayor Pro Tem for 2022.

### **TRAVEL POLICY APPROVED**

Steve Robinson, City Administrator, said the City's Travel Policy was last updated in December 2018. The suggested changes will be based on the U.S General Services Administration 2022 Per Diem rates for Minnesota. Th rates are as follows:

	Breakfast*	Lunch	Dinner*	Total
STANDARD RATE	\$13.00	\$15.00	\$26.00	\$54.00
DULUTH	\$18.00	\$20.00	\$36.00	\$74.00
EAGAN/BURNSVILLE				
MENDOTA HEIGHTS	\$16.00	\$17.00	\$31.00	\$64.00

MINNEAPOLIS/ST.PAUL	\$18.00	\$20.00	\$36.00	\$74.00
ROCHESTER	\$14.00	\$16.00	\$29.00	\$59.00

The IRS has increased the mileage rate effective January 1, 2022, employees will be reimbursed at 58.5 cents per mile for business related miles driven with their personal vehicle.

Council Member Cummings stated that spouses should be covered under a dinner meeting situation. Council Member Kolpin agreed. Council Member Ernst asked if this is something that the IRS controls? Mr. Robinson said staff would have to check with our legal counsel so if approved it should be approved contingent on what that finding is.

A motion was made by Council Member Cummings, seconded by Council Member Kolpin and unanimously carried to approve the Travel Policy contingent on legal counsel findings on including spouses for dinner reimbursements.

**RESOLUTION NO. 2022-01-01 ADOPTED APPROVING A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE STATE OF MINNESOTA AND LOCAL GOVERNMENT AND AUTHORIZING PARTICIPATION IN NATIONAL OPIOID SETTLEMENTS**

Mr. Robinson said the City of Worthington, along with other Minnesota counties and cities, have been harmed by the misconduct of certain entities that engage in the manufacture, marketing, promotion, distribution and dispensing of opioids. The Minnesota Attorney General's Office has prepared the MOA that provides for the equitable distribution of national litigation settlement proceeds to local Minnesota cities and counties. Signing the MOA maximizes Minnesota's share of opioid settlement funds.

Settlement funds may be used for abatement strategies such as Treatment or Prevention; or other strategies such as Law Enforcement expenditures related to the opioid epidemic. Funds available for use by the City will be distributed through Nobles County.

A motion was made by Council Member Ernst, seconded by Council Member Cummings and unanimously carried to approve the Memorandum of Agreement (MOA) authorizing participation in the national opioid settlement and to adopt the following resolution:

RESOLUTION NO. 2022-01-01

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE STATE OF MINNESOTA AND LOCAL GOVERNMENT AND AUTHORIZING PARTICIPATION IN NATIONAL OPIOID SETTLEMENTS

(Refer to Resolution File for complete copy of Resolution)

**DESIGNATE OFFICIAL DEPOSITORIES APPROVED**

Mr. Robinson said as advised by the State Auditor, Council is asked to designate financial institutions as official depositories for the City of Worthington in 2022. Staff submits the following for Council approval and designation: 4M Fund (League of MN Cities sponsored money market), American Bank & Trust, Ameriprise Financial, Bank of the West, Edward Jones Investments, Equitable Advisors, First State Bank Southwest, First State Investment Services, Fulda Area Credit Union, Rolling Hills Bank, Momentum Independent Network, United Prairie Bank, United Prairie Financial Network, Wells Fargo, Wells Fargo Advisors and Worthington Federal Savings Bank.

A motion was made by Council Member Cummings, seconded by Council Member Kielblock and unanimously carried to designate the official depositories for 2022.

**RESOLUTION NO. 2022-01-02 ADOPTED FOR THE VACATION OF CERTAIN EASEMENTS IN REFSELL'S ADDITION**

Steve Schnieder, City Engineer, said Independent School District 518 is proposing to expand the administration office located at 111 7 Marine Avenue by adding onto the south and west side of the existing building. Mr. Schnieder explained there are three storm water utility easements recorded as Document No. 168796 that were discovered by the school district as part of the property research. He said the easement to be vacated was not identified by the engineering staff as an active easement and inspection of the area did not identify any storm water discharge lines outletting into County Ditch 12. The drainage easement extends diagonally from the county ditch to the southeast on the west side of the existing school administration building, and when extended would go under the neighboring residence. This drainage easement would not be useable in the future since it extends under the neighbor's house. The two other drainage easements that go through the school property that accommodate the stormwater drainage to the ditch are not to be vacated at this time.

A motion was made by Council Member Cummings, seconded by Council Member Ernst and unanimously carried to adopt the following resolution:

RESOLUTION NO. 2022-1-02

RESOLUTION OF VACATION OF CERTAIN EASEMENTS IN REFSELL'S ADDITION

(Refer to Resolution File for complete copy of Resolution)

**ORDINANCE NO. 1178 ADOPTED TO AMEND TITLE XV OF THE CITY CODE OF WORTHINGTON, NOBLES COUNTY, MINNESOTA, TO REZONE PROPERTY FROM "B-2" (CENTRAL BUSINESS DISTRICT) TO "B-3" (GENERAL BUSINESS DISTRICT)**

Matt Selof, City Planner, said Efrain Patino has requested a change of zone for property located at

310 11th Street from its current 'B-2' Central Business District zoning designation to 'B-3' General Business District. This will allow the property to be used as a warehouse/storage space with issuance of a conditional use permit. The legal description of the subject property is as follows:

NW 60' of Lot 5 & 6 and All of Lots 7 & 8, Block 15, Plat of Worthington,  
Nobles County, Minnesota.

The City Planning Commission voted 4-2 to recommend approval of the requested change of zone. at its January 4th, 2022 meeting.

Their recommendation was based on the following:

1. The subject property is currently zoned 'B-2' – Central Business District. The applicant has requested the property be rezoned to 'B-3' – General Business District. This would then allow him to seek a conditional use permit for a small warehouse/storage space to serve his businesses in town (Thompson Mexican Grill, El Mexicano #3, and a soon to be ice cream store).

The property owners feel that the current zoning of the property has prohibited them from selling it because of the nature of the existing building which was built as a printing facility for The Globe. The setup of the building combined with the lack of parking best suites the site for a small warehouse facility. The property has been for sale for about 5 years now. An application was submitted in 2018 to rezone the property to 'B-3' and was subsequently denied.

2. While it is not required by State or local requirements, staff finds it prudent to consider a property's stated future land use as established by the City's Comprehensive Plan. As shown in Exhibit 1B the future land use map identifies the subject property as "Downtown Mixed Use" with a mixture of residential, office and commercial space. The plan also specifies that this area is to "...function in an organized and cohesive manner with a higher level of attention to pedestrian improvements and building prominence along the street corridor."

The subject property also falls into the Downtown District which the comprehensive plan lays out additional specific goals for. Downtown, according to the plan is to be a "collection of smaller retail, service and office uses." It also specifies that "Industrial uses are not compatible with plans and objectives for the Downtown District" when discussing the ADI/Campbell's property (now the JBS Worthington Fieldhouse).

3. Staff finds that with changes of zone and other land use requests the surrounding zoning and land uses should be considered to reduce future land use conflicts. The

zoning of the abutting properties are as follows:

North: 'R-4' – Medium Density Residential District. Some medium density housing sits north of the subject property.

East: 'B-2' – Central Business District. The Globe's office building sits adjacent to the subject property and Frontier Communications has a building to the east as well.

South: 'B-2' – Central Business District. T-Mobile and a couple others store line the street to the south. Family Dentistry and a municipal parking lot are also located just south of the property.

West: 'R-4' - Medium Density Residential District. First United Methodist Church and Worthington Federal Savings Bank both sit to the east of the subject property.

Included in the considerations of the Planning Commission was staff's opinion that the requested change of zone would create a 'B-3' – General Business "spot" within the larger 'B-2' Central Business District. "Spot zoning" is defined by the league of Minnesota Cities as rezoning a small parcel of land in a manner that:

- Has no rational basis that relates to promoting public welfare.
- Establishes a use classification inconsistent with surrounding uses and creates an island of nonconforming use within a larger zoned district (for example one lot where industrial uses are permitted in an otherwise residential zone).
- Dramatically reduces the value for uses specified in the zoning ordinance of either the rezoned plot of abutting property.

Mr. Selof said letters from a neighboring property owner in favor of the change of zone and a letter of support from Forum Communications Company on behalf of the seller (an entity of Forum Communications Company) were received.

Council Member Kielblock said that he was one of the descending votes on the Planning Commission because he feels that it is spot zoning and also feels that down the road there could be potential difficulties if it were sold and zoned a "B-3".

Council Member Cummings said there is a person that owns multiple businesses in town that is interested in purchasing this building. The building has set empty for a long time and considering the parking issues that accompany the property makes it limited as to what business could actually fit there.

Joni Harms, Forum Communications, said that they have an interested buyer that will have the same amount of traffic as they had at the building. The Globe used it for manufacturing and distribution

and allows for semi traffic that does not block alleys or roads.

Jason Johnson, Johnson Builders & Realtors, said that he is representing both the buyer and seller and according to the City's Comprehensive Plan if the building was used for retail it would need up to 50+ parking stalls to comply.

A motion was made by Council Member Cummings, seconded by Council Member Kielblock and unanimously carried to adopt the following ordinance for the change of zone located at 310 11<sup>th</sup> Street:

ORDINANCE NO. 1178

AN ORDINANCE TO AMEND TITLE XV OF THE CITY CODE OF WORTHINGTON, NOBLES COUNTY, MINNESOTA, TO REZONE PROPERTY FROM "B-2" (CENTRAL BUSINESS DISTRICT) TO "B-3" (GENERAL BUSINESS DISTRICT)

(Refer to Ordinance File for complete copy of Ordinance)

**ORDINANCE NO. 1179 TO AMEND TITLE XV OF THE CITY OF WORTHINGTON, NOBLES COUNTY, MINNESOTA, TO REZONE PROPERTY FROM "T-Z" (Transition Zone) TO "R-4" (Medium Density Residential)**

Mr. Selof said Ryan Huegerich (Huegerich Construction Inc.) has requested a change of zone for property located on the east side of County Road 5 and approximately 450 north of County Road 35 from its current 'TZ' Transition Zone zoning designation to 'R-4' Medium Density Residential. The legal description of the subject property is as follows:

That part of the Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼) of Section 19, Township 102, Range 39, described as follows: Commencing at the southwest corner of said Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼) of Section 19, thence north along the west line of said Section a distance of 185.0 feet, which is the point of beginning; thence north along said west line a distance of 144 feet; thence at right angles easterly a distance of 409 feet; thence at right angles northerly a distance of 185.5 feet; thence at right angles easterly to the east line of said Northwest Quarter of the southwest Quarter (NW ¼ SW ¼) of said Section 19; thence south along the east line thereof to a point opposite the point of beginning thence westerly at right angles to the west line of said Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼) of Section 19, said point being the point of beginning in Nobles County, Minnesota.

NOTE:

The line in the legal description "thence south along the east line thereof to a point opposite the point of beginning" is an ambiguous call. Also, the call of "thence

westerly at right angles to the west line of said Northwest Quarter of the Southwest Quarter (NW ¼ SW ¼)” is actually not at right angles but rather 89 degrees 47 minutes 47 seconds. For the purposes of this survey, the south line of the survey is assumed to be the north line of the adjoining tract to the south. It is suggested that a new legal description be prepared which would more accurately describe the surveyed property.

Mr. Selof said the City Planning Commission voted unanimously to recommend approval of the requested change of zone at its January 4th, 2022 meeting,

Their recommendation was based on the following:

1. The current zoning of the subject property as ‘TZ’ – Transition Zone which is established “primarily for those annexed unplatted areas within the city that have not been zoned for development.” The applicant has requested the subject property be rezoned to ‘R-4’ Medium Density Residential. Huegerich Construction Inc. is a developer out of Nebraska and is planning on constructing 108 multi-family housing units on the site to serve JBS employees. This proposed project is part of JBS USA’s Hometown Strong program which is seeking to provide housing for employees in communities JBS operates in. The details of the project are not yet known and those plans could change. Staff would caution that approval of the change of zone does not constitute approval of the larger project.
2. Well not required by State or local requirements, staff finds it prudent to consider a property’s stated future land use as established by the City’s Comprehensive Plan. As shown in Exhibit 2B the comprehensive plan identifies the subject property as “General Industrial”. This district “covers the majority of industrial and manufacturing land uses in Worthington” and “are located along major highway and railroad corridors.” The plan goes on to address the location of the subject property specifically saying, “significant industrial expansion is planned on the eastern side of Worthington with the availability of water, sanitary sewer, highway, and rail access. This area also poses the least amount of residential land use conflicts.”

In staff’s opinion the goals for this area set by the comprehensive plan (adopted 17 years ago) have largely failed to be met and it is unlikely that the city will see interest in industrial development in that area. The recent move of Cemstone to 27th Street and subsequent rezoning to M-2 alongside the former Bedford Technology Building paves the way for further industrial uses north of town rather than east. Additionally, the single-family homes around the subject property and the HRA’s townhomes just south of the property (known as “Rising Sun Estates”) make the subject property better suited for residential uses.

Staff would note that this issue is better suited by a full comprehensive plan update

(which staff hopes to begin in the coming year). Any decision on this application will have a great impact on the future land use of the east side of town.

3. With changes of zone and other land use requests the surrounding zoning and land uses should be considered to reduce future land use conflicts. As shown in Exhibit 2A the zoning of the abutting properties are as follows:

North: 'TZ' - Transition Zone.

East: Unannexed land, outside of city limits.

South: 'M-1' – Light Manufacturing district.

West: 'M-1' – Light Manufacturing district.

The current land uses are as follows:

North: Single-Family Homes and farmland.

East: Farmland outside of city limits.

South: A couple of single-family homes, Pulver towing and D&H Storage Buildings sit directly to the south. Beyond this is Rising Sun Estates and single-family homes.

West: Farmland, A single-family home, T&S Rentals (mainly storage garages), and the City's Water Tower sit directly east of the subject property. Just beyond that is John Deere.

Mr. Selof noted that this request does go against the current Comprehensive plan that is out dated.

A motion was made by Council Member Ernst, seconded by Council Member Kolpin and unanimously carried to approve the following ordinance:

ORDINANCE NO. 1179

AN ORDINANCE TO AMEND TITLE XV OF THE CITY OF WORTHINGTON, NOBLES COUNTY, MINNESOTA, TO REZONE PROPERTY FROM "T-Z" (Transition Zone) TO "R-4" (Medium Density Residential)

(Refer to Ordinance File for complete copy of Ordinance)

**CONDITIONAL USE PERMIT - 218 & 222 10<sup>TH</sup> STREET APPROVED**

Mr. Selof said Erin Schutte Wadzinski has applied for a conditional use permit to operate her law firm (Kivu Immigration Law) in the buildings located at 218 and 222 10th Street.

Pursuant to Minnesota Statute § 462.3595 and as outlined in Worthington City Code §155.086 (C), and Appendix E, office services located along Tenth Street from Second Avenue to Fifth Avenue require a conditional use permit. The legal description of the subject property is as follows:

Shell's Subdivision of SE 48' of Hotel Lot A, Block 7, City of Worthington, Nobles County, Minnesota.

AND

Shell's Subdivision of SE 48' of Hotel Lot, southwest 97' of Lot B, Block 7, City of Worthington, Nobles County, Minnesota.

Mr. Selof said the Planning Commission voted unanimously to recommend approval of the requested conditional use permit at its January 4th, 2022 meeting subject to the following conditions:

1. The subject property must maintain compliance with all applicable local, State, and Federal standards and requirements.

Their recommendation was based on the following:

1. Pursuant to Minnesota Statute § 462.3595, the governing bodies of Minnesota cities may designate certain types of developments as conditional uses:

*“The governing body may by ordinance designate certain types of developments, including planned unit developments, and certain land development activities as conditional uses under zoning regulations. Conditional uses may be approved by the governing body or other designated authority by a showing by the applicant that the standards and criteria stated in the ordinance will be satisfied. The standards and criteria shall include both general requirements for all conditional uses, and insofar as practicable, requirements specific to each designated conditional use.*

2. The applicant owns and operates Kivu Immigration Law here in Worthington. Her business has grown faster than anticipated and to accommodate more staff in the coming year they need a larger building and are hoping to move to the subject property. Kivu Immigration law is currently located just down the street from the subject property on 3rd Ave.
3. The subject properties current zoning designation as ‘B-2’ – Central Business District. City Code §155.086 (4) (C) establishes a “Retail Shopping Overlay District.” That section of code can be seen here:

(C) Retail Shopping Overlay District.

(1) This overlay district is intended to preserve the concentration of retail shopping activities at ground level along Tenth Street from Second Avenue to Fifth Avenue.

(2) Only one Retail Shopping Overlay District shall be allowed.

(3) Ground level uses permitted in this district shall be as designated in Table

5 of this title for non-residential use groups (A, B, C, D, E, F). Any use permitted in the underlying zoning district, as indicated on the official zoning map, may be allowed as a conditional use in accordance with §§ 155.185 and 155.186 of this chapter.

(4) Non-ground level uses permitted in this district shall be those uses allowed and regulated in the underlying zoning district as indicated on the official zoning map.

City Code Chapter 155, Appendix E establishes the underlying permitted uses in the ‘B-2’ – Central Business District.

4. Minnesota Statute § 462.3595 also includes the procedural requirements for the issuance of a conditional use permit by a municipality in Subdivision (2). The Statute requires that public hearings on the granting of conditional permits shall be held in the manner provided in section § 462.357, Subdivision 3, which states:

*“No zoning ordinance or amendment thereto shall be adopted until a public hearing has been held thereon by the planning agency or by the governing body”*

5. A rough floor plan was provided. City Code Chapter 155 Appendix G: Table 6 establishes that off-street parking for office services located in the 6-block downtown core is not required although the applicant will utilize 5-6 parking spaces on the backside of the building.
6. While not required by State or local requirements, staff finds it prudent to consider a property’s stated future land use as established by the City’s Comprehensive Plan. The City’s Comprehensive Plan has identified the future land use of the subject property as “Downtown Core” which provides a mix of office, retail, service, residential and public uses.
7. Staff found that with the changes of zone, conditional use permits, or other land use requests, the surrounding zoning and land uses should be considered to reduce future land use conflicts. The abutting land uses for the subject property are the following:

North: ‘B-2’ – Central Business District. A couple businesses and the Center for Active Living sit north of the subject property.

East: ‘B-2’ – Central Business District. Seed and Stem sits adjacent to the east of the building.

South: ‘B-2’ – Central Business District. South across the street is El Azteca, another business, and a bank.

West: ‘B-2’ – Central Business District. Main Street Kids store is adjacent to the property on the west.

Mr. Selof noted the planning commission feels that the requirements set by the retail overlay district found in City Code §155.086 (4) (C) were unnecessary and that requiring a conditional use permit for office space along tenth street is not in line with the goals set by the Comprehensive Plan (which favors office uses downtown).

Erin Schutte Wadinski said she opened the business three years ago and has grown out of the current location. This building would allow growth of her legal team.

A motion was made by Council Member Kielblock, seconded by Council Member Cummings and unanimously carried to approve the conditional use permit for 218 & 222 10<sup>th</sup> Street.

### **COUNCIL COMMITTEE REPORTS**

1. Mayor Kuhle - No report.
2. Council Member Janssen - No report.
3. Council Member Ernst - No report.
4. Council Member Kielblock -
5. Council Member Kolpin - Attended a Center for Active Living Committee meeting, they are starting the new programs that are being funded by the grant that was received.
6. Council Member Cummings - No report.

### **CITY ADMINISTRATOR REPORT**

Mr. Robinson said packets for the COVID-19 Policy have been distributed. The installation of the nets and grass at the JBS Fieldhouse will be beginning this week.

A Special Council Work Session needs to be scheduled to review the draft of the Rental Housing Program. After discussion the meeting will be scheduled for January 26<sup>th</sup> at 4:00 p.m., in City Hall Council Chambers.

### **ADJOURNMENT**

A motion was made by Council Member Kielblock, seconded by Council Member Kolpin and unanimously carried to adjourn the meeting at 7:44 p.m.

Mindy L. Eggers. MCMC  
City Clerk