

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, FEBRUARY 28, 2005**

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

4. APPROVAL OF AGENDA.

City Manager John Gunyou reported that there were no changes to the agenda.

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

5. APPROVAL OF MINUTES: February 14, 2005 regular council meeting.

Schneider moved, Wiersum seconded a motion to approve the minutes of the February 14, 2005 Minnetonka City Council meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Recognition of Board Member Jim Calkins.

Anderson recognized Jim Calkins for eight years of service on the Minnetonka Park Board.

Calkins expressed his appreciation for the support of the mayor, city council, park board and staff.

B. Recognition of employees and firefighters who reached significant milestone years of service in 2004.

All council members participated in recognizing the following employees for years of service milestones:

- Betty Norton, Personnel Services Administrator, 30 years
- Jeff Dubay, Street Maintenance Manager, 30 years

- Keith Rude, Engineering Construction Coordinator, 30 years
- Jill Schmidt, Police Administrative Coordinator, 30 years
- Bill Neumann, Street Maintenance Public Service Worker, 25 years
- Doug Fetter, Utility Public Service Worker, 25 years
- Larry Johnson, Firefighter, 25 years
- Duane (D.J.) Lenarz, Utility Public Service Worker, 25 years
- John Nelson, Utility Public Service Worker, 25 years
- Ron Armstrong, Police Officer, 25 years
- Scott Ornat, Engineering Technician III, 25 years

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reviewed the schedule of upcoming council meetings.

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

No one appeared.

9. BIDS AND PURCHASES:

A. Consideration of bids for the repainting of the Tanglen water tower.

Gunyou provided a brief staff report for this item.

Callison moved, Wagner seconded a motion to award the bid for the repainting of the Tanglen water tower to Classic Protective Coatings, Inc. for \$186,735. All voted "yes." Motion carried.

B. Consideration of a bid from Continental Safety Equipment of Eagan, Minnesota, for new self-contained breathing apparatus and associated equipment.

Gunyou provided a brief staff report for this item.

Schneider moved, Thomas seconded a motion to award bid to Continental Safety Equipment in the amount of \$263,368.00 for the delivery, training and certification of new self-contained breathing apparatus and associated equipment. Anderson asked that the motion include the associated recommendation to spend up to \$105,000 for matching funds. All voted "yes." Motion carried.

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

A. Claims for council authorization – February 28, 2005.

Wiersum moved, Thomas seconded a motion to approve the February 28, 2005 claims list, including checks numbered 187625 through 187945, totaling \$1,174,071.78. All voted "yes." Motion carried.

B. An ordinance amending sections 615.050(2) and 710.005(33) regarding licensing of sexually-oriented businesses.

Wiersum moved, Thomas seconded a motion to adopt Ordinance No. 2005-06 amending Sections 615.050(2) and 710.005(33) of the City Code regarding licensing of sexually-oriented businesses. All voted "yes." Motion carried.

C. Items pertaining to the use of tax forfeited land for the 2005 Pavement Rehabilitation project No. 4425.

Wiersum moved, Thomas seconded a motion to adopt the following resolutions:

- 1) Resolution No. 2005-010 authorizing the reconveyance of portions of certain tax-forfeited lands to the state of Minnesota by the city of Minnetonka.
- 2) Resolution No. 2005 -011 requesting conveyance of portions of certain tax-forfeited lands to the city of Minnetonka for right-of-way, drainage, and wetland preservation purposes.

All voted "yes." Motion carried.

D. Resolutions pertaining to tax-forfeited land within the city of Minnetonka.

Wiersum moved, Thomas seconded a motion to adopt the following resolutions:

- 1) Resolution No. 2005-012 approving the classification of non-conservation tax-forfeited land.
- 2) Resolution No. 2005-013 requesting the conveyance of certain tax-forfeited land to the city of Minnetonka for conservation and drainage and utility purposes.

All voted "yes." Motion carried.

E. Temporary sign for the city of Minnetonka to advertise the Eco - Fair at 14600 Minnetonka Boulevard.

Wiersum moved, Thomas seconded a motion to approve the temporary sign and the recurring use of the temporary sign for the city's Eco - Fair event. All voted "yes." Motion carried.

F. Resolution encouraging legislation to increase funding for I-494 corridor improvements.

Wiersum moved, Thomas seconded a motion to adopt Resolution No. 2005-014 encouraging legislation to increase funding for I-494 corridor improvements. All voted "yes." Motion carried.

G. Items pertaining to the TH 7/Williston Road north frontage road project.

Wiersum moved, Thomas seconded a motion to adopt the following resolutions:

- 1) Resolution No. 2005-015 approving final plans and authorizing the advertisement of bids.
- 2) Resolution No. 2005-016 requesting a variance from Minnesota Rules for State Aid Operations.

All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES: None.

13. PUBLIC HEARINGS:

A. Public hearing to consider resolutions approving projected use of funds for year 2005 of the Urban Hennepin County Community Development Block Grant program and the reprogramming of CDBG funds from the program year 2004.

Anderson and Gunyou provided introductory comments, and Community Development Director Ron Rankin provided an overview of the staff report.

Anderson thanked staff for their proactive efforts to redistribute the funds. The choices made were wise and proportionate.

In response to Thomas' question about the emergency deferred loan program, Rankin said that there would be no interest, and the debt would be forgiven after 10 years. If the home was resold before 10 years, the loan would be repaid to the city and returned to the CDBG fund. Repayments of these loans are available for reuse.

Callison noted that there are 64 households on the waiting list for the single-family rehab program. She asked how the proposed changes would affect eligibility. Rankin said that those on the waiting list have been asked to provide updated income

information. Of those, less than 25 percent no longer meet the requirements, and would be dropped from the list.

Callison asked for staff comments on the future of the CDBG program. Rankin said that the Bush administration has proposed to move the HUD based CDBG program to a new program administered by the Department of Commerce. The new program is described as more targeted and unified, with greater focus on high poverty areas. The funding recommended is less than what is currently being allocated.

Anderson noted that the Bush administration is proposing a Strengthening America's Communities Act. Eighteen existing grant programs would be combined into one program, and the CDBG program would be eliminated. Total funding would be reduced from \$6 billion to \$4 billion. Anderson said that she has heard that this proposal is not expected to go too far this year. Minnesota's senators have been working to preserve CDBG funding through HUD this year, but CDBG funds will likely go away within several years.

Schneider said that the city needs to proactively prepare for these eventualities and have a system in place.

Anderson opened the public hearing.

Fran Gustafson spoke on behalf of ICA. Gustafson said that her job is to search out grant opportunities. She noted that ICA served 24 Minnetonka families in 2003, and 51 Minnetonka families in 2004. Gustafson said that they would apply for CDBG funds again next year, and hope to be included.

Anderson noted that the city received a new request from ICA for funds this year. Minnetonka received fewer CDBG funds this year so the city proportionately reduced the amounts to agencies that were already funded. The city did not think it would be fair to add another agency and further reduce the current funding levels. Anderson noted that the city is limited to allocating only 15 percent of its total CDBG allocation for social service uses.

Mary Margaret Jung-Reagen spoke on behalf of the Greater Minneapolis Daycare Association. She provided an update on their services. She noted that Minnetonka's 2004 funds served three Minnetonka families. Each receives \$160/month for daycare services.

Nora Davis spoke on behalf of the Hopkins-Minnetonka Family Resource Center. She thanked the city for its gracious support. She

noted that need continues to grow. Over the past year, 270 food packages have gone to Minnetonka residents, 263 of whom were senior citizens. Back to school supplies were provided to 200 Minnetonka children. Through the Winter Warm Wear program, 300 items were given to Minnetonka children. The Toy Chest Program distributed toys to over 800 kids, 300 of whom were from Minnetonka. The center provided more than 6,000 information and referrals contacts — about one-third of those contacts were to Minnetonka residents. She was frightened to hear of the cutbacks, but thankful for the work they have been able to do for Minnetonka residents. The center will find a way to continue.

Bill O'Meara spoke on behalf of CASH. He thanked the city for its support.

Mike Vraa spoke on behalf of Homeline. He thanked the city for its support. Minnetonka was the first city to provide CDBG funds to their agency, and now five cities provide that funding.

Anderson closed the hearing.

Callison asked about the ICA lease arrangement. Rankin said that the parcel was purchased by the city for storm water drainage, but was not yet needed for that use. Minnetonka allows ICA to use the city-owned building on the property on a rent-free basis.

Callison moved, Wagner seconded a motion to adopt the following resolutions:

- 1) Resolution No. 2005-017 approving projected use of funds for year 2005 of the Urban Hennepin County Community Development Block Grant program.
- 2) Resolution No. 2005-018 the reprogramming of CDBG funds from the program year 2004.

All voted "yes." Motion carried.

B. Continued public hearing to consider applications by Scoreboard, Inc., for on-sale and Sunday on-sale intoxicating liquor licenses for Gavin's Restaurant, 11000 Red Circle Drive.

Gunyou provided a brief staff report for this item.

Anderson noted that the public hearing was previously opened, and invited comments. There were none and the hearing was closed.

Wagner moved, Callison seconded a motion to grant the on-sale and Sunday on-sale intoxicating liquor licenses for Gavin's Restaurant, 11000 Red Circle Drive. All voted "yes." Motion carried.

14. OTHER BUSINESS:**A. Preliminary plat to subdivide 3564 Shady Oak Road into two lots for Shane Homes, Inc.**

Planning Director Geoff Olson provided the staff report.

Ellingson noted that 20 years ago, a lot subdivision at 3570 was denied. There is a huge area of undeveloped land in these backyards, and he was pleased that staff looked at the neighboring properties. He asked about the larger picture regarding lots behind lots.

Olson said that this would be a fairly straightforward subdivision. No variances were required. This property and the lot to the north are the only remaining properties that could subdivide with a public street. Someone could potentially purchase several adjoining properties and subdivide, but it is more likely that there will be requests for lots behind lots, which would require variances. The proposed subdivision requires no variances and would not set a precedent.

Schneider said that at the planning commission hearing, neighbors voiced concerns about future development. Staff commented on the wetland. This area would require case-by-case review of any future requests.

In response to Callison's request for information about the conservation easement, Olson said that the neighbors were concerned about possible tree loss. The developer agreed to a conservation easement to preserve trees.

Callison thought the proposal was fine, but was concerned about the conservation easement. She noted that the city has traditionally required conservation easements as part of a tradeoff, in which the applicant has received something of value. She thought this situation was different, and was changing the rules. The owner of the new lot could not remove trees, and this restriction would infringe on the property owner's rights. She commended staff for its zeal, but was not sure about the public purpose. She asked for council comments on whether the city should require conservation easements when there is not an exchange of value.

Olson explained that there was public value in preserving trees. He noted that staff is preparing a new tree preservation ordinance at council direction, and that this ordinance would protect certain

stands of trees, which may limit the ability to develop. He would also appreciate any council comments.

Callison said the easement would limit such common uses as a swingset. Olson responded that the homeowner would have the ability to locate the house pad to limit tree loss. The owner would know of the conservation easement when they bought the property.

Schneider said the city wants to preserve trees, but the city does not want to tell people they can't put in a pool — there must be balance. Most people value some trees, so they would preserve them on their own. He was concerned about ratcheting up the tree preservation ordinance.

Wagner left the meeting at 7:50 p.m. and did not return.

Anderson referred to a situation on Wilson Street, where the council allowed a variance so the house could be placed closer to the lot line, and in exchange, the city received a conservation easement. She thought this situation was different because there was a large area of open space at the rear of the property. The conservation easement would add to the open space, and that is in the public interest. The council may need to be more clear on where to require conservation easements. In this case, the house could be sited to provide a larger front yard. She asked if this would be where the house would have to be placed. Olson said that the developer agreed to the location.

Olson noted that the tree ordinance provides for tree preservation areas. It is a philosophical question for the council to decide how to apply that ordinance. For the Crosby Cove development, the ordinance was met. At that time, there was concern that there were not enough tools in the toolbox to minimize tree loss.

Anderson supported the conservation easement, and said that it is justified in the ordinance.

Wiersum said that if a cul-de-sac had not been shared, a variance would have been required, and there would have been tradeoffs. We don't know if the lot to the north will develop. Wiersum was comfortable with the conservation easement, and felt there was a tradeoff. He shared Callison's concerns and wants to be careful about limiting property rights.

Wiersum moved, Thomas seconded a motion to give preliminary approval to the Hedlund Shady Acres, date-stamped January 21, 2005. Approval is based on the finding that the plat meets the

required standards and ordinances. Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
 - a. Show the following on the final plat:
 - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven foot-wide drainage and utility easements along all other lot lines.
 - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (3) A ten-foot drainage and utility easement must be shown along the west lot line of Lot 2.
 - (4) A drainage and utility easement must be shown over the 964.5 elevation on Lot 2.
 - (5) A dedication of seven feet of right-of-way along Shady Oak Road.
 - b. Pay the city a park dedication fee of \$2,375.00
- 2) The following items must be submitted to the city before the city releases the final plat:
 - a. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - b. The following documents for the city attorney's approval:
 - (1) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - (2) Conservation easements over trees to be protected south of the existing home, and a drawing of the easements for the approval of the city attorney. The easements and drawings must be recorded with the final plat.
 - (3) A private driveway easement between the street right-of-way and Lot 2. The easement must state the maintenance responsibilities of each owner. The minimum driveway width must be as required by the fire marshal.
 - (4) A private utility easement across Lot 1 to provide services to Lot 2.
 - (5) Submit a special assessment waiver, in recordable form acceptable to the city attorney, agreeing to pay 100% of the cost to construct the public street. The total cost not to exceed 125% of the city's current estimate (\$219,388 for the street), which will be increased annually for inflation. The waiver will bind all parcels in

the subdivision, and the special assessments will be spread equally on each of them.

- (6) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.

These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.

- c. Any other requirements included with final plat approval.
- 3) The following must be submitted to the city before the city issues a building permit:
- a. A grading and tree preservation plan for the new lot, subject to staff approval. Plans must include the construction of the driveway. The plans must be in substantial compliance with agreed building areas as required with the final plat. The sewer and water services must be shown to minimize impact to the significant trees.
- b. A copy of the recorded plat and any easement or covenants required to be recorded.
- c. A hookup fee for sanitary sewer and water.
- d. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
- e. A driveway turn around must be provided on the new lot to prevent backing out onto Shady Oak Road.
- f. The new home must be built with a sprinkler system subject to review and approval of the fire marshal.
- g. Minimum low floor elevation for the new home on Lot 2 is 966.5.
- 4) During construction, the streets must be kept free of debris and sediment, and the tree protection and erosion control fencing must be maintained.
- 5) Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 ½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
- 6) Before the city makes a final inspection of the house, the drive must be paved from the street to the house on Lot 2.

The city may approve a time extension if weather prevents paving of the drive.

- 7) The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

Callison moved, Schneider seconded a motion to remove the requirement for a conservation easement. Callison and Schneider voted "yes." Thomas, Ellingson, Wiersum and Anderson voted "no." Motion failed.

On the vote on the main motion, all voted "yes." Motion carried.

B. Presentation of the 2005 Assessment Report.

City Assessor Dick Toy presented the 2005 Assessment report.

Schneider noted the chart that showed the decline in the number of homes valued at less than \$200,000.

In response to Thomas' question, Toy said that physical assessments were done in the area north of Highway 7 and east of CSAH 73 this past year.

Anderson noted that valuation notices will be mailed in the next couple of weeks. Residents should call the assessing staff if they have questions. She recognized the assessing staff in the audience, and commended them for the fine job they do.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointment to the park board.

Anderson moved, Thomas seconded a motion to approve the appointment of Cathy Rude, 12011 Arbor Circle, to the park board to serve the remainder a two-year term, effective February 28, 2005 and expiring on January 31, 2006. All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Wiersum seconded a motion to adjourn the meeting at 8:17 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk