

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MARCH 7, 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 Al Thomas, Tony Wagner, Bob Ellingson, Brad Wiersum, Terry Schneider, Jan Callison, and Karen Anderson were present.

4. APPROVAL OF AGENDA.

Acting City Manager Geralyn Barone reviewed the addendum, which provided amending conditions for items #10A and #10D.

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

5. APPROVAL OF MINUTES: February 28, 2005.

Wiersum requested a change to the first sentence of his comments on page 8 of the minutes to read if a cul-de-sac had "not" been shared . . .

Wagner moved, Thomas seconded a motion to approve the minutes of the February 28, 2005 Minnetonka City Council meeting as amended. All voted "yes." Motion carried.

6. SPECIAL MATTERS: Proclamation of March 8, 2005 as Caring Youth Day.

Callison read a proclamation establishing March 8, 2005 as Caring Youth Day.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Barone reported on the schedule for upcoming council meetings, and provided information about the Eco-Fair.

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

No one appeared.

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

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

A. **Conditional use permit for a flower and bedding plant stand at the southwest corner of the Westwind Plaza parking lot, 4795 County Road No 101, for Sever's Farmers Markets.**

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2005-019 approving a conditional use permit for a flower and bedding plant stand at the southwest corner of the Westwind Plaza parking lot, 4795 County Road No 101. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Record the resolution with Hennepin County.
- 2) The plant and produce stand may be operated April 15 through October.
- 3) Any display of items must be limited to representative samples and must be arranged in as compact a manner as reasonably practicable.
- 4) Any change in the person, location, or items sold at the stand renders this permit invalid.
- 5) This approval does not approve any signs at the site. A sign permit application must be submitted for staff review and approval. Any proposed sign must be requirements outlined in city code.
- 6) Violation of any conditional use permit standards outlined in city code will result in immediate revocation of the conditional use permit.
- 7) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 8) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 9) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

B. **Amendment to CDBG third-party agreement between city of Minnetonka and Community Involvement Programs.**

Wiersum moved, Wagner seconded a motion to approve the amendment to the third-party agreement between the city of Minnetonka and Community Involvement Programs. All voted "yes." Motion carried.

C. Resolution accepting plans and specifications and authorizing the advertisement for bids for the 2005 Pavement Rehabilitation Program.

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2005-020 accepting plans and specifications and authorizing the advertisement for bids for the 2005 Pavement Rehabilitation Program, Project No. 4425. All voted "yes." Motion carried.

D. Lot division to re-divide the properties at 13 Westwood Road and 15 Westwood Road into two buildable lots for Lance Rosenberg.

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2005-021 approving a lot division at 13 and 15 Westwood Road. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:

Approval is subject to the following conditions:

- 1) The following items must be submitted to the city before the city releases this resolution:
 - a. If applicable, evidence of watershed district approval
 - b. The following documents for the city attorney's approval:
 - (1) Ten-foot-wide drainage and utility easements next to any public street right-of-way and seven-foot-wide drainage and utility easements along all other lot lines.
 - (2) Drainage and utility easement over the 891.5 elevation.
 - (3) Conservation easements over the area 16.5 feet outward from the edge of the wetland, and a drawing of the easements for the approval of the city attorney. The easements and drawing must be recorded with the final plat.
 - (4) A private driveway easement between the street right-of-way and Tract A that is acceptable to the city attorney. The easement must state the maintenance responsibilities of each owner. The minimum driveway width must be as required by the fire marshal.
 - (5) A private utility easement of Tract B to serve Tract A.
- These documents must be recorded with the lot split resolution, and a drawing of any easements must be attached to the easement deed.

- c. A revised certificate of survey must be submitted. The revisions must include the following:
 - (1) The new house on the westerly lot must meet the following minimum setbacks:
 - (a) 20 feet to the 100-year stormwater elevation.
 - (b) 40 feet to the easterly lot line; and
 - (c) 25 feet to the southerly lot line.
 - (2) Drainage and utility easement over the 891.5 elevation.
 - (3) Ten-foot-wide drainage and utility easements next to any public street right-of-way and seven-foot-wide drainage and utility easements along all other lot lines.
 - d. A park dedication fee of \$2,750.00
 - e. Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the lot split resolution.
 - f. Restrictive covenants to be recorded against the individual lots with the lot split resolution. The covenants must include the conditions that have not been met as of the release of the resolution. These covenants must first be submitted for the approval of the city attorney.
- 2) The following must be completed before the city issues a building permit:
- a. A grading and tree preservation plan must be submitted to the city for the new lot, subject to staff approval. The plans must be substantially in compliance to the agreed building areas as required with final approval. The sewer and water services must be shown to minimize impact to the significant trees. This plan will be subject to the planning director's approval.
 - b. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing must be installed subject to review and approval of the city's environmental resources coordinator.
 - c. A copy of the recorded resolution and a copy of any easements or restrictive covenants required to be recorded must be submitted to the city.
 - d. A hook-up fee for sanitary sewer and water.
 - e. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - f. Minimum floor elevation of the new home must be 893.5.

- 3) The drive must be paved from at least the street to the house on Tract A before the city makes a final inspection of the house. The driveway must have at least a seven-foot setback from the side lot lines. The city may approve a time extension if weather prevents paving of the drive.
- 4) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, 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 1/2 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) This resolution must be recorded by the county within one year, unless the city council approves a time extension. If the council does not approve the extension, the lot division approval will be void.

All voted "yes." Motion carried.

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

12. **INTRODUCTION OF ORDINANCES:**

A. **Ordinance amending City Code section 845.010 regarding public nuisances.**

Barone provided the staff report for this item.

In response to Anderson's question, Barone said that the guidelines were drafted to help staff with the process. Staff prefers to work with the guidelines before having the council adopt them as a council policy. Council policies do not have the same force as an ordinance. Staff would like to proceed with the ordinance at this time to assist with enforcement.

Schneider asked staff to change the draft ordinance to distinguish between requirements for land for which the city has fee title, and easements. With easements, the underlying property owner continues to have some rights, provided their use is not incompatible with the easement. Anderson agreed.

City Attorney Desyl Peterson said that Schneider raised a good point. She explained that she included language recognizing the legal rights of easement holders but that this was somewhat

esoteric. She will amend the language before the ordinance is adopted.

Callison noted that the language of easements does outline some of those rights, and said that perhaps easements could be eliminated from the ordinance. Peterson noted that tax forfeited land is technically an easement, and that needs to be included.

In response to questions from Schneider and Anderson, Peterson said that the Charter does not require public hearings for ordinances such as this one.

Thomas moved, Wagner seconded a motion to introduce an ordinance amending section 845.010 of the City Code regarding public nuisances. All voted "yes." Motion carried.

13. PUBLIC HEARINGS:

A. Public hearing to consider increasing municipal water and sanitary sewer rates.

Barone provided the staff report for this item. Finance Director Merrill King said that she had detailed analysis data regarding the late payment fees.

Wagner asked if a high percentage of accounts are significantly overdue. King said that there is a subgroup of significantly overdue accounts that are assessed against the property taxes annually. She was not sure that the city could do anything to affect that group, but said that they do pay a penalty with the assessment.

Callison noted that the recommendations were based on a study done in September 2000, and asked if data was still relevant.

Public Works Director Brian Wagstrom said that a number of the assumptions in the 2000 report still exist. Since that study, there are some new projects, including the watermain for the CSAH 101 project, control systems, lift station renovations, and replacement of the sand media in the treatment plant filters. Wagstrom said that the costs are unknown related to fees the Metropolitan Council is considering, but those fees could be significant. Over the coming year, he and King will evaluate the rates, taking into consideration the issue of inflow and infiltration.

Anderson noted that inflow and infiltration have negatively affected Minnetonka's system, and asked that the council be provided with information on this issue. Wagstrom said that he is gathering that data. The capacity of the Metropolitan Waste Plant is being

consumed by inflow and infiltration, which comes from rainwater flowing into the system. Infiltration enters the system through the ground. Inflow enters from the ground surface and we need to understand that more completely. The source of inflow is not understood at this time, but a possibility is that it may come from residential drainage systems. If nothing is done, the cost could be high. Anderson asked that the council be kept informed on this issue.

Wiersum asked about the average amount of a delinquent bill. King said that there are roughly 1,200 accounts that are 10 days delinquent. The average quarterly residential utility bill is \$78, based on winter rates. King did not have information about commercial accounts, but noted that 90 percent of the delinquent accounts are residential. She did not anticipate an issue with the commercial accounts.

Wiersum noted that credit card companies use late fees to generate revenue, and he did not want the city to do that. He wanted the fee to correlate to the cost of collection or the time value of the money. He wanted the fee to be reasonable.

King said staff surveyed 14 comparable cities, and found that Minnetonka was the only city that did not charge a late fee. The fee proposed for Minnetonka is more generous than those of other cities both in terms of amount and the number of days. Ten of the 14 cities charged a late fee for payments that are one to five days late; one charged after 10 days, and three charged after a number of days more than 10. King noted that the city is limited by State law in what it can charge, and the intent is to get the payments in on time.

In response to Anderson's question, King said that there is a 21-day period between the issuance of the bill and the payment due date. She also noted that there are about 16,700 utility accounts.

Wiersum noted that the city discussed graduated fees a few years ago. He supported lighter fees for those who conserve water. King said that over the next year she and Wagstrom will look at the effect of tiered rates and will decide if adjustments are needed.

In response to Anderson's request, Barone said that the September 2000 study recommended that the city make incremental adjustments each year.

Wagner asked if there were rate adjustments for accounts with sprinklers. Wagstrom said that commercial properties have separate accounts for their sprinklers, and they pay a 25 cent

surcharge per 1,000 gallons water used from May to September. There is no tiered rate.

Anderson opened the public hearing at 7:12 p.m. No one spoke, and the hearing was closed.

Callison looked forward to further analysis. She would like to know the needs, and supported the rate changes and the late fees. She did not think the late fees would generate significant revenue.

Thomas agreed. He noted that some argue that these fee increases are a way to increase taxes. He said that the fees cover the depreciation of the city's equipment. With more development, there are more demands on the system. He would like to look at rates for those who conserve water. He also supported the late fee. He did not see it as a way to make money. He did not want the city to be perceived as a bank, and noted that the city has to manage its cash flow with the issues related to revenue from the state. He said that the city would work with property owners who are experiencing a temporary problem, but the people who continually pay their bills late strain the city's finances.

Wiersum agreed. The increase is reasonable and the late fee is appropriate. He wants to encourage water conservation, and would like more information on that.

Wagner also agreed, and would like to look at sprinkler rates, because sprinkler users might abuse the system.

Wagner moved, Callison seconded a motion to adopt Resolution No. 2005-022 providing for a change in municipal water rates and sanitary sewer service charges. All voted "yes." Motion carried.

B. Public hearing to consider increasing storm water utility fees.

City Engineer Lee Gustafson provided the staff report for this item.

Thomas read the staff report to say that the \$3.95 rate increase would mean that there would be no other increases through 2010. Gustafson said that this increase would bring the city's rate up to cover the unexpected projects, but there would still be smaller inflationary increases each year. Barone said that this funding will be reflected in the tables with the next Capital Improvement Program (CIP).

Anderson noted that the storm water fund is separate from the city's general fund. She asked about limitations on the use of the storm water fund. Gustafson said that most of the storm water

funds are used for CIP projects. Additional items funded from the storm water fund include such things as system maintenance, a catch basin cleaner, and a percentage of staff salaries for those involved with that system. Peterson added that funds in the storm water fund can only be used for that system, and they may not be used for other general purposes. Anderson noted that the fund could not be used to buy a fire truck, for example.

Wiersum said that last year's increase was 16.7 percent, and this year's would be 12.9 percent. He was concerned about double-digit increases during a period of low inflation. He did note that there have been new, unexpected projects. Gustafson said that there have been very significant projects that the city has had to address, including federally mandated requirements from the EPA, and new NPDS requirements, including the new salt storage facility. If unanticipated expenditures arise in the future, the city may have to make further adjustments to the CIP.

Callison asked if there is still a waiting list for storm water projects. Gustafson said that there is. Staff has lowered the priority for some of these projects, and always looks at the project's validity. Staff then balances projects based on priority.

Anderson opened the public hearing at 7:27 p.m. There were no comments, and she closed the public hearing.

Wiersum moved, Callison seconded a motion to adopt Resolution NO. 2005-023 increasing storm water utility fees. All voted "yes." Motion carried.

C. Public hearing to consider applications by Big Bowl Asian, LLC, for on-sale and Sunday on-sale intoxicating liquor licenses for Big Bowl, 12649 Wayzata Boulevard

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

Anderson opened the hearing at 7:29 p.m. There were no comments.

Callison moved, Thomas seconded a motion to continue the public hearing to consider applications by Big Bowl Asian, LLC, for on-sale and Sunday on-sale intoxicating liquor licenses for Big Bowl, 12649 Wayzata Boulevard to April 11, 2005. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Appeal of the planning commission's denial of a front yard setback variance to remodel the home at 3926 Vandan Road for Kenneth Heim.

Planning Director Geoff Olson provided the staff report for this item.

Applicant Ken Heim, 3926 Vandan Road, said that he and his wife had looked at several options. Due to concerns about the slope of the driveway and the existing structure, they felt that this option was the best. Their existing garage is substandard in size making it difficult to park more than one vehicle inside the garage or to accommodate today's larger vehicles. The garage's location is an inconvenience for activities such as carrying groceries into the house.

In response to Schneider's question, Heim explained how the lower level space will look with the new configuration. He would add living space, a bedroom, and some storage space to the lower level.

Schneider watched the planning commission meeting, and read the staff report. He did not see an issue related to the character of the neighborhood. He noted that there is diversity of housing in Minnetonka, and the applicant's proposed home would fit. Schneider said that he tends to narrowly interpret neighborhood character, and looks at if the change will have a significant impact on the neighborhood. He felt this would fit with the neighborhood, but it would require a variance. The applicant warrants a decent garage of sufficient height. The only other viable option, without a variance, is on the east side, but that would not solve the inconveniences of the existing garage. The proposed changes would add value and make this a better home. The variance requested was reasonable.

Callison supported the staff's recommendation for the variance. She said that the existing garage is not of adequate size, and noted that a two-car garage is a reasonable expectation. The grade is significant, and she did not see another home in that neighborhood with a similar grade drop. The proposed plan would not affect the character of the neighborhood.

Callison moved, Thomas seconded a motion to overturn the planning commission's decision and adopt Resolution No. 2005-024 approving a front yard setback variance from 35 feet to 20 feet at 3926 Vandan Road. This resolution is based on the following findings:

- 1) Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:

- a. There is zero to four feet of right-of-way in front of the home.
 - b. There is an eight-foot elevation change from the street to the house.
 - c. The existing garage door is just six feet tall, with bedrooms above, which would make it difficult to add on.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The proposal would not alter the character of the neighborhood.
- Approval is subject to the following conditions:
- 1) Submit proof of having recorded this resolution with Hennepin County before the city issues a building permit.
 - 2) The installation and maintenance of erosion control and tree protection, subject to review by the city's environmental resources coordinator.
 - 3) The planting of three new trees to replace the maple, ash, and birch trees.
 - 4) The removal of the existing driveway and that the new driveway access Vandan Road in the same location as the existing driveway.
 - 5) A grading plan must be submitted with the building permit application.
 - 6) This variance will end on December 31, 2006, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

Anderson supported the motion. She noted that the neighborhood was developed with ramblers and thought the proposed change would provide some variety to the neighborhood.

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointment to the planning commission.

Anderson moved, Wiersum seconded a motion to approve the appointment of Michael Dahl, 16825 Blenheim Way, to the planning commission to serve a two-year term, effective March 7, 2005 and expiring on January 31, 2007. All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Wiersum seconded a motion to adjourn the meeting at 7:53 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk