

Councilpersons:
First Ward: Friedmeyer, Wharton
Second Ward: Schmidt, Kruger
Third Ward: Bricher, Schoen

Mayor: Rollin Hall
City Atty: Peter Ekstrand
City Adm: Chad Springer
City Clerk: Susan Schamaun
Date: August 21, 2014

**CLOSED SPECIAL MEETING PROCEEDINGS OF THE CITY COUNCIL
AND WABASHA PLANNING COMMISSION**

The Closed special meeting of the City Council and the Wabasha Planning Commission of the City of Wabasha was held on Thursday, August 21, 2014, and was called to order at 4:30 pm by Mayor Hall.

Councilpersons present: Bricher, Friedmeyer, Schmidt, Schoen, Kruger, Wharton and Mayor Hall.
Planning Commission members present: John Friedmeyer, Charles Bricher, Craig Falkum, and Jim Miller. Dr. Scott Durand arrived late. Absent: Tim Wallerich and Brian Wodele.

Attorney Paul Reuvers, Attorney representing the City was present as well as City Attorney Peter Ekstrand. City Administrator, Chad Springer; Planning Assistant, Wendy Busch; City Clerk, Sue Schamaun and City Planner, Molly Patterson-Lundgren, were also present.

Mayor Hall announced the purpose of the Closed Special Meeting was to discuss pending litigation regarding the lawsuit filed by Mr. James Roemer against the City of Wabasha in Federal Court.

At 4:31 pm, Councilpersons Friedmeyer and Kruger moved to go into Closed Session to discuss pending litigation regarding the lawsuit filed by Mr. James Roemer against the City of Wabasha in Federal Court. Adopted unanimously.

At 5:37 pm, Councilpersons Schmidt and Bricher moved to come out of Closes Session. Adopted unanimously.

Open Session.

Mayor Hall announced that the City Council discussed the proposed settlement between the City of Wabasha and the plaintiffs, Jim and Mary Roemer and no action was taken in Closed Session.

Attorney Paul Reuvers explained that the representatives for the City along with himself were, City Administrator Chad Springer, and Councilpersons Schoen and Friedmeyer, and Molly Patterson-Lundgren, who is the City Planner in this case, reached an agreement with the Roemer group at a federal court settlement hearing on July 31st. Attorney Reuvers stated they discussed what, if any, grandfather rights did Mr. Roemer have to that site prior to the change in ordinance and also how interconnected were they with the railroad, which was important due to federal preemption. He also stated that transloading is transportation and so the question was how interconnected or how much control does the railroad have to Roemer's operation. He stated leading up to this hearing, they spent a lot of time with the Planning Commission looking at options. If the City prevailed in the suit, he would still get a permit but he would be required to obtain a Conditional Use Permit from the City and if we lose the litigation, the City gets nothing and has no regulatory authority. He explained some of the conditions in the settlement in reference to number of truckloads, routes, hours of operation, dust control and road improvements. He stated Mr. Roemer will be contributing \$50,000 to the City to be used for City road improvements as the City deems appropriate.

Attorney Paul Reuvers recommended Council approved the settlement as proposed and explained that Councilmembers Friedmeyer and Schoen took an oath to approve the settlement when voted on by the Council.

Councilpersons Bricher and Schmidt moved to approve the settlement as presented see Attachment A.

Councilpersons Wharton stated he wanted to table this item and stated he felt this was not a good agreement. He felt the number of trucks, 400 each way, coming into town will be a detriment and also stated he felt the real estate values would diminish. He was also concerned with the noise, diesel fumes and silica sand dust. He pointed out there is a city park where children will be exposed to the truck traffic close to this facility. He urged Council not to vote for the settlement.

Councilperson Schmidt stated the City has two attorneys recommending to approve the proposed settlement. He also stated if we continue to fight and the city loses, the city has no control. If the settlement is approved, the City has some control.

Councilperson Friedmeyer stated he was not comfortable continuing the lawsuit with a 1 in 5 chance of winning.

Councilperson Bricher stated without the agreement, there would be no control on the number of trucks or the days or hours of operation.

Councilperson Schoen stated she was not happy with the settlement and there was a lot of discussion at the federal court settlement hearing. She stated she agrees with Councilperson Wharton but she is bound by the court to vote a certain way. She stated she felt they did the best they could under the circumstances and nobody is going to win in this. She stated there is a lot of responsibility to go around and the city is trying to do the best that it can. She stated for some of the questions, answers don't exist yet.

The motion was adopted by the following vote:

Ayes: Kruger, Schmidt, Bricher, Mayor Hall, Friedmeyer

Nays: Wharton

Abstain: Schoen

ATTACHMENT A: SETTLEMENT

Having no other business, Councilpersons Schmidt and Kruger moved to adjourn at 6:00 pm. **Adopted unanimously.**

Susan Schamaun, City Clerk