

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JANUARY 28, 2002**

1. CALL TO ORDER.

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

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL.

City Clerk Kathleen Magrew called the roll. Council members Jan Callison, Terry Schneider, Linda Koblick, Al Thomas, Ken Tauer and Karen Anderson were present. Council member Dick Allendorf was excused.

4. APPROVAL OF AGENDA.

City Manager John Gunyou advised the council of additional information regarding item 10E, a revised resolution correcting the address in the heading; and item 14B, the Gray's Bay Marina. Gunyou said that the information regarding item 14B would be fully explained during that portion of the agenda.

Koblick moved, Tauer seconded a motion to approve the agenda with the addendum information. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES

Callison moved, Schneider seconded a motion to approve the minutes of the January 7, 2002 regular city council meeting as submitted. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Retirement Recognition of Lt. Terry Balfanz.

Callison noted the accomplishments of Lt. Balfanz's 29 years of service to the city. She and Mayor Anderson presented a plaque to Lt. Balfanz and he received a standing ovation from all present. Lt. Balfanz thanked the present and past city councils for their strong support. Tauer said this was the first standing ovation he had observed during his service on the council, and noted the respect for Lt. Balfanz.

B. Commendation to Minnetonka Citizen for Assistance to the Police Department.

Mayor Anderson and Police Chief Joy Rikala presented Russell James Putchio with a plaque commending him for his efforts on behalf of the City

of Minnetonka and the Minnetonka Police Department. Putschio restrained a suspect in an armed robbery.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

City Manager John Gunyou reported that staff was working on a contingency plan in response to the State's "Big Fix" for the budget situation. Information on the contingency plan will be presented to the council within the next few weeks.

Gunyou noted that there will be a study session on February 4 at which the council will receive a status report on its targets, and there will be a discussion regarding buildable areas. The next regular council meeting will be held on February 11. Open space priorities will be the main business item for that agenda.

Anderson thanked the city manager and council members for attending the fire department's annual ball over the past weekend.

8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA.

9. BIDS AND PURCHASES. None

10. Items Requiring a Majority Vote:

A. Claims for council authorization – January 14, 2002.

Tauer moved, Callison seconded a motion to approve the January 14, 2002 claims list including checks numbered 163718 through 164068 totaling \$1,249,938.06. All voted "yes." Motion carried.

B. Claims for council authorization – January 28, 2002.

Tauer moved, Callison seconded a motion to approve the January 28, 2002 claims list including checks numbered 164069 through 164438 totaling \$2,969,188.76. All voted "yes." Motion carried.

C. Resolution approving the Pay Equity Implementation Report for the City of Minnetonka.

Tauer moved, Callison seconded a motion to approve Resolution 2002-007 approving the Pay Equity Implementation Report for the City of Minnetonka. All voted "yes." Motion carried.

D. Approval of a resolution amending City Council Policy 11.7 pertaining to Big Willow Park operations.

This item was pulled from the consent agenda for discussion at the request of an audience member.

Recreation Director Dave Johnson reported that the name change for the organization was routine and that the issue of concern to the neighbors related to extending the hours for operation of lighting at the fields. He advised that the change was requested because the Little League Association was now under the Amateur Athletic Union. Johnson explained that under the proposed change, the association could not play past 10 p.m., and that innings would no longer be the deciding factor for extending play. He said that there was nothing in the policy that specifically allowed the lights to be on for maintenance. Johnson said that softball lighting can be on until 10:30 p.m., soccer lighting until 10 p.m. and baseball lighting until 11 p.m. Currently, Little League innings can not begin after 9:20 p.m., but play can continue.

Callison asked about the location of the Little League fields. Johnson said that fields 1, 2 and 3 are along Minnetonka Boulevard. Callison asked about spillover of lighting to the neighbors across Minnetonka Boulevard. Johnson said that according to city tests, spillover was minimal and below the allowed foot-candle level.

Barbara Wood, 11883 Minnetonka Boulevard, spoke on behalf of herself and her neighbors. She objected to the short notice for the meeting and said that other neighbors could not be present. Sixteen neighbors signed a petition opposing extending the hours of lighting. Wood said that she understood that the request was made solely for the convenience of the League so they could start games later, and did not provide any additional game capacity. She said that the League and the neighbors had agreed to the existing hours of operation. She questioned the wisdom of extending the time for games for boys on weeknights. Wood said that the other lighting was immaterial to this request. She said that the lighting reflects and causes light pollution for the neighbors.

Gunyou related Allendorf comments in his absence. Allendorf had reservations about approving the request unless value could be demonstrated for the League and its participants. Anderson noted that Allendorf is the ward council representative for that area.

Johnson said that the extended hours would not add to the game capacity. He noted that field capacity is an issue throughout the city. The longer period would help them in cases of rain delays.

Anderson asked if the starting times for games would change. Tauer noted that if the starting times remained the same, the likelihood of extending games would be quite remote. Johnson responded that last year the League started one game at 6 p.m. and another at 8 p.m. The goal was to complete the first game by 7:30 p.m.

Tauer asked if the League could be held to those starting times. He said if only one in ten games extended later, that would not cause a great inconvenience. He would object if the League began starting games later.

Johnson said that the city could enforce the start times by requiring that no game start later than 8 p.m.

Callison said that it would be helpful to know the likelihood of games extending later and how many games could not be completed last year because of time.

Anderson expressed concern about the lighting always remaining on until 10:20. She said that it would be ridiculous to leave the lights on if no one was at the field.

Thomas asked if the maintenance would always begin as soon as the game ended, or if the League would schedule the maintenance for 10 p.m.

Schneider said that if this was the only lit field, greater sensitivity would be required. He was not sure of the impact of the requested extension. Anderson noted the reaction of the audience, and said that they have indicated that they know the impact of the Little League lights going off at 9:20 p.m. Schneider said that he would be reluctant to decide the issue without input from the League. He said that the game ending should start the clock for the maintenance time.

Wood said that she can tell the difference when the Little League lights are on or off. She invited the council to visit their homes to see the lighting.

Koblick noted her past involvement with Little League. She said that there would be spillover from the lighting at other fields which could help during maintenance.

Johnson said that there is spillover of lighting from other fields. He said that the League will maintain the fields as soon as games end, and that they wanted the lighting also for the safety of those handling money in the concession stands.

Callison moved, Thomas seconded a motion to continue this item for a time when the League Association can be present to address the issue of start times and maintenance needs.

Anderson asked Johnson to check with the league in scheduling this item for a future agenda. She also asked Johnson to contact Ms. Woods. Johnson said that he would also advise David Camp of the new date because he organized the petition signing. All voted "yes." Motion carried.

E. Resolution approving a conditional use permit for a medical use in a B2 zone at 11004 Cedar Lake Road for Paul E. Ziman.

Tauer moved, Callison seconded motion to adopt Resolution 2002-008 approving a conditional use permit for a medical use in a B-2 zone at 10976-11032 Cedar Lake Road for Paul E. Ziman. Approval is based on

the findings that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Record this resolution with the county before the city issues a building permit.
- 2) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 3) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 4) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

F. Resolution receiving feasibility report, ordering the improvements in, and authorizing the preparation of plans and specifications, and authorizing easement acquisition for the 2002 Pavement Rehabilitation Program, Project No. 4416.

This item was pulled from the consent agenda by Anderson, who asked staff to investigate the cost and feasibility of undergrounding the utilities along the streets in the Windsor Lake area as part of that project.

Gunyou said that staff could obtain estimates from Xcel Energy for the council's discussion of the Capital Improvements Program. The council could then decide if it was appropriate to allocate funds to accomplish this.

Anderson noted that utilities were buried during the Meeting Street project, and asked how that was funded. City Engineer Lee Gustafson said that the Street Improvement Fund paid for that work, and that a number of poles had to be moved as part of the Meeting Street project, so Xcel Energy's contributions reduced the city's costs to bury the utilities. Anderson asked if poles would need to be moved in the Windsor Lake area. Gustafson said that not as many poles would need to be moved in the Windsor Lake area because geometric changes were not anticipated in most areas.

Anderson asked who buries utilities. Gustafson said that each individual utility buries their own. Once all of the lines are buried, the poles are removed. Anderson noted that Xcel has expected the city to bear the cost of burying the electrical utilities. She asked if the other utilities shared that view. Gustafson said that in the past they have not, but their expectations have grown in recent years.

Anderson wanted to get at the true cost of burying the utilities. She knows that Xcel has resisted burying lines in the past and asked staff to pay attention to the costs. She thought the Windsor Lake neighborhood would benefit from burying the utilities.

Tauer said that joint trenching options should be explored to reduce costs and suggested that the city initiate such discussions. Tauer also noted that when the electric franchise was renegotiated, the city was given the right to verify the cost of burying utilities.

Gunyou said that staff will be bringing a policy to the council for discussion about when utilities are buried. This will also be discussed during the Capital Improvements Program review.

Schneider supported obtaining costs because this was a typical neighborhood, but thought that any decision should be based on a uniform policy that discusses funding sources.

Schneider said that the state's budget response may also impact these kinds of projects. Gunyou concurred, and noted that street projects are one of the larger capital outlays of the city. He said that budget responses would not likely affect 2002 street projects.

Tauer moved, Callison seconded a motion to adopt Resolution 2002-009 receiving feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the 2002 Pavement Rehabilitation Program, Project No. 4416. All voted "yes." Motion carried.

G. Resolution receiving feasibility report, authorizing preparation of plans and specifications, and authorizing easement acquisition for the CSAH 73/TH 7 Intersection Improvement Project No. 4887R.

Tauer moved, Callison seconded a motion to adopt Resolution 2002-010 receiving feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the CSAH 73/TH 7 Street Improvement Project No. 4887R. All voted "yes." Motion carried.

H. Resolution approving a conditional use permit for an accessory structure that exceeds 12 feet in height at 3904 Williston Road for Kirk Velett.

Tauer moved, Callison seconded a motion to adopt Resolution 2002-011 approves a conditional use permit at 3904 Williston Road to construct an accessory building in excess of 12 feet in height. Approval is based on the following findings:

- 1) The proposal meets the required conditional use permit standards
- 2) The proposal would not impose any negative impacts on the surrounding area.
- 3) The proposal is consistent with the spirit and intent of the ordinance.

Approval is subject to the following conditions:

- 1) Record this resolution with the county before the city issues a building permit.
- 2) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 3) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 4) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

11. **Items requiring Five Votes.** None

12. **INTRODUCTION OF ORDINANCES.** None

13. **PUBLIC HEARINGS.**

A. Continued public hearing to consider applications for off-sale liquor license to Cost Plus, Inc. for use at Cost Plus World Market, to be located at 11240 Wayzata Boulevard, Suite B, Minnetonka, Minnesota (formerly HomePlace).

Gunyou briefly introduced this item, noting that the city attorney will discuss the council's discretion on the issuance of liquor licenses.

Community Development Director Ron Rankin introduced the item, reviewing the information in the staff report. He clarified that the wine shop would require 1,528 square feet of the total 19,500 square feet that CostPlus would lease, and that total area represented one-half of the former Homeplace store. Rankin said that nothing in the background investigation warranted denial of a liquor license.

City Attorney Desyl Peterson noted that the public hearing was opened at a previous meeting. At that meeting, another liquor license holder presented what seemed to be an argument for the council not to grant the

license to prevent competition to another business. Peterson said that the council has the ability to limit the number of liquor licenses issued in the city but they cannot do this to limit competition. They may only limit the licenses when doing that would be in the broader public interest for the city as a whole. An example of an argument that would support limiting licenses would be the police department being unable to handle the additional workload. She said that the council cannot deny a liquor license solely to restrict competition.

Anderson said that the people who have written or called to oppose the CostPlus license had not only cited the competition issue, but also expressed concern that CostPlus is a nationally supported and marketed business which would compete against an existing hometown and locally-owned business. She asked Peterson if this could be a basis for denial.

Peterson said that it could not, because it would be based on the private interest of one business and not on the public welfare of all citizens of the city as a whole. She said that business formation information is not relevant to the council's decision-making process.

At Anderson's request, Rankin clarified the square footage of the CostPlus store, and noted that the wine shop will have a separate entrance off CostPlus' main entrance.

Anderson noted that the public hearing was still open.

Julie Kauser was present on behalf of CostPlus. Anderson asked her if the wine shop was an integral part of their operation. Kauser said that liquor sales typically represent 10 to 20 percent of their overall sales.

Warren Steiner spoke as President of Broviak & Co., a business neighbor to the proposed CostPlus. He supported the American way, which promotes competition. He believes that if CostPlus opens, his business will close because he could not absorb even a one or two percent decrease in business. Steiner said that his store offers greater selection, and he expressed the hope that CostPlus would meet the needs of his customers who want upscale wines.

Steiner also recalled Anderson's words at a previous meeting about liquor licenses being a privilege, and concurred with that view. He questioned a California business realizing that and working to prevent the sale of liquor to minors in Minnetonka.

Anderson said that Minnetonka's ordinance is designed to prevent the sale of liquor to under aged individuals and offers very tough penalties. She assumes Costplus will adhere to the ordinance. She noted that the council enforces the ordinances equally for all liquor license holders.

Linda Mason, 13028 Northview Road, questioned if any value would be added by CostPlus. She noted that with this license, there would be seven liquor establishments in the area. She said that some landlords would not have set up a competitive situation such as this. She noted that Minneapolis limits liquor licenses within 400 feet of each other.

There were no other comments from the audience, and Anderson closed the hearing at 7:44 p.m.

Callison recalled Leslie Broviak's comments when the hearing was opened at a previous meeting. She said that it is clear that Broviak's customers are loyal. She said that everyone is sympathetic to the situation, but the council has no tool to deal with the competition issue. In response to the issue of seven licenses being too many, Callison said that some may have argued that six licenses would have been too many. She said that there is no indication that the police department is overtaxed due to the number of licenses in the area. She said that the council cannot consider the issue of whether a benefit is being added in this case. She expressed the hope that Broviak weathers the storm and stays.

Schneider moved, Tauer seconded a motion to grant Cost Plus, Inc. an off-sale intoxicating liquor license to be used at Cost Plus World Market located at 11240 Wayzata Boulevard, Suite B, Minnetonka Minnesota.

Tauer said that the I-394 corridor is the most concentrated area of the city for everything. He said that CSM has been a good builder, and it was a puzzle to him why they allowed the competition situation to occur. He said that the issue of competition is not within the council's purview, and there is no reason by which the council could deny the request.

Anderson said that she prefers local, homegrown businesses and noted the loyal and dedicated clientele of Broviaks. She expressed the hope that Broviaks customers would continue to support them. She said that it is not within the council's purview to consider market issues. She said that the same issue is raised with regard to grocery stores and coffee shops.

All voted "yes." Motion carried.

B. Public hearing to consider items concerning a lot division at 14725 Minnetonka Drive:

- 1) Public hearing to consider a resolution vacating part of a drainage and utility easement; and**
- 2) Resolution approving a lot division.**

Principal Planner Cary Teague provided the background report for this item.

Koblick said that a neighbor asked about trees that were placed on the site to provide a buffer. Teague said that the pine trees were required as part of the previous development and the applicant wants to keep them. The applicant will be working with the city's environmental coordinator to try to save them.

Anderson asked if a twinhome could be built on the lot. Teague said that tonight's action would only be an approval of the lot division. The applicant wants to build a single-family home. The applicant would need to seek site and building review by the planning commission if a double home was desired.

Tauer asked why the home would require sprinkling. Teague said that was a typical requirement of the fire chief for shared driveways.

Anderson opened the public hearing at 7:56 p.m. No one spoke and the hearing was closed.

Thomas moved, Schneider seconded a motion to:

A. Hold the public hearing and adopt Resolution 2002-012 vacating the drainage and utility easements. Approval is subject to completing the following conditions:

1) Deeding a new easement to the city. The description of the new easement shall be subject to staff approval.

2) Provide title evidence as required by the city attorney.

B. Adopt Resolution 2002- 013 approving the lot division. Approval is subject to the following conditions:

1) Complete the following before release of this resolution approving the lot division:

a. If applicable, evidence of watershed district approval.

b. The following documents for the city attorney's approval:

(1) At least a ten-foot-wide drainage and utility easement next to the existing right-of-way, and at least seven-foot-wide drainage and utility easements along all other lot lines;

(2) A utility easement over existing or proposed public utilities, as determined by the city engineer;

g. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.

3) The resolution vacating the drainage and utility easements must be recorded with the lot division resolution.

4) This resolution must be recorded by the county within one year, unless the city council approves a time extension. If the council does not approve the extension, the lot division approval will be void.

All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Items concerning construction of a new home at 5658 Seven Oaks Court for Robert Ogren:

- 1) **Resolution approving a shoreland setback variance from 35 feet to 25 feet and a floodplain setback variance from 35 feet to 1 foot; and**
- 2) **Resolution approving a conditional use permit for an accessory apartment.**

Teague provided the background information for this item.

Koblick asked if the variance request could be reduced through changes to the garage and if the lot size impacted the variance. Teague said that the garage could be shifted. He said that the setback would need to be to the line of sight or 35 feet, regardless of the lot size.

Tauer noted the side protrusion on the garage. He asked about the standard size for a three-car garage. Teague responded that 36' is a typical width for a three-car garage. Tauer said that the setback could be reduced to the street rather than to the lake.

Schneider suggested looking at the value and benefit of shifting the garage over what is on the property now and what the new structure would bring. He said that shifting the structure might make sense if the lot were vacant. He viewed the request as reasonable, and supported staff's recommendation.

Gunyou presented Allendorf's comments. Allendorf viewed the request as an improvement over the current situation. It would be less intrusive and was in keeping with the character of the neighborhood.

Robert Ogren, 17338 Bench Path, Farmington, spoke as the applicant. He said that moving the garage would impact the access for the mother-in-law

apartment. He said the garage bump out was to provide street appeal and ease of access to the vehicles in the garage.

Callison agreed with Schneider's comments about the net benefit. The request increases the setback to Glen Lake.

Tauer agreed that the proposal offers a net benefit from the original, and said that he just wanted to ensure that the request was not extravagant.

Thomas moved, Schneider seconded a motion to:

Adopt Resolution 2002-014 approving the following variances at 5658 Seven Oaks Court:

- Shoreland setback from 35 feet to 25 feet from a line drawn from the closest shoreward corners of the adjacent structures.
- Floodplain variance from 35 to 1 foot.

Approval is based on the following findings:

- 1) Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - a. The small size of the lot (15,000 square feet) limits the building area; and
 - b. The lot was created before the current setback ordinances from the lake and floodplain.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The house would be set back further from the lake and floodplain than the existing house; and
 - b. A conservation easement would be established along the lake edge.

Approval is subject to the following conditions:

- 1) Submit the following before the city issues a building permit:
 - a. Proof of having recorded this resolution and the conditional use permit resolution with the county.
 - b. Proof of recording a 20-foot-wide conservation easement from the ordinary high water elevation (904.1) with the county.

- c. A demolition permit for the existing home.
 - d. A grading/drainage plan that includes water resource protection plus detailed fencing that ensures that construction would not occur within the floodplain and that stockpiling would occur away from the lake.
 - e. A revised site plan showing the new boundary of the wetland edge at the northwest corner being 35 feet from the corner of the house.
- 2) This variance will end on December 31, 2002, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

Adopt Resolution No. 2002-015 approving the proposed conditional use permit for an accessory apartment. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Record this resolution with the county before the city issues a building permit.
- 2) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 3) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 4) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

B. Items involving the Gray's Bay Marina:

- 1) **Operating agreement with the Department of Natural Resources**
- 2) **Operating and business plans**

Gunyou provided a brief introduction to the item, noting the addendum materials.

Peterson provided the background information as presented in the staff report. She added that since the report was prepared, the Department of Natural Resources (DNR) had asked about a slip for an enforcement boat. In order to add one slip, two must be added. The DNR would make the additional slip available for the city to lease. The additional slips would require a variance from the Lake Minnetonka Conservation District

(LMCD) due to the length of the dock. Peterson said that there was no certainty that the variance would be granted and noted that the addendum suggested that she be given flexibility with wording to respond to this option.

Peterson said that another issue is the definition of closing the site in the winter. She said that the common expectation is that the city will not plow the lot in the winter, but the open issue is whether or not the area will be gated or a barrier placed at the entrance. Peterson said that the DNR did not think they had agreed to a barrier, but the task force had a strong belief that a barrier was needed when the site was not attended. The task force did not view the site as a park; they view it as a boat launch. Peterson noted that there will be 15 parking spaces on the causeway when the road improvements are completed, so pedestrians could access the lake in the winter at that point. Peterson said that the task force insisted that the site be gated from October 31 to April 1, but said that the site could remain open to November 15 if weather permitted and there was an attendant on site. The DNR reluctantly agreed to this.

Peterson noted the attached summary of the task force's understanding and compromises regarding the project. Peterson said that the addendum added a sentence stating that the attendant requirement came from the neighbors; this was added at the suggestion of Callison.

Anderson asked about the average "ice-out" date. Peterson said that she thought the date was April 15, but said that date rarely coincided with the actual ice-out date. Anderson said that she thought ice-out usually occurred in mid-to-late March. Peterson said that the task force agreed that there was some merit to having a date certain so that users would have the same expectations every year.

Thomas asked if the site would be gated during the night during the boating season. Peterson responded that the boat launch would be available 24-hours/day during the boating season.

Johnson then reviewed the information in the staff report regarding the operating and business plans. He said that the additional slip provided by the DNR would reduce costs.

Callison suggested that the agreement be amended to clarify that the site would be open 24-hours a day only during the operating season.

Koblick said that she has 20-years experience with boating. She has never seen a slip that was available in perpetuity unless a very large boat was purchased through a marina.

Facilities Manager Mike Pavelka said that the suggestion was for a one-year lease with a courtesy option to renew. This recommendation was

based on the previous owner's operation and other private marinas on the lake.

Thomas, noting that the site is proposed to operate as an enterprise fund, expressed the hope that the site would be self-sufficient. He asked about the impact to other funds if, for example, revenues did not meet expectations. Gunyou said that situation would be addressed the same as with other city facilities—staff would first look at expenses that were not fixed, such as wages and capital expenditures, and also at revenue (the slip rental). He said that fees would be reviewed annually. Slip fees would be raised to ensure no cross-subsidy from other funds. Johnson concurred and noted the \$15,000 escrow fund which was intended to remain untouched for at least ten years. He said that staffing could fluctuate with the needs as well.

Thomas said that he wanted staff to watch to make sure the site is self-sufficient. He agreed that the facility will be great, but was leery of expanding it.

Gunyou replied that the presumption is that the city will not cross-subsidize this site with property tax revenue from our taxpayers.

Callison noted that the public has expressed concerns that the slip rates are too high. She asked about comparisons.

Pavelka presented 2001 survey information from east Lake Minnetonka launching sites. He said that four of the five sites will raise their rates by 10 to 15 percent for 2002. Pavelka noted that the city's rates will be lower than the rates charged by the previous marina owner.

Callison asked if any public sites had been included in the survey. Pavelka said that the rates in Excelsior, Deephaven and Wayzata were lower, but those sites did not offer gas or retail at the site.

Schneider said that he has attended several Wayzata City Council meetings and heard discussions about slip fee increases. He said that people who rent slips seem to take on a perceived vested right that the slip is theirs. As a result, that council has found it difficult to raise fees.

Anderson noted that the other public sites would not have attendants. Schneider said that the other public sites would have other amenities, such as nearby downtown restaurants, etc.

Koblick noted the inclusion of the neighborhood in this process. She asked if day boaters could be dealt with to prevent problems with the neighbors.

Peterson said that the city has parking rules and will have lease agreements with the people who lease slips. She has obtained leases

from other marinas, and noted that leases are becoming more sophisticated and detailed to address problems as they emerge.

Koblick said that she hopes the city requires people who lease slips to provide proof of insurance. She also wants to make sure dockage fees are paid up-front, probably by December 1st. She supported the lottery system, and asked if a penalty provision could be included if a non-resident is found to be leasing a slip. Peterson said that residency would be verified at renewal and throughout the year if there were cause. She said that a penalty provision would be provided.

Koblick noted that many people jointly own boats over 23 feet in size, and asked that the residency of joint owners be addressed. Koblick recommended changing the fee structure if dual boat categories are allowed. She encouraged a footage requirement because the docks will only handle boats to a certain size.

Koblick asked if a water hose and vacuum will be made available at each slip. Peterson said that staff had not yet gotten into the specifics of the dock design, but that Operations & Maintenance Director Brian Wagstrom was researching designs. Peterson said that conduit will be placed to provide for future amenities. Phone lines will be provided for credit card payments. Vacuums had not yet been discussed. Peterson said that water and electric service will be provided for each slip.

Koblick noted that high and low water levels can prevent dock usage, and suggested that the lease agreements address this issue. The leases should also address sub-leasing, and prohibit water toys being tethered to the boat. Peterson suggested that she work with Koblick as she drafts the lease agreements.

Koblick also suggested that users not be allowed to carry gas onto docks, and noted that clear signage should be provided. She also suggested that attention be paid to acceptable methods for cleating boats and what types of bumpers would be allowed. She also suggested that the lease address nuisance boats in a state of disrepair. She suggested including references to long-term or overnight parking, and the number of parking stalls allowed for guests. Peterson said that each slipholder would have one parking stall.

Koblick asked about day-boaters, who typically have guests meet them at the launch site. Peterson said that each renter would have one stall, and said they might have to arrange for carpooling. There would be no other reserved parking spaces.

Koblick suggested that staff also watch to ensure that parking does not spill out into the neighborhood.

Anderson asked about the LMCD variance for the extra slip. Peterson said that the variance would be required because the dock would extend beyond 100 feet. She said that the former marina had 120 slips, and that number will be reduced to 30. The LMCD's director has advised that the docks are not grandfathered in. Peterson clarified that the marina's previous docks extended beyond 100 feet.

Schneider said that he had reviewed the LMCD variance information and thought there was a very strong argument to grant the variance, particularly with the DNR's request for an enforcement slip.

Bob McFarlin, a member of the Minnetonka Park Board who lives at 4240 Winchester Court, spoke. He said that his comments would be from the perspective of a resident, not as a park board member.

McFarlin said that the park board reviewed the business and operating plans as they were drafted for 28 slips. He viewed renting slips as a recreational asset provided by the city to residents. The two key issues for him were availability and price, and he felt that the suggested plans failed in both of those areas. He said that the park board did not agree on the length of lease terms. He would like to see three year rotating leases, with all 29 slips coming up for full renewal every three years. McFarlin said that if the city granted lifelong leases, it would no longer be in the recreation business but would be in the landlord business.

With regard to pricing, McFarlin said that a fixed rate would place the city's rate for smaller boats at the second most expensive per foot cost on the lake for private or public sites. For boats of all lengths, the rate would be the most expensive minimum rate on Lake Minnetonka. For boats in the 20 to 22 foot category, the rate would be the fourth most expensive public or private rate. For 23 to 26 foot boats, the rate would be the seventh or eighth most expensive. A fixed rate would start to become reasonable at the 26-foot length.

McFarlin was concerned about the language regarding attendants in the DNR agreement. McFarlin said that the only other launch site in the state with attendants is Silver Bay on Lake Superior. The language would lock the city into providing attendants, even if the city later found that they were not necessary. McFarlin said that he understood the neighbors' concerns, but said that there was no evidence to justify those fears.

Koblick asked McFarlin for his recommendation on fees. He recommended something in the \$1,600 range to the park board, but they did not support that. McFarlin said that he would like the council to consider a shorter-term lease.

Anderson disagreed with categorizing the site as a recreational asset to the city. She said that the state provided the majority of the funding and the whole population can use the public access, regardless of where they

live. She said that in previous discussions, the council supported the site as an enterprise operation.

McFarlin agreed with Anderson's comments with regard to the landing. He said that overall it was a wonderful project for the city and the region.

Susan White spoke as a member of the task force. She said that the boat slips and gas sales were included for the purpose of providing funding for the attendants. She said that there are few places to purchase gas on the east side of the lake. The slips and gas sales represented a compromise for her. She stressed the importance of the history of the discussions to the decisions. She said that the DNR viewed the site as a way to get more boats on Lake Minnetonka. She said that providing an attendant should be viewed as an innovative way to work this type of use into a neighborhood.

White asked that the operating plan include a provision for task force members to be present for the review, and to give feedback on what works. She said that it would be easier to lower fees later than try to raise them. She hoped that the city would take a wise approach and realize that there may be years when there will be revenue shortfalls due to weather.

Anderson noted that the term of the lease was an issue that remained open.

Schneider said that was the biggest issue. He agreed that the site was not a true recreational asset, but instead offers a means to cover the enterprise fund and provide security. He agreed that the site provides opportunities for others to get involved. He did not want to lock people in forever. He likened the situation to board and commission members who serve only eight-year terms to encourage turnover. He thought some limit was needed and wanted an annual renewal. He suggested that three year terms might be too short, but said that he might be comfortable with terms of no less than five years and no more than ten years. He would also support staggered leases. He said that the site will increase public access to the lake. He suggested that leaseholders go back into the lottery after five, eight or ten years.

Koblick said that the public will want long-term leases but shorter-term leases would make sure there is citizen access and would be in the public's interest. She said that a process for turnover is needed. She would support three-year leases. She would also support a different structure for large and small boats. She said that larger boats would need to be kept further from shore in deeper water. Koblick said that 25 feet is the dividing point between large and small boats. She did not think a \$1,600 rate would cover expenses, and suggested \$2,400 for boats under 25 feet, and \$3,600 for boats over 25 feet. She said that smaller boats could be allowed to park in slips that would accommodate larger boats, but not vice versa. Koblick said that she could support three-year terms, and maybe five-year terms, but no more.

Thomas asked if larger boats could fit under the bridge. Pavelka said that issue had been addressed.

Thomas said that he understood the fee structure and the need for the attendant. He did not think people should be able to hold a slip until they die. He thought others should be given an option to use the slips. A three or five year limit would make the slips more available to residents.

Callison saw fees and the length of leases as the issue. She said that the fees were designed to pay for the attendants. She wasn't sure the market would bear the costs if the leases were for three years. She said that while it is nice to serve the public, the city needs to meet its costs. Callison cautioned against complicated dual fees because the costs must be covered and the obligations to the neighborhood met. These changes could affect the project's viability.

Callison said that the language about attendants needed to be in the agreement because it was part of the agreement with the neighbors. She said that only one attendant may be needed, but if the city finds that no attendant is needed, it should meet with the neighbors. She had no problem with White's request that the neighbors be asked for feedback. She suggested that their feedback be given to the park board.

Anderson noted general council concurrence with including the task force in the annual review. Schneider clarified that the review should occur at a public meeting and that as members of the public they could attend. Anderson asked that notice of such meetings be sent to the neighborhood. Anderson also noted general council concurrence with including the attendant language in the agreement.

Tauer said that different rates would give more flexibility, but with the limited number of slips at the site that didn't seem necessary. He suggested lease terms in the five to 10 year range.

Anderson said that she would not support dual pricing because it would greatly increase the rate for the slips that would accommodate larger boats. She said that dual pricing could work at a larger marina. She noted that launching would be free and that many sites charge a fee. She said that smaller boats will benefit from this. She supported five to ten year leases, and suggested eight years as a compromise. She said that it would be a good idea to allow for rotation.

Koblick asked about fees to store boats over the winter. Peterson said that no winter storage would be allowed at the site.

Schneider said that staff had done a good job on the budget and felt that there was flexibility to deal with situations that arise. He thought that gas sales would exceed the projections. He was concerned that utility fees

might be greater than expected due to the cost to recharge the batteries for larger boats.

Peterson said that staff discussed the rates with the former marina owner, and Gabriel Jabbour, another marina owner. Both recommended a simple fee structure due to the limited number of slips. Peterson clarified that the maximum boat that would be allowed was 26 feet.

Schneider moved, Tauer seconded a motion to approve the operating agreement with the Department of Natural Resources, and the operating and business plans for the Gray's Bay Marina with the changes suggested in the addendum and with a maximum renewal option of eight years with a simplified staggering process. Schneider clarified that lease holders could return to the lottery when that term expired.

Callison moved, Tauer seconded a motion to amend the motion to make the lease term 10 years. Callison and Tauer voted "yes." Schneider, Koblick, Thomas and Anderson voted "no." The amendment to the motion failed.

Koblick raised the dual pricing structure concept. Schneider suggested keeping the system straightforward. Anderson saw no council support for a dual fee structure.

On the vote on the main motion, all voted "yes." Motion carried.

Peterson said that the planning commission and city council will be considering variance requests and the construction plan with awarding of bids in the future.

Anderson thanked staff for the years of work that went into this incredible effort.

All voted "yes." Motion carried.

15. APPOINTMENTS.

A. Appointment of Heidi Erm to the Community Heritage Commission (CHC).

Anderson moved, Callison seconded a motion to appoint Heidi Erm to a two-year term on the Community Heritage Commission (CHC). All voted "yes." Motion carried.

B. Appointment of Priscilla Bue and reappointments of Steve Watkins and Robert McFarlin to the Park Board.

Anderson moved, Callison seconded a motion to appoint Priscilla Bue to a two-year term on the Park Board and to reappoint Steve Watkins and

Robert McFarlin to two-year terms on the Park Board. All voted "yes."
Motion carried.

C. Appointment of David Larson to the Economic Development Authority (EDA).

Anderson moved, Callison seconded a motion to appoint David Larson to a two-year term on the Economic Development Authority (EDA). All voted "yes." Motion carried.

D. Resolution designating the appointment of:

- 1) **Bill Yaeger as commissioner for the Bassett Creek Water Management Commission to serve a term of office beginning February 1, 2002, and ending on January 31, 2004.**
- 2) **Mike Rardin as Alternate Commissioner for the Bassett Creek Water Management Commission to serve a term of office beginning February 1, 2002 and ending on January 31, 2002.**

Anderson moved, Callison seconded a motion to adopt Resolution 2002-016 designating the appointment of:

1. Bill Yaeger as commissioner for the Bassett Creek Water Management Commission to serve a term of office beginning February 1, 2002, and ending on January 31, 2004.
2. Mike Rardin as Alternate Commissioner for the Bassett Creek Water Management Commission to serve a term of office beginning February 1, 2002 and ending on January 31, 2002.

All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Koblick seconded a motion to adjourn the meeting at 10 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk