

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, OCTOBER 10, 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 provided background information about the addendum, which included an alternate motion for Item #11B, variances for 2813 McKenzie Point Road. The property owners have requested an extension to modify their plans.

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

**5. APPROVAL OF MINUTES: September 26, 2005 regular council meeting.**

Wiersum moved, Thomas seconded a motion to approve the minutes of the September 26, 2005 Minnetonka City Council meeting. Callison, Thomas, Wagner, Ellingson, Wiersum, and Anderson voted "yes." Schneider abstained. Motion carried.

**6. SPECIAL MATTERS:**

**A. Presentation on behalf of Hopkins School District (270) Referendum.**

Anderson introduced this item, noting that Hopkins School District includes more than one-half of the city.

School Board Chair Dale Feste and Sue Scharenbroich, School Board member, were present. Feste noted the great relationship between the district and the city. He advised that the district's November 8 referendum would ask voters to renew three existing operating levies, totaling about \$12 million. The district already

uses these funds for educational programs. Recent legislative changes allow for rescinding existing levies, combining them, and renewing them for a period of 10 years. The existing levies would end between 2008 and 2012.

Feste said that the district will also take advantage of an inflationary increase. The tax impact to the average home in the district (valued at \$300,000) would be \$44 per year. Feste asked that the city council share information about the referendum and support it.

In response to Schneider's question, Feste said that the inflationary adjustments would occur annually over 10 years and would be about 2.5 percent each year. Scharenbroich added that because the district did not make inflationary adjustments a few years back, they could benefit from the inflationary increase the first year it passes.

Feste said that questions about the referendum should be referred to the district. Scharenbroich said that the district would appreciate the council's support. The referendum is critical and represents about 12 percent of the district's budget.

Anderson noted the great partnership between the district and the city, and said that it is quite unique to Minnesota compared with other states. She said that the district's boundaries are not coterminous with the city's, which creates some fragmentation, and makes it difficult to get community support. About 12 years ago, the city decided that partnerships with the districts were important for cost efficiencies, better facilities, and other reasons. A partnership with the Hopkins School District evolved which included monthly meetings of the mayors, managers and staff. Those meetings produced the Lindbergh Center at the High School, which became a statewide model for partnerships. The partnership with the Minnetonka School District started later, due in part to the success of the partnership with the Hopkins School District. She is grateful that the monthly meetings have continued, and other partnerships have evolved.

Anderson said that the school district has faced huge budget cuts over the past few years. She does not live in that district, but will support the referendum to those with whom she speaks.

Scharenbroich said that the fragmentation issue is difficult, and she appreciated the invitation to appear at the council meeting.

Ellingson commended the school district for taking advantage of various ways to generate funds. He said that all districts are facing difficulties, and programs are being dismantled. He noted that Hopkins was the first school district to take advantage of merit or performance pay, which required foresight. He also said that their last referendum resulted in beautiful changes to their facilities.

Feste and Scharenbroich thanked the city council for its support. Feste said that they value the partnership with the city greatly.

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

Gunyou reported on the schedule for upcoming council meetings, noting that an update on past planning projects will be provided at the October 24 council meeting.

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

No one appeared.

**9. BIDS AND PURCHASES:**

**A. Consideration of bids for the purchase and installation of Civic Center plaza heating system.**

Gunyou provided the staff report.

Schneider moved, Callison seconded a motion to award the bid for the purchase and installation of the Civic Center plaza heating system to NS/I Mechanical Contracting Company in the amount of \$64,894.00.

Anderson asked about the project timeline. City Engineer Lee Gustafson said that the plaza should reopen within four to five weeks. Electrical and irrigation work will follow. The new heating system will not be operational until next year.

All voted "yes." Motion carried.

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

**A. Claims for council authorization – October 10, 2005.**

Wiersum moved, Wagner seconded a motion to approve the October 10, 2005 claims list, including checks 192177 through 192407, totaling \$1,431,645.02. All voted "yes." Motion carried.

**B. Resolution appointing election judges for the November 8, 2005 General Election.**

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2005-127 appointing the election judges for the November 8, 2005 Municipal General Election. All voted "yes." Motion carried.

**C. Resolution authorizing the installation of traffic control devices at various locations within the city of Minnetonka.**

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2005-128 authorizing the installation of traffic control devices at various locations within the city of Minnetonka. All voted "yes." Motion carried.

**D. Preliminary plat to divide the property at 5700 Whited Avenue into two lots for Clark Kent Homes.**

Wiersum moved, Wagner seconded a motion to give preliminary approval to the Clark Kent Addition plat, date stamped August 18, 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) Lake Shore Avenue on the north side of the plat must be changed to Oric Avenue.
    - (3) Expand the right-of-way at Oric Avenue and Whited Avenue to a 25-foot radius.
  - b. Pay the city a park dedication fee of \$2,375.
- 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) A private driveway easement between the street right-of-way of Oric Avenue 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.
- (3) 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.
  - d. The existing home, garage on Lot 1, and other accessory buildings must be removed.
- 3) The following must be submitted to the city before the city issues a building permit:

  - a. A grading and tree preservation plan for each lot, subject to the planning director's approval. The plans must be in substantial compliance with the building pads shown on the preliminary plat and must preserve trees designated for preservation at the time of preliminary plat approval. The city may require adjustments in the house pad location to maximize tree preservation. The sewer and water services must be shown to minimize impact to any significant trees.
  - b. A temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
  - c. A copy of the recorded plat and any easement or covenants required to be recorded.
  - d. A hookup 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. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
- 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) The area near the intersection of Oric Avenue and Whited Avenue must be regarded to improve visibility at the intersection. The grading and tree removal would be subject to review and approval of the city engineer.
- 6) Construction vehicles must not park on adjacent streets.
- 7) 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.
- 8) The detached garage on Lot 2 must be removed by December 31, 2005.
- 9) 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.

All voted "yes." Motion carried.

**E. Resolution authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor.**

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2005-129 authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor. All voted "yes." Motion carried.

**F. Time extension for the Deephaven Cove preliminary plat at 3600 County Road 101 for Steven Scott Development.**

This item was pulled from the consent agenda by Ellingson. He said that this developer's request for a time extension was due to the affordable housing requirement. Ellingson felt that if the city required affordable housing, it should also make a financial contribution.

Anderson said that this is a much larger issue and that there are many other factors involved. She noted that developers receive other concessions that subsidize affordable housing in different ways. The topic might warrant future council discussions.

Callison noted that a Hennepin County grant was used to subsidize this project. The impact of affordable housing was not totally paid by this developer.

Anderson said that this is a fluid and evolving topic. Affordable housing is expensive. The city looks at many funding options. She asked if Ellingson would support this request.

Ellingson said that the request was reasonable, but he did want to make a point. In the future, affordable housing may be more difficult to construct if we expect the developers or other market rate purchasers to bear the costs.

Callison moved, Thomas seconded a motion to approve a one-year time extension for the Deephaven Cover preliminary plat at 3600 County Road 101 for Steven Scott Development. All voted "yes." Motion carried.

**11. Items requiring Five Votes:**

**A. Preliminary plat, with parking setback variance, for a three-lot subdivision at 5243 Black Friars Lane for Stratford Wood LLC.**

Wiersum moved, Wagner seconded a motion to give preliminary approval to Stratford Wood Second Addition, with parking setback variance, date-stamped August 4, 2005. Approval is based on the following findings:

- 1) Aside from the requested parking lot setback variance, the plat meets the required standards and ordinances.
- 2) The plat would meet the required standards for a variance, because:
  - a. Though the proposed plat would result in different building types separated onto different lots, Stratford Wood would continue to function as one large residential development or land use.
  - b. The community center parking lot is currently set back over 540 feet from the exterior property line of the development. This setback to the exterior property line would not change.
  - c. The parking lot setback variance would not result in any visual change to Stratford Wood. As such, it would have no negative impact on the area nor would it alter the essential character of the neighborhood.

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) Drainage and utility easements over the wetland on Lot 1, north of Boarshead Road, and the wetland between Lot 1 and Lot 2 as required by the city engineer.
- b. The owners of 5136 Willow Lane must consent to the dedication of standard drainage and utility easements.
- 2) The following items must be submitted to the city before the city releases the final plat:
- a. The following documents for the city attorney's approval:
- (1) Dedicate additional drainage and utility easement to cover the gap between the existing, platted easements and a utility easement established by Doc. No. 4108013.
- (2) Dedicate additional trail easements over the existing gravel trails currently located outside the limits of the existing trail easement.
- (3) Cross access easements to allow resident access to Lot 2.
- (4) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
- (5) 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.
- The easement documents must be recorded with the final plat, and a drawing of any easements must be attached to the easement deed.
- 3) The community center building must only be available to Stratford Wood residents and at least Stratford Wood apartment residents.
- 4) The fire alarm systems must be upgraded as required by the fire marshal.
- 5) 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.

All voted "yes." Motion carried.

**B. Resolution overturning the planning commission's decision approving variances to tear down and rebuild a home at 2813**

**McKenzie Point Road for Lecy Bros. Homes on behalf of Larry and Betty Kochevar.**

This item was pulled from the consent agenda by Anderson due to the addendum information.

Gunyou provided the staff report, noting that on September 26, 2005, the city council voted to overturn the planning commission's recommendation, and directed staff to prepare findings of fact for denial. A number of options were offered to the contractor at that meeting, including an extension of time to modify the plans. The contractor declined.

Then on October 10, the contractor said that the property owner would request an indefinite extension so that the contractor could prepare new plans which would presumably reflect the council's direction at the September 26 meeting. The property owners signed a waiver, which was included in the addendum.

Callison supported the indefinite extension. She assumed that the owners were clear about the council's direction and the reasons for the denial. She presumed the new plan would reflect the council's concerns.

Thomas agreed. He said it was unfortunate that the request for an extension wasn't made at the September 26 meeting when different options were discussed. At that time, the contractor said that this was not an option. Thomas said that the council tried to let the property owners know that this was the best option. He also hoped that the new plans would reflect the council's concerns.

Anderson said that the developer and applicants have the right to bring back anything they wished. She noted that the council gave good direction about what would be more acceptable.

Wiersum said that the extension was the most prudent use of resources, and he supported it.

Schneider noted he was absent for the September 26 vote, and asked if he should abstain from voting. City Attorney Desyl Peterson said that he could vote on this item.

Anderson said that the alternate motion would allow continuation of the item indefinitely. Peterson said that staff did not request a specific date. An indefinite extension seemed easier.

Anderson asked if submittal of new plans would trigger another 120-day deadline. Peterson said that the deadline would be indefinite. The project would not require additional planning commission consideration or hearings because the planning commission approved greater variances than the council supported.

Wagner noted that on September 26, the contractor talked about moving the house closer to the lake. Wagner did not support that. He was also concerned that an indefinite extension would require more staff time, and suggested setting a deadline.

Callison thought that the applicants would move quickly, so she was comfortable with the indefinite extension. Peterson said that setting a 60-day deadline would be an option.

Schneider moved, Wiersum seconded a motion to rescind the motion adopted on September 26, 2005, overturning the planning commission and directing staff to prepare findings for denial for the variances on 2813 McKenzie Point Road, and instead to continue the matter indefinitely to allow the applicant to submit revised plans for council consideration.

In response to Anderson's question, Peterson said that the matter would need to go back to the planning commission if there was a substantial change to the plans. That would be a judgment call, but she did not think a foot or two difference would merit planning commission review. Wiersum noted that the council was talking about side yard setbacks of about 1.5 feet, so a difference of one or two feet could be a problem.

Anderson noted this was not a public hearing, and asked Roy Lecy if he wished to speak. He did not.

All voted "yes." Motion carried.

## 12. INTRODUCTION OF ORDINANCES:

### A. Ordinance rezoning from R-1 to PUD, and adopting a master development plan, with final site and building plans at 5516 Glenavon Avenue.

Rich Spielberg, 5428 Glenavon Ave, lives next to this subdivision, and asked if the rezoning had been discussed by the planning commission. Anderson explained the process for rezoning ordinances, including introduction, followed by referral to the

planning commission for public hearing. People who live in the area will be notified. She suggested that Spielberg contact Cary Teague to be put on the notification list and to discuss any concerns. Spielberg said that he has already sent a letter to Teague with his recommendations.

Peterson noted that tonight's action was procedural and no substantive action would result. Anderson added that approval is not implied when an ordinance is introduced. She noted that neighborhood interest in projects is what keeps Minnetonka solid.

Schneider moved, Thomas seconded a motion to introduce an ordinance rezoning from R-1 to PUD, and adopting a master development plan, with final site and building plans and referred it to the planning commission. All voted "yes." Motion carried.

**B. Ordinance amending the master development plan for an addition and parking lot reconfiguration at the Wendy's Restaurant at 4912 County Road 101 for Wendy International.**

Schneider moved, Thomas seconded a motion to introduce an ordinance amending the master development plan for an addition and parking lot reconfiguration at the Wendy's Restaurant at 4912 County Road 101 and referred it to the planning commission. All voted "yes." Motion carried.

13. **PUBLIC HEARINGS:** None.
14. **OTHER BUSINESS:** None.
15. **APPOINTMENTS and REAPPOINTMENTS:** None.
16. **ADJOURNMENT.**

Thomas moved, Wagner seconded a motion to adjourn the meeting 7:10 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk