

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, MARCH 31, 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 Dick Allendorf, Ken Tauer, Terry Schneider, Al Thomas, Jan Callison, and Karen Anderson were present. Council member Brad Wiersum was excused.

**4. REORDERING THE AGENDA.**

City Manager John Gunyou noted information in the addendum regarding item #11A, Ultimate Electronics. There was a correction to the resolution and a new condition regarding noise.

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

**5. MINUTES.**

Schneider moved, Thomas seconded a motion to approve the minutes of the March 17, 2003 regular council meeting and the March 17, 2003 executive session. All voted "yes." Motion carried.

**6. SPECIAL MATTERS.**

**A. Recognition of 2003 Citizenship Academy Graduates**

Anderson and Schneider recognized the following graduates of the 2003 Citizenship Academy: Keith Berg, Ruby Berg, Chris Carlson, Peg Carlson, John Connelly, Anne Kalscheuer, Janet Larson, Paul Lehman, Steve Lutz, Diana Nagle, Jack Nagle, Darhl Nelson, Tami Petterson, Emily Richter, Kristin Richter, Gia Sundbo, Mari Sundbo, Kevin Zahler and Pat Zahler. Graduates recognized but not present

were: Cathy Gunderson, Sarah Sanna, Margaret Simonson, Amrit Singh, Bruce Stillman, Jake Wenmark, and Charles Wright.

**B. Recognition of Board Member Bob McFarlin**

Thomas recognized Bob McFarlin's three years of service to the Park Board and the Joint Recreation Board. He also thanked him for his assistance with the referendum. Anderson presented him with a recognition award. McFarlin said that it was an honor and a pleasure to serve. He noted that his new position is temporary so he would be interested in serving the city again when that position is done.

**C. Proclamation of April 2003 as "Child Abuse Prevention Month."**

Callison read the proclamation proclaiming April 2003 as "Child Abuse Prevention Month."

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

Gunyou reported that the April 7, 2003 study session had been cancelled. The city council will meet as the board of review on April 9, 2003. The next regular city council meeting will be held on April 14, 2003.

Anderson noted that April 9, 2003 will be the League of Minnesota Cities' City Day at the State Capitol.

Allendorf reminded the audience of the availability of council packet information on the computer in the council chambers and on the city's Web site.

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

No one appeared.

**9. BIDS AND PURCHASES.**

**A. Consideration of bids for renovation of the Shady Oak Beach diving platform.**

Gunyou provided a brief introduction for this item, noting that the original budget was considerably higher to allow replacement of the pilings. An underwater inspection determined the posts were in good shape so only the decking will be replaced.

Callison moved, Tauer seconded a motion to award the bid for renovation of the Shady Oak Beach diving platform to Hunerberg

Construction, in the amount of \$42,280. 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 March 17, 2003 claims list, including checks numbered 173258 through 173609 totaling \$1,233,829.96. All voted "yes." Motion carried.

**B. Resolution Establishing a Real Property Fire Loss Escrow Account.**

Tauer moved, Callison seconded a motion to adopt Resolution No. 2003-018, establishing a real property fire loss escrow account. All voted "yes." Motion carried.

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

**A. Resolution for a conditional use permit for a vehicle audio installation business with parking variance at 12901 Ridgedale Drive (Ridge Square South shopping center) for Ultimate Electronics.**

Anderson noted the addendum information regarding this item.

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2003-019, as amended in the addendum, approving a conditional use permit for an audio-system installation business with parking variance.

- 1) Apart from parking standards, the proposal meets the required conditional use permit standards
- 2) Strict enforcement of the ordinance would cause undue hardship because of circumstances unique to this property.
  - a) The applicant is proposing to use the property in a reasonable manner. City code requirements that must be applied to auto-related uses were intended for more traditional or intense auto repair or servicing uses.
- 3) The variance would be consistent with the spirit and intent of city ordinance for the following reason:

- a) The proposal would not impose any negative impacts on existing parking conditions. Auto-related parking requirements are intended for more traditional, intense repair or service operations where spaces must be provided for vehicles waiting to be serviced or picked up by owners.

Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Record this resolution with the county before the city issues a building permit.
- 2) Provide ordinary 1 density for automatic fire sprinklers in the lease space.
- 3) A separate sign permit application must be submitted for staff review. Any proposed sign must meet conditions outlined in the Ridge Square South sign covenants.
- 4) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 5) 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.
- 6) Noise from vehicle radios or audio equipment that are being installed or that have been installed at this business must not be audible at any nearby residential property line at any time.
- 7) The applicant must agree to the above conditions in writing.

Tauer said that he had requested the new condition regarding noise because he had remembered a similar condition for Best Buy.

Callison felt that the proposed language was overly broad and could be interpreted to apply to vehicles on adjacent streets. Schneider suggested adding "from the site" just before "at any nearby residential property line at any time." City Attorney Desyl Peterson accepted that change.

Matt Kennen, Audio King Project Manager, represented the applicant. He said that he had not seen the addendum changes. He said that they want to be good neighbors but they would have no control over the actions of customers after they leave their shop. He would be willing to provide that they would not test any equipment with their roll up door open, and they could provide a sign inside the installation area asking customers to be courteous to neighbors.

Peterson suggested moving the phrase "from the site" in condition #6 to after the word "noise." This would limit responsibility to the property itself.

Kennen said that they had made great efforts to acoustically isolate the installation area.

Schneider and Allendorf agreed to the change in the motion as suggested by Peterson.

All voted "yes." Motion carried.

## 12. INTRODUCTION OF ORDINANCES.

### A. Introduction of an ordinance amending the nuisance ordinance concerning construction site restoration and the discharge of sediment or pollutants to public streets, storm sewers, or water resources.

Anderson asked for a staff presentation on the ordinance. The ordinance would not be referred to another commission for comment, so she asked the council to provide direction to staff.

Gunyou reminded the council that this ordinance was a companion to an ordinance introduced on March 17, 2003. That ordinance amended the zoning ordinance and had been referred to the planning commission.

Environmental Resources Coordinator Jo Colleran provided a staff report on this item.

Anderson noted that the overall goal of the ordinance is to provide education rather than punishment. She asked if staff would respond to complaints from residents regarding people in their neighborhood dumping lawn debris into the street and the storm sewer. Colleran said that staff would respond to complaints, and said that the focus would be on intentional acts. She said that an entire neighborhood would receive a mailing when an anonymous complaint was

received. In other cases, Colleran would visit the offender to educate them on options for removal of debris.

Tauer questioned providing 240 days for site restoration. Colleran said that the current ordinance allows 240 days to seed, sod or provide ground cover from the time construction begins. The amendment takes into account winter conditions. A property owner would still need to control erosion and sedimentation. Colleran said that the 240-day requirement has worked well, but becomes problematic if the deadline occurs during winter.

Callison noted the amount of debris in the streets at this time of year. She asked if the city would be proactive in clearing this debris so it does not go into the storm sewer. Colleran said that scientific research has shown street sweeping to be an effective tool in this regard. In response to Callison's question, Colleran said that staff will continue to look for ways for the city to be more proactive in this area.

Thomas supported the amendment to the ordinance. He noted that the city has made information available regarding composting. He encouraged education in that area to continue. He suggested looking at some provisions regarding brush piles, perhaps based on lot size and condition. This may be needed because of the response to education about buckthorn.

Anderson said that she did not hear any council direction for staff to change the ordinance. She said that the recommendations were simple, short and direct.

Tauer moved, Callison seconded a motion to introduce an ordinance amending the nuisance ordinance concerning construction site restoration and the discharge of sediment or pollutants to public streets, storm sewers, or water resources. All voted "yes." Motion carried.

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

#### **A. Public hearing to consider applications by Nicklows & Sons, Inc., for on-sale and Sunday on-sale intoxicating liquor licenses for Nicklows & Sons restaurant, 6001 Shady Oak Road.**

Community Development Director Ron Rankin provided the staff report for this item.

Anderson opened the public hearing at 7:20 p.m. No one spoke.

Schneider moved, Allendorf seconded a motion to continue the public hearing for on-sale intoxicating liquor licenses for Nicklows & Sons restaurant at 6001 Shady Oak Road to May 12, 2003.

Anderson welcomed Nicklows to the community.

All voted "yes." Motion carried.

#### 14. OTHER BUSINESS.

##### A. **Items concerning a proposed outdoor seating area for the Bacio Restaurant at 1571 Plymouth Road South (Bonaventure shopping center) for Bacio:**

- 1) **Ordinance amending the existing master development plan;**
- 2) **Resolution for a conditional use permit, with variance.**
- 3) **Approval of amended liquor licenses for an outdoor dining area for the Bacio restaurant at 1571 Plymouth Road South.**

Planning Director Geoff Olson provided the staff report regarding the outdoor seating area.

Schneider moved, Tauer seconded a motion to:

- 1) Adopt Ordinance No. 2003-08, allowing unenclosed, outdoor seating areas at the Bacio Restaurant.

Approval is based on the following findings:

- a) The proposal meets the intent of the Bonaventure master development plan. The existing lease restriction is in place to ensure parking at the site meets minimum requirements. City policy has been to not require additional parking for outdoor seating areas. These spaces have not traditionally increased the number of restaurant patrons and vehicles; instead, they simply offer a seating option. Available parking at the site would not be affected by the proposal.

Approval is subject to the following condition:

- a) The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below: Site Plan dated February 22, 2003
- 2) Adopt Resolution No. 2003-021, approving a conditional use permit with variance for an outdoor seating area at the Bacio restaurant at 1571 Plymouth Road So. (Bonaventure shopping center) for Bacio.

This resolution is based on the following findings:

- a) Apart from providing an uninterrupted enclosure and being accessed only through the principal building, the proposal meets the required conditional use permit standards
- b) Strict enforcement of the ordinance would cause undue hardship because of circumstances unique to this property.
  - (1) The applicants are proposing to use their property in a reasonable manner, acceptable to city staff charged with the issuance and enforcement of the city's liquor licenses.
- c) The variances would be consistent with the spirit and intent of city ordinance for the following reasons:
  - (1) A stonewall, gate, and hedge would physically separate the outdoor seating area from the Bonaventure parking lot and surrounding sidewalks.
  - (2) A host stand would be located directly inside the proposed gate; no one would be seated except by a host.
  - (3) The proposed stone wall and building design could be altered to fully surround the outdoor seating area in the future, should the city deem it necessary.

Approval is subject to the following conditions:

- a) The outdoor seating area must not impede egress from the building. The proposed stonewall and gate must be approved by the city's fire marshal prior to issuance of a building permit.

- b) In the future, should the city find it warranted, the city may require the stone wall fully surround the outdoor seating area and building design be altered to allow access only from the building
  - c) The outdoor seating area must remain as seasonal seating. It may not be incorporated into the building, fully enclosed, or converted to year-round usable space.
  - d) Record this resolution with the county before the city issues a building permit.
  - e) The city council may reasonably add or revise conditions to address any future unforeseen problems.
  - f) 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.
  - g) The applicant must agree to the above conditions in writing.
  - h) Any outdoor sound system is to have the volume regulated to a moderate level. The city, at its sole discretion, may require any outdoor sound system to be removed.
  - i) The outdoor dining area must close by 10:00 p.m. Sundays through Thursday, and by 11:00 p.m. Fridays and Saturdays.
- 3) Staff recommends the liquor licenses be amended to allow liquor service at the outdoor dining area, subject to the conditions listed below:
- a) In the future, should the city find it warranted, the city may require the stone wall fully surround the outdoor dining area, and the building design be altered to allow access to the area only from the building.
  - b) Any outdoor sound system is to have the volume regulated to a moderate level. The city, at its sole discretion, may require any outdoor sound system to be removed.
  - c) The outdoor dining area must close by 10:00 p.m. Sundays through Thursday, and by 11:00 p.m. Fridays and Saturdays.

Rick Webb spoke as the owner of Baccio's. Anderson thanked him for coming to the meeting, and said that the changes would improve the looks of the area.

All voted "yes." Motion carried.

**15. APPOINTMENTS.** None

**16. ADJOURNMENT.**

Tauer moved, Callison seconded a motion to adjourn the meeting at 7:27 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk