

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, JUNE 10, 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.**

Assistant City Manager Geralyn Barone called the roll. Council members Dick Allendorf, Terry Schneider, Linda Koblick, Jan Callison, Al Thomas, Ken Tauer, and Karen Anderson were present.

**4. APPROVAL OF THE AGENDA.**

City Manager John Gunyou advised the city council of the following changes to the agenda. The draft June 6, 2002 planning commission minutes were provided for item #11A, and an additional condition was added to that item. Item 11B only requires four votes. Item 14B was pulled from the agenda at the applicant's request, and postponed to the June 24, 2002 meeting.

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

**5. MINUTES.**

Allendorf moved, Koblick seconded a motion to approve the minutes of the May 13, 2002 special council meeting and the May 20, 2002 regular council meeting as submitted. All voted "yes." Motion carried.

**6. SPECIAL MATTERS.**

**A. Presentation of Life Saving Award to Officer Sarah Grau.**

Police Chief Joy Rikala explained the circumstances under which Officer Grau saved the life of a toddler. Callison presented a Life Saving Award to Officer Grau for her actions.

**B. Presentation of Victor Gilbertson's recently published book, Watercolors of Bridges over Minnehaha Creek.**

Victor Gilbertson, a member of the community heritage commission, presented a copy of his recently published book, Watercolors of Bridges Over Minnehaha Creek, to the City of Minnetonka. Anderson recognized Mr. Gilbertson's personal commitment to publishing the book. Gilbertson noted that four of the bridges have already been demolished, so his documentation will be important to future generations.

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

City Manager John Gunyou reported that there will be no council meeting on June 17<sup>th</sup> due to the annual League of Minnesota Cities Conference in Rochester. The next council meeting will be held on June 24<sup>th</sup>.

Anderson reported about the very successful June 1<sup>st</sup> special drop-off event. The next drop-off will be held on September 14.

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

Bob Cunningham spoke as a representative of St. Therese Catholic Church in Deephaven. He noted that the church is building an addition and needs to add a sprinkler system. Because Deephaven does not have a city water system, the church would like to connect to Minnetonka's water system for fire protection purposes only. Staff denied his request for this connection. Cunningham said that 800 Minnetonka families are members of the church, 225 Minnetonka children attend their school, and 300 to 350 Minnetonka children attend religious education classes at the church.

Anderson said that items that are not part of the regular agenda are generally referred to staff. Because the council recently discussed this issue, Anderson asked if any council members had changed their position.

Anderson noted that Minnetonka's water system has been under severe stress and a new water tower is being added. Minnetonka has also asked the State of Minnesota for the authority to build three additional wells, but has only received approval for one well. Anderson said that she wished the city could respond differently.

Allendorf asked if the church had any other option. Cunningham said that they could install a 12,000-gallon underground tank at about the same cost. He noted that the city system would be more reliable.

In response to Callison's question, Cunningham said that he had discussed the issue with Deephaven officials, but a response did not seem

imminent. Callison said she was sympathetic, but said that Deephaven needs to develop its own long-term solution for their residents and businesses.

Schneider said that if Minnetonka granted this request without a long-term commitment from Deephaven, it would just delay Deephaven addressing the issue. Schneider said that if Deephaven had a long-term solution in place, he might consider an interim solution. Cunningham said that the church was only asking for water service for fire protection purposes.

Gunyou said that Brian Wagstrom had spoken with Deephaven staff and its consulting engineer that day. They indicated that this issue was "further back on the burner" because of their fire station project.

Thomas and Koblick agreed with the comments made by the other council members.

Tauer said that it was difficult to deny something that seemed so simple. He was concerned about setting a precedent if other businesses made similar requests. Cunningham noted that theirs is a non-profit organization.

Gunyou said that staff had spoken previously with the church and the developer to explain the situation. He was glad to learn that either option would now cost about the same. Previously the developer had reported a major cost differential for the underground tank.

**9. BIDS AND PURCHASES:**

**A. Formal rejection of bid to bury fiber optic cable from the civic center campus to the new operations and maintenance facility.**

Gunyou provided brief background information on this item.

Callison moved, Allendorf seconded a motion to reject the bid from ComLink, Inc. for installation of fiber optic cable between the city hall and the operations & maintenance facility and authorize the re-advertisement for bids. All voted "yes." Motion carried.

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

**A. Claims for council authorization – May 28, 2002.**

Tauer moved, Callison seconded a motion to approve the May 28, 2002 claims list, including checks numbered 166635 through 166949 totaling \$1,278,514.30. All voted "yes." Motion carried.

**B. Claims for council authorization – June 10, 2002.**

Tauer moved, Callison seconded motion to approve the June 10, 2002 claims list, including checks numbered 166950 through 167189 totaling \$966,749.83. All voted “yes.” Motion carried.

**C. Resolution approving a traffic control signal agreement with the Minnesota Department of Transportation and Hennepin County for the CSAH 73/TH 7 Intersection Improvement Project No. 4887R.**

Tauer moved, Callison seconded a motion to adopt the Resolution No. 2002-055 approving Traffic Control Signal Agreement No. 83308R with the Minnesota Department on Transportation and Hennepin County for the CSAH 73/TH 7 Intersection Improvement Project No. 4887R. All voted “yes.” Motion carried.

**D. Proposed Orders for Tobacco License Stipulations.**

Tauer moved, Callison seconded a motion to issue Findings of Fact, Conclusions, and Orders for the following establishments:

<u>Establishment</u>	<u>Fine</u>
Boulevard Sinclair	\$200
Driskill’s Foods	\$200
Freedom Valu Center #57	\$200
Glen Lake Amoco	\$75
Glen Lake Mobil	\$75
Redstone Grill	\$75
Sherlock’s Grill	\$75
Spielmanns Amoco	\$75
Sundial Wines/Spirits	\$200
Tom Thumb #149	\$75

All voted “yes.” Motion carried.

**E. Agreement concerning Burwell Furnishings.**

Tauer moved, Callison seconded a motion to authorize the city manager to execute the Burwell furnishings agreement. All voted “yes.” Motion carried.

**F. Resolutions ordering the abatement of nuisance conditions existing at:**

- 1) **3320 Chippewa Road**
- 2) **12900 Woodbridge Trail**
- 3) **18523 Covington Road**
- 4) **18601 Covington Road**
- 5) **5804 Covington Terrace**

Staff advised that the nuisances had been abated at 18601 Covington Road and 5804 Covington Terrace, so no action was needed for those items.

Tauer moved, Callison seconded a motion to adopt the following resolutions to abate nuisance conditions:

- 1) Resolution No. 2002-056 related to 3320 Chippewa Road.
- 2) Resolution No. 2002-057 related to 12900 Woodbridge Trail.
- 3) Resolution No. 2002-058 related to 18523 Covington Road.

All voted "yes." Motion carried.

**G. Items pertaining to an outdoor dining area for the Marriott Hotel at 5801 Opus Parkway, for IHP Holdings Partnership, LP:**

- 1) **Resolution approving a conditional use permit.**
- 2) **Approval of amended liquor licenses.**

Tauer moved, Callison seconded a motion to adopt Resolution No. 2002-059 approving a conditional use permit for the Marriott Hotel at 5801 Opus Parkway, for IHP Holdings Partnership, LP based on the following findings:

- 1) The proposal meets the standards outlined in the city code, Section 300.21.2, regarding general standards for conditional use permits for business zoning districts.
- 2) The proposal meets the standards outlined in the city code, Section 300.21.4. r, regarding accessory sidewalk cafes and outdoor eating areas.

Approval is subject to the following conditions:

- 1) Record this resolution with the county within one year from the date of city council approval.
- 2) The outdoor eating area must not be open longer than 6:00 a.m. to 1:00 a.m. seven days per week.

- 3) In order to serve liquor within the outdoor eating area, a liquor license must be obtained.
- 4) Proper fencing must be installed subject to review and approval of the city fire marshal, and per the satisfaction of the conditions of a liquor license.
- 5) The outdoor eating area must be equipped with refuse containers and periodically patrolled for litter pick-up.
- 6) The outdoor eating area must not have speakers or audio equipment.
- 7) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 8) 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.
- 9) The applicant must agree to the above conditions in writing.

Schneider moved, Allendorf seconded a motion to amend the liquor licenses, subject to the following conditions:

- 1) Liquor sales may only occur during the hours allowed by law. Current hours are: Monday through Saturday, 8 a.m. to 1 a.m. and Sunday, 10 a.m. to 1 a.m.
- 2) Proper fencing must be installed.
- 3) The outdoor eating area must be equipped with refuse containers and be periodically patrolled for litter pick-up.
- 4) There must not be speakers or audio equipment in the outdoor eating area.

All voted "yes." Motion carried.

**11. Consent Agenda (Items requiring Five Votes).**

**A. Resolution approving a lot division with a lot width at the setback and right-of-way variance at 14620 Woodhill Circle for April Guerin.**

Koblick asked if the requirement to replace trees after one year is a current requirement. Principle Planner Cary Teague said that it was a standard requirement. He said that the requirement is actually

greater for some projects. He noted that the city does not require landscaping and screening for single-family properties.

Allendorf asked if the car on blocks would be removed as part of the approval process. Teague responded that the car would be handled as a separate nuisance issue.

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2002-053 approving a lot division at 14620 Woodhill Circle, with a lot width at the setback variance from 110 feet to 0 feet, and a lot width at the right-of-way variance from 80 feet to 0 feet. Approval is based on the following findings:

- 1) The proposal meets the required standards and ordinance for a lot division, with the exception of the lot width variances;
- 2) The proposal meets the eight required standards for a lot width at the right-of-way variance in Section 300.10, Subdivision 5(h)(2)(b).

Approval is subject to the following conditions:

- 1) The following items must be submitted to the city before the city releases this resolution:
  - a. The following documents for the city attorney's approval:
    - (1) Ten-foot-wide drainage and utility easements next to any public street right-of-way and seven-foot-wide drainage and utility easements along all other lot lines.
    - (2) A 30-foot drainage and utility easement over the extension of the sewer and water lines running east/west through the property.
    - (3) A private driveway easement between the street right-of-way and the proposed new lot that is acceptable to the city attorney. The easement must state the maintenance responsibilities of each owner. The minimum driveway width must be as required by the fire marshal.

These documents must be recorded with the lot split resolution, and a drawing of any easements must be attached to the easement deed.

b. Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the lot split resolution.

2) The following must be completed before the city issues a building permit:

a. A grading and tree preservation plan must be submitted subject to staff approval. The plans must be substantially in compliance to the agreed building areas as required with final approval. The sewer and water services must be shown to minimize impact to the significant trees. This plan will be subject to the planning director's approval.

b. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing must be installed subject to review and approval of the city's environmental resources coordinator.

c. A copy of the recorded resolution and a copy of any easements or restrictive covenants required to be recorded must be submitted to the city.

d. A park dedication fee of \$500.00 must be paid to the city.

e. A hook-up fee for sanitary sewer and water.

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

g. The existing auxiliary structure must be removed.

3) The drive must be paved from at least the street to the new house before the city makes a final inspection of the house. The city may approve a time extension if weather prevents paving of the drive.

- 4) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
- 5) Trees in the northeast corner of the new lot should be preserved. Trees must be planted to compensate for any significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 1/2 inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
- 6) The new home must be sprinkled.
- 7) 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.

## 12. INTRODUCTION OF ORDINANCES.

### A. Ordinance permitting off-premises real estate open house and garage sale signs.

Gunyou reviewed the information in the staff report to introduce this item.

Koblick asked if the changes would also relate to other signs, such as campaign signs and other advertisements. Gunyou said the changes would only affect real estate open house and garage sale signs. All other signs would continue to fall within the existing city ordinance. State law regulates campaign signs.

Allendorf said that a sign five feet from the pavement might still be in the right-of-way, which would mean that the city was not enforcing to the law. Gunyou agreed that state law prohibits signs within the right-of-way of state, county, and municipal state aid roads, which includes all major roads in Minnetonka. Rights-of-way vary, but are typically 10 to 15 feet from the curb. If the city strictly enforced the state law, even garage sale signs would be illegal. Staff thought that enforcing uniformly to five feet made sense and

simplified the process, because that would be the standard for all other streets in Minnetonka.

Allendorf said that other cities have ten or five foot requirements or none. He did not think that other cities had weekend enforcement efforts. Gunyou said that other cities don't enforce every weekend, but they do periodic sweeps.

Callison asked if rental signs for apartment buildings would be permitted. Gunyou said that they would not, unless they advertised an open house. He added that staff was not likely to strictly check on open houses, and expected that real estate signs of various types might show up during the allowable Sunday period.

Callison asked if there would be problems if real estate and garage sale signs were allowed in the right-of-way, but others were not. City Attorney Desyl Peterson said that there is case law related to regulating speech based on the content of the message. She was not certain that the city had a compelling argument to support regulating based on content. She noted that the city's sign ordinance includes many content-based regulations.

Callison asked if garage sale signs posted on Wednesdays would be removed. Gunyou said that it seemed reasonable to allow garage sale signs to be posted late in the day on Wednesdays, but not early in the morning. Gunyou said that the council could choose to allow garage sale signs anytime, but said that three days seemed a reasonable compromise to control clutter. Thursday, Friday and Saturday are the most common days for garage sales.

Callison was concerned about establishing another ordinance that could not be enforced. She felt the reference to "adjacent property owners" was confusing, and asked staff to clarify that the ordinance requires that permission be received from the underlying property owner.

Schneider said it would be impossible to enforce a ban on all signs. Staff had crafted a compromise that could be reasonably enforced. The proposed ordinance would offer a better long-term solution than the existing regulations.

Tauer thought that the new proposal was well thought out and practical. He could make a distinction between real estate and garage sale signs because garage sales encourage the positive practice of recycling. Tauer said that five feet might be too close, and thought enforcement should be based on visibility. He would

support allowing open house signs earlier on Sundays, perhaps beginning at 9 a.m. or 10 a.m. Gunyou said that realtors commonly put the signs up just before their open houses and do not want to encourage early arrivals.

Allendorf was concerned about putting language in the ordinance if there was no intent to enforce it. He suggested a reference to keeping the site view open. He was troubled about setting a five-foot setback not consistent with state law. He liked allowing only one sign per intersection. He would not oppose allowing garage sale signs all week.

Schneider said that the five-foot setback requirement made sense and would avoid signs at the edge of the curb. He said that the state could enforce their laws if they wanted a greater setback.

Ken Johnson of Edina Realty, spoke as the former President of the Board of Realtors and the Edina Chamber of Commerce. He said that the sign issue comes up about every five years, and not just in Minnetonka. Cities enforce, realtors comply for a time, and then the problem resurfaces. He said that realtors try to police themselves. Realtors hope that real estate signs could be allowed on both Saturdays and Sundays to direct traffic to open houses. Realtors would help get the message out. Johnson noted that builders have Parade of Homes signs up for three weeks each spring and fall. He said that signs for homes being sold by their owners should be treated the same way.

Koblick was glad that the city was addressing this issue in a thoughtful way.

Callison suggested that Johnson repeat his comments during the planning commission discussion of the ordinance.

Anderson was pleased with the direction of the discussion and felt this action would move the city toward an enforceable ordinance. She noted the effectiveness of the weekend enforcement program.

Allendorf said that doing weekend enforcement should avoid the inundation of sign violations every five years.

Anderson asked about the cost of the weekend enforcement. Gunyou said that it costs a few hundred dollars per weekend. He said enforcement efforts include all nuisances, not just signs. Staff intends to continue the program, regardless of what changes to the sign ordinance are eventually adopted.

In response to Johnson's question, Gunyou said that the ordinance covers all real estate signs, including those properties for sale by their owner. Anderson clarified that the regulations only apply to off premise signs.

Tauer moved, Koblick seconded a motion to introduce an ordinance permitting off-premises real estate open house and garage sale signs, and to refer the ordinance to the planning commission. All voted "yes." Motion carried.

### 13. PUBLIC HEARINGS.

#### A. **Public hearing to consider applications by SID Minnetonka, LLC for on-sale and Sunday on-sale intoxicating liquor licenses for Sidney's restaurant, 15600 Highway 7.**

Community Development Director Ron Rankin advised that Sidney's will continue with its same local management team. The police report is in progress, and the item will return to the council on July 8.

Anderson opened the public hearing. No one spoke. The public hearing was left open.

Allendorf moved, Thomas seconded a motion to continue the public hearing to consider applications by SID Minnetonka, LLC for on-sale and Sunday on-sale intoxicating liquor licenses for Sidney's restaurant, 15600 Highway 7 to July 8, 2002. All voted "yes." Motion carried.

### 14. OTHER BUSINESS:

#### A. **Presentation of the December 31, 2001 Comprehensive Annual Financial Report by DeLoitte & Touche.**

Cliff Hoffman and Kirsten Vosen of DeLoitte and Touch, were present. Hoffman presented the city's annual financial report.

Allendorf asked if Hoffman had seen the tiered water rates proposal. Gunyou said that he had not. Allendorf felt the tiered rates would help the utility enterprise fund, and Gunyou agreed. Tauer asked about challenges with the city's aging demographics. Hoffman said that there is a tendency for aging residents to not support referendums.

Koblick asked how employee retirements would affect the city. Hoffman said that if a large number of employees retire in a short period of time the city would lose some of its knowledge base. Based on Minnetonka's economic base and size, it should be able to attract talented staff. He did not see this as a major issue, but said that succession planning is important.

Koblick asked if the recently created Revenue Stability Account was a positive from an accounting perspective. Vosen said that it was.

Thomas noted that the reserve as a percentage for the fund balances has dropped. If the current trend continues, this would drop below 30 percent. He asked what the city should do to stay above 30 percent. Hoffman said that a number of things have impacted this ratio, including the GASB 34 conversion, and more conservative accounting since 1992. He was confident that if the city council set a minimal percentage, that the city would not go below it.

Vosen reviewed the changes to the financial statement with the conversion to GASB 34.

Allendorf asked about the cost of that conversion. Vosen said that the auditing fees were \$30,000. Allendorf said that it was wise for the city to make the conversion now, because it would have cost the city \$75,000 if done later. Vosen said that the templates created will be very helpful in future years, and they will serve as a model for other cities.

In response to Anderson's question, Vosen said that Minnetonka's GASB 34 conversion process can help other cities if the information is shared. Hoffman expects considerable interest from other communities.

Vosen then reviewed the draft management letter and the reportable conditions.

Anderson thanked DeLoitte & Touche, and Dale Eggenberger and Greg Sticha of the finance staff. Anderson said that she was not yet convinced of the practical usefulness of GASB 34. Hoffman said that he hoped it would improve over time.

Gunyou noted the leadership Eggenberger and Sticha brought to the project. He thanked the DeLoitte staff for bringing life to a

arcane subject, and for being accessible to city staff for various issues throughout the year.

**B. Bennett Family Park financial agreement.**

This item was pulled from the agenda at the applicant's request.

**C. Administrative hearing regarding the tobacco licenses of Twin Cities Stores, Inc. d/b/a Oasis Market #524 and #563.**

Anderson noted that no one was present from Twin Cities Stores.

Peterson said that she had left two phone messages for them over the prior weeks. On the day of the meeting, she did speak with someone at Twin Cities Stores, so they knew the hearing was on the agenda. The person Peterson spoke with said that the purchaser had offered a birth certificate as proof of identification. Peterson checked the police report and confirmed that the purchaser had not been asked for identification.

Peterson suggested postponing the hearing to a date uncertain, to allow staff to work with the licensee. She recommended that the council take no action at this time. Peterson said that the penalties for this offense are stated in the ordinance so the city does not have much discretion in this area.

Callison moved, Schneider seconded a motion to take no action on this item. All voted "yes." Motion carried.

**15. APPOINTMENTS.**

**A. Appointments to the Minnetonka Senior Advisory Board.**

Anderson moved, Callison seconded a motion to approve the following appointments to the Minnetonka Senior Citizens Advisory Board:

Ellsworth Bundy, 5809 South County Road 101, #303, be appointed to the Senior Citizen Advisory Board to serve a two-year term of office effective June 1, 2002 and expiring on May 31, 2004.

Diana Grace Nagle, 10451 Greenbrier Road, #214, be appointed to the Senior Citizen Advisory Board to serve a two-year term of office effective June 1, 2002 and expiring on May 31, 2004.

Ruby Berg, 4614 White Oak Road, be appointed to the Senior Citizen Advisory Board to serve a two-year term of office effective June 1, 2002 and expiring on May 31, 2004

Karen Mast, 5372 Ashcroft Road, be appointed to the Senior Citizen Advisory Board to serve a two-year term of office effective June 1, 2002 and expiring on May 31, 2004.

Joseph B. Steen, Jr., 14601 Atrium Way, #339, be appointed to the Senior Citizen Advisory Board to serve one year of the two-year term of office vacated by Helen Erickson, effective June 1, 2002 and expiring on May 31, 2003

All voted "yes." Motion carried.

**B. Appointments to the Minnetonka Park Board.**

Anderson moved, Koblick seconded a motion to approve the following appointments to the Minnetonka Park Board:

Lanise Stufft, 18008 Powderhorn Drive, be appointed to the Park Board to serve a two-year term of office effective June 10, 2002 and expiring on January 31, 2004.

Sue Woodrich 2308 Archers Lane, be appointed to the Park Board to serve a two-year term of office effective June 10, 2002 and expiring on February 28, 2003.

All voted "yes." Motion carried.

**16. ADJOURNMENT.**

Thomas moved, Allendorf seconded a motion to adjourn the meeting at 8:47 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk