

CITY OF SHOREWOOD
CITY COUNCIL REGULAR MEETING
MONDAY, NOVEMBER 22, 2021

5755 COUNTRY CLUB ROAD
COUNCIL CHAMBERS
7:00 P.M.

MINUTES

1. CONVENE CITY COUNCIL REGULAR MEETING

Mayor Labadie called the meeting to order at 7:00 P.M.

A. Roll Call

Present. Mayor Labadie; Councilmembers Johnson, Siakel, Callies, and Gorham; City Attorney Keane; City Administrator Lerud; City Clerk/HR Director Thone; Finance Director Rigdon; Planning Director Darling; Director of Public Works Brown; and, City Engineer Budde

Absent: None

PLEDGE OF ALLEGIANCE

B. Review Agenda

Johnson moved, Siakel seconded, approving the agenda as presented. All in favor, motion passed.

2. CONSENT AGENDA

Mayor Labadie reviewed the items on the Consent Agenda.

Councilmember Callies asked about item 2D and noted that in the report there was reference to some action that still needed to be taken, but the resolution states that it has been completed.

City Clerk/HR Director Thone stated that everything has been completed for this item, so the resolution language is accurate.

Mayor Labadie asked to remove item 2E from the Consent Agenda and move it to the Planning portion of the meeting as item 7E.

Johnson moved, Gorham seconded, Approving the Motions Contained on the Consent Agenda, as amended, and Adopting the Resolutions Therein.

A. City Council Regular Meeting Minutes of November 8, 2021

B. Approval of the Verified Claims List

C. Approval of Recording Secretary Service Agreement, Adopting RESOLUTION NO. 21-135, "A Resolution Approving an Addendum to the Recording Secretary Service Agreement."

- D. **Approval of the Retail Liquor License for Jim's Liquor, Adopting RESOLUTION NO. 21-136, "A Resolution Approving Jim's Liquor Off-Sale Intoxicating liquor License."**
- E. ~~**Approval of Consulting Planner Service Agreement, Adopting RESOLUTION NO. 21-137 (Moved to Planning – item 7E.)**~~
- F. **Approval of Assessment Agreements for Water Connections, Adopting RESOLUTION NO. 21-138, "A Resolution Certifying Special Assessments on the 2022 Hennepin County Property Tax Rolls."**
- G. **Approve Quote and Award Contract for Installation of Water Services on Lawtonka Drive, Adopting RESOLUTION NO. 21-139, "A Resolution Accepting Quote and Awarding Contract for Installation of Water Services on Lawtonka Drive."**

Consent Agenda Item A: Johnson, Gorham, Callies and Siakel voted aye. Labadie abstained. Items B, C, D, F, and G: All in favor. Motion carried.

3. MATTERS FROM THE FLOOR

Guy Sanschagrin, 27725 Island View Road, noted the upcoming Council retreat and stated that he thinks that will be a good time for the Council to take a step back and reflect on their duties to Shorewood residents. He suggested the following topics based on feedback he has gotten from other citizens: Create visible processes that base decisions and communications on data, facts and analysis; Improve engagement with residents; Realign and streamline the Zoning Code and better define processes around it. He shared various examples of where he feels each suggestion has room for improvement from their current practices. He stated that he would also suggest that the Council examine their own properties to ensure that there are no violations of City Code.

Mayor Labadie explained that the Council retreat will be held on November 30, 2021.

Chris Hoff, 26395 Peach Circle, thanked the Council for organizing the Strawberry Lane Open House and noted that he felt it was very productive. He stated that he has talked to a number of families from Strawberry Court, Peach Circle, and Strawberry Lane and feels there is a lot of support from the project and hope that it will come to fruition. He stated that there is a lot of interest in water and safety for walking and wanted to reiterate to the Council that there is a lot of community support for this project.

Mayor Labadie noted that for anyone interested, a link to the Open House can be found on the City's website.

Alan Yelsey, 26335 Peach Circle, stated that he would like to suggest agenda items for future meetings and for Council discussion at their upcoming retreat. The recommendations include: The City's practices – such as data and access to information; Projects – requesting that they be listed on the website with access for the residents of all the information pertinent to the projects; Data Practices Act; and the Smithtown Ponds Project to allow for updates and resident feedback on the proposal. He shared examples of situations and experiences as support for why he feels these topics are worthy of discussion.

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Mayor Labadie asked staff to address the comment made regarding charging residents for copies and asked if there is a way for people to view documents free of charge.

City Clerk/HR Director Thone stated that there is no charge for inspection of documents. She stated that the only time there is a charge is when residents want to leave with documents whether they are electronic or hard copy.

Mayor Labadie asked for an explanation of 'inspection'.

City Clerk/HR Director Thone explained that inspection means that they can come into City Hall and view the documents.

4. PUBLIC HEARING

5. REPORTS AND PRESENTATIONS

6. PARKS

A. Report by Commissioner Hirner on October 26, 2021 Park Commission Meeting

Park Commissioner Hirner gave a brief overview of discussion and actions taken at the October 26, 2021 Park Commission meeting, as reflected in the minutes.

7. PLANNING

A. Report by Commissioner Riedel on November 16, 2021 Planning Commission Meeting

Planning Commissioner Riedel gave a brief overview of the discussion and actions taken at the November 16, 2021 of the Planning Commission, as reflected in the minutes.

B. Minor Subdivision and Variance

Applicant: Zehnder Homes

Location: 24835 Yellowstone Trail

Planning Director Darling gave an overview of the request for a minor subdivision to re-establish the original lot line between two parcels. She noted that the original lot was recorded in the 1950s and were combined at some point in the past. She explained that the measurement regulations have changed since that time, so with current regulations, the lot would be four inches short of the 100 feet that is required. Staff initially recommended approval because, to recreate legal descriptions in this case, would create two complicated legal descriptions rather than two very simple legal descriptions. Staff received one letter that is attached in the packet and noted that there were also two requests to speak at the Planning Commission meeting. She gave a brief overview of the comments made at the meeting regarding the ravine work that was completed on the west side of the property that drains the Minnetonka Country Club which has been working well and were concerned that this subdivision would interfere with the flow. She stated that upon review, she found that there is a low area on the west side of the property which carries some localized overland waters, but no overland water from the Minnetonka Country Club. She noted that there is a twenty-four inch storm sewer pipe that is on the property to the west which carries a substantial amount of water from the Minnetonka Country Club regional ponds, through this

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area, and then directed towards Lake Minnewashta. The existing easements over the other property, as well as the standards ten foot easement, are adequate for the City to maintain the pipes in the future and nothing is expected with this subdivision that would harm the existing drainage system. The applicant is proposing to put a rain garden in the north middle portion of the project which would account for rate control from the additional impervious surface proposed on Lot #4. The Planning Commission voted unanimously to recommend approval of the request.

Gorham moved, Johnson seconded, Adopting RESOLUTION NO. 21-140, “A Resolution approving a Minor Subdivision and Variance for Zehnder Homes for Property Located at 24835 Yellowstone Trail.” All in favor, motion passed.

**C. Variance to Minimum House Width
Applicant: Ben and Meghan Becker
Location: 6180 Cathcart Drive**

Planning Director Darling explained the request to allow a home to be built at twenty feet wide rather than the required twenty-two feet. The applicant is proposing to remove all of the existing structures from the site and build a new home with two detached garages that would be used to store their personal vehicles and equipment. The home and the garages will have cedar stain, lap-siding with metal roofs. She explained that the proposed home is 20x65 feet and would have about four percent impervious surface coverage. Staff and the Planning Commission recommended approval. She noted that the Planning Commission had asked staff to add discussion of the purpose of a minimum width and size home as well as the size of the garage be added to their work plan in the upcoming year.

Ben Becker, 6180 Cathcart Drive, explained that this home was designed for his family by their architect, Dan Salmela. He read aloud brief biographical information regarding the background and design style of Mr. Salmela. He stated that they are very proud that Mr. Salmela has designed their home and explained some of the elements related to efficiency and natural light.

Councilmember Callies stated that a two foot difference, to her, does not seem to be that much. She stated that Mr. Becker stated that twenty feet is conducive to natural light and asked why twenty-two feet would not be conducive to their plans.

Mr. Becker stated that he believes that is a question that would need to be answered by Mr. Salmela. He noted that when they discussed it, Mr. Salmela indicated that sixteen feet is actually the optimal width. He stated that they have seven foot tall windows and there will be dark cement floors that will allow the light to flood in and warm the flooring and the house. He stated that Mr. Salmela has built other homes that are twenty feet wide which is the compromise that he feels is not too drastic a departure from the optimal sixteen feet width.

Councilmember Callies asked what the basis was of the City having a twenty-two foot width requirement.

Planning Director Darling explained that the minimum home size is consistent with other cities around the metro area. She stated that years back, the State Statute changed which said that zoning ordinances could not prevent any particular types of construction as long as they met the State building code. She stated that as a get around from people trying to live in sheds or mobile homes on regular lots, most cities instituted a size limitation. She stated that the size for Shorewood is 22x30 feet which is the equivalent of 660 square feet. She stated that the Becker

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family is proposing a 20x65 foot home which has multiple stories on two acres which she believes it is consistent with the intent of the zoning regulations to prevent impermanent construction.

Councilmember Gorham stated that although this is a self-created issue, he thinks that despite this being very reasonable, what the Planning Commission seemed to struggle with whether there was a way to take reasonable requests into the code so there is not a struggle with the definition of practical difficulty. He stated that he does not think this necessarily fits the variance.

Planning Director Darling agreed that it was not a one-hundred percent perfect fit with the variance criteria. She stated that she would go back to the first criteria which is intent with the Comprehensive Plan and zoning regulations. She noted that the entire criteria are subjective and she would feel in this particular case, the applicant has provided a design that satisfies most of the variance criteria and was enough that she felt comfortable recommending approval.

Councilmember Callies asked how often the City had request for width variance for a home.

Planning Director Darling stated that it is relatively rare and noted that this is the only one she has seen in the City.

Councilmember Callies stated that the reason the City may change the zoning regulations is if the City is hearing the same type of request over and over. She noted that if it is not a frequent request, it may be more appropriate for a variance as opposed to changing the entire code to some other width.

Councilmember Siakel stated that she thinks that the City is not used to people coming before the Council and asking to build something smaller because it is usually a request to go larger.

Johnson moved, Gorham seconded, Adopting RESOLUTION NO. 21-141, “A Resolution Approving a Variance to the Side Yard Setback for Property Located at 6180 Cathcart Drive.” All in favor, motion carried.

D. Urban Farm Animal Discussion

Planning Director Darling explained that this item is a continuation of previous discussion regarding chickens and other fowl. She stated that the Council recently approved changes to the standards for urban farm animals, but were concerned after hearing from some residents that chickens are constantly noisy and frequently escape from their enclosures. The Council directed staff to come up with some means of containing the chickens and asked them to look specifically into enclosures and wing clipping. She noted that staff also looked at the possibility of requiring more land in order to be allowed to have chickens or other fowl. Following their research, they are not making any recommendations regarding wing clipping as inspecting and enforcing that practice would be time consuming and an inefficient use of the inspector's time. Staff is recommending that the lot size and setback be increased from the side property lines to be greater than what is currently in place. She stated that this recommendation would be in the hope that there is more space between the coop and the property lines. They are also recommending that the enclosures be fully enclosed which could include nets or screening over the top and noted that the Council may want to consider a minimum sized enclosure based on the number of chickens and adding standards for rejecting or revoking permits, and exempting rabbits and bees from many of the new standards.

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Mayor Labadie asked if there was anyone present who would like to speak regarding urban farm animals, however, there was no one present for this issue.

Councilmember Johnson stated that his only concern is if the City has any current permit holders that have a lot that is less than the proposed half acre.

Planning Director Darling stated that they do and how this would be written up and structured is so that it would apply to new permit requests for a minimum sized lot. She stated that this would mean that all the people who currently have chickens can maintain the same number of chickens until they voluntarily decide to discontinue the practice.

Councilmember Gorham asked about the review of enclosures and whether there was generally a minimum size listed. He noted that if the Council were to recommend a size, he does not think he would know where to begin.

Planning Director Darling stated that there are several standards based on some of the websites she found. She noted that similar to minimum house sizes, it is a certain square footage per chicken or fowl and is based on maintaining minimum standards. She stated that property owners could go larger if they can accommodate that on their property.

Councilmember Gorham asked if they could go larger but would then be subject to accessory structures and building permit limitations.

Planning Director Darling stated that was correct.

Councilmember Gorham asked if she was looking for input from the Council on a minimum size.

Planning Director Darling noted that she plans to propose some options to the Council following her research, if the Council decides to move forward.

Councilmember Callies stated that she thinks the proposed changes sound reasonable to her, particularly the fully enclosed enclosures.

Councilmember Gorham asked if most of the current permit holders have fully enclosed areas.

Planning Director Darling stated that most of the current chicken owners have enclosed coops, but there are a few that allow their chickens to free range and are just enclosing them with fencing. She stated that the City will define 'enclosure' and require that it either have a top, a screen, or a net on it.

Councilmember Gorham expressed his appreciation to Planning Director Darling for how much time she has spent researching this issue.

Councilmember Callies asked if her understanding was correct that this that would still apply to the existing permit holders so they would have to fully enclose their coops, but would not have to meet the minimum lot size.

Planning Director Darling confirmed that this was a correct understanding.

There was consensus of the Council that these recommendations are reasonable and directed staff to proceed with drafting the amendments to the ordinance.

E. Approval of Consulting Planner Service Agreement (Moved from item 2E of the Consent Agenda)

Planning Director Darling explained that this item is a request to authorize a service agreement with Landform Professional Services to allow their review of any applications that may be submitted where there is a real or perceived conflict of interest for the Planning staff. She explained that certified planners have ethic requirements that are above and beyond the Minnesota Statutory definitions of conflict of interest. She noted that in the event of an application being submitted that she is not able to review, she recommends hiring a firm with a strong planning consultant team, such as Landform Professional Services. She stated that she is recommending them because their planning division is well established with a principal planner who has lead their team for over twenty years and they have extensive experience working with small communities and can accommodate the occasional review of a planning or zoning request. She stated that if no applications come forward in the next few months, staff would not execute the agreement and no cost to the City would be incurred.

Mayor Labadie noted that she would be abstaining from any discussion, debate, or vote on the matter and asked Mayor Pro-Tem Johnson to take over the meeting to discuss this matter.

Mayor Pro-Tem Johnson asked if the Council had any questions for staff.

Councilmember Callies stated that she feels this sounds reasonable but noted that she thinks there may be other situations that come up and questions why the City would not just go ahead and engage this firm and keep them on the 'back burner'. She stated that she understands that Mayor Labadie is recusing herself from this conversation, but noted that she feels this issue is not really directly related to that potential issue. She stated that she thinks it may be good idea for the City to have a back-up in place for other reasons.

Councilmember Gorham asked why this was an 'exploding offer' from the consultant that they can only manage this for three months. He asked why the City could not keep them on-call for a longer time period, such as a year.

Planning Director Darling noted that the City could certainly asked Landform Professional Services if they are open to a longer time frame.

Mayor Pro-Tem Johnson stated he thinks this would be something where the City would reach back out and renew the contract, as needed. He stated that he can see that this may come up in other situations for commissioners, firefighters, or staff members who also live in the City.

Councilmember Gorham asked at whose discretion this consultant would be used.

Planning Director Darling explained that she would make the call on that decision as an application came in. She stated that if she cannot review it, then no one who works under her certifications could review it either.

Councilmember Callies stated that she does not think the intent of this is to step over City staff on a regular basis, so this would have to be in the case of a conflict.

Mayor Pro-Tem Johnson stated that he assumes that there would also be some sort of consultation with City Administrator Lerud and the City Attorney as part of the decision making process.

Planning Director Darling agreed that she would consult them as part of her decision.

Councilmember Siakel stated that she thinks moving forward with this contract is the right thing to do in this circumstance.

Callies moved, Gorham seconded, Adopting RESOLUTION NO. 21-137, “A Resolution Accepting a Quote and Authorizing Execution of a Service Contract with Landform Professional Services. Johnson, Callies, Gorham and Siakel in favor. Motion passed 4-0-1 (Labadie abstained).

Mayor Pro-Tem Johnson turned the meeting back over to Mayor Labadie.

8. ENGINEERING/PUBLIC WORKS

A. Authorize Preparation of Plans and Specifications for 2022 Mill and Overlay, City Project 21-11

City Engineer Budde noted that the City identified a mill and overlay project as part of their 2022 CIP in order to aid in maintaining and extending the longevity of the existing roadway infrastructure in the City. He noted that generally, these streets have the poorest pavement ratings and will benefit from a mill and overlay project. The roadways proposed to be included are: Silver Lake Trail, Sierra Circle, Christmas Lake Road, Christmas Lake Lane (East and West), Murray Street, Murray Court, Galpin Lane, and the remaining block of Covington Road. The City has budgeted \$732,500 for this project and there is a proposal from Bolton and Menk in the amount of \$95,500 to prepare the final plans and specifications and complete construction administration for the project.

Siakel moved, Johnson seconded, Adopting RESOLUTION NO. 21-142, “A Resolution Authorizing Preparing Plans and Specifications for the 2022 Mill and Overlay Project, City Project 21-11.” All in favor, motion passed.

Mayor Labadie noted that the City is currently in the process of addressing the condition of Galpin Lake Road. She stated that there has been a hearing in front of the Capital Investment Committee and there was a legislative bus tour conducted that included State senators, representatives and other individuals that came to the City. She stated that they are aware that the road does not match the City of Chanhassen and she has reached out to the mayor of Chanhassen to discuss the issue. She stated that if the funding does not come through, it is possible the City may have to address this road at some point. She stated that she just wanted to point out that the roadway is being looked at by both the local level in communication with the neighboring city and neighboring county as well as the State level.

9. GENERAL/NEW BUSINESS

10. STAFF AND COUNCIL REPORTS

A. Administrator and Staff

1. Twins Community Funds Grant

City Administrator Lerud stated that this item is just for informational purposes. He stated that the field posts on Field 2 have heaved out of the ground and the concrete is exposed. He stated that the City has submitted a grant application to the Twins Community Fund to help with repair and replacement of those posts. He stated that the City will find out by the end of the year if the grant is awarded, but noted that the City may have to do the construction in 2022 whether the grant is awarded or not, because of the condition of the posts.

2. Update on Request for Non-Conforming Dock

Planning Director Darling noted that on November 8, 2021, Kelly Rogers spoke to the Council from 20960 Radisson Road who submitted documentation and asked that she be allowed to have a dock on her easement at Christmas Lake either by variance, Conditional Use Permit, or by considering the dock that she previously had to be grandfathered in. Council had requested that staff review the documents and her findings are summarized in the staff report. She stated that in the matter of a variance application docks are listed as an accessory use which defines them as a use and consequently, in the State of Minnesota, you would not be able to apply for a variance to have a dock as a principal use. She stated that for a Conditional Use Permit, in order to review and approve a CUP, the zoning ordinance has to list that use subject to the approve of the CUP and no such use is authorized in a residential zoning districts. She stated that 'grandfathering' is a colloquial term for non-conforming rights and explained that a legally non-conforming right means that a use or structure was originally allowed but due to a code change or other legal process, the use no longer conforms to code. She noted that by Statute, such a use may be continued indefinitely under the parameters in State statute or City code. She stated that if a use was begun and continued without ever having been consistent with code, it is non-conforming and has no rights under Statute to continue. She noted that she had also summarized the rights to the property and the court case that was cited by Ms. Rogers in the staff report. She noted that this item is just for informational purposes this evening.

Kelly Rogers noted that she would be turning in her data practices form to the City.

Other

Finance Director Rigdon reminded the Council that the Truth in Taxation meeting will be coming up on December 6, 2021 at 7:00 p.m. in the Council Chambers.

City Engineer Budde gave a brief update on the Smithtown Pond project. He stated that the City was anticipating getting their permit from the Army Corps of Engineers at the beginning of November, but due to a settlement on a case in California, the Army Corps of Engineers has paused any new permits until they get more clarity on the results and nuances of that case. He stated that is not sure how long this permit will be idling.

Councilmember Gorham asked how long the Army Corps of Engineers has had the permit and whether it had already been six months.

City Engineer Budde stated that this permit is a three month permit and they have had it for just over three months.

Councilmember Callies asked if City Engineer Budde was waiting for direction from the Council as to when to get Strawberry Lane back on the agenda.

City Engineer Budde stated that staff had tentatively slated for it to come back in January. He stated that he expected the Council to discuss the applicable items at their upcoming retreat.

Councilmember Johnson stated that there was a comment made during Matters from the Floor about residents being able to find information on projects through the City website. He asked if all of those details and information were available on the City website under Road and City Projects.

City Engineer Budde stated that the relevant documents are available on the City website. He stated that he has met with the person who provided that comment and some of the information they were looking for is from four or five years ago, such as older drainage studies. He stated that all of the information from those have had more recently updated studies, so, in his opinion, some of those things are obsolete and irrelevant.

Councilmember Johnson asked if the Barr Engineering study for all of western Shorewood was still available on the website.

City Engineer Budde stated that study is still on the website and he was referring to stuff prior to that, which is no longer available on the website.

Councilmember Callies stated that she thinks the request was to archive all the documents that there would be in the Data Practices request onto the website, which does not seem practical to her. She stated that the documents are available by a Data Practices request.

City Engineer Budde stated that he had a similar thought on that issue. He stated that he had advised that individual to go ahead and request those documents and they would be provided.

Councilmember Gorham asked if the City charged for something like sending a digital file of information.

City Engineer Budde stated that his understanding is that the City does charge for this service.

City Administrator Lerud noted that the City does charge for staff time and research time. He noted that, for example, Bolton and Menk will submit a bill to the City for the time City Engineer Budde and his staff needed to compile this information so, the charge is a way to recoup those costs.

Councilmember Callies noted that those costs are also set by Statute and is not something the City is making up and this is what is allowed.

Councilmember Gorham stated that if it is available on the website, then it is free. He noted that the concern is that the document is taken off of the website and now people have to pay to access that document.

Councilmember Callies stated that is because it would be considered archival research. She noted that she feels the current website is a bit difficult to maneuver to find the information under

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the links and how it is organized. She stated that it does not make sense to her to have every possible document that the City has ever used available on the website.

Councilmember Johnson stated that he completely agreed.

Councilmember Siakel noted that when a resident calls, she feels staff bends over backwards in order to help them and will get the information. She stated that she does not know how everything could be put on the website. She stated that if a resident has a concern, all they have to do is call City Clerk/HR Director Thone or someone at the front desk for assistance.

B. Mayor and City Council

Councilmember Callies asked about the Council schedule for December.

City Administrator Lerud note that the Truth in Taxation meeting will be December 6, 2021 and then are planning to have the regular second Monday meeting on December 13, 2021. He stated that there will be a resolution at the December 13, 2021 meeting requesting some holiday hours and that the December 27, 2021 regular Council meeting not be held.

Councilmember Johnson stated that he felt the Strawberry Lane Open House was great and noted that all Councilmembers were in attendance.

Councilmember Siakel stated that something was brought up tonight regarding Council response to residents. She explained that her comments in the past were that she wanted to have discussion at the retreat for some guidance in responding to residents. She stated that at no time has she ever directed or instructed Councilmembers that they should or should not respond to residents. She noted that, however, when she gets a hostile e-mail or communication or something that threatens litigation, she does not feel compelled to respond to those. She stated that her point at the meeting was really to have a conversation about those situations and how the Council can handle them appropriately and reiterated that she has never told other Councilmembers how they should communicate, respond, or interact with the residents because that is up to them as elected officials.

Mayor Labadie explained the open meeting law and noted that regarding communications, the Council is very cognizant of the law and is cautious that they not violate the law. She stated that there were final interviews for the South Lake Minnetonka Police Department and have selected a finalist who is going through the final evaluations and clearances before they are offered the position. She stated that she met with the other mayors of the Minnetonka School District with the Superintendent which was a productive meeting and noted that Dr. Peterson, the Superintendent, has submitted his retirement plans. She stated that Arctic Fever will be coming up soon and encouraged anyone interested in volunteering to contact Park and Recreation Director Grout for the available opportunities. She stated that her Coffee with the Mayor at Pillars of Shorewood Landing has been going really well and have now scheduled it for once a month. She noted that she has started taking a guest speaker with her to these meetings and noted that currently, these meetings are not open to the public due to COVID-19 restrictions, but on December 10, 2021 the guest speaker will be Senator Ann Johnson-Stewart, whose mother is a resident at the Pillars and on January 13, 2022, Representative Kelly Morrison will be the guest speaker.

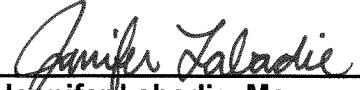
11. ADJOURN

Johnson moved, Gorham seconded, Adjourning the City Council Regular Meeting of November 22, 2021, at 8:24 P.M. All in favor, motion passed.

ATTEST:



Sandie Thone, City Clerk



Jennifer Labadie, Mayor