

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, AUGUST 23, 2004**

**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.**

Councilmembers Brad Wiersum, Jan Callison, Terry Schneider, Al Thomas, Tony Wagner, Bob Ellingson and Karen Anderson were present.

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou reviewed the addendum. Two additional letters were received concerning Item #14A, Headwaters Park, and an email was received regarding Item #14C, the proposed smoking ban.

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

**5. APPROVAL OF MINUTES: August 9, 2004 regular council meeting.**

Schneider moved, Thomas seconded a motion to approve the minutes of the August 9, 2004 Minnetonka City Council meeting. Callison noted a typo on page 7. Callison, Schneider, Thomas, Wagner, and Ellingson voted "yes." Anderson and Wiersum abstained. Motion carried.

**6. SPECIAL MATTERS:**

**A. Proclamation honoring "Celebrate Groveland . . . 150 Years of Learning."**

Wiersum read the proclamation regarding Groveland's 150-year history in the city. Anderson presented the proclamation to Groveland representatives Heidi Kluzak, Deb Zilverberg, and Dave Parker.

Kluzak invited the entire community to help Groveland Elementary celebrate their 150<sup>th</sup> anniversary starting with a kick off celebration on September 26 at 3 p.m.

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

Gunyou reported on the upcoming council meeting schedule.

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

No one spoke.

**9. BIDS AND PURCHASES: None.**

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

**A. Claims for council authorization – August 23, 2004.**

Wiersum moved, Callison seconded a motion to approve the August 23, 2004 claims list, including checks numbered 183894 through 184213, totaling \$1,420,408.74. All voted “yes.” Motion carried.

**B. Request to remodel the old B-Dalton Book Store at 5101 County Road 101 into retail space and a coffee shop/restaurant for Redstag Properties, LLC.**

Wiersum moved, Callison seconded a motion to:

- 1) Adopt Ordinance No. 2004-23 rezoning 5101 County Road 101 from B-1, office, to B-2, commercial. This ordinance is based on the following findings:
  - a. The rezoning would be consistent with the city’s guide plan.
  - b. The rezoning would be consistent with the public health, safety, and welfare.
  - c. The rezoning would be consistent with adjacent land uses to the north, east and west.
- 2) Adopt Resolution No. 2004-093 approving a conditional use permit for a fast-food restaurant in a B-2 zoning district at 5101 County Road 101. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:
  - a. The rezoning would be consistent with the city’s guide plan.
  - b. The rezoning would be consistent with the public health, safety, and welfare.
  - c. The rezoning would be consistent with adjacent land uses to the north, east and west.
- 3) Approve the site and building plans for a fast-food restaurant and retail space at 5101 County Road 101, subject to the following conditions:
  - a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the

following plans, unless modified by the conditions below:

- Site and landscape plan date stamped June 8, 2004.
  - Building elevations date stamped June 8, 2004.
- b. The following must be submitted to the city before the city issues a building permit:
- (1) Final site, utility, and erosion control plans for staff approval.
  - (2) A final landscape and irrigation plan for staff approval.
  - (3) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping.
  - (4) An illumination plan for staff approval.
- c. The property owner is responsible for replacing any required landscaping that dies.
- d. The building must be protected with a fire sprinkler system pursuant to the NFPA 13.
- e. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- f. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
- g. Construction must begin by December 31, 2005, unless the planning commission grants a time extension.

All voted "yes." Motion carried.

**C. Items pertaining to CSAH 3 (Excelsior Boulevard) and CSAH 60 (Baker Road) intersection improvements:**

- 1) **Resolution approving final plans and construction cooperative agreement with Hennepin County.**
- 2) **Authorizing advertisement for bids.**

Wiersum moved, Callison seconded a motion to:

- 1) Adopt Resolution No. 2004-094 approving final plans and construction cooperative agreement No. PW 24-15-04 with Hennepin County as it pertains to County State Aid Highway No. 3 and County State Aid Highway No. 60 intersection improvements, County Project No. 0304, and City Project No. 4422.
- 2) Authorize advertisement for bids.

All voted "yes." Motion carried.

- D. Resolution approving final plans and construction cooperative agreement with Hennepin County and the City of Hopkins for the CSAH 73 (Hopkins Crossroad) and CSAH 5 (Minnetonka Boulevard) intersection improvements.**

Wiersum moved, Callison seconded a motion to adopt Resolution No. 2004-095 approving final plans and construction cooperative agreement No. PW 19-01-04 with Hennepin County and the City of Hopkins as it pertains to County State Aid Highway No. 5 and County State Aid Highway No. 73 Intersection Improvements, County Project No. 8111, City Project No. 5004R. All voted "yes." Motion carried.

- E. Resolution authorizing the issuance of a senior housing refunding revenue note (WestRidge Senior Housing Project).**

Wiersum moved, Callison seconded a motion to adopt Resolution No. 2004-096 authorizing the issuance, sale, and delivery of its senior housing refunding revenue note (Westridge Senior Housing Project), Series 2004; payable solely from revenues pledged to the note; approving the form of and authorizing the execution and delivery of the note and the related documents; and providing for the security, rights, and remedies with respect to the note. All voted "yes." Motion carried.

- F. Resolution ordering the abatement of nuisance conditions existing at 15709 Excelsior Blvd.**

Wiersum moved, Callison seconded a motion to adopt Resolution No. 2004 -097 ordering the abatement of nuisance conditions existing at 15709 Excelsior Blvd. All voted "yes." Motion carried.

- G. Resolutions ordering the abatement of nuisance conditions existing at 2504 Bantas Point Lane, 5651 Oakview Lane and 13717 Inverness Road.**

Community Development Director Ron Rankin advised that the property at 2504 Bantas Point Lane is in compliance.

Wiersum moved, Callison seconded a motion to adopt:

- 1) Nuisance conditions existing at 2504 Bantas Point Lane – pulled, this property is in compliance.
- 2) Resolution No. 2004-098 ordering the abatement of nuisance conditions existing at 5651 Oakview Lane.
- 3) Resolution No. 2004-099 ordering the abatement of nuisance conditions existing at 13717 Inverness Road.

All voted "yes." Motion carried.

**H. Request from William Otting, owner of Otting House Movers, to move a house located at 12790 Amy Lane to Silver Lake, Minnesota.**

Wiersum moved, Callison seconded a motion to approve a permit for William Otting, owner of Otting House Movers, to move a house located at 12790 Amy Lane to Silver Lake, MN, subject to the following stipulations:

- 1) That city staff approve in advance any tree trimming done in connection with the move.
- 2) That the move be directly monitored by appropriate city staff.
- 3) That the move be a continuous trip from the property to outside the city limits.

All voted "yes." Motion carried.

**I. Ordinances making changes to the floodplain, shoreland, drainage, and storm water ordinances and the ordinance and resolution regarding the water resources management plan.**

Anderson noted that the city council previously had significant discussion of this and the following item, and there were numerous opportunities for public input.

Wiersum moved, Callison seconded a motion to:

- 1) Adopt Ordinance No. 2004-24 amending City Code Sections 300.02, 300.04, and 300.24 regarding definitions, administrative decisions and the floodplain district.
- 2) Adopt Ordinance No. 2004-25 amending City Code Sections 500.045 and 1205.005 regarding drainage and storm water.
- 3) Adopt Ordinance No. 2004-26 amending City Code Section 300.25, subd. 4 regarding conditional uses in the shoreland district.
- 4) Adopt Ordinance No. 2004-27 amending City Code Section 300 regarding the Water Resources Management Plan.
- 5) Adopt Resolution No. 2004-100 amending the City of Minnetonka Water Resources Management Plan.

All voted "yes." Motion carried

**J. Ordinance amending the wetland overlay district.**

Wiersum moved, Callison seconded a motion to adopt Ordinance No. 2004-28 amending City Code Section 300.23 concerning the wetland overlay district. All voted "yes." Motion carried.

**K. Request from Granite/McCrossan for a variance from the noise ordinance for certain nighttime construction work on I-494.**

This item was pulled from the consent agenda at the request of Wagner, and a member of the audience. City Engineer Lee Gustafson provided a staff report.

In response to Anderson's question, Gustafson confirmed that the variance would be granted until November 22<sup>nd</sup>. If additional noise was anticipated, the council would be advised. A significant communications plan is in place to keep Minnetonka residents and surrounding communities advised about the project's status. Anderson noted that a similar variance was granted when the bridge at I-494 and CSAH 5 was reconstructed. Gustafson confirmed that there would be about three to four nights of work at each location.

Thomas acknowledged that the state is not required to seek a variance from the city and did so only as a courtesy. He suggested that the contractor consider breaking up the nights of pile driving to provide a respite for the neighbors.

Rich Spielberg, 5843 Glen Avon Avenue, lives next to I-494. During the meetings about this project, he heard that pile driving might be done on weekends and there would be no overnight pile driving.

Cyrus Morrow represented the contractor. He said that the evening work is needed due to the lane closure restrictions for state and county roads. At Baker Road, they are restricted to closures from 9 a.m. to 3 p.m. Their contract requires them to request a noise variance if they need to work off hours. The contractor wants to complete the work as quickly as possible. Anderson noted that this will be a tough project that will require a couple of years work but she expects the results will be worth the inconvenience.

Callison noted that the contractor is required to provide seven days' written advanced notice when the work will occur. She emphasized the importance of communicating as much information about this project as possible to the public.

Dan Galvin, Public Information Coordinator for Granite McCrossan, said that it is his full-time job to handle notifications to the public and city staff. He is setting up a Website, and has a growing email network. The project hotline number is 952.908.2929, and the hotline is updated daily. His number is 952.908.2907, and he is also available to respond to concerns. Callison asked that these numbers be published on the city's Website.

In response to Thomas' question about providing a respite from the pile driving, Galvin said that it is best to complete the work once the equipment is mobilized. It is possible that the work could be accomplished more quickly.

In response to Wiersum's question, Galvin said that the noise would most affect homes within 500 to 1,000 feet of the pile driving. Anderson noted that the nature of the soils also impact the noise.

Schneider moved, Wiersum seconded a motion to approve the noise ordinance variance, subject to the following:

- 1) Pile-driving work between 10 p.m. and 7 a.m. is to be limited to the Baker Road and State Highway 7 locations, and is to occur for no more than 4 consecutive days at each location.
- 2) Granite/McCrossan will provide written notice to residents at least 7 days in advance of pile-driving work, using mailing lists provided by the city. Other nighttime work will also be publicized by the contractor.

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

**11. Items requiring Five Votes: None.**

**12. INTRODUCTION OF ORDINANCES:**

**A. Ordinance adopting a PID (Planned I-394 District) master development plan for an office building at the southwest corner of I-394 and County Road 73.**

Wagner moved, Thomas seconded a motion to introduce an ordinance adopting a PID (Planned I-394 District) master development plan for an office building at the southwest corner of I-394 and County Road 73 and refer it to the planning commission. All voted "yes." Motion carried

**B. Ordinance amending City Code Section 300.29 regarding non-conforming uses.**

Thomas moved, Wagner seconded a motion to introduce an ordinance amending City Code Section 300.29 regarding non-conforming uses and refer it to the planning commission. All voted "yes." Motion carried.

**13. PUBLIC HEARINGS:**

**A. Public hearing to consider resolutions for the special assessment of 2003-2004 projects.**

Anderson opened the public hearing at 7:04 p.m. No one spoke and the hearing was closed at 7:05 p.m.

Callison moved, Wiersum seconded a motion to adopt:

- 1) Resolution No. 2004-101 adopting assessments for 2003-2004 sewer and water improvement projects.
- 2) Resolution No. 2004-102 was not used.
- 3) Resolution No. 2004-103 adopting assessment for Nuisance Abatement Project Nos. 4894N-23, 4894N-24, 4894N-27, 4894N-29, 4894N-31, and 4894N-32, and 4894N-33.
- 4) Resolution No. 2004-104 adopting assessments for Nuisance Abatement Project Nos. 4894N-22, 4894N-25, 4894N-26, and 4894N-30.
- 5) Resolution No. 2004-105 adopting assessment for Nuisance Abatement Project No. 4902.
- 6) Resolution No. 2004-106 adopting assessment for Fire Sprinkler Project Nos. 4874F-4 and 4874F-6.

All voted "yes." Motion carried.

**14. OTHER BUSINESS:**

**A. Items concerning Minnehaha Creek Headwaters Park master plan and Gray's Bay area trail:**

- 1) **Phase II of the Headwaters Park master plan.**
- 2) **Gray's Bay area trail alignment.**
- 3) **Resolution approving a conditional use permit for a trail and bridge footings within floodplain and wetland buffer areas in the vicinity of the Minnehaha Creek headwaters for the City of Minnetonka.**

Barone provided the staff report. She also related that today the Minnehaha Creek Watershed District (MCWD) provided information about water overflow at the weir. In recent years, water has only overflowed about one week a year; however, the flow depends on the weather. For example, in 2002 there was overflow for eight weeks, but there were no overflows from 1997 to 2000.

In response to Anderson's question, Barone said that the park board was advised of Options A and B, but the same level of detail was not available at that time.

In response to Schneider's question, Gustafson said that Option B would provide a concrete walkway a few inches below the overflow

metal structure on the weir. An alternative would be to attach an elevated walkway to the metal structure of the weir, situated 12 to 18 inches higher than the structure to allow water and some debris to pass.

Callison noted that some residents felt that the plan would render certain areas non-navigatable for canoes and kayaks. Barone said that only the area to the north of the boardwalk would be inaccessible. Responsibility for removal of debris trapped between the bridge and the weir would be shared between the city and MCWD.

Callison noted that residents had said that the tall grass would give poor visibility under Option B. Barone said that some areas might have obstructed views, but that was not an overall concern.

In response to Wagner's question, Gustafson explained the boardwalk structure and how it would allow for the passage of debris. He noted that on occasion, large branches or logs would need to be removed.

In response to Wiersum's question, Barone explained the gate and sign system that would be used to close the trail due to high water.

Anderson noted an issue raised in a letter in the addendum, which was why the flooding of Crosby Road would not be addressed. Anderson said that the homes in that area would not likely be allowed under current development standards.

Gustafson explained the difficulties with that section of Crosby Road because the road is narrow and level with the adjacent rear yards. The only way to provide curb and gutter would be to elevate the road, which would block drainage from the yards and create ponds in the rear yards. The simplest solution is to leave the road at its existing elevation to allow water to pass from the yards to the waterway across the road. That section of Crosby Road is scheduled for rehabilitation next year. The method that will be used is to grind up the existing surface and re-lay asphalt at the current elevation. Gustafson said that widening the road is not an option because it would require property outside the city's right-of-way. Gustafson said that we will have to live with some of the problems in that area, including some roadway flooding.

Anderson invited public comments. There were none.

Schneider supported implementing this crossing in the best way possible. He noted that the two options represented better alternatives than have been available in the past. The tricky part is

crossing the weir and the adjacent area. Schneider was reluctant to support Option A due to the long-term maintenance costs of boardwalks. Option B would be the most practical option. Schneider asked staff to consider an elevated structured walkway above the weir. He acknowledged that this would be more costly, but preferred to invest more money to provide a safer, longer-lasting and more attractive amenity that is available for use throughout the spring and summer. That would provide more public value than having to close the trail periodically.

Callison visited the Headwaters Park today and noted its beauty and benefit as a public amenity. She also noted the challenge for north-south connections in this area of the city, and said that this project provides a terrific opportunity for such a connection. Callison felt that the impact of the trail south of the headwaters area would be minimal, and she did not think traffic would increase to the point where the road would need to be widened. Callison supported Option B, but understood that the city might need to look at other options.

Wagner supported the Loop Trail System as a valuable community asset. He shared Schneider's concerns about Option A due to the maintenance issues, and the challenge of clearing debris. He suggested pursuing Option B as aggressively as possible.

Wiersum said that the trails are a great amenity for Minnetonka residents, and they are used a great deal. He is a frequent user. He appreciates the opportunity to provide a north-south connection to view a beautiful area of the city. He also supported Option B over Option A because it would not reduce the navigable areas, and it would reduce the maintenance challenges of boardwalks. Wiersum viewed the Gray's Bay Boulevard on-street trail as a small line on a map, supplemented with small directional signs. Additional right-of-way would not be required. He did not believe that this section of trail would significantly change that neighborhood.

Anderson was pleased to see this project advance, which she did not think would occur for years because of numerous obstacles. She noted the opportunities the two recent developments provided. Anderson said that she used an informal trail through this area before MCWD placed a fence along the weir during one wet period. Although the new developments were not welcomed by all of the neighbors, they presented an opportunity to add an amenity for the whole community.

Anderson noted that trail use is higher on Sunday afternoons, but otherwise, you can travel for miles at times and not see a soul. She did not think the trail would bring people from other communities,

and thought it would be used mostly by Minnetonka residents. Anderson supported the directional signs to help people through the neighborhood to their destination. Anderson also noted that the original trail proposal was to follow Lakeshore Avenue to provide a connection to Libbs Beach. This option would still allow for that, and makes the most sense. Anderson recognized that there is both opposition and support for the trail. She said that the city would do what it can to ameliorate the impact to people in the area south of the dam with signage to keep trail users on track. Anderson noted her ongoing support for the city's trail system, including this segment.

Thomas moved, Wiersum seconded a motion to:

- 1) Approve Phase II of the Minnehaha Creek Headwaters Park master plan.
- 2) Approve the trail alignment from Linner Park to Minnetonka Boulevard/CSAH 101. This includes Option B as the preference for crossing the headwaters area dependent upon approvals. Option A and an alternative of attaching a structure directly to the weir may be pursued if Option B is not feasible.
- 3) Adopt Resolution No. 2004-107 approving a conditional use permit for a impervious trail and bridge footings within wetland buffer and floodplain areas for the proposed loop headwaters trail.

Schneider asked that Option B consider the alternative of an elevated structured walkway.

Anderson expressed appreciation for the cooperation of MWCD as the agencies work together to make the area look and function better, and said that she looked forward to removal of the fence. She thanked staff for their efforts on this project.

All voted "yes." Motion carried.

**B. Detachment and annexation agreement to build 28 townhomes at 3600 County Road 101 for Steven Scott Development.**

Gunyou noted that this project did not follow the typical development review, because no rezoning was required in Minnetonka. The proposal is to detach the property from Minnetonka, and annex it to Deephaven.

Principal Planner Cary Teague provided the staff report.

In response to Anderson's question, Teague clarified that the detachment/annexation request was made by the developer and not the city of Deephaven.

City Attorney Desyl Peterson said that the request was from the developer and the current owner of the property. She said that Deephaven had not made a formal request for the annexation. Deephaven has been reviewing the plans, and Peterson thought that Deephaven's expectation was that if Minnetonka approved the detachment, they would accept the annexation.

In response to Anderson's question, Teague said that the whole site is 4.7 acres in size, with 2.1 acres in Minnetonka.

Callison said that after she read the staff report, she questioned the rationale of why the city should approve this request for detachment to Deephaven.

Gunyou responded that since the new development would be in Deephaven, this project did not go through the same staff review that Minnetonka projects typically receive. As a result, staff did not negotiate affordable housing trade-offs for increased density. He noted that it was well within the city council's purview to require such trade-offs. Gunyou added that while the undeveloped property currently generates a few hundred dollars in taxes each year, property taxes would be about \$150,000 if the property were developed. This is relatively small compared to Minnetonka's total tax base. The developer is being required to pay \$175,000 in storm sewer assessment fees to Minnetonka; this represents the project's share of improvements in the watershed.

Gunyou acknowledged that there are a number of valid reasons for the entire parcel to come into Minnetonka rather than Deephaven; primarily Minnetonka's fuller array of public services, including municipal sewer and water. However, the developer and city of Deephaven both strongly preferred that the project be located within Deephaven, so water will have to be provided through a well system. Staff has worked cooperatively with the developer and the City of Deephaven to facilitate these annexation preferences.

Peterson provided historical background regarding a detachment/annexation near the Village Automotive site on I-394. She noted that the Lexus dealership was constructed over the boundary between Minnetonka and Wayzata, which made the development more complex. The landowner petitioned for a detachment to annex the property to Wayzata. The request was contested, but Minnetonka agreed that the portion of land in Minnetonka on which the Lexus building stood should be detached

from Minnetonka and annexed to Wayzata, so the entire building would be in one community. Staff considered that situation when it met with this developer. Staff recognized the desirability of having the development located within one community, but there was the question of what Minnetonka would get in return.

Gunyou explained the primary benefit of concurring with the detachment to allow the development to proceed - the project would replace the current industrial storage on the site with a residential development. He noted the city has had good experience working with this developer. Staff initially thought the Minnetonka neighbors to the south would welcome this change, but there was not universal support for the new development.

Callison noted that the property is not guided for mid-density in the city's Comprehensive Guide Plan. Gunyou confirmed that the property is guided as R-1, low density. He also noted that, unlike the Sanctuary property, this property has never been identified as a possible area for higher density.

Wiersum questioned the benefits from this project for Minnetonka and its residents. He saw lots of cons and very few pros. The benefit would be the clean up of an unsightly area. Negatives would include the increased density and lack of affordable housing. Wiersum noted the neighborhood involvement in the nearby Sanctuary project where the density was increased as a trade-off for affordable housing. He noted that two communities may not have the same standards, but argued that if Minnetonka is detaching land, it should hold the project to its own higher standards. He opposed the project because Minnetonka would get a higher density project and no affordable housing.

In response to Schneider's question, Gustafson explained the sanitary sewer connection. Gustafson said that Minnetonka has sanitary sewer and water service along CSAH 101, but the developer preferred to have service from Deephaven. Gustafson said that the development would be served by a private well system.

Gunyou added that during initial discussions with Deephaven and the developer, staff indicated that Minnetonka would only provide utilities if the project was annexed to the City of Minnetonka. Since the developer elected to go into Deephaven, it would not be appropriate for Minnetonka to provide services.

In response to Wagner's question, Teague said that development in the steep slope area would not set precedent because of its small size. The code allows reasonable development into a 30% slope.

Peterson added that there would also not be precedent because the steep slope is currently in Deephaven.

In response to Wagner's question, Teague said that the project would improve drainage. Only a small area in the southwest portion of the site would continue to drain toward Minnetonka's residential homes, and the city engineer felt that was reasonable.

The developer, Scott Bader of Steven Scott Development, spoke. He introduced Dean Dovolis of DJR Architects, and Mark Gronberg of Gronberg Associates, Civil Engineers. Bader said that they had worked on this project for more than nine months, and they were respectful of both cities' requirements. He felt the concept was reasonable. They had asked city staff what would be acceptable, and felt this concept complied with those discussions. However, he acknowledged that the city council was the ultimate decision-maker.

Bader said that Deephaven wanted the project to be in Deephaven, because it only has two remaining developable sites. Deephaven would not support annexation of the portion in Deephaven to Minnetonka.

Bader said that the site is an eyesore, and there is a Minnesota Pollution Control (MPCA) issue that will be addressed. Without the development, the site will not be cleaned up. Bader did not know how quickly the project would progress. He noted what he felt was a significant contribution on his part of up to \$175,000 toward the stormwater project. He also noted that there is a conservation easement on the south side of the property to protect some trees.

In response to Anderson's request for clarification of the water and sewer issues, Bader said that a well system will be used for water. Bader originally thought the project could connect to Minnetonka's system regardless of which community the project was in.

Anderson asked if the developer had state approval to dig the wells. Bader said that had not been obtained. Dovolis noted that Deephaven has an existing system of private wells, so obtaining permits for residential wells in Deephaven is not an issue like it is in Minnetonka.

Dovolis and Gronberg explained the sewer service connection, and said that the project would connect to Deephaven's system.

Wiersum asked if the pollution issue would interfere with the plans for wells. Dovolis said that testing is underway. Based on his observations at the site, it appears that most of the pollution is from

petroleum products drained onto the surface, and the pollutants would not likely have reached the aquifer.

Bob Crump, 2001 Bay Street, asked why there was no affordable housing as was being provided in the Sanctuary project. He suggested requiring two or three affordable units, particularly with the proximity to the CSAH 101/5 intersection. Crump said that Gunyou's comments about the tax revenues answered his other concern, but noted that \$150,000 was a large amount to him. Crump questioned the property being annexed to Deephaven without a requirement for affordable housing.

Anderson noted that affordable housing is a policy of the Minnetonka City Council, and it can be used as a trade off for greater density.

Bader said that Deephaven did not require affordable units. His decision not to include affordable units was based on economics. That issue played into his decision about contributing toward the stormwater project. Bader said that the development was small and there was only so much he could do.

Rich Spielberg, 5643 Glen Avon Avenue, said that he had lived in a condominium at 5648 Green Circle Drive at the time of the 1985 superstorm. A retaining wall collapsed after that storm. Spielberg said that the collapse occurred because the city had approved the retaining wall as a "scenic easement" and not for structural reasons. He hoped that the city would ensure the structural integrity of this proposed retaining wall.

In response to Anderson's question, Gustafson said that Minnetonka requires that a professional engineer design any retaining wall over four feet in height. He did not know about Deephaven's requirements. Teague said that there would be retaining walls on the southern slope, in Minnetonka, but not to the extent of those on the northern slope in Deephaven. Staff was not familiar with the concept of scenic easements.

Callison recalled an unanswered question raised at the planning commission for the city attorney. The speaker wanted to know if the indemnification Minnetonka would receive for the storm pond and drainage could be extended to the residents in case something went wrong. Peterson said that would be an extraordinarily unusual provision. The city has many developments with drainage that have the potential to impact other homeowners, and the city has never required indemnification of the neighbors.

Callison said that the speaker's point was that the city wants to protect itself, and wondered why it couldn't also require protection of the residents. She asked if there were any legal impediments to providing the indemnification. Peterson said that there was no legal reason why it could not be done; that would be a policy decision for the city council. She noted that the city council was not legally required to approve the project.

Wagner asked about the potential of developing the site in two cities, rather than as one parcel. Gunyou said that while such a split was legally possible, both cities and the developer reached the conclusion that it would be better to go one way or the other. They were not only concerned about the complexity of initial approvals, but also about ongoing responsibilities. Keeping the project within one city would be simpler for the residents of the development.

In response to Anderson's question, Wiersum said that the Sanctuary project included 3.9 acres that were developed into 23 total units with four affordable units. Anderson noted that the size was similar to this project.

Callison said that the development was reasonable, and the developer had done a good job working with the two cities and representing his interests. She said that the Comprehensive Guide Plan was updated in 1999, and this area was guided R-1, low density residential. Although the city does modify the plan, it does not do so without a basis for the change. She reviewed the proposal to determine if mid-density might be appropriate, and noted that this property is surrounded by R-1 properties, except for a small commercial property on CSAH 101. She recited the situations where medium density is appropriate, including where a variety of housing types is desired, or where a transition is needed between widely differing land uses. Density increases are also sometimes made for environmental protection reasons or where affordable housing provides an offset.

Callison said that this site could accommodate at most 10 single-family homes, which would create less environmental impact, and by using PUD, could minimize those impacts. Callison felt there would be substantial environmental impacts with 28 units. She noted that staff remained concerned about the mass of the building and the view to the back. Callison did not know why the city should approve the project. She thought that without any trade offs, the property should remain guided for R-1 use.

Wiersum noted the conversations with the neighbors about the Sanctuary project. The Sanctuary project was good for mid-density because of its proximity to commercial uses and transportation. In

that case, the issue came down to the number of affordable housing units, and there was a compromise. He and the neighbors grappled with the issue, but Wiersum thought the right solution was reached. Wiersum said that he would have trouble looking those neighbors in the eye if there were no affordable units in this project—particularly with the detachment of the property from Minnetonka. In this case, the city would pay a cost with no benefits, so he would not support the project.

Schneider was generally neutral about the project. The character of the area would improve with the clean up of the site, but that could happen anytime in the future. He questioned the number of units that would be right for the site, and the detachment/annexation. His reservation to the detachment related to the private well concept. He was concerned that there would be a future request for access to Minnetonka's water system, because there have been other requests for service by Deephaven properties. He felt that the sewer was being handled appropriately, but not the water. However, he did not feel that the utility issue alone would outweigh redevelopment of the site.

Dovolis said that Deephaven concluded that the site was appropriate for mid-density as a transition area, and guided it for 32 units.

Schneider would be more comfortable with a higher density if the entire site was in Minnetonka, but he would not be comfortable at this level of density. He noted that there are single-family units around most of the perimeter of the property. Schneider would be comfortable with four units per acre, but not six.

Wagner also weighed the pros and cons. As positives, the property would be cleaned up, the developer has worked with the city for a long time, and the developer would pay \$175,000 toward the stormwater assessment. As negatives, the city would be giving up \$150,000 in tax revenue, and the neighbors to the south oppose the project. Wagner would have been more willing to support a higher density if there were affordable units, even though Minnetonka would not receive credit for them. Wagner recognized the economic challenges of the project, but suggested working with the developer to arrive at a better solution because there were no time constraints. Wagner did not see enough benefits from the project to support it.

In response to Anderson's question, Peterson said that because the applicant is not seeking Minnetonka's zoning approval, the state law regarding review deadlines did not apply. She did not know the timing status with Deephaven. Anderson said that the project could

be approved by Deephaven and not by Minnetonka. Peterson said that could happen, but she did not know if the project would then be built.

Thomas was leaning in the same direction as the other councilmembers. He did not support giving up the property, and allowing it to be rezoned from R-1 to medium density without any affordable housing. He noted that the site would be cleaned up eventually. Thomas said that Minnetonka has a lot more to offer in terms of utilities. He also noted Deephaven's ongoing reluctance to deal with the municipal water issue, and the number of times over the past nine months that Minnetonka has had to respond to that issue. Thomas did not support the detachment/annexation.

Anderson did not want the issue to become a Minnetonka versus Deephaven debate, and said that it has not been to date. She appreciated staff's efforts to deal with these complications, and the developer's efforts to work out the issues. Anderson noted that Deephaven has requested city water service, not just for that area of the city, but also for other areas over the past two years. Minnetonka has made it clear that it does not have water to give away because it has not received state approval to dig needed wells. Without that, Minnetonka could not in good conscience give water to other cities when it cannot meet its own requirements. She noted that Minnetonka is investing dollars to meet its water needs. Although this request seems small – 28 units – the question applies to Minnetonka's whole border with Deephaven. Anderson recalled that a Minnetonka council member previously said that before Minnetonka would even consider responding positively to Deephaven's water requests, there should be some movement on their part to correct their problems. Minnetonka Boulevard is being rebuilt through Deephaven this summer, and they are not installing water lines as part of that construction at the request of their residents.

Anderson said that this site might be appropriate for some increased density with its proximity to CSAH 101/5. She wished there was an opportunity for affordable housing, but agreed that Minnetonka could not require it. Anderson noted that incremental changes had been made since this project was first proposed two years ago. She thanked staff for pushing for those changes, but noted that the city council was not yet satisfied. She agreed that the site desperately needed to be cleaned up, and said that neighbors have called about it. Although this project provided an opportunity for that to occur, the council has reservations with it.

Ellingson recalled the historic actions that nibbled away at Minnetonka's border, which were only stopped by incorporation. He

said that the city council supports the broad and progressive policies of the city, which include protecting Minnetonka's services and providing affordable housing. Ellingson noted a recent townhome project in his neighborhood with 13 units and one affordable unit. He thought that this project should have been reviewed by the EDA. Ellingson did not support the annexation, and suggested looking at the project according to the historical policies of the city and the city council.

Bader said that he had asked about affordable housing up front. He did not want to have the council vote no on his project, and asked for a delay to allow him to review his options. His decision would be based on economics—if he could do something, he would; if not, he will withdraw his request.

Schneider said that without the statutory time limit, there is more latitude for the project to follow its own course. Schneider felt that higher density would be warranted with affordable units due to the proximity to CSAH 101. He thought there might be a way to avoid future water issues. He suggested considering an option for a private road, maintained by an association, down the center of the property along the city border to avoid the detachment/annexation issue. He suggested affordable units within the Minnetonka portion of the project. In exchange, Minnetonka could provide water service to all the units.

Anderson said Schneider's concepts were interesting, and it looked like a road could follow the city boundary. She noted the council's interest in affordable housing, but also noted the council's concerns about the proposed density.

Wagner said that if some of the other issues could be resolved, he might support higher density due to the property's proximity to CSAH 101/5. He noted that Deephaven has guided the property as a transitional use. Wagner wanted to maintain the stipulations that would mitigate the effects to the neighbors to the south.

Callison said that without affordable housing, there was nothing to support this level of density. She did not know how much more density she would support. She would like an analysis of how this site fits with the guide plan, because this was not an area earmarked for higher density.

Anderson would not support adding affordable units if it would increase the currently proposed density. She noted that this is an annexation request, which the city did not have to approve. She would not agree to any higher density, and would prefer a little less density.

Wiersum agreed with Callison. It would be desirable to clean up the site sooner rather than later. Affordable housing was critical to him. He noted that if Schneider's option were used, the city would need to re-guide the property in Minnetonka, an issue that had been avoided through the proposed annexation. Wiersum noted the similarities to the Sanctuary property. He also noted that the Sanctuary provided two outlets, and this project would only have one outlet onto CSAH 101 for the traffic from 28 units. Wiersum said that he would have a similar affordable housing expectation as the Sanctuary. He was not concerned about Deephaven's wishes in that area because they would be receiving something for nothing. From a philosophical perspective, Wiersum said that affordable housing on this site would also be affordable housing for this community. He felt it was important to Minnetonka to take a stand because affordable housing is needed within our community.

After the discussion, the developer was still agreeable to the council taking no action on his request.

Wiersum moved, Callison seconded a motion to delay consideration of this matter. All voted "yes." Motion carried.

**C. Resolution supporting a countywide ordinance prohibiting smoking in public places.**

Rankin provided the staff report. He noted that Hennepin County is not talking about a broad ban on smoking at public places. At this point, they are only looking at restaurants and bars.

In response to Anderson's inquiry, Rankin explained the difference between the ordinances adopted in Bloomington and Minneapolis. He said that Minnetonka would ask Hennepin County to hold hearings and reach an appropriate countywide decision to help "level the field."

Anderson said that she received emails on both sides of the issue.

Richard Woellner, 3847 Huntington Circle, spoke as a retired chest and internal medicine physician. He encouraged the council to adopt the resolution. He also encouraged the council to take its own action if the county did not act promptly.

Woellner provided information about the adverse effect of second hand smoke in the work place, especially for those in the restaurant business. He did not support the Libertarian views. Woellner said that we do not allow salmonella or E coli in our food, well contamination, or asbestos in our air. The adverse effects of

second hand smoke are significantly higher and more people die from it. Woellner supported being just as aggressive regarding second hand smoke.

Woellner noted that businesses raise concerns about the financial impacts of a ban. There have been lots of studies, which invariably find no change in business, or an actual improvement in business, after adoption of an ordinance. The studies used comparisons of food and liquor receipts in comparable communities with and without bans, such as Vail and Aspen.

Wagner has a number of friends who are doctors. They have told him that anyone with heart disease is at a significantly higher risk of heart attack when they enter an area with smoke. He noted the findings in Montana where heart attack occurrences dropped after a statewide ban was enacted, only to increase to the previous levels when that ban was repealed. Wagner supported a regional decision by Hennepin County.

Schneider shared those concerns, and noted the significant health risks to those with asthma. A countywide ban would make it easier to know the rules. Countywide or regional rules are generally easier to enforce and are better respected. Schneider would support Minnetonka taking its own action if the county does not act because smokers will go where it is allowed.

Callison said that Hennepin County deals with public health issues in our area so this is an appropriate issue for the county to address.

Callison moved, Thomas seconded a motion to adopt Resolution No. 2004-108 supporting a county-wide ordinance prohibiting smoking in public places.

Wiersum noted that the Libertarian issue of government telling people what they can and can't do has been raised. For him, the public health issue is far greater. We would not be saying that people could not smoke—only that they could not smoke in bars and restaurants where their actions would affect others. He wished that people would not smoke due to the significant health risks, and noted that some people may not have the option of leaving a restaurant where there is smoke. He supported the county approving a ban.

Anderson wished that the standards could apply statewide, but said this issue could not wait for that to occur. She said that Hennepin County is looking for support from populated cities, and the state will probably be watching for that too. She noted that there has been no impact to businesses where bans have been enacted. She

said that this action was a move in the right direction and she was willing to do more. She just returned from a trip to the northern European countries, where conditions are where we were 25 years ago. The trip made her grateful for the controls that are in place, and increased her support for this action.

All voted "yes." Motion carried.

**D. Administrative hearings regarding the following liquor license holders:**

**Don Pablo's Operating Corp. d/b/a Don Pablo's  
Dayton's Iron Horse Liquors, Inc. d/b/a Lakeshore Grill  
SID Minnetonka, LLC d/b/a Sidney's  
Target Corporation d/b/a Target store T-1356  
Big Bowl, Inc. d/b/a Big Bowl Café**

Peterson noted that all five establishments admitted to the violation of failure to attend the June 22 mandatory liquor training, so an evidentiary hearing was not required. The council only needed to consider the penalties.

**Target Corporation d/b/a Target store T-1356**

Peterson said that, unlike the other four establishments, Target only holds a 3.2 off-sale liquor license. In similar past circumstances, the city council has imposed a \$250 fine or seven-day suspension with six days stayed for a year on condition the licensee attends next year's session. Peterson noted that the order would need to be corrected to reflect that Target still must attend a make up session.

Joy Gauster, Asset Protection Manager, and Josh Jewitt appeared on behalf of Target. Gauster apologized for failing to attend the session. She was recently hired, and there were multiple managers replaced during the same time frame. She was not aware of the requirement to attend the session until after the session took place. Gauster wanted to make things right and will attend next year's session.

Schneider suggested that Target implement a system so the information is automatically given to new managers.

With regard to Target Store #T1356, Schneider moved, Thomas seconded a motion to impose a penalty of \$250 or seven days suspension of the liquor license, with six days stayed on condition the licensee attends the 2005 liquor training session.

Wiersum asked if Target was part of the best practices program. Peterson said they are not. Anderson suggested that they be given

information about the program. Peterson said that they had no previous violations.

Anderson asked that the motion include the correction to the Order regarding Target staff viewing the make-up videotape.

All voted "yes." Motion carried.

### **Don Pablo's Operating Corp. d/b/a Don Pablo's**

Jeremy Herzberg, Director of Don Pablo's Operations for Minnesota and Illinois, represented Don Pablo's. Peterson noted that Don Pablo's has a full liquor license, and they failed to attend the 2000 and 2001 seminars. In 2000, the council imposed a sanction of \$750 or a one-day suspension. For the 2001 violation, the sanction was a \$750 fine and a one-day suspension. Don Pablo's attended the 2002 and 2003 sessions. Staff recommended the same penalty for the 2004 violation as the 2001 violation – a \$750 fine and a one day suspension. Peterson noted that suspensions are generally scheduled on a Thursday chosen by staff. Peterson said that a Don Pablo's representative did attend the make up session.

Callison clarified that the penalty would be a seven-day suspension with six days held in abeyance for a year on condition of attending next year's session.

Anderson recalled that there were extenuating circumstances in 2001.

Herzberg said he was not with Don Pablo's during the time of the 2000 or 2001 violations. Herzberg said that the store's general manager failed to attend the 2004 session in retaliation for disciplinary actions and was then terminated. Herzberg said that Don Pablo's attended the makeup session. Herzberg said that they had taken action against the manager, but offered no other excuse and apologized.

Anderson appreciated the honesty and the explanation. In response to Anderson's question, Peterson said that Don Pablo's does not participate in the best practices program. Anderson said that they might consider it. Peterson said that information about the program was provided at the make up session.

Anderson noted that Minnetonka takes liquor licenses very seriously. Not all communities provide training sessions, and those who attend Minnetonka's find them helpful and valuable. They also appreciate the best practices program. She said that Minnetonka is

also very tough on sales to minors. She asked staff to provide the establishment with information. Herzberg said that he had given the information about the best practices program to his general manager, and they will do it.

With regard to Don Pablo's Operating Corp. d/b/a Don Pablo's, Wiersum moved, Wagner seconded a motion to impose a penalty of \$750 and seven days suspension of the liquor license, with six days stayed on condition the licensee attends the 2005 liquor training session. All voted "yes." Motion carried.

### **Big Bowl, Inc. d/b/a Big Bowl Café**

Peterson noted that this was a repeat violation for Big Bowl, who also missed the 2002 seminar. Although the circumstances were slightly different from Don Pablo's, Peterson said that the net result was the same, so the same penalty was proposed for them.

Jason Hair, Senior Manager of Big Bowl, apologized. He was at the council meeting in place of the general manager who was at a corporate conference in Texas. On the day of the seminar, only Hair and one other general manager were in the store. There are usually five managers. Hair was new to the store at the time. They could not attend the session. Hair has attended a make up session.

Peterson said that Big Bowl did call to say someone would attend but no one attended. She recommended the same penalty as for Don Pablo's.

With regard to Big Bowl, Inc. d/b/a Big Bowl Café, Thomas moved, Wiersum seconded a motion to impose a penalty of \$750 and seven days suspension of the liquor license, with six days stayed on condition the licensee attends the 2005 liquor training session. All voted "yes." Motion carried.

### **SID Minnetonka, LLC d/b/a Sidney's**

Terry Mulhern, Sidney's General Manager, said that his son got married the week before the seminar, and it just slipped his mind. He takes his liquor license responsibilities very seriously and has not missed a session. He apologized and said that he did not miss the session intentionally.

Peterson said she was surprised that Mulhern was not at the session. He has been a very active member of the community, and served on the liquor advisory committee when the best practices program was created. Mulhern is also a volunteer for the city. Peterson understood that things happen. She suggested a sanction

of \$750 or seven days suspension of the liquor license, with six days stayed on condition the licensee attends the 2005 liquor training session.

With regard to SID Minnetonka, LLC d/b/a Sidney's, Thomas moved, Wagner seconded a motion to impose a penalty of \$750 or seven days suspension of the liquor license, with six days stayed on condition the licensee attends the 2005 liquor training session. All voted 'yes.' Motion carried.

**Dayton's Iron Horse Liquors, Inc. d/b/a Lakeshore Grill**

Peterson said that the sanction proposed for Lakeshore Grill was the same as for Sidney's.

Tom Leuer, Regional Manager for Marshall Field's, and Margaret Nibbe, General Manager of Lakeshore Grill, were present. Nibbe apologized that a manager was not present at the meeting. She realized the importance of attending the session, and said that they have complied in the past. She and Leuer attended the make up session.

With regard to Dayton's Iron Horse Liquors, Inc. d/b/a Lakeshore Grill, Wiersum moved, Wagner seconded a motion to impose a penalty of \$750 or seven days suspension of the liquor license, with six days stayed on condition the licensee attends the 2005 liquor training session. All voted "yes." Motion carried.

**15. APPOINTMENTS and REAPPOINTMENTS: None**

**16. ADJOURNMENT.**

Wiersum moved, Thomas seconded a motion to adjourn the meeting at 9:53 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk