

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, April 14, 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 Terry Schneider, Brad Wiersum, Al Thomas, Jan Callison, Dick Allendorf, Ken Tauer, and Karen Anderson were present.

4. REORDERING THE AGENDA.

City Manager John Gunyou presented staff's recommendation to reorder the agenda, moving item #14A to the end of the meeting. This change would allow the council to adjourn to an executive session to discuss a settlement offer to this litigation. After the executive session, the council would return to the chambers to hear item 14A.

Anderson noted that the open meeting law permits city councils to hold executive sessions to discuss active litigation.

Schneider asked if the council would discuss the item before adjourning to the executive session. City Attorney Desyl Peterson said that the appellants requested that the council hold the executive session before any discussion of the matter.

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

5. MINUTES.

Allendorf moved, Callison seconded a motion to approve the minutes of the March 31, 2003 regular council meeting and executive session. Schneider, Thomas, Callison, Allendorf, Tauer and Anderson voted "yes." Wiersum abstained. Motion carried.

6. SPECIAL MATTERS.

A. Proclamation of Thursday, April 24, 2003 as “Arbor Day” in the City of Minnetonka.

Schneider read a proclamation proclaiming Thursday, April 24, 2003, as “Arbor Day” in the City of Minnetonka.

B. Proclamation of April 27, 2003 through May 4, 2003 as “Days of Remembrance – For Your Freedom and Ours.”

Callison read a proclamation proclaiming the week of April 27, 2003 through May 4, 2003 as “Days of Remembrance – For Your Freedom and Ours.”

7. REPORTS FROM THE CITY MANAGER AND COUNCIL MEMBERS.

Gunyou reported that the city council will hold its first review of the five-year capital improvement program on April 21. The next regular city council meeting will be held on April 28.

Anderson reported that the Gray’s Bay public access opened this weekend. The grand opening of the site will take place on June 5 at 1:30 p.m.

Anderson also reported that she and Schneider attended the League of Minnesota Cities’ City Day at the Capitol.

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

No one appeared.

9. BIDS AND PURCHASES.

A. Consideration of bids for 2003 diseased tree removal.

Gunyou provided a brief introduction to this item.

Tauer noted that the bid was for 1,000 trees, and the exact number of trees that will be removed is not yet known. Gunyou said that the bid is for standard pricing with some allowance for unique circumstances. If the actual number of trees removed is more or less than 1,000, the amount would be adjusted accordingly.

Tauer moved, Thomas seconded a motion to award the bid for the 2003 diseased tree removal to S & S Tree and Horticultural Specialists, Inc., in the amount of \$77,970. All voted “yes.” Motion carried.

B. Consideration of bids for Pioneer Park construction.

Gunyou provided a brief introduction to this item. He noted that this project would be funded from the park dedication fund because it is for a new park.

Allendorf moved, Callison seconded a motion to award bid for Pioneer Park construction to Arrigoni Brothers Construction in the amount of \$25,100. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Claims for council authorization.**

Tauer moved, Allendorf seconded a motion to approve the April 7, 2003 claims list, including checks numbered 173610 through 174014 totaling \$1,846,760.04. Schneider, Wiersum, Thomas, Allendorf, Tauer and Anderson voted "yes." Callison abstained as to check number 174004. Motion carried.

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

Tauer moved, Allendorf seconded a motion to adopt Resolution No. 2003-021, approving amendments to the City Council Rules of Procedure. All voted "yes." Motion carried.

C. Resolution ordering the abatement of nuisance conditions existing at 5804 Covington Terrace.

In response to Anderson's question, Peterson said that staff had visited the property today, and the nuisance conditions had not been remedied.

Tauer moved, Allendorf seconded a motion to adopt Resolution No. 2003-022, ordering the abatement of nuisance conditions existing at 5804 Covington Terrace. All voted "yes." Motion carried.

11. Consent Agenda (Items requiring Five Votes). None**12. INTRODUCTION OF ORDINANCES. None****13. PUBLIC HEARINGS.****A. 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, and Competitive Bidding.**
- 2) **An ordinance regarding judging qualifications of Council Members.**

Peterson provided the staff report for this item.

Anderson noted that the public hearing on this item was opened at the previous council meeting. She invited comments from the audience. Anderson explained the purpose of the Charter and the process for amending it. There were no comments from the audience, and the hearing was closed at 6:55 p.m.

Schneider moved, Tauer seconded a motion to adopt Ordinance No. 2003-09 amending Minnetonka City Charter Sections 2.02, 2.03 and 6.06 regarding appointments to boards and commissions, judging qualifications of council members, and competitive bidding; and to adopt Ordinance No. 2003-10 amending the City Code to add section 100.030 regarding judging qualifications of council members. All voted "yes." Motion carried.

14. OTHER BUSINESS.

- A. **Appeal by Mark Kelly, on behalf of Jim and LuAnn Walters, of the planning commission's decision about whether the structures along Highway 7 on the Accell Academy property at 4626 Linnea Lane are signs.**

This item was taken out of order and heard at the end of the agenda.

At 7:05 p.m., Callison moved, Allendorf seconded a motion to adjourn to executive session to discuss pending litigation between the Walters and the City. Anderson noted that a record would be kept of the executive session, and the council would return to the council chambers to discuss the item after the executive session. All voted "yes." Motion carried.

The council reconvened at 7:58 p.m. Anderson reported that the city council in executive session decided not to accept the proposal brought by the Walters' attorney and asked staff to present an alternative proposal to the Walters.

Gunyou provided a brief introduction for the agenda item, and City Planner Geoff Olson provided the staff report.

Attorney Mark Kelly, 351 Second Street, Excelsior, spoke on behalf of the Walters. He agreed that there was a 32-foot "support our troops" sign on the Walters' property. He said that the current ordinance allows 32 square foot political signs. The ordinance allows six-foot square opinion signs. He asked the council to acknowledge this discrepancy. He argued that defining signs as illegal was contradictory to the first amendment. He noted that there is no limit to the number of campaign signs that may be posted on a single property.

Kelly said that Olson had issued a directive on March 3 to remove the art or file an appeal to the planning commission. His client received legal papers on March 5, and they had eight remaining days in which to file an appeal. Kelly said that since the city had already decided to begin litigation, they could not provide a fair and impartial hearing under the ordinance. He suggested that the council recuse itself and have the case heard by an administrative law judge as an impartial decision-maker. Kelly noted that there was a court hearing on a motion scheduled for Wednesday, and he said that the appeal process had yet to run its course.

Anderson said that the council agenda item was only related to the planning commission's decision regarding whether the multi-colored figures and structures were signs.

Peterson said that the biggest issue raised by Kelly was the impartiality of the city, and due process for the landowner. Peterson said that the planning commission was clearly an independent body not involved in decisions regarding litigation. The Walters have full due process rights in district court, which allows citizens to dispute actions of a legislative body. Where that occurs, a judge would be the ultimate decision-maker.

Peterson said that it was relevant for the city council to take a position. She said that the court would give deference to how the council interprets its ordinances. The administrative process would be a separate, independent process. She would provide the court with the council's interpretation of the ordinance.

In response to Schneider's question, Peterson said that the council action at this meeting was not related to the "support our troops"

sign. Schneider suggested that the discussion be limited to the agenda item.

Callison said that she reviewed the definition of a sign in the ordinance. She agreed absolutely with staff's interpretation. She noted that the original sign request that was denied was for an advertising sign. She felt that the figures were intended to draw the eye to the exact location of the school. She noted that the figures related to the billboard. She did not feel it would be biased to say that the figures were an advertisement for the school. She felt that the figures were clearly and irrefutably a violation of the ordinance. She would support the resolution.

Tauer agreed with Callison. Based on his experience serving on the planning commission, he found that the figures were signs.

Wiersum found it compelling that the figures matched those on the billboard. The argument that they were art came only after they were challenged.

Schneider said that he does not take issues of free speech lightly, and noted that a war is being fought to preserve those rights. He said that common sense must be used. Residents have a civic responsibility to adapt to the norms of the community. The city's sign ordinance was developed with a great deal of input, and, once adopted, is an expression of the views of Minnetonka's citizens. Although he did not want to dampen free speech, he felt that the figures crossed over the line.

Allendorf noted that the figures were put in place soon after the sign variance request was denied. He agreed with the expressed views of the other council members.

Schneider moved, Wiersum seconded a motion to adopt Resolution No. 2003-023, upholding the decisions of the planning commission and the planning director that the structures erected on the berm next to Highway 7 at 4626 Linnea Lane are illegal signs.

Anderson said that she feels strongly about the right to express political opinions. She saw the figures clearly as signs because they are tied to the billboard. She served on the sign ordinance committee many years ago. She said that one of the reasons Minnetonka looks so good is because of the fair and equal enforcement of the sign ordinance.

All voted "yes." Motion carried.

B. Ordinance amending the city's grading and erosion control ordinance.

Gunyou provided a brief introduction to this item.

Callison moved, Thomas seconded a motion to adopt Ordinance No. 2003-11, amending the city's grading and erosion control ordinance. All voted "yes." Motion carried.

C. Ordinance amending the nuisance ordinance concerning construction site restoration and the discharge of sediment or pollutants to public streets, storm sewers or water resources.

Gunyou provided a brief introduction to this item.

Thomas suggested that staff who are enforcing the sprinkling restrictions be trained to watch for damaged silt fencing. Environmental Resources Coordinator Jo Colleran said that would happen, and described the current process for handling those complaints.

Wiersum noted that the letter from the Department of Natural Resources indicated that Minnetonka's ordinance would be more restrictive than their regulations. Colleran said that the DNR letter was in response to the grading ordinance. The Pollution Control Agency is the lead agency for sedimentation and debris related to water resources. The PCA did not comment on the nuisance ordinance.

Peterson advised that the legislative representative for the builders association expressed her appreciation for Colleran submitting the draft ordinance to their association for comments.

Allendorf asked that staff provide information in the Weekly Information Packet concerning the number and source of referrals regarding silt fencing violations. Colleran said that this could be provided with minimal effort using existing statistics.

Allendorf moved, Wiersum seconded a motion to adopt Ordinance No. 2003-12, 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.

D. Approve an amended liquor license for an address change for the MGM Liquor Warehouse at 17730 Highway 7 (7 Hi Shopping Center).

Anderson noted that this was a straightforward matter that would amend MGM's liquor license when they move into their new building.

Schneider moved, Tauer seconded a motion to approve the amendment of the MGM Liquor Warehouse off-sale license to reflect the change of address to 4920 County Road 101. All voted "yes." Motion carried.

15. APPOINTMENTS.

A. Appointment of Freinde Mills, 5005 Woodland Road, to the Minnetonka Park Board.

Anderson moved, Callison seconded a motion to approve the appointment of Freinde Mills, 5005 Woodland Road, to the Minnetonka Park Board for a term beginning on April 14, 2003 and terminating on January 31, 2005. All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Wiersum seconded a motion to adjourn the meeting at 8:25 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk