

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MARCH 17, 2003**

1. CALL TO ORDER.

Mayor Karen 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, Dick Allendorf, Ken Tauer, Terry Schneider, Brad Wiersum, Al Thomas, and Karen Anderson were present.

4. REORDERING THE AGENDA.

City Manager John Gunyou advised the city council of two items in the addendum. The city attorney provided a revised ordinance for item 10B that incorporated changes suggested by Council Member Tauer. The second item was additional documentation for item 12A. This information was inadvertently omitted from the agenda packet and then e-mailed to the city council. Inclusion of this documentation in the addendum incorporated it into the official packet.

Tauer moved, Callison seconded a motion to approve the agenda as amended. All voted "yes." Motion carried.

5. MINUTES.

Callison moved, Thomas seconded a motion to approve the minutes of the February 24, 2003 regular council meeting as submitted. Callison, Tauer, Schneider, Wiersum, Thomas and Anderson voted "yes." Allendorf abstained. Motion carried.

6. SPECIAL MATTERS.

A. Recognition of Minnetonka Historical Society's publication of Minnetonka History Book

Anderson recognized the Minnetonka Historical Society for its publication of "Minnetonka Mills: An Historic Profile in Pictures and

Stories of a Community in Minnetonka, Minnesota. ” She introduced LaWayne Yaeger, President of the Minnetonka Historical Society, and Betty Johnson, author of the book.

Yaeger thanked the city council for their support in preserving Minnetonka’s history over the past 30 plus years. She was especially appreciative of the city’s help in restoring the Burwell House. She thanked Johnson for authoring the book, and Bill and Susan Jepson for their extra efforts to get the book published.

Johnson explained that Minnetonka Mills was chosen as the subject of the book to focus the project. The writing of the book coincided with the 150th anniversary of the settling of the Minnetonka Mills area.

Yaeger provided information about the availability of the book.

Anderson said that the pictures were magnificent, and pointed out that the book provides a walking tour of the historic Minnetonka Mills area. She thanked the society for their wonderful effort.

7. REPORTS FROM THE CITY MANAGER AND COUNCIL MEMBERS.

Gunyou reported that the March 24th study session will focus on a master plan for the Civic Center. The city will host a volunteer recognition dinner on March 26th. The next regular city council meeting will be held on March 31st.

Anderson congratulated the Hopkins High School Girls Basketball team for placing third in the State tournament.

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

Joe Dantzinger, 3116 Groveland School Road, thanked Johnson for writing the book, and thanked the council for designating the Clement house next to the former bowling alley on CSAH 101 as an historical building.

Lori Weissman, 4461 Hunters Ridge Road, said that she was speaking for a number of residents. She asked the city council to adopt a resolution opposing proposed legislation regarding the issuance of permits to carry concealed weapons. She said that the legislation would take away the police chief’s discretion on issuing such permits, and the new program would cost \$1 million to implement. The legislation would shift the responsibility for issuing permits to the county sheriff, and would also reduce the time to review applications from 21 days to 15 days. Weissman

said that the cities of Bloomington and Duluth have adopted similar resolutions.

Anderson noted that the city council could not vote on such a resolution at this meeting. She suggested that Weissman submit materials to staff.

Schneider noted that the League of Minnesota Cities and the Association of Metropolitan Municipalities are lobbying on this issue. Anderson said that the legislation would take control away from local governmental units, and noted that police chiefs are opposing the legislation. She said that she would support such a resolution.

Joe Dantzinger, 3116 Groveland School Road, spoke in favor of the conceal-carry legislation, and said that he is thinking of applying for a permit for himself due to personal safety concerns. He suggested that decisions on applications for permits be based on objective guidelines.

Anderson welcomed Boy Scout Troop #208 from Oak Knoll Lutheran Church.

9. BIDS AND PURCHASES.

A. Items pertaining to the CSAH 73/TH 7 Intersection Improvement Project No. 4887R:

- 1) **Consideration of bids**
- 2) **Authorization for staff to enter into an agreement with Xcel Energy for burial of overhead utility lines**

City Engineer Lee Gustafson provided the staff report for this item.

In response to Schneider's question, Gustafson said that the project would include a new signal at Minnetonka Mills Road and CSAH 73, and a revised signal at T.H. 7 to make that intersection more effective with its new lanes.

In response to Allendorf's inquiry, Gustafson said that the project would start in June, after the school year ends, and would be completed by mid-August to late September, depending on the weather.

Allendorf moved, Tauer seconded a motion to:

- 1) Award the bid for the CSAH 73/TH 7 Intersection Improvement Project No. 4887R to Park Construction Company in the amount of \$1,158,317.37; and

- 2) Authorize an agreement with Xcel Energy for the burial of overhead utility lines.

All voted "yes." Motion carried.

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

A. Claims for council authorization.

Tauer moved, Callison seconded a motion to approve the February 28, 2003 claims list, including checks numbered 172985 through 173257 totaling \$872,929.62. All voted "yes." Motion carried.

B. An ordinance amending sections 1045.015 and 1135.010(2) regarding public nudity and indecency.

This item was pulled from the consent agenda by Callison, who asked for an overview of the revised ordinance in the addendum. City Attorney Desyl Peterson reviewed the changes that had been proposed by Tauer.

Schneider moved, Tauer seconded a motion to adopt Ordinance No. 2003-05, amending sections 1045.015 and 1135.010(2) regarding public nudity and indecency as amended in the addendum. All voted "yes." Motion carried.

Tauer thanked Peterson for the changes, and said it was important to distinguish between nudity and sexual acts.

C. An ordinance amending section 615.050(2) regarding licensing of sexually oriented businesses.

Tauer moved, Callison seconded a motion to adopt Ordinance No. 2003-06, amending section 615.050(2) regarding licensing of sexually-oriented businesses. All voted "yes." Motion carried.

D. An ordinance amending section 815 regarding standards and enforcement of the food code.

Tauer moved, Callison seconded a motion to adopt Ordinance No. 2003-07, regarding standards and enforcement of the food code. All voted "yes." Motion carried.

E. Final approval of the ROSEWOOD ORCHARD plat at 3545 and 3539 Shady Oak Road for David and Rose Schlueter.

Tauer moved, Callison seconded a motion to approve the ROSEWOOD ORCHARD final plat that was received on February 10, 2003, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat; and
- 2) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat. All voted "yes." Motion carried.

F. Resolution receiving feasibility report, ordering improvements in, authorizing preparation of plans and specifications, and authorizing the acquisition of easements for the Crestwood Circle Storm Sewer Improvement Project No. 4654.

Tauer moved, Callison seconded a motion to adopt Resolution No. 2003-014, receiving the feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the Crestwood Circle Storm Sewer Project No. 4654. All voted "yes." Motion carried.

G. Resolution opposing the closure of any suburban courthouse and requesting Hennepin County District Court to share information and cooperatively examine possible solutions for State funding cuts.

Tauer moved, Callison seconded a motion to adopt Resolution No. 2003-015, opposing the closure of any suburban courthouse and requesting Hennepin County District Court to share information and cooperatively examine possible solutions for State funding cuts. All voted "yes." Motion carried.

11. Consent Agenda (Items requiring Five Votes).

A. A three-lot preliminary plat, with lot area and lot width at the setback variances, at 3021 and 3113 Atwater Street for Joseph W. Jurusik.

In response to Tauer's question, Principal Planner Cary Teague responded that this plat included a revision to the floodplain from the original plat submittal. He noted that the new plat reflected the actual elevations.

Callison moved, Allendorf seconded a motion to give preliminary approval to the re-platting of a portion of Lyons 2nd Addition, dated January 21, 2003, with lot area variances and lot width at the front yard setback variances at 3021 and 3113 Atwater Street for Joseph W. Jurusik. Approval is based on the following findings:

- 1) Except for the variances, the proposal meets the required standards and ordinances for a preliminary plat.
- 2) The proposal meets the required standards for a variance, because:
 - a) There is a unique hardship to the property caused by platting and development of the property and surrounding neighborhood prior to the effective date of the current ordinance.
 - b) The variance would meet the intent of the ordinance because the property qualifies for the small lot standards in the zoning ordinance. All of the small lot standards, including minimum buildable area and setbacks, would be met or exceeded by the plat.
 - c) The plat is consistent with the development of the surrounding neighborhood and represents a reasonable use of the property.

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
 - a) Show the following on the final plat:
 - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines. No easement is necessary along the north lot line of Parcel A due to the location of the existing home 3 feet from the lot line.
 - (2) The legal descriptions must be revised to indicate the name of the plat is Lyons 2nd Addition and not J.F. Lyons 2nd Addition.

- b) Pay the city a park dedication fee of \$2,375.00.
- 2) The following items must be submitted to the city before the city releases the final plat:
- a) An electronic CAD file of the final plat in microstation or DXF.
 - b) The following documents for the city attorney's approval:
 - (1) Title evidence that is acceptable to the city attorney. Title evidence must be current within 30 days before release of the final plat.
 - (2) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions below that have not been met as of the release of the plat. These documents must be recorded with the final plat, and a drawing of any easements must be attached to the easement deed.
- 3) The following must be submitted to the city before the city issues a building permit:
- a) A grading and tree preservation plan for the new lot, subject to staff approval. The plans must be in substantial compliance with the agreed building areas as required with the final plat. The sewer and water services must be shown to minimize impact to the significant trees.
 - b) The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
 - c) A copy of the recorded plat and any easements or covenants required to be recorded.
 - d) A hookup fee for sanitary sewer and water.
 - e) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If

the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.

- 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 must be planted to compensate for 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 six 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 city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES.

A. Introduction of an ordinance amending the City's grading and erosion control ordinance.

Anderson explained the process for changes to ordinances. She noted that the council had discussed this issue on two previous occasions, and she encouraged council members to comment on the draft before it is sent to the planning commission.

Environmental Resource Coordinator Jo Colleran provided the staff report, and noted that the ordinance formalizes many practices and procedures already in place.

Tauer expressed appreciation for addressing the issue of construction pollution without increasing red tape.

Allendorf applauded the ordinance and asked about enforcement. Colleran said that enforcement would be facilitated by Chris Robbins, the environmental/planning intern hired last fall. Colleran said that she or Robbins visit each construction site every two weeks, and they also respond to complaints.

Thomas was pleased with the ordinance. He noted the difficulties in his ward two years ago due to erosion issues, and said that a neighbor moved because of the problem. He was also pleased with the new enforcement process. He asked that the ordinance be publicized so people are encouraged to report violations. Thomas noted that construction pollution is the number one contributor to the degradation of water quality. He appreciated that the ordinance would be tougher than the Minnesota Department of Natural Resources regulations.

In response to Tauer's question, Colleran said that building inspectors are cooperatively watching for violations when they are on sites to do their inspections. They report violations to Colleran or Robbins, who follow up on them.

Peterson said that a companion ordinance, amending the nuisance ordinance, will be introduced at a later date. It would not require planning commission review. She said that the companion ordinance will authorize nuisance abatement and will provide that costs could be assessed against the property.

Wiersum asked for an explanation of the new practices or procedures in the draft ordinance. Colleran said that the biggest changes related to the requirements for grading and erosion plans. Currently, there are no requirements for soil stockpiled on a property. With the new ordinance, a plan would be required for soil stockpiled for more than 14 days. The other new features would be to require financial security of the applicant, and the ability to withhold inspections and/or stop work when there are violations. Wiersum supported getting these issues to the top of contractors' punch lists.

Gunyou noted the positive effect Colleran has had in this area since she was hired. She has accomplished a great deal in the areas of education and obtaining grants, and she has brought forward a series of ordinance amendments with more to come. He noted that the council's approval of her position provided the necessary staff expertise and time to provide more oversight at construction sites. These efforts have also improved with the hiring of Robbins—a position made possible by reorganization of the planning department.

Allendorf moved, Wiersum seconded a motion to introduce an ordinance amending the city's grading and erosion control ordinance and to refer the ordinance to the planning commission.

Anderson provided staff with a copy of an e-mail she received from Jim Couling regarding run-off of pet litter. She thanked staff for their work on the ordinance.

All voted "yes." Motion carried.

13. PUBLIC HEARINGS.

A. **Hold a public hearing regarding a resolution authorizing a modified water rate structure and water and sewer rate increases.**

Gunyou provided an overview of the proposed changes, noting that water and sewer fees can be used to generate revenue, or as in this case, to encourage water conservation. The proposed rate changes are one component of several strategies adopted in response to water shortages of a few years ago. Most of the capital improvements are underway or have been completed, and educational efforts are ongoing.

Gunyou explained that there is sufficient water supply except in the summer when lawn sprinkling creates peak usage that sometimes exceeds the city's capacity. The city strategies are intended to shave off the peaks to avoid water shortages. He noted that the council had previously adopted sprinkling restrictions. At that time, the city council also asked the staff to develop a pricing structure to encourage reduced usage. Gunyou noted that this concept has been used throughout the country, but that Minnetonka's structure would be more aggressive. The city council directed staff to draft a pricing structure that would make a difference.

Gunyou then explained the effect of the proposed changes on residential and commercial properties. For residential users, the new structure would require those who use more water than average to pay higher rates. Rates would vary from \$1.45 per thousand gallons to \$2.35 per thousand gallons. The minimum charge would be eliminated (about \$21 per quarter), and replaced with a \$1 per quarter account maintenance fee. Customers would only pay for the water they used. If a property used no water, it would only be charged \$1 for the quarter.

Gunyou said that about two-thirds of the residential properties would fall into the lowest rate category during the winter, and about one-half would remain in the lowest category during the summer. He also noted that 10 percent of the residences consume one-third

of the water during the summer months. He said that those higher users represent a tremendous drain on the system. Average water users will see little difference in their bills. Below average users could see a \$10 to \$15 reduction in their quarterly bills. Above average users could see a \$25 to \$30 a quarter increase in their utility bills, if they do not reduce their consumption.

Because of the diversity of commercial users, Gunyou said that a different approach was used for these customers. A 10-cent per thousand gallon surcharge would be added to commercial bills for the months of May to September. The sprinkling account surcharge would be 25 cents per thousand gallons for those same months. Minimum usage charges would be eliminated for commercial accounts, but there would be account and meter charges. The annual percent change to bills for commercial users would be similar to the percentage changes for residential users.

Gunyou noted that the intent of the rate structure was not to generate additional revenue for the Utility Fund. Because the new rates are designed to encourage people to lower their usage, pricing is set so that total revenues should be about the same as generated by the current structure. Staff plans to implement the changes by the end of April, prior to the summer peak usage period.

Gunyou noted that there was considerable publicity of these proposed changes. Notices of an informational meeting were mailed to all commercial users and included with their December utility bills. An informational meeting was held in January, but only three people attended. A front-page article about the proposed changes was also published in the January *Minnetonka Memo*. That article generated about a dozen calls. Three of those callers were pleased with the proposed changes. Six of the callers wanted clarification. Three of the callers would see an increased bill.

Anderson clarified that the changes would be adopted by council resolution, so the change would require a public hearing but would not require consideration at two council meetings.

Tauer also clarified that residents would only pay the higher rate for usage over 25,000 gallons. Gunyou concurred, and said that the lower rate would apply to the first 25,000 gallons.

In response to Schneider's question, Gunyou said that about 10 percent of the residential customers use one-third of the water

during the summer/peak use period. The new rates were designed to encourage those users to reduce their consumption.

Anderson said that reducing water usage could have an impact on the number of wells and storage tanks needed.

Wiersum said that this issue is important. Despite the abundance of lakes, water is a scarce resource. He said that the changes would help residents consider how much water they are using. When this change was discussed, he looked at his own usage. As a result, he has decided to change the way he uses water. He believes the change will benefit the city.

Gunyou noted that education will be a big part of this change. Notices have been, and will continue to be, included with water bills advising residents how to care for their lawns.

Callison asked if the city would once again offer commercial customers a reduced rate for a device to turn off sprinklers during rains. Gunyou said that the city will continue to match commercial customers' costs for such devices up to a certain dollar limit.

Anderson opened the public hearing at 7:42 p.m., and invited public comment. No one spoke, and the public hearing was closed.

Callison moved, Tauer seconded a motion to adopt Resolution No. 2003-016, authorizing a modified water rate structure and water and sewer rate increases.

Anderson noted her support for the changes. She asked that staff keep the city council apprised of the effects of the changes after the first full billing cycle, perhaps in July or August.

All voted "yes." Motion carried.

B. Items Recommended by the Charter Commission:

- 1) Public hearing: an ordinance amending the City Charter regarding appointments to boards and commissions, judging qualifications of council members, incompatible offices and competitive bidding.**
- 2) Introduction of an ordinance regarding judging qualifications of council members.**

Peterson provided the staff report for this item. She noted that the continued public hearing was tentatively scheduled for March 31,

2003, and inquired if all council members would be present at that meeting, because passage of these items would require unanimous approval of all seven council members. Wiersum said that he would not be at that meeting. Anderson suggested that staff propose another date for the continued public hearing.

Allendorf was concerned about the lack of a definition for harassment in the contested qualifications section. Peterson said that there is similar language in the city's code of ethics in the ordinance code. That language was added a number of years ago when the city received a petition that asserted that some council members had a conflict of interest so they should not vote on an issue. It was apparent that the intent of the petition was to delay the vote on that project. The use of the word "harassment" seemed appropriate instead of delay, and it would be up to the city council to determine whether or not a written complaint was submitted for impermissible purposes. She said that alternative language could be provided if the council wishes. Allendorf suggested that someone could question whether the council should make such a determination. He asked if there could be a standard and objective way to judge if there was harassment.

Tauer referred to the appointment of boards and commissions members. He questioned if the council would be responsible for the appointment of staff to similar positions. With regard to incompatible offices, he asked if the language should refer to appointments to "public" offices. With regard to council member qualifications, Tauer wondered if the issue of residency could be better defined.

In response to Tauer's question about boards and commissions appointments, Peterson said that the proposed language would follow language that states that the city council may establish boards and commissions, so she did not see it governing appointment of employees. With regard to incompatible offices, she noted that state law provides that a county commissioner cannot hold another elected office. She said that it would be highly unlikely that the proposed language would be interpreted as referring to non-public offices. She noted that any changes to the language submitted by the charter commission would require the commission's approval. She did not think it would be necessary to better define residency because court decisions have done so.

Anderson said that oaths of office are typically required for public offices. Peterson was not aware of other entities that would require an oath of office. Schneider raised the issue of holding an elected

office in an organization such as the National League of Cities. Anderson said that the NLC does require new board members to take an oath of office.

Anderson opened the public hearing at 7:59 p.m. and invited public comment. No one spoke, and she noted that the public hearing would be left open.

Gunyou inquired about council availability for the continued public hearing. All council members said that they would be at the April 14, 2003 meeting. The council concurred that they would like changes to Section 2.05, and Peterson said that the council's motion should eliminate reference to that section.

Schneider moved, Wiersum seconded a motion to 1) introduce an ordinance amending the City Charter regarding appointments to boards and commissions, judging qualifications of council members, and competitive bidding, 2) introduce an ordinance amending the city code regarding judging qualifications of council members, and 3) continue the public hearing to April 14, 2003.

Allendorf asked if other council members were concerned about the harassment issue he raised earlier. Callison said that she would be more concerned about trying to define harassment.

Peterson asked for clarification that the motion included the ordinance to amend the city code. Schneider and Wiersum agreed that had been their intent. Anderson noted that the council would consider the issue of incompatible offices again after the charter commission reviewed the language again.

All voted "yes." Motion carried.

C. Public hearing to consider a resolution that vacates part of the County Road 101 right-of-way next to the Gray's Bay Public Access for the State of Minnesota.

Gunyou provided a brief introduction for this item.

Anderson opened the public hearing at 8:05 p.m., and invited public comment. Bob Crump, a member of the task force, asked to see a map showing the area, and staff provided that information. The public hearing was closed at 8:07 p.m.

Callison moved, Wiersum seconded a motion to adopt Resolution No. 2003-017, vacating part of the CSAH 101 right-of-way next to

the Gray's Bay Public Access for the State of Minnesota. All voted "yes." Motion carried.

14. OTHER BUSINESS.

A. Authorize 2003 Diseased Tree Removal Program.

Gunyou provided the staff report for this item, reviewing the planned changes.

Thomas asked if staff would continue the practice of providing a list of tree removal contractors to residents who asked. Gunyou said that staff wanted to avoid any appearance of endorsing contractors, but said that a list had been maintained as a matter of convenience for the public. Gunyou said that at a minimum, a prominent disclaimer would be provided indicating that the contractors had worked in the city but the city was in no way endorsing their work. Thomas noted several incidents of problems with contractors on the list. He suggested that residents use the yellow pages to find contractors, and said that the city should no longer provide the list.

Based on the information provided, Callison said there appeared to be an increase in the number of diseased trees. City Forester Mark Simenson referred to information on the Web site of the Department of Agriculture that indicated that there was a period of reduction in the number of diseased trees, but that the numbers were now climbing as a result of mild winters. The Department of Agriculture said that a number of Elm tree seeds planted in the mid-1970s were now of sufficient size to be affected by disease. The department did not expect the numbers to increase further.

Anderson asked if the proposed changes would require any changes to the city's ordinances, particularly with reference to the Forestry Fund. Gunyou responded that he did not believe it would.

Schneider said that he did not have strong feelings about maintaining a list of contractors, but said that it would make sense to limit the referral arrangement. He asked if the city had a list of contractors it uses. Gunyou responded that the city council authorizes a single contractor for tree removal, and that contract is typically for several years. Thomas noted that two or three contractors with whom residents of his ward had problems were on the contractor list.

Peterson, in response to Anderson's inquiry about other ordinance changes that might be needed, said that she had searched the city's code and found no references to the Forestry Fund.

Anderson said that it appeared that it would no longer be appropriate to provide a contractor's list.

Tauer appreciated looking at the issue of providing contractors for the public, and said that the city's good intentions in that area had sometimes been interpreted negatively. He said that it was time to separate that issue. He had no strong feelings on the issue of maintaining a contractor list.

Callison supported eliminating the contractor list because it implicitly inferred endorsement.

Wiersum agreed that residents could obtain names of contractors from the yellow pages. He was also concerned about implied endorsement.

Callison moved, Thomas seconded a motion to approve the 2003 diseased tree removal program, in which the city will:

- continue to provide the following forestry services: diseased tree inspections for Dutch elm and oak wilt diseases, provide tree and horticultural consultations, administer testing services and advise on public trimming activities.
- solicit diseased tree removal bids for public trees and for reforestation purposes, but not for private tree removal.
- no longer provide a list of tree removal contractors.

All voted "yes." Motion carried.

B. Resolution approving amendments to the City Council Rules of Procedure.

Anderson thanked staff for their work on this item. She noted that there were a number of typographical errors in the document, and saw no urgency for the council to act on this item at this meeting.

Tauer noted that the notice on council agendas indicates that members of the public can pull an item from the consent agenda, but that the rules indicate only members of the city council can pull items from the consent agenda. He said that the current mayor is

respectful of the requests of the audience. Peterson said that the other six members of the council could pull an item if a member of the audience so requested and the mayor did not grant the request. Anderson suggested rephrasing the language to indicate that the city council could pull an item from the consent agenda at the request of a member of the audience or a request from staff.

Callison referred to the changes in voting requirements with respect to a vacancy on the city council. She asked if vacancy also referred to absences of council members. Peterson said her intent was to refer only to vacancies, and she saw a clear distinction between a vacancy and an absence. Schneider suggested addressing the issue to avoid challenges during discussion of contentious issues. Peterson said that she would clarify that language.

Anderson noted an apparent conflict between sections 2.9 and 2.11. Section 2.9 states that an item cannot be added to the agenda after it is published unless it is approved by the council under their approval of the agenda. Section 2.11 states that items could be added under the city manager/council reports. Peterson said that she would revise those sections to eliminate the inconsistencies. She noted that the rules would allow the council to vote to suspend any of the rules.

Thomas raised the issue of notice regarding special meetings and cancellation of meetings in sections 1.3 and 1.7. He suggested adding electronic notice. Peterson said that people do not always check their e-mail or might be away from their office. Wiersum suggested adding electronic notice as an option in addition to the other options. Peterson said that the main concern is the end result, which is that people receive notice. Anderson suggested that there be some verification that notice was received. Schneider said that staff needs to make its best effort through the available means to provide notice. He did not think verification was needed. Peterson agreed to add language that staff would use its best efforts to notify the council using whatever means are available.

Callison referred to section 5.3, which states that it is inappropriate for the council to accept public comments on issues that have been referred to a board or commission. As an example, she noted the citizen who commented on the historic house at this meeting which is related to the Sanctuary project, and said that project had been referred to the planning commission. She said that under the rules, those comments should have been ruled out of order, and Peterson agreed. Callison asked whether this section would provide a

safeguard to the integrity of the process. Anderson said that she could accept the language as presented in the draft.

Tauer said that the council should have discretion on how to act.

Wiersum said that the council should have discretion to indicate that it may not comment on an item until it has received feedback from a board or commission to which a matter has been referred. He believed that the proposed language would allow the council this discretion.

Callison agreed that the mayor has the authority to determine whether such comments are out of order.

Schneider said that the current language prohibits discussion, and suggested softening the language to "may limit" discussion, leaving discretion to the council's judgment at the time.

Peterson said that she was hearing a council preference to have the language be more permissive. She noted that the mayor has the right to limit the comments.

Gunyou suggested adding a sentence regarding intent, which is to avoid discussions that are out of the review sequence.

Tauer would support the council not discussing the item.

Anderson supported the mayor having discretion. She said that the purpose is for the planning commission to have the full benefit of discussion. She felt that allowing someone to speak at another forum before a planning commission meeting, for example, would mean that the playing field was no longer level. Schneider said that there could be a large number of people who wanted to speak to the council and questioned where the comments would be stopped.

Anderson noted that there was some council consensus to make some changes to limit the comments. She suggested that the city attorney consider adding a sentence about intent.

Schneider suggested that on controversial issues, comments be limited due to volatility, and also to preserve the process.

Thomas referred to the second paragraph of section 5.4 regarding communications pertaining to pending matters. He noted that the council has permitted information to be distributed from the podium. Peterson clarified that this section refers to written correspondence

received at city hall for council members. The purpose of the language is to ensure those items are distributed to city council members. She will clarify this language.

Wiersum asked if there should be a time limit because agenda packets are distributed on Fridays. Callison said that additional material is handled through addendums.

Anderson referred to section 7.4 dealing with tie votes. She noted that a tie would not occur if all council members were present. Peterson said that a tie vote could occur when there is a vacancy on the council.

Anderson noted that the rules require that when a vote fails, the item should be automatically scheduled for the next meeting. She asked that the city attorney remind the council of this requirement.

Tauer asked about time limits to vote on planning applications. Peterson responded that failure to have enough votes does not constitute a denial. She noted that sections 7.4 and 7.5 are somewhat conflicting. Schneider said that the main concern would be with applications that don't have sufficient votes for approval or denial. Peterson said that she would work with the language to eliminate the conflict, and might eliminate section 7.4. She said that the current language is a good faith effort to counter certain court decisions. Anderson noted that it can be problematic to continue the item to the next agenda. Peterson said that the item would not be deemed to have failed if the motion is to continue it. She said another option could be to schedule the item for another meeting. Wiersum suggested combining sections 7.4 and 7.5.

In response to Wiersum's question, Peterson said that she will delete references to automatically scheduling an item after a tie vote, but would provide an option to continue the item. Wiersum noted that section 7.4 refers to tie votes, and section 7.5 refers to failed votes. He suggested adding an option to continue for both of these occurrences.

Schneider asked about e-mails between council members. Peterson said that issue is addressed by State law.

The council asked Peterson to make the discussed amendments to the rules for future council action.

15. APPOINTMENTS.

A. Appointment of Advisors for the 2003 Local Board of Review.

Anderson moved, Callison seconded a motion to appoint the following as Advisors for the 2003 Local Board of Review:

- Terry Hullsiek, Counselor Realty
- Larry Kriedberg, Coldwell Banker Burnet,
- Tom Selseth, Counselor Realty
- Joel Shields, Edina Realty

All voted "yes." Motion carried.

At this point, Joe Dantzing, 3116 Groveland School Road, asked to address the council again. He had not realized that his earlier comments were inappropriate. He noted that the council asks citizens for comments, but could also rule those comments out of order.

Anderson said that the rules of procedure have been in place for a number of years, and they had nothing to do with the earlier item on this agenda. She noted the importance of carrying out city business in a professional manner, and said that rules of procedure were essential to that process. She said that is particularly important when issues become emotional. The council needs the ability to keep order so the council can complete its business.

In response to Dantzing's question, Anderson provided an explanation of the public hearing process. She said that the rules of procedures were adopted for the council's business, and they do not limit public comment.

Callison said that the earlier discussion actually broadened the existing rule. Tauer said that the council expressed an interest in softening that rule to facilitate public comment.

Schneider said that the city council always encourages public comment. Regarding land use issues, that process is dictated by State law. The planning commission provides the public hearing opportunity, and that process needs to be honored. He noted that the council may accept additional public comment, but the council watches the planning commission's public hearings and then decides if more public comments are needed or would be redundant. Anderson noted that many other cities only allow public comments at the planning commission public hearing.

Peterson said that she would be willing to meet with Dantzing to explain process issues.

16. ADJOURNMENT.

Anderson noted that staff has recommended that the council go into a closed session. Peterson noted that this discussion related to pending litigation.

Callison moved, Thomas seconded a motion to adjourn the meeting at 9:21 p.m. and go into closed session to discuss litigation strategy with the city attorney regarding City of Minnetonka v. Walters. Callison, Allendorf, Schneider, Wiersum, Thomas and Anderson voted "yes." Tauer was absent for the vote. Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk