

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, AUGUST 25, 2003**

**1. CALL TO ORDER.**

Mayor Anderson called the meeting to order at 6:30 p.m.

**2. PLEDGE OF ALLEGIANCE.**

All joined in the Pledge of Allegiance.

**3. ROLL CALL.**

City Clerk Kathleen Magrew called the roll. Council members Jan Callison, Dick Allendorf, Brad Wiersum, Terry Schneider, Al Thomas and Karen Anderson were present. Council member Ken Tauer was excused.

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou noted that there were two minor changes to item #14A, council policies, which would be explained during that item. He also said that the developer had agreed to postpone the Meadowwoods project to the September 15, 2003 meeting. Interested parties had been notified of the change.

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

**5. APPROVAL OF MINUTES.**

Allendorf moved, Callison seconded a motion to approve the minutes of the August 11, 2003 council meeting. All voted "yes." Motion carried.

**6. SPECIAL MATTERS:**

**A. Proclamation of the month of September 2003 as National Alcohol and Drug Addiction Recovery Month.**

Anderson read a proclamation proclaiming September 2003 as National Alcohol and Drug Addiction Recovery Month.

**B. Southwest Rail Transit Study Update by Hennepin County.**

Katie Walker, Study Manager for Hennepin County, shared information about the Southwest Rail Transit Study. She reviewed

the process, which included a Technical Advisory Committee (TAC, which included city staff), and a Policy Advisory Committee (PAC, which included elected officials). Minnetonka was represented on both committees.

Walker reviewed the four recommendations as outlined in the staff report. She said that the Hennepin County Board asked staff to share the recommendations from the committees with cities. In late October, the board will be asked to authorize the next study phase.

At Anderson's request, Walker provided a detailed review of the maps of the four options.

Anderson asked if option #1A was the least preferred because it did not serve the commercial and industrial areas of Minnetonka and Eden Prairie. Walker said that those who are involved in the project intuitively think that a modified option #3A might perform better because it would serve employment concentrations. She noted that consideration was given to those who live along the trail. Anderson said that there is opposition along the route.

As the city's representative, Callison reported that PAC discussed serving the employment centers over an option that only followed land already owned by the county.

Walker said that the next step would likely be an alternatives analysis to provide expanded ridership and environmental information, as well as engineering estimates of the cost of structures that would be needed. The plan is to select one locally preferred alternative at the conclusion of the next phase. Walker said that those who live along the routes want to know if their areas are likely candidates.

In response to Anderson's question, Walker explained that there was legislation that prohibited the railroad authority, the Metropolitan Council, and MnDOT from undertaking preliminary engineering of LRT or commuter rail in the Southwest Transit Corridor area until July 2005. She said that the alternatives analysis would likely take 18 months, so the legislation should not cause process problems. She said that it was clear that the Legislature wants to continue to receive information about this issue. Anderson said that the Minnetonka City Council would also want to be kept advised of progress. She noted the high use of the shuttles to the State Fair from Ridgedale as an indication that transit options have value.

In response to Schneider's question, Walker said that Hennepin County studied a busway from Hopkins to Minneapolis, and MnDOT looked at busways throughout the metropolitan area. The Metropolitan Council was banned by the Legislature from conducting a busway study that would include Eden Prairie, Chanhassen, Chaska, Minnetonka, the Kenilworth area, and the mid-town area in Minneapolis, which would leave only a two-mile segment between Hopkins and St. Louis Park. Walker said that future studies would look at bus alternatives for comparisons as to ridership, cost, and performance. They are looking at bus routes on freeway shoulders.

In response to Wiersum's question, Walker said that the underlying assumption of Hennepin County is that trails would be included along the LRT line. The county right-of-way through Eden Prairie, Hopkins and Minnetonka is 100 feet wide. The right-of-way narrows to 60 feet in the Kenilworth area. Two tracks of light rail would take 30 to 35 feet, and the trail is about 10 to 14 feet wide. There is sufficient area for the trail and rail to co-exist. She said some re-routing might be needed near Shady Oak Lake.

Walker said that trails, light rail, and freight rail co-exist throughout the country. She was aware of only one accident, where a bicyclist rode around a gate and was struck by a train.

Wiersum noted that railroad tracks run along some portions of this trail, so co-existence would not be unprecedented. Walker said that occurs in Hopkins, St. Louis Park and Minneapolis. Allendorf clarified that it does not occur in Minnetonka.

Allendorf noted that the study of alternatives and some surveying are occurring as two separate activities. He cautioned people from assuming that the project is a "done deal."

Anderson thanked Walker for the information, and noted that additional information is available on the Internet.

## **7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.**

Gunyou reported on the following items:

- There will not be a council meeting on September 1 due to the Labor Day holiday. City Hall will also be closed.
- The city council will meet in a joint study session with the park board on September 3 from 5:30 p.m. to 7 p.m.
- The preliminary 2004 budget will be discussed at the September 8 study session.

- A Primary Election will take place on September 9 for Wards 1 and 4. Absentee voting is available at city hall, and extended hours will be available the weekend before. Election results will be publicized on the city's cable bulletin board and on [eminnetonka.com](http://eminnetonka.com).
- A special council meeting will be held on September 9 at noon to canvass the results of the Primary Election.
- The next regular council meeting will be held on September 15. The Sanctuary and Meadowwoods projects will be on that agenda.
- Due to the dry weather of the past three weeks, the city has increased enforcement of sprinkling restrictions. Water usage is up from the winter rate of 8 million gallons a day to 16 million gallons/day. This is due to watering of lawns. A temporary connection to the new well provides an additional 1.5 million gallons of water/day. The sprinkling restrictions during the daytime allow the city to refill the reserves, and is critical for public safety purposes. Gunyou noted that lawns require only about one inch of water per week. Sprinkling is prohibited between 11 a.m. and 5 p.m. any day, and may occur only on an even/odd basis. There is no restriction on watering with a hand-held hose. Private wells may be used at any time provided the well is registered and a sign is posted, and permits are available for new plantings.

Gunyou said that the new water tower would be in service in a few weeks. It will add one-half million gallons of storage capacity. Landscaping of that site should be completed by October.

Anderson thanked council members for covering events for her while she was attending out-of-town meetings. She noted the importance of the National League of Cities (NLC), which serves as a lobbyist for cities on the federal level. She said NLC's lobbying was particularly important with the reduction in funding from the state level, and discussions to cut federal aid for city programs such as transportation, housing and homeland security. She encouraged fellow council members to attend the Congress of Cities in Nashville, TN in December.

**8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA.**  
None.

**9. BIDS AND PURCHASES:**

**A. Consideration of bids for aerial lift truck.**

Gunyou provided a brief introduction to this item.

Allendorf moved, Callison seconded a motion to award the bid for an aerial lift truck to Altec Industries, Inc. in the amount of \$95,284. All voted "yes." Motion carried.

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

**A. Claims for council authorization.**

Schneider moved, Allendorf seconded a motion to approve the August 25, 2003 claims list, including checks numbered 176519 through 176865 totaling \$1,514,504.15. Allendorf, Wiersum, Schneider, Thomas and Anderson voted "yes." Callison abstained as to check number 176561. Motion carried.

**B. Resolution approving a Traffic Control Signal Agreement with the Minnesota Department of Transportation for emergency vehicle pre-emption systems in the vicinity of Carlson Parkway and T.H. 12.**

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2003-067 approving a Traffic Control Signal Agreement with the Minnesota Department of Transportation for emergency vehicle pre-emption systems in the vicinity of Carlson Parkway and T.H. 12. All voted "yes." Motion carried.

**C. An ordinance amending city code section 930 regarding an unattended child in motor vehicle.**

Schneider moved, Allendorf seconded a motion to adopt Ordinance No. 2003-20 amending city code section 930 regarding an unattended child in motor vehicle. All voted "yes." Motion carried.

**D. Authorize permit application to Three Rivers Park District requesting winter use of the SWLRT Trails within the City of Minnetonka for five years (2003-2007).**

Schneider moved, Allendorf a motion to authorize a permit application to Three Rivers Park District requesting winter use of the SWLRT Trails within the City of Minnetonka for five years (2003-2007). All voted "yes." Motion carried.

**E. Authorization for Mayor and City Manager to execute an agreement for professional auditing services with Kern DeWenter Viere for 2003-2005 financial audits.**

Allendorf pulled this item from the consent agenda for discussion. He noted that DeLoitte Touche had provided auditing services to the city for a number of years, but their latest proposal was two times more expensive than the proposal from Kern DeWenter Viere. Finance Director Dale Eggenberger said that staff was also surprised by the proposals. He noted that Deloitte Touche now serves only Minnetonka, Plymouth and Bloomington, and indicated that they are looking to get out of the municipal auditing business. In response to Allendorf's question, Eggenberger said that staff did not believe that the city had been overcharged in the past. The increase would only have related to a new agreement.

Anderson noted that Kern DeWenter Viere provides auditing services for 58 cities in Minnesota.

Allendorf moved, Wiersum seconded a motion to authorize the mayor and city manager to execute an agreement for professional auditing services with Kern DeWenter Viere for 2003-2005 financial audits. All voted "yes." Motion carried.

**F. Resolutions pertaining to tax-forfeited land within the City of Minnetonka.**

- 1) **Approving the classification of non-conservation tax-forfeited land.**
- 2) **Approving the public auction of certain tax-forfeited land within the City of Minnetonka.**
- 3) **Requesting the private sale of certain tax-forfeited land within the City of Minnetonka.**

Schneider moved, Allendorf seconded a motion to adopt the following resolutions pertaining to tax forfeited land within the City of Minnetonka:

- 1) Resolution No. 2003-071 approving the classification of non-conservation tax-forfeited land.
- 2) Resolution No. 2003-072 approving the public auction of certain tax-forfeited land within the City of Minnetonka.
- 3) Resolution No. 2003-073 requesting the private sale of certain tax-forfeited land within the City of Minnetonka.

Allendorf, Wiersum, Schneider, Thomas and Anderson voted "yes." Callison abstained as to Resolution No. 2003-073. Motion carried.

**11. CONSENT AGENDA (Items requiring Five Votes). None.**

**12. INTRODUCTION OF ORDINANCES.** None.**13. PUBLIC HEARINGS.****A. Continued public hearing to consider an application by Barrel Wine & Spirits, LLC for an off-sale intoxicating liquor license to be used at Barrel Wine and Spirits located at 15400 State Highway 7, Minnetonka, Minnesota.**

Gunyou noted that a map was prepared to show the locations of existing liquor licenses in the city.

Community Development Director Ron Rankin reviewed the staff report for this item and shared the new map.

Anderson invited audience comments during the continued public hearing.

Dan Keegan, 5015 Westmill Road, spoke as the owner of the Glen Lake Liquor Store. He said that Minnetonka has a sufficient number of liquor stores to serve the community, and it has three times as many establishments as the cities of Eden Prairie and Edina, which have municipal liquor. He did not think the community could support another liquor store, and said that this location was not a convenient location.

Anderson noted that the applicant was present but did not wish to make any comments. She closed the public hearing at 7:34 p.m.

Schneider said that the council debated the issue of limiting liquor licenses several years ago, and decided that the best overall criteria were commercial zoning and the free market. He noted that liquor licenses become very valuable in communities that limit them, and said that Minnetonka has not wanted to do that.

Callison noted that a similar circumstance occurred when CostPlus proposed to locate a liquor store near Broviaks. She said that the city attorney provided guidance at that time, and asked Peterson to comment.

City Attorney Desyl Peterson said that it is not the role of the city council to limit economic competition. The city has authority to determine that there are enough liquor establishments, or that a location is inappropriate, because the council has broad discretion. The city council could determine that the community is already adequately served.

Callison said that Keegan's request focused on protection of existing businesses. She said that the council should not make economic decisions, and said that risk of success would be the responsibility of the new store.

Wiersum agreed and said that the market should decide. He had received several calls from residents, some who own liquor stores, and some who thought that there were enough stores. He encouraged them to attend the meeting if they had strong opinions, but they did not. He supported the application.

Anderson said that the council will hear from residents when there are enough establishments, and she believes that at that point, the city will limit the number of licenses. She said that if the store is not at a good location, it will not survive.

Schneider said that certain liquor stores within Minnetonka serve particular areas, while other stores attract customers from beyond the city. He did not see a need to restrict licenses absent potential harm to the public health, safety or welfare, such as sales to youth. He said that the market should take its course.

Thomas agreed that the market would dictate the success or failure of any business. If a limit were to be set for licenses, he would want to take into consideration all on-sale and off-sale licenses. A future discussion of this issue may be needed when the city reaches its saturation. He said that it was hard to balance the principles of capitalism with protection of the residents of the city.

Schneider moved, Callison seconded a motion to grant an off-sale intoxicating liquor license to Barrel Wine & Spirits, LLC to be used at Barrel Wine and Spirits located at 15400 State Highway 7.

Callison, Allendorf, Wiersum, Schneider and Anderson voted "yes." Thomas voted "no." Motion carried.

Peterson noted how responsible the Minnetonka liquor license holders are, as demonstrated by the last compliance check where every establishment passed.

**B. Public Hearing to consider resolutions for the special assessment of 2002-2003 projects.**

Gunyou introduced this item and summarized the projects, which included one sewer and water project, several nuisance abatements, and a fire sprinkler retrofit. Gunyou noted that this year

staff recommended an interest rate of six percent, down from the traditional 7.5 percent rate. This was a reflection of the current financial environment and relates to the city's bond rate.

Thomas noted projects that related to pool cleaning, house repairs, and housekeeping. He asked why residents had not handled these maintenance issues on their own.

Rankin said that the homeowners were not capable of handling the maintenance issues for various reasons, such as serious illness. He said that each situation had been somewhat desperate and the city stepped in at the request of neighbors. Gunyou said that the larger projects were spread over five to ten years to make them financially affordable.

Schneider would be concerned if people were taking advantage of the process to access low overhead and fees. He has always supported having the administrative fees as high as practical to discourage intentional use.

Thomas said that the city has been good to offer assistance and eliminate nuisances, particularly where there are safety and health issues. He was concerned about the low interest rate of six percent, which would be a favorable consumer rate. He suggested that the council look at this issue in the future.

Gunyou said that staff shared the same concerns and does not want to function like a bank. He said that most projects are paid for over a year, and the longer-term projects are negotiated. Gunyou noted that last year's projects included one for nearly \$100,000 to complete a house that had been left partially constructed for many, many months.

Anderson noted the number of houses in the city, and said that the city is extremely fortunate that the number of houses involved is small, particularly with the city's aging housing stock.

Wiersum would not like the program to seem like too good of a deal so that people would take advantage of it. He could support the program for people in tough circumstances, like the elderly or ill. He noted that the projects would be paid off if the property sold. The program is a tool so that the work can be done, and it serves the public good. He supported increasing the administrative fees.

In response to Anderson's question, Rankin said that the city involves other agencies to provide assistance to homeowners.

Hennepin County assists where there are vulnerable adults or children involved.

Anderson opened the public hearing at 7:56 p.m. There were no comments, and the hearing was closed at 7:57 p.m.

Callison moved, Allendorf seconded a motion to adopt the following resolutions for the special assessment of 2002-2003 projects:

- 1) Resolution No. 2003-071 adopting assessments for 2002-2003 sewer and water improvement projects.
- 2) Resolution No. 2003-072 adopting assessment for Nuisance Abatement Project Nos. 4894N-10, 4894N-11, 4894N-14, 4894N-15, 4894N-18, and 4894N-20.
- 3) Resolution No. 2003-073 adopting assessments for Nuisance Abatement Project Nos. 4894N-17.
- 4) Resolution No. 2003-074 adopting assessments for Nuisance Abatement Project Nos. 4894N-12, 4894N-13, and 4894N-19.
- 5) Resolution No. 2003-075 adopting assessment for Nuisance Abatement Project No. 4882.
- 6) Resolution No. 2003-076 adopting assessment for Fire Sprinkler Project No. 4874F-5.

All voted "yes." Motion carried.

**C. Public Hearing on a redevelopment plan for a proposed Minnetonka Boulevard/101 redevelopment and housing development project.**

This item was withdrawn and no action was taken.

**14. OTHER BUSINESS:**

**A. Resolution adopting the revised city council policy manual.**

Anderson thanked staff for undertaking this monumental project. She said that the revised manual reflected current policies.

Gunyou said that the project started several years ago. He characterized it as a recodification. The staff report noted the major changes, and Gunyou reviewed the addendum items. A sentence was deleted from Policy No. 1.2 (All appointments will be for a maximum of two consecutive terms or eight years, whichever is greater.) to reflect current practice and terms. The policy modification sections in policies 2.5, 2.8, 5.1, 11.11, 12.2 and 12.6

were deleted, and policy modification language was added to the introduction.

Callison moved, Thomas seconded a motion to adopt Resolution No. 2003-077 adopting the revised city council policy manual with the amendments noted in the addendum. All voted "yes." Motion carried.

Schneider asked for a revised electronic version of the document to reflect the addendum changes. Gunyou said that the new manual would not be published, but would be available on-line.

## **B. Strategic Framework.**

Gunyou provided the introduction for this item. He said that the one-page document reflects this city council and staff, who are pragmatic and action-focused. He noted a recent strategic vision statement for a school district that was 20 pages long. Gunyou said that upon adoption, the framework would be publicized in the normal ways.

Callison expressed concern about the phrase "protect and preserve open space." She said that the council understands the intent of that goal, but she feared that the wording could create an expectation that the city would acquire all open space. She suggested prefacing the phrase with the word "responsively."

Anderson said that the word "responsively" could be used to preface each goal. The council is expected to act in a responsible manner, and it would not be responsible, or financially feasible, for the city to acquire all open space. Callison said that she did not want to have the discussion for each development proposal.

Schneider said that all sorts of qualifiers could be used, and he was not sure that any would solve the issue. He would be reluctant to change the language just because someone might use it negatively.

Wiersum did not disagree with Callison. He said that the council values open space and knows what that means to them. People will challenge the city on that point regardless of the wording.

Allendorf noted that others acknowledged there was a problem, but did not want to fix it. He supported revising the language and said that the issue will arise with each development.

Anderson had no problem with the language as submitted, nor did Thomas.

Schneider said that the strategic framework is a living document, not carved in stone. He did not support revising the language at the meeting and said that the strategic framework is important enough to warrant unanimous council approval. He did not see any urgent reason to adopt the framework at this meeting, and suggested continuing the item for staff to provide options.

Wiersum agreed. He said that it was important for the full council to be comfortable with the document, because it embodies what the city stands for.

Callison moved, Wiersum seconded a motion to direct staff to revise the language "preserve and protect open space."

Anderson did not want to lose that value within the framework. She said that it was the driving force behind the vision.

Thomas said that if the language was diluted too much, he would not support it, because he supported open space protection through the referendum.

Wiersum suggested that staff take a closer look at the language, and did not think the council should debate the issue at this meeting. He noted that the environment was the top goal, and wanted the document to say exactly what the council meant.

Callison said she understood that the goals were listed without any priority.

All voted "yes." Motion carried.

**C. Administrative hearing regarding the following liquor license holders: Lund's Country Village, MGM Liquors.**

Anderson said that the council would be acting as a judge in these matters, so it had not previously received specifics about the violations.

Peterson distributed proposed Findings of Fact, Conclusion, and Order for each establishment. She noted that the city's ordinances require that a responsible person attend every mandatory training session. Neither establishment had a representative at the June 17, 2003 mandatory training session. Notices of that session were

mailed on May 16, 2003 by certified mail. Peterson said that both establishments admitted that they had not had a representative at the session, and both had representatives attend a make-up session. Because there were no factual disputes, the city council only needed to determine the consequences.

Peterson reviewed the basis for staff's recommendation for fines. Lund's previously failed to attend the 1994 training session, and received a \$350 fine or a one-day suspension. This was typical of a fine for an on-sale wine license at that time. Since then, the city council has raised that fine to \$400 or a one-day suspension, provided there are no other violations. She noted that in most cases, the establishments choose to pay the fine.

In the case of MGM Liquors, Peterson said that there was a similar violation by 7-Hi Liquors in 1990 where they received a \$700 fine. That fine has since increased to \$750. Peterson noted a similar violation by Byerly's in 1996 for which they received a \$250 fine because there was an issue about the notice for the session. Absent relevant argument from MGM, Peterson did not believe that situation was comparable.

Thomas asked if the council made a determination about the type of notice that should be posted if a license were suspended for a liquor violation. Peterson said that there was discussion of that issue when an establishment posted a notice that did not refer to the true reason for the closure, but the city council did not make a formal decision on notice. Rankin concurred and said that there was no definitive direction to staff regarding postings. Thomas suggested that the council discuss this issue in the future. Anderson noted that during the previous discussion about postings, there was not council support to change the posting requirements.

Although the city has best practices in place, Peterson said that they would not apply to these violations.

The following people appeared on behalf of Lund's:

John Kolander, Restaurant Operations Manager  
Bruce Snyder, Store General Manager  
Leslie Jacobson, Restaurant Manager

Snyder said that they received the notice. He had been unable to attend, and Jacobson and another manager had been scheduled to attend but failed to do so. He apologized and said that they had no excuse. They attended a make-up session, and have a fairly good record. Snyder said that staff is retrained each time the liquor policy

is changed, whether or not they sell liquor. They take liquor sales seriously.

Allendorf asked if previous violations regarding sales to minors should be factored into the determination of penalties. Peterson said that the council adopted a policy of presumptive penalties for certain violations, and failure to attend training was not one of those violations. She said that the council was entitled to look at other previous violations.

The following individuals appeared on behalf of MGM Liquors:

Mike Maglich, co-owner

Tim Larson, Operational Supervisor for MGM

Randy Weber and Dan Walgrave, Store Managers for the Minnetonka store

Maglich apologized for missing the meeting and said that it was not out of disrespect for the program. He said that they believe in the program and have never missed a training session. Five employees were scheduled to attend but missed it due to a calendaring mistake. Nine attended the make-up session. He noted that they have served on the best practices committee, and publicly thanked Peterson for her hard work on that project and her work with the license holders. Maglich said that the program was working because every establishment passed the compliance checks, and there is no other city with that record. Maglich said that the mistake occurred during the rush of opening their new Minnetonka store.

Anderson said that the council had conducted the hearings, established that the violations occurred, and now needed to determine the penalty. She noted the city attorney's recommendation for penalties based on past activities and the current fine schedule.

Callison moved, Allendorf seconded a motion to adopt the Findings of Fact, Conclusion and Order regarding Lund's Country Village with the staff recommended penalty. All voted "yes." Motion carried.

Callison moved, Thomas seconded a motion to adopt the Findings of Fact, Conclusion and Order regarding MGM Liquors with the staff recommended penalty. All voted "yes." Motion carried.

Schneider supported the motions because there were violations. He was surprised to see a violation at MGM Liquors because they have given strong support to the whole program. He said that everyone is human and mistakes happen.

Allendorf applauded MGM as the only Minnetonka liquor establishment to scan all identification. He was surprised with their violation, but said that out of five employees registered, one should have attended.

**15. APPOINTMENTS AND REAPPONTMENTS.**

**A. Appointment of Linnea Sodergren and Dick Allendorf to the I-394 Corridor Express Lanes Community Task Force.**

Anderson moved, Callison seconded a motion to appoint Linnea Sodergren and Dick Allendorf to the I-394 Corridor Express Lanes Community Task Force. All voted "yes." Motion carried.

**16. ADJOURNMENT.**

Thomas moved, Wiersum seconded a motion to adjourn the meeting at 8:40 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk