

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, APRIL 22, 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 Linda Koblick, Jan Callison, Al Thomas, Ken Tauer, Dick Allendorf, and Karen Anderson were present. Council member Terry Schneider was excused.

**4. REORDERING THE AGENDA.**

Anderson said that item 6C would be added to the agenda, a proclamation concerning Cinco de Mayo. City Manager John Gunyou said that there were no other changes to the agenda.

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

**5. MINUTES.**

Koblick moved, Allendorf seconded a motion to approve the minutes of the April 8, 2002 regular city council meeting as submitted. All voted "yes." Motion carried.

Tauer moved, Thomas seconded a motion to approve the minutes of the April 10, 2002 Board of Review meeting. Koblick, Callison, Thomas, Tauer and Anderson voted "yes." Allendorf abstained. Motion carried.

**6. SPECIAL MATTERS.**

**A. Recognition of Caring Youth Award recipients.**

Callison advised that the March 14, 2002 Caring Youth Recognition event was cancelled due to a winter storm. As an alternative, the 15 award recipients would be recognized at the meeting. Anderson and Callison presented each recipient a certificate from the Governor of Minnesota and from each of the three participating

cities. The recipients were: Jacey Bader, Andrew Cherne, Kiann Dopp, Scott Espiritu, Tom Hegblom, Nathan Johnson, Amanda LaMar, Kristine Lamoreux, Janine Larson, Monica Myers, Ashley O'Rourke, Devaris Range, Ryan Shaughnessy, Elizabeth Shaw, and Ryan Yearous

**B. Proclamation - April 25, 2002 "Arbor Day" in the City of Minnetonka.**

Thomas read a proclamation proclaiming April 25, 2002 as "Arbor Day" in the City of Minnetonka.

**C. Proclamation – May 5, 2002 "Cinco de Mayo" in the City of Minnetonka.**

Koblick read a proclamation proclaiming May 5, 2002 as "Cinco de Mayo" in the City of Minnetonka.

**7. REPORTS FROM THE CITY MANAGER AND COUNCIL MEMBERS.**

City Manager John Gunyou reported that there will be no council meeting next week, and that the next regular council meeting will be held on May 6, 2002.

Anderson acknowledged the junior high students in the audience, as well as Boy Scout Troop 346 from All Saints Lutheran Church.

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

Chuck Regenold, 4512 Williston Road, expressed concerns about security at the city's water towers. He suggested that greater security should be considered for the new water tower as a result of the events of September 11, 2001. He presented a list of questions.

Anderson advised Mr. Regenold that the city has spent a great deal of time on its security and emergency management plans, especially since September 11, 2001. She recommended that Mr. Regenold contact staff directly.

Gunyou confirmed that the city takes security issues seriously, and stated that it was not prudent to discuss specific security measures publicly. He noted that several staff had already spoken with Regenold on more than one occasion.

Tauer thanked Mr. Regenold for raising the issue, and suggested that the city manager privately update council members on the city's security measures.

Callison said that the information Regenold presented would not have changed her mind regarding the location decision for the new water tower.

**9. BIDS AND PURCHASES:**

**A. Consideration of bids for the 2002 Pavement Rehabilitation Program, Project No. 4416.**

Gunyou provided a brief introduction to this item.

Allendorf noted that the bid was less than the budgeted figure, and asked what would happen to the excess dollars. Gunyou responded that the excess dollars would remain within the overall street project budget for the year because other projects may cost more than their estimate. Reconciliation is made at the end of each budget year.

Allendorf moved, Callison seconded a motion to award the bid for the 2002 Pavement Rehabilitation Program, Project No. 4416, to Palda & Sons Inc. in the amount of \$3,160,720.34.

In response to Tauer's inquiry, City Engineer Lee Gustafson said that the project would include the area north of Lake Windsor. Approximately 90 percent of the storm sewer in that area will be replaced, and some water quality measures will be taken.

All voted "yes." Motion carried.

**10. CONSENT AGENDA (Items Requiring a Majority Vote):**

**A. Claims for council authorization.**

Tauer moved, Koblick seconded a motion to approve checks numbered 166002 through 166282 totaling \$990,458.00. All voted "yes." Motion carried.

**B. Adoption of an ordinance repealing Section 120 regarding the Police Civil Service Commission.**

Tauer moved, Koblick seconded a motion to introduce and adopt Ordinance No. 2002-06, repealing Section 120 regarding the police civil service commission. All voted "yes." Motion carried.

**C. Adoption of an ordinance amending City Code Section 900 regarding Emergency Management.**

Tauer moved, Koblick seconded a motion to adopt Ordinance No. 2002-07, amending City Code Section 900 regarding emergency management. All voted "yes." Motion carried.

**D. Matters involving the Gray's Bay Public Access:**

- 1) Revised Cooperative Agreement with the DNR.**
- 2) Revised Operating Plan.**

This item was pulled from the consent agenda by Callison who noted that a public process has been used for this project. She was concerned about an item passing on the consent agenda without the public being advised.

City Attorney Desyl Peterson explained that the council approved an agreement with the DNR on January 28. At the Gray's Bay Task Force meeting on January 22, there was disagreement between the DNR and the task force members concerning barricading of the site. Task force members said that barricading the site in the winter was critical, and they thought the DNR had agreed to that. The DNR maintained that they had not. The task force reacted by stressing the importance of the barricade and including specific dates of closures. Staff placed that language in the agreement, but the DNR had not agreed to the language at the time of the council meeting.

In subsequent discussions with the city attorney and city manager, the DNR agreed to the placing of barricades when the lake is frozen. They would not agree to arbitrary dates to open and close the site because of the public funds involved in the improvements. The DNR believes that the site should be open when the lake is not frozen.

Peterson said that the primary concern of the task force members was placing barricades during the winter. Staff agreed that the specific dates of closure should be deleted because that brings the agreement back to where staff and the neighborhood representatives thought they were before the January 22 task force meeting.

In response to Koblick's question, Peterson clarified that the DNR will receive information within 48 hours after the city closes the site for any emergency reason.

Callison moved, Allendorf seconded a motion to approve 1) the revised cooperative agreement with the Department of Natural Resources; and 2) the revised operating policy for the public access. All voted "yes." Motion carried.

**E. Ordinance amending the conditional use permit standards for utility poles, transmission lines and substations.**

Tauer moved, Koblick seconded a motion to adopt Ordinance No. 2002-08, amending the conditional use permit standards for utility poles, transmission lines and substations. All voted "yes." Motion carried.

**F. Authorization for the Mayor and City Manager to execute a declaration for the preservation of the wetland buffer and rain gardens at the Operations & Maintenance facility.**

Tauer moved, Koblick seconded a motion authorizing the Mayor and City Manager to execute a declaration with the Minnehaha Creek Watershed District for the preservation of the wetland buffer and rain gardens at the operations and maintenance facility. All voted "yes." Motion carried.

**G. Resolutions approving environmental cleanup funding applications to Hennepin County, the Metropolitan Council, and the Minnesota Department of Trade and Economic Development regarding the Cantera Woods development at 2001 Dwight Lane.**

Tauer moved, Koblick seconded a motion to adopt the following resolutions related to the Cantera Woods development at 2002 Dwight Lane: 1) Resolution No. 2002-037, approving the environmental financial grant application to the Hennepin County Department of Environmental Services; 2) Resolution No. 2002-038, authorizing application for the Metropolitan Council tax base revitalization account; 3) Resolution No. 2002-039, approving the contamination cleanup grant application to the Minnesota Department of Trade and Economic Development; and 4) Resolution No. 2002-040 committing local match and authorizing contract signature for the Department of Trade and Economic Development funding to address certain conditions. All voted "yes." Motion carried.

11. **Consent Agenda (Items requiring Five Votes).** None

12. **INTRODUCTION OF ORDINANCES.**

A. **Ordinance amending City Code Section 845 regarding Public Nuisances.**

Gunyou advised the council that this was the first of two nuisance enforcement related items on the agenda. Staff developed this comprehensive program in response to requests from the city council, as well as a general concern that the number of nuisance complaints was increasing. Peterson reviewed the background information provided in the packet.

Anderson said that her interpretation of the proposed language was that snowmobiles on a trailer would count as a vehicle, but those not on a trailer would not. Peterson said that she was correct.

In response to Anderson's question about the process for this ordinance, Peterson advised that the police advisory committee would review the draft this week to provide citizen input. Anderson suggested that the council introduce the ordinance and formally refer the ordinance to the police advisory committee.

Tauer asked if a tenant would be required to obtain the property owner's consent to display an item for sale. Peterson said that she would address this issue in the ordinance. Tauer agreed with counting larger trailers, but was reluctant to count smaller trailers, such as those used for gardening supplies.

Allendorf said that he has received an increasing number of calls about nuisances so he appreciated staff's effort to address this issue. He questioned different categories for snowmobiles based on whether or not they were on a trailer. He expressed frustration with the ten days required to remove vehicles illegally displayed for sale and suggested a 24-hour period to move the vehicle. He also encouraged a fine system or other measures to discourage repeat offenders.

Gunyou said that staff hopes educating the public will remedy many of the problems. He said that staff intends to aggressively pursue repeat offenders through better tracking of offenses. Gunyou said one concern is that people believe that something is acceptable if they observe others doing the same thing.

Koblick said that she was pleased to see the changes, especially with regard to the number of vehicles. She noted that there are many water toys in Ward 3 because of its proximity to Lake Minnetonka, and felt that the changes would help address those issues. She said that the changes would not be onerous to lakeshore property owners.

Callison moved, Thomas seconded a motion to introduce an ordinance amending City Code Section 845 regarding public nuisances. All voted "yes." Motion carried.

**B. Ordinance requiring buffer areas around wetlands on lots with new construction and increasing building setbacks around "preserve" wetlands from 35 feet to 60 feet**

Planning Director Geoff Olson reviewed the background information for this project.

Tauer asked for the conditions that would result in the restoration of a wetland. Environmental Resource Coordinator Jo Colleran said that restorations could arise out of mitigation efforts required by city, state or federal rules. She said that interested property owners might also want to restore a wetland. Tauer said that he would not want to punish someone who wanted to do something that was good.

Callison asked when the city would reduce or waive the buffer area requirement. Colleran gave the example of a homeowner who wanted to build an addition and needed to alter the grade. If the home were only 40 feet from the wetland, staff might reduce the requirement to 20 feet. Callison asked why the city would not simply deny the request. Colleran said that the ordinance gives the city discretion through the use of the word "may" rather than "will." Callison was concerned about taking away the teeth of the ordinance. Colleran said that in the case of the example she provided, staff would look at how flat the area was between the wetland and the structure, whether or not reducing the setback would cause a negative impact and whether such a reduction would allow another area of the property to be protected. Callison said that she was concerned that the standards not be so broad that the city would suffer. Colleran said that the city council has the option to review such applications.

Allendorf appreciated staff removing the requirement for signage of the buffer area on single-family properties. He supported smaller markers on the order of a boundary or survey stake. Smaller signs

would still protect the wetlands. He asked for examples of the signs staff considers, and would like to see a standard. Olson explained that Apply Valley and Plymouth use a stake that is about five feet in height. Olson said that staff would seek an aesthetically pleasing sign.

Tauer suggested a sign that was visible only from a closer distance, such as 10 feet.

Koblick suggested considering a more creative stake, perhaps in the shape of a cattail.

Callison appreciated the need to delineate the buffer area so it is not mowed. She felt that a sign two feet square in size would be too large, but was not confident that a stake in the ground would accomplish the goal. Anderson agreed that the sign should be tasteful and unobtrusive.

Thomas suggested that a standard be set to ensure uniformity for these signs, unlike the signs to denote use of a private well for sprinkling purposes.

Anderson noted that the council would introduce the ordinance and refer it to the planning commission for public hearing. She said that the public hearing will be advertised in the paper and on the city's Web site.

Allendorf moved, Callison seconded a motion to introduce an ordinance requiring buffer areas around wetlands on lots with new construction and increasing building setbacks around "preserve" wetlands from 35 feet to 60 feet and refer the ordinance to the planning commission. All voted "yes." Motion carried.

### **13. PUBLIC HEARINGS.**

#### **A. Items related to Redistricting:**

- 1) Public hearing to consider an ordinance amending Section 105.010 of the Code of Ordinance establishing ward boundaries.**
- 2) Resolution adopting precincts and polling places.**

Gunyou provided brief background information on this item.

Anderson suggested that the boundary line between wards one and two be marked on the map to show that it continues along the city of Hopkins boundary to the east of Minnetonka Boulevard.

Gunyou described the two areas of significant ward change. Koblick also noted the changes in the legislative boundaries. Anderson said that the legislative changes were extensive, and directed residents to check the city's Web site for further information.

Gunyou also said that a number of polling places had changed due to availability. Anderson said that Hennepin County will mail a notice to residents concerning the polling place changes.

Anderson opened the public hearing at 7:58 p.m. No one spoke, and the hearing was closed.

Callison moved, Thomas seconded a motion to 1) adopt Ordinance No. 2002-09 amending Section 105.010 of the City's Code of Ordinance to establish ward boundaries; and 2) adopt Resolution No. 2002-041, establishing the precinct boundaries and polling places. All voted "yes." Motion carried.

**B. Continued public hearing to consider applications for on-sale and Sunday on-sale intoxicating liquor licenses to Bacio, Inc., for use at Bacio restaurant, to be located at 1571 Plymouth Road (formerly LeeAnn Chin).**

Anderson noted that the public hearing remained open and invited comments. No one spoke, and the hearing was closed at 8 p.m.

Allendorf moved, Callison seconded a motion to grant on-sale and Sunday on-sale intoxicating liquor licenses to Bacio, Inc. located at 1571 Plymouth Road. All voted "yes." Motion carried.

**C. Public hearing to consider an application by Target Corporation for an offsale 3.2 percent malt liquor license to be used at Target Store T-1356 (SuperTarget) located at 4848 County Road 101.**

Community Development Director Ron Rankin advised the council that Target has equipment in place so that liquor sales require the presence of a manager over 21 years of age and identification of purchasers.

In response to Allendorf's inquiry, John Ratkin of Target said that they require identification for proof of age from anyone who appears to be under the age of 40.

In response to Thomas' inquiry, Rankin said that all on or off sale license holders are subject to compliance checks.

Anderson opened the public hearing at 8:04 p.m. No one spoke, and the hearing was closed.

Callison moved, Tauer seconded motion to grant an offsale 3.2 percent malt liquor license to Target Stores T-1356 (SuperTarget) located at 4848 County Road 101.

Allendorf noted that the silt fencing behind the store is in poor condition and asked if it could be removed or repaired. Olson said that staff would check to see if erosion was still an issue.

All voted "yes." Motion carried.

#### **14. OTHER BUSINESS:**

##### **A. Presentation by the Hennepin County Regional Railroad Authority regarding the Southwest Corridor Rail Transit Study.**

Gunyou advised that the Hennepin County Regional Railroad is making presentations to all the cities through which the Southwest Corridor Rail corridor passes in an effort to encourage public participation in their process.

Katie Walker of Hennepin County and Rick Nau presented information about the study process, its purpose and the public involvement. Nau said that the findings of the study would be presented in 2003.

Allendorf noted that the Legislature prohibited the study of the corridor as a bus way. He asked if this study was an effort to circumvent the Legislature. Nau said that the proposal is for a multi-modal system and they really expect light rail to be included. Walker added that they feel that the corridor is viable for light rail. They project high ridership for the corridor. She said that they expect to maintain the pedestrian trails along the corridor and there will likely also be feeder buses.

Allendorf represents the ward through which the corridor passes, and he noted that the neighbors were irate when there were

discussions about buses on the corridor. He expects that the neighbors will also provide input at the April 30 public meeting.

Anderson said that it was not likely that public sentiment will change. She was not alarmed by the study because she questioned how long it would take to construct a system if the study results in a finding that light transit would be appropriate. Anderson noted the political issues related to the Hiawatha Line and asked Nau about the political implications. Nau said that they have studied other cities that have implemented light rail systems, including Portland, Denver, St. Louis, and Dallas. Those cities found it hard to get the first segment operational, but after people saw the benefits, they wanted their area to be next for service. The study is preparatory; so if the Hiawatha line is successful in 2004, they will have another segment ready to go.

In response to Anderson, Nau said that he was not aware of state legislators trying to prevent the study of this portion of the line. Anderson encouraged Minnetonka residents to participate in the hearing.

Tauer said that he philosophically favors better mass transit, so he was pleased about the study. He thanked the county for looking ahead to keep the options open.

**B. Resolution approving a conditional use permit for a 75-foot-high pole with wireless telecommunication antennas at 3311 County Road 101 for Sprint PCS.**

Gunyou provided a brief introduction to the item, noting that this was the first application to be considered under the city's new ordinance. Olson reviewed the background information in the packet.

Peterson advised the council that through the Telecommunications Act, Congress has restricted issues local governments may consider with respect to these kinds of application. The council may not consider any perceived health implications. Cities must permit reasonable operations for existing and prospective services within its boundaries. The city cannot prohibit antennas, and must allow antennas where there is a gap in service coverage. Peterson said that Sprints' application meets the requirements of the city's ordinance and staff was recommending its approval. Peterson stated that she could not identify any basis on which to recommend denial of the application.

Anderson noted that the city did extensive research on the ordinance during the one-year moratorium on antennas. She felt that the term "stealth" was a misnomer for a 75-foot high pole. She asked about the requirements in other cities. Peterson responded that a few cities require the stealth design. Without the stealth design, the pole would resemble those with the "crow's nest" design. Peterson said that the stealth terminology was borrowed from another city's ordinance.

Callison said that there are three special areas designated within the city. Antennas are not allowed within these special areas except if a radio study indicates that no other location would meet the needs. In response to her question, Olson said that the packet includes an analysis that indicates there is no alternative location.

In response to Koblick's request, Rankin described the improvement project that is underway with the business owners in the CSAH 5/101 area. This project is linked to Hennepin County's roadway improvement project scheduled for 2003 to 2004. Koblick asked if the pole would create problems for that plan. Rankin said that one goal of the project is to decrease the profile along CSAH 5 and CSAH 101. There are no plans to remove existing buildings or otherwise alter them.

Koblick asked about the feasibility of requiring Sprint to relocate the antenna should it create problems for the area improvement project. Peterson said that the city would have to pay for the relocation if the city wanted it to happen.

Allendorf voiced concern about the efforts and financial commitments that have gone into beautifying the area. Peterson responded that she knew of no way to stop the antenna. The city's consultant looked at the issue of alternative locations and found that there was not much room to negotiate the location, because this is a small commercial node in a residential area. She said that the Groveland School grounds were eliminated as an option. A 140 foot pole would be required if the pole were placed at Bennett Family Park. The application meets the standards of the ordinance.

Peterson noted that telecommunication companies are often difficult to deal with, but Sprint has been very cooperative throughout this process. When the city adopted the moratorium a year ago, Sprint could have challenged it; other telecommunication providers have been successful in such challenges. Sprint has worked with the City of Minnetonka, and their request has already been delayed a year.

Tauer said that he doesn't like to see anything taller than trees, but the city cannot return to yesteryear and give up technology. He said that the city worked hard on the ordinance and it is a good ordinance. He felt that the above ground power lines detract from the appearance of that area.

Koblick said that a great deal of dollars and time have been invested in the area. She did not want the tower to conflict with the city's project. She asked if the lease could be limited to two years. She also suggested the possibility of a cost sharing if the antenna would need to be relocated.

Peterson said that the council's role at this meeting was as a regulator, not a property owner. If the city owned the property on which the pole was to be erected, it would have more discretion regarding the conditional use permit terms.

Anderson cautioned the audience that she would not permit comments related to the health issue, and invited public comment.

Roger Behrens, an attorney with Faegre and Benson, 90 South 7<sup>th</sup> Street, Minneapolis, spoke on behalf of Sprint. He noted that Sprint has worked with the city and provided input on the ordinance during the moratorium period. Sprint had no interest in challenging the moratorium, although other telecommunications companies have made similar challenges and have won.

Behrens said that their application had changed significantly over the past year. They worked with staff to find an appropriate location, and their application complies with the ordinance. The 75-foot height is allowed, their equipment is located within a building, and they meet both the stealth and collocation requirements. Behrens said that Sprint would place a flag on the pole if the city so desires. The planning commission voted unanimously in favor of their application. Behrens said there was no legal basis for denial of the application and there are no alternative locations. Other locations would violate the ordinance in terms of setbacks or keeping the equipment within a building.

Behrens did not know the cost to relocate the tower, but said that a conditional use permit is a permanent permit. The city's consultant agrees that there is a service gap. Behrens thanked the council, and suggested that they applaud the positive results of the new ordinance.

Michael Kelly spoke as the owner of the Great Harvest Bread Company. He questioned if the setback requirements were met. He noted that the businesses want to improve the area. He said that the tower will be ugly no matter where it goes, and will degrade their area. He felt that the tower could provide the momentum to end the beautification project, and asked the council to deny the request.

Allendorf noted that the tower could not be constructed in that area unless one of the property owners leased the land to Sprint. He asked if the businesses had talked with the property owner. Kelly said that the property owner was in France and could not be reached. He felt that the property owner would want to be a good corporate citizen. Allendorf said that although the city could not stop the project, the property owner could.

Kelly said that their business pays \$750,000 annually in wages to people in the area. If the tower is allowed, he felt strongly that they would not stay in the area.

Olson said that the tower meets the setback requirements. Gunyou said that the Bennett Park site would only work if that association agreed to lease land to Sprint, and that was highly unlikely. Anderson noted that in earlier discussions, a park site was thought to be a good location because of the trees.

Pat Olson spoke as a business owner in the Ty Abel building. She noted that Sprint has an antenna tower at the Cub Store, 1.8 miles to the south. She asked if that pole could be increased in height, and questioned having antennas every two miles.

Peterson responded that during the discussions of the ordinance, the council weighed the pros and cons of allowing fewer higher towers, or more lower towers. The council accepted the fact that lower towers would require more towers. Anderson noted that trees and topography affect the range of antenna towers.

Deeann Roberg, who runs the dance studio at 3311 CSAH 101, said that she did not receive notice of the application because she is a tenant in that area. If she had more time, she would have contacted the owner of the Sterling Center to voice her concern. She characterized the area as the heart of Minnetonka, its downtown and the gateway to Minnetonka from Wayzata. It provides local balance to the larger chains like Target and Cub. She was disappointed that there was no legal basis to deny the request. She suggested locations in Deephaven or at the Woodland

Office Building. She noted that the city of Long Lake was sued for denying a similar application, and eventually negotiated an alternate site. She suggested that a task force be formed.

Theresa Traut spoke as the owner of a business in the building adjacent to the Ty Abel building. She noted that the beautification project has made progress and they are feeling positive about the upcoming changes. They now feel comfortable making investments to improve their building. She questioned if all alternative sites had been checked. She noted that the ordinance requires a written analysis of the other sites.

Peterson said that the study of alternative sites was completed by Owl Engineering. Their report, which was included in the council's packet, shows the rings of coverage. Staff relied on that study in making its recommendation.

Garrett Lysiak, Owl Engineering, explained the process he used in conducting his analysis. He determined that there was a coverage gap.

Allendorf asked what would happen if the city denied the request. Olson noted that the deadline for action was tonight. Peterson said that the council would need to recess for her to prepare written findings for denial of the application to be read into the record. It would then be up to Sprint to decide about litigating the matter. Peterson could not predict how long litigation would take, but noted that the city could be exposed to paying the legal costs should Sprint prevail. Anderson asked if litigation could also result in a less desirable design being approved. Peterson said that it would be likely that the court would simply order the approval of the application before the council.

Callison clarified that Bennett Park would not work without a 150' tower, Groveland School would not work, and there were setback issues for the other sites. Peterson said that any commercial or residential property could be used if they met the standards. Callison did not want to ask the applicant to explore fruitless options. She said that the city could insist on the written analysis, but it was unlikely the results would change. Peterson said that there are no other locations outside the special area, because it is this area that needs the service.

Tauer noted the importance of the business area. He was disappointed with the comment that a business might choose to leave because of the tower. He did not think the end result would

change if the matter were delayed because, based on the facts, the city attorney saw no reason for denial. He thought that the city would lose a lawsuit on the issue. He did not see any option but to approve the request, and expressed hope that the businesses would continue with their beautification plans.

Koblick was concerned because of the time and money put into the beautification effort. She suggested a two-week delay to obtain a written analysis. She felt that the citizens were owed that level of due diligence.

Thomas felt compelled to support the application. He noted that the city began looking at the antenna issue more than six years ago as towers have filled up with antennas. Federal law supercedes the cities on this issue. Requiring a written analysis would delay the request, but he did not think the city would prevail. The issue comes down to the property owner who granted the lease. Thomas did not see any alternative, because the application meets the requirements of the ordinance.

Callison said that the tower was not ideal, but the only basis for a denial was a technicality regarding the written analysis. No other locations are available, so nothing would be gained through a delay for the written analysis. Callison referred to neighborhood opposition to the Adath Jeshurun Congregation building due to its height, and noted how well it blends into the area.

Callison said that she travels through the CSAH 5 and CSAH 101 intersection daily and sees the road, the flag at the bank and the large billboard. She recently noted a 55-foot high pole in the intersection that she never noticed before. Callison said that much is planned for the area, including landscaping, parking and flowers. She also would be saddened if businesses moved from the area as a result of the pole. The stealth design is much better. In an ideal world, the pole would not exist, but the ordinance compels the council to approve the request.

Allendorf said that his sole reason for suggesting denying the request was to give the businesses in the area time to contact the owner granting the lease. But, he noted that those businesses have had a year to contact the property owner. He agreed with Callison's comment that people will not likely notice the pole, particularly after the beautification project.

Anderson said that the business owners could still contact the property owner if the council approved the request, and, depending on the contract language, there might be other options.

Callison thought that the property owner was likely aware that the other businesses in the area did not want the pole.

Anderson and Peterson reviewed the voting requirements for the item. Anderson noted that four votes were required, and one council member was missing. She asked Behrens if he wanted the vote taken. Behrens said that he did. He noted that if the council took no action, the application would be deemed approved by state law.

Callison moved, Tauer seconded a motion to adopt Resolution No. 2002-042, approving a conditional use permit for a 75-foot-high pole with wireless communication antennas at 3311 County Road 101. This resolution is based on the finding that the proposal meets the required conditional use permit standards. Approval is subject to the following conditions:

- 1) Record this resolution with the county before the city issues a building permit.
- 2) The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
  - Site Plan, dated February 25, 2002
  - Certificate of Survey, dated February 25, 2002
  - Enlarged Plan and Details, dated February 25, 2002
  - Tower Elevation, dated February 25, 2002
- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) 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.
- 5) The applicant, the pole owner, the landowner, and their successors must allow the shared use of the pole if an additional user agrees in writing to meeting reasonable terms and conditions for shared use, must submit a dispute over the potential terms and condition to binding arbitration,

and must sign the conditional use permit agreeing to these requirements.

6. The applicant and the landowner must agree to the above conditions in writing.

Anderson said that she would support the motion. She felt that it would be raising false hopes to delay the action for a written analysis. She has followed this issue nationally, and watched many cities make large expenditures of taxpayer dollars to fight such applications, only to lose. She could not in good conscience put the city in that position. She felt that the businesses could still contact the property owner. She did not think the tower would destroy the area. The city has six telecommunication providers operating in the city, which is why the council fought for collocation. Anderson noted that it is the residents with their cell phones who are driving the need. She said she was accused of selling out when she said she was willing to forego cell phone service in that area.

Callison, Thomas, Tauer and Anderson voted "yes." Allendorf and Koblick voted "no." Motion carried.

Allendorf left and was excused for the balance of the meeting.

**C. Resolution amending the Council Policy on Nuisance Enforcement.**

Gunyou provided the introduction to this item. He noted that Rankin's work group had artfully blended education and enforcement to promote a high quality of life in the city. Gunyou said that if the city has an ordinance, it should enforce it, but the challenge was to come up with the right balance.

Rankin distributed the draft educational piece. He noted that the proposed changes would allow staff to improve enforcement efforts on the more obvious problems—vehicles illegally displayed for sale and signs in the rights-of-way. The hope is that staff-initiated educational efforts will reduce the number of incidents. The program will be publicized through the Minnetonka Memo and the Web site.

Anderson asked for clarification of who will issue citations and how notice will be given. Rankin said that the city initially makes people aware of the ordinance requirements and voluntarily seeks compliance before citations are issued. Violators are generally

given 10 to 30 days to comply. The firefighters who will help with the educational effort will not issue citations.

Tauer said that he has always been proud that Minnetonka enforces only on a complaint basis so neighborhoods can create their own standards. However, looking at the list, he saw that at least half of the items made sense for the city to initiate the enforcement. He thought the program was well done. He felt that the city had done a disservice in allowing signs to proliferate.

Rankin said that most enforcement would still be initiated by complaints due to staffing limitations. However, he hoped that the program would improve on the most obvious violations.

Koblick liked the new educational piece and suggested submitting it for an award.

Callison supported the program and liked the idea of monthly reports. The council could revisit the issue if there was too much activity. She viewed the program as very positive.

Anderson noted that the policy would become effective immediately upon adoption. She thanked the staff and noted that nuisance complaints increase when the snow melts.

Koblick moved, Thomas seconded a motion to adopt Resolution No. 2002-043, amending the Council Policy on Nuisance Enforcement. All voted "yes." Motion carried.

**D. MERIT Organizational Component.**

Due to the lateness of the hour, Gunyou suggested that his presentation of this item be delayed to the May 6, 2002 council meeting, and be done with Bill Morris' presentation of the results of the Community Survey. Gunyou noted that the city received a high A- for its organizational grade, and that no council action was required. Anderson concurred with postponing the matter.

**15. APPOINTMENTS.** None.

**16. ADJOURNMENT.**

Thomas moved, Tauer seconded a motion to adjourn the meeting at 10:20 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk