

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MAY 8, 2006**

1. CALL TO ORDER.

Mayor Callison 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 Terry Schneider, Bob Ellingson, Al Thomas, Tony Wagner, Dick Allendorf, and Jan Callison were present. Brad Wiersum was excused.

4. APPROVAL OF AGENDA.

Assistant City Manager Barone reviewed the changes and additional comments provided in the addendum dated May 8, 2006 which related to:

- Item 5A, approval of the April 10, 2006 city council meeting minutes, was removed from the agenda.
- Item 10C, Great Gardens by Grandma, revised a condition of the conditional use permit.
- Item 11A, Dairy Queen, added a new condition to the conditional use permit.
- Item 13B, The Wine Shop, additional letters received from the public were enclosed.

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

5. APPROVAL OF MINUTES:

A. April 10, 2006 regular council meeting.

Removed from the agenda.

B. April 10, 2006 board of review meeting.

Schneider moved, Thomas seconded a motion to approve the minutes of the April 10, 2006 Minnetonka City Council board of review meeting. All voted "yes." Motion carried.

C. April 26, 2006 board of review meeting.

Schneider moved, Thomas seconded a motion to approve the minutes of the April 26, 2006 Minnetonka City Council board of review meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Proclamation declaring May 14 through 20, 2006 as National Police Week.

Wagner read a proclamation declaring May 14 through May 20, 2006 as National Police Week.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Barone reported on the schedule for upcoming council meetings. A council workshop with boards and commission members will be held May 15, 2006.

Wagner attended the Sherwood Forest Neighborhood Association meeting on April 27, 2006. He congratulated the elected officers and wished them the best of luck.

Callison attended Bennett Park's grand opening and 50th anniversary. She congratulated them and the Glen Lake Girls' Athletic Association on the start of their seasons.

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

No one appeared.

9. BIDS AND PURCHASES:

A. Consideration of bids for the Wentworth Trail Pond Excavation Project No. 5613.

City Engineer Lee Gustafson provided an overview of the project. It will begin in June and last approximately six weeks. He recommended approval.

Wagner asked if the pond will be impacted by future developments on the west and south lots. Gustafson answered in the negative.

Allendorf moved, Ellingson seconded a motion to award the bid for the Wentworth Trail Pond Excavation Project No. 5613 to Sunram

Construction, Inc. in the amount of \$55,000.00. All voted "yes."
Motion carried.

B. Purchase and relocation agreement with West Suburban Alano Society.

City Attorney Desyl Peterson gave the staff report.

Allendorf recalled that Alano has the right to sign 15 parking stalls. He asked if staff would review the sign plan. Peterson answered in the affirmative.

Callison confirmed with Peterson that no significant change had been made to the agreement. The parking lot details had been fine tuned and the right of first refusal was added.

Chris VanHauer, West Suburban Alano Board of Directors member, thanked staff. He found the agreement workable. Callison also thanked staff for finding an acceptable solution and noted Alano is an important part of the community.

Wagner moved, Thomas seconded a motion to approve the purchase and relocation agreement with West Suburban Alano Society. All voted "yes." Motion carried.

C. Purchase agreement for 13410 Minnetonka Boulevard.

Barone provided the staff report.

Wagner moved, Ellingson seconded a motion to authorize the purchase agreement, including the first amendment, for the property at 13410 Minnetonka Boulevard. All voted "yes." Motion carried.

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

A. Claims for council authorization – May 8, 2006.

Allendorf moved, Schneider seconded a motion to approve the May 8, 2006 claims which includes checks numbered 196485 through 196729, totaling \$1,129,130.91. All voted "yes." Motion carried.

B. Ordinance amending the city code regarding various criminal provisions.

Allendorf moved, Schneider seconded a motion to adopt Ordinance No. 2006-09 amending City Code Sections 925.005, 925.105, 930.065, 945.005, 1040.005, 1040.015, 1305.005, and 1305.010 regarding animals, exhibition driving, aircraft, harassment, definitions, and penalties. All voted "yes." Motion carried.

C. Conditional use permit for an outdoor garden center at 17507 Minnetonka Boulevard for Great Gardens by Grandma.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2006-036 in accordance with the May 8, 2006 addendum approving a conditional use permit for Great Gardens by Grandma to operate an outdoor garden center at 17507 Minnetonka Boulevard. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Submit a signed parking agreement between the owners of the 17507, 17515, and 17523 Minnetonka Boulevard properties. This agreement must be recorded against the properties and a copy of the recorded agreement returned to the city.
- 2) The garden center may be open annually, the last Monday in April through the last Sunday in June.
- 3) No more than four signs, which do not exceed 32 square feet in aggregate, are allowed for the garden center.
- 4) Incidental product or pricing signs placed directly next to the appropriate product. Product advertising is permitted, but must be included in the maximum allowed sign area. The signs shall have a professional appearance and shall be securely mounted or erected in a safe location. These limitations apply to all signs associated with the use, including those affixed to vehicles. All voted "yes." Motion carried.
- 5) The conditional use permit is issued for an outdoor garden center in the area specified in the application. Any change in the location or items sold shall render the permit invalid.
- 6) Violation of the conditional use permit standards outlined in City Code 300.21.4(o) or conditions placed upon the conditional use permit shall 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 and record this resolution with the county.

All voted "yes." Motion carried.

D. Ordinance changing the definition of lot to exclude land under lakes or streams.

Allendorf moved, Schneider seconded a motion to adopt Ordinance No. 2006-10 amending City Code Section 300.02, subdivision 71, concerning the definition of lot to exclude land under lakes or streams. All voted "yes." Motion carried.

E. Final approval of the MINNETONKA HIGHLANDS plat at 5516 Glenavon Avenue for Floyd Calhoun.

Allendorf moved, Schneider seconded a motion to approve the MINNETONKA HIGHLANDS final plat that was received on March 27, 2006, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat; and
- 2) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

F. Final approval of the CLEAR SPRING ADDITION plat at 4735 Clear Spring Road for Community Involvement Programs, Inc.

Allendorf moved, Schneider seconded a motion to approve the CLEAR SPRING ADDITION final plat that was received on April 18, 2006, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat; and
- 2) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

G. Purchase and construction agreement with Curt Fretham.

Allendorf moved, Schneider seconded a motion to approve the purchase and construction agreement with Curt Fretham. All voted "yes." Motion carried.

H. Approval of an encroachment agreement with T-Mobile Central LLC.

Allendorf moved, Schneider seconded a motion to approve the encroachment agreement with T-Mobile Central, LLC. All voted "yes." Motion carried.

I. Approval of Labor Agreement between the city of Minnetonka and LELS (Public Safety Dispatchers).

Allendorf moved, Schneider seconded a motion to approve the 2006 - 2008 labor agreement between the city of Minnetonka and LELS for public safety dispatchers. All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Items concerning the existing Dairy Queen Restaurant at 12940 Minnetonka Blvd. for Sandness Construction.

Wagner moved, Thomas seconded a motion to:

- 1) Adopt Resolution No. 2006-037 approving a conditional use permit for the existing restaurant at 12940 Minnetonka Boulevard in accordance with the May 8, 2006 addendum. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:
 - a. Record this resolution with the county before the city issues a building permit.
 - b. The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - c. 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.
 - d. Provide an outside trash receptacle in a convenient place for customer use during operating hours.
 - e. The applicant must agree to the above conditions in writing.
- 2) Approve the site plan with the following variances: (1) a front yard setback variance from 50 feet to 40 feet; (2) side yard setback variances from 35 feet to 7 feet on the west side of the building and from 35 feet to less than 1 foot on the east side of the building; and (3) a parking space variance from 10 spaces to 3 spaces.

Approval is based on the following findings:

- a. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - (1) The lot is an existing, non-conformity. There is no buildable area on the property.
- b. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - (1) The existing building is non-conforming. The proposal maintains existing side building lines and extends just 4-inches beyond the footprint of the previous exterior storage space.
 - (2) The proposal does not reduce the amount of parking on the site.
 - (3) The proposed addition is for storage space. It would not increase the number of patrons to the restaurant or result in increased demand for parking.
 - (4) Given the existing non-conformities and the location at the rear of the building, the proposal would have no negative impact on the surrounding area.

Approval is subject to the following conditions:

- a. Submit proof of having recorded this resolution with the county before the city issues a building permit.
- b. The parking lot must be re-striped to accommodate the door at the back of the proposed addition.
- c. This variance will end on December 31, 2007, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:

- A. **Ordinance rezoning 5720 and 5740 Green Circle Drive from B-1, Office, and B-3, General Business, to PUD, planned unit development, for an office redevelopment for Opus Corporation.**

Planning Director Geoff Olson provided a brief overview.

Allendorf noted that the first Opus building generated controversy. He asked to be notified when the public hearing notices were sent. Olson explained that public hearing notices had already been sent

and that Opus representatives held a neighborhood meeting before submitting the application. Members of the Green Circle Drive Condominium Association had their questions answered and gave the proposal a fairly favorable reception. Olson was not expecting the same intense reactions prompted by the first Opus project.

Ellingson attended the neighborhood meeting. He thought it was the best presentation for a development that he has seen during his time on the council. The residents concerned with the original Opus headquarters were at the meeting and seemed to be much more accepting of the current proposal. Ellingson said one of the differences is that the original project replaced an open area that residents considered their own neighborhood park. Residents have seen the improvements, are used to the building, and realize it is a well-done development. He did not detect opposition.

Allendorf moved, Ellingson seconded a motion to introduce the ordinance rezoning 5720 and 5740 Green Circle Drive from B-1, Office, and B-3, General Business, to PUD, planned unit development, for an office redevelopment for Opus Corporation and referred it to the planning commission. All voted "yes." Motion carried.

B. Ordinance rezoning 3212 Wentworth Trail from R-1, low density residential, to PUD, planned unit development, for Dennis Zylla.

Olson provided the staff report.

Allendorf moved, Wagner seconded a motion to introduce the ordinance rezoning 3212 Wentworth Trail from R-1, low density residential, to PUD, planned unit development, for Dennis Zylla and referred it to the planning commission. All voted "yes." Motion carried.

13. PUBLIC HEARINGS:

A. Public hearing to consider applications by C & R Partners, LLC, for on-sale and Sunday on-sale intoxicating liquor licenses for Café Cabernet restaurant, 17523 Minnetonka Boulevard.

Community Development Director Ron Rankin gave the staff report.

Chris Eriksson, 1225 Orono Oaks Drive, Orono, applicant, described the proposal for an "upscale, casual" restaurant. Entrees

would cost between \$9 and \$19. A key element in making the experience unique would be sourcing boutique wines from all over the world, featuring them at the restaurant, and stocking them in the store. The existence of that relationship will make the business successful in the long term. It will meet a demand in the area. There are not a lot of similar restaurants in the area. Eriksson cleared up these issues:

- The lease only allows 4,500 square feet of the site to be used for off-sale liquor sales. The floor plan is currently divided to allow 4,500 square feet of off-sale liquor sales and 4,500 square feet of restaurant use. The landlord would allow the restaurant to be made larger.
- A cross easement for parking is being completed.

Callison acknowledged strong support for a restaurant in the area. She asked if there would be adequate parking. Rankin explained that planning staff is calculating the parking needs based on the existing and proposed uses for the site. Currently, there would not be adequate parking to meet ordinance requirements. A variance would be required. The total amount of available parking and the expected need will be considered during the review of the conditional use permit. He believed that, historically, there has not been a shortage of parking at that corner.

Rankin agreed with Callison that an increase in the square footage of the site used as a restaurant might require more parking spaces than are available on site.

Schneider recalled that the ordinance has a provision which factors in multiple types of uses. It provides a discount in the required number of parking stalls by taking into consideration varying peak traffic times. Olson described a similar situation across the street from the proposed site. A consultant provided an analysis of actual parking needs based on different peak operation times. Olson suspected that something similar would work for the proposal.

Callison asked when the conditional use permit will be reviewed by the city council. Rankin expected the planning commission to review the conditional use permit application in June. Staff will try to coordinate the conditional use permit and off-sale liquor license application's second hearing so that council may review them at the same meeting.

In response to Wagner's question, Rankin responded that the applicant hopes to open the restaurant in late August. Eriksson

planned on opening the restaurant and off-sale liquor store at the same time.

Callison opened the public hearing. No one spoke.

Schneider moved, Allendorf seconded a motion to consider applications by C & R Partners, LLC, for on-sale and Sunday on-sale intoxicating liquor licenses for Café Cabernet restaurant, 17523 Minnetonka Boulevard, and to continue the public hearing to June 5, 2006. All voted "yes." Motion carried.

B. Public hearing to consider an application by C & R Partners, LLC, for an off-sale intoxicating liquor license for The Wine Shop, 17523 Minnetonka Boulevard.

Rankin provided the staff report.

Wagner thanked staff and the applicant for addressing council's concerns. He appreciated the limit on alcohol and beer sales.

Allendorf asked how the sale restriction would be enforced, how much it would cost the city, and what the penalty would be for a violation. Barone explained that a third party must provide a compliance report with the annual renewal of an on-sale liquor license. The same process could be followed for an off-sale license. The business owner covers the cost of a third party preparing and submitting a report to the city. If the percentage is not met, then staff could recommend that the liquor license not be renewed. Rankin agreed and said each year; on-sale licensees are selected at random and audited for compliance. The intention is to keep reports accurate. The applicant's sales reports could be checked periodically.

Schneider had concerns with the provision. He did not believe the city had ever required a certain type of liquor only be sold in a particular liquor store. The city would be setting a precedent of restricting what liquor licensees would be allowed to do in their own stores. For example, he saw a problem with a city council allowing only domestic beer to be sold in a certain establishment. Liquor is liquor. Schneider felt the city should look at the merits of the liquor store and determine how it fits in with the community, rather than saying that it is wanted, but limit its products to certain types of liquor. He compared it to the fine line between free speech and sign restrictions. He was concerned with the implementation of a whole new set of provisions and criteria that had not been placed on any

other license holder in the community and the precedent that might be set.

Wagner felt the insertion of certain sales percentages was included because council gave clear direction that the off-sale liquor license would not pass in its previous form. The applicant has made the proposal unique. He believed the city council forced the applicant into the situation.

Callison clarified that the application is a traditional, off-sale liquor license. The applicant is agreeable to a condition that would restrict the type of liquor sold off-sale.

Eriksson addressed the restriction that his business is willing to accept. He felt the relationship between the wine store and the restaurant will make the business successful, and that is what is unique. He was unsure if one or the other could be successful on its own, but was confident that the combination would do well. The shelf space would consist of 85% wine and the rest would be related convenience items. The business was willing to accept what would be unprecedented and possibly a disadvantage. He did not feel it would negatively impact the business.

Ellingson asked if Eriksson knew of a similar business in the Twin Cities that had a restaurant and off-sale liquor business. Eriksson stated that there are similar businesses, but not exactly like the proposal. Pazzaluna Italian in St. Paul is a restaurant with a small wine shop that is approximately 600 square feet in size with all Italian wines priced over \$15 a bottle. Pazzaluna Italian carries 100 wine selections. Café Cabernet would carry 1,000 selections. The large wine list would be part of the draw to the restaurant. Some restaurants have an off-sale area in the same building, but it is not a cooperative relationship between the two businesses.

Callison opened the public hearing.

Jerry Green, 5409 Highland Road, welcomed the restaurant and wished the applicant well. In the spring, he requested that the council not approve a liquor store on Minnetonka Boulevard. An off-sale wine program might be considered. He wanted to hear the reasons why each councilmember who votes in favor of the application voted in favor.

Thomas moved, Allendorf seconded a motion to continue the public hearing to consider an application by C & R Partners, LLC, for an off-sale intoxicating liquor license for The Wine Shop, 17523

Minnetonka Boulevard, June 5, 2006. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Lot division, with variances, at 5808 Louis Avenue for Home Reflections, Inc.

Olson provided the staff report.

Mike Brandvold, 16103 Temple Lane, of Anderson Engineering, represented the applicant. He explained the dimensions and features of the property divided into two lots and how it would be utilized. He and the applicant agreed with staff's recommendations.

Ellingson asked if any of the trees would be protected by a conservation easement. Olson stated that the trees around the wetland would be protected.

Wagner stated that restricting the size of a new house to fit in with an established neighborhood is a topic worth looking into. He felt this issue is becoming more common place. He agreed that an eight-foot variance would be reasonable. He was concerned with the size of the residences and the neighbors' concerns with them fitting in with the character of the neighborhood. He supported staff's recommendation.

Thomas echoed Wagner's comments. An attempt to prevent the construction of one big house may result in the construction of two big houses since there would be no size restriction. Limiting house sizes based on neighborhood character would be very subjective. The character of established neighborhoods with residences and lots of similar size could be changed by a disproportionate-sized residence.

Callison struggled with the balance between an acceptable level of expectation of change and maintaining what already exists. One neighbor's comment stated that a single home would ensure the openness and woodland feel of the area around it. That is the character that residents value. The struggle is that the character of the neighborhood is going to change. The issue is deciding if smaller homes or million dollar homes are wanted. The issue is not the lot size. Two lots would work well in the neighborhood. The issue is the size of the houses on the two lots. The proposed houses would be positioned close to the setbacks. The need for a variance allows the council some control. She considered what

difference would be made if the residences would be shifted so that the depth of the house would be hidden from the street with a larger area between the houses. Council could request similar house spacing to what exists in the neighborhood. She noted there is time to consider whether this is an opportunity to separate the lot size from the residence. She supported an ordinance that would respect the feel of the neighborhood more than the proposed houses would. The lots would be deep enough to allow for more separation of the houses.

Schneider felt the variance was mitigated by the property on the north. In perception, it is a huge lot because of the wetland. The variance request is a meaningful one. He encouraged being cautious regarding telling future residents how the home may be designed. If the property owner paid for the lot, he or she should be allowed to build the home he or she wanted. The character of the neighborhood needs to be respected, but having site approval for every home that is built may influence the diversity of housing. Currently in Minnetonka, huge, new residences are adjacent to old farm houses. Minnetonka does not consist of clusters of similar-type residences. That is what makes the city relatively unique. Keeping things similar to preserve the character of the neighborhood would be in opposition to the character of the city.

Allendorf agreed with Thomas that neighborhood character can be so subjective that it loses its meaningfulness. Allendorf looked at the site and felt the proposal would be an opportunity to positively change the character of the neighborhood. When completed, the proposed residences may promote the redevelopment of the residences on the east side which looked in violation of nuisance ordinances. The proposal may not keep the character of the neighborhood as it is, but change it for the better. Allendorf stated that setbacks may be used to force the houses to be spaced so that they would not appear so huge from the street. He felt the character of the neighborhood could be changed for the better.

Wagner heard from residents concerned that the city council is approving every variance and that residences are getting too close together. The size of houses currently being built may warrant a deeper front yard setback. Wagner could support the variance to allow two lots and the use of setbacks to push the residences further back to mute the impact of the two houses.

Ellingson agreed with Wagner that residents are accustomed to a certain distance between residences. Larger residences are closer

to each other. He thought it might be appropriate for the proposal to have wider side setbacks.

Olson said the issue of large homes came up during a discussion of lots behind lots. The subdivision review committee increased the setbacks because of the residences' sensitive location. Increasing that setback to 40 feet instead of 25 feet was discussed at a recent study session because of the increasing size of residences. The planning commission and staff were having a difficult time deciding on an objective standard to define a maximum house size restriction. An ordinance allowing the council the right to require a smaller house was considered. That was too subjective. Planning commissioners discussed a building mass calculation. Callison identified the risk of increasing setbacks causing taller structures.

Schneider cautioned against creating standards on a lot by lot basis. He felt properties need to be treated the same and more thought needs to be given to provide a universal standard.

Callison acknowledged that there is more time available to consider options for the proposal.

In response to Wagner's question, Olson described the setbacks.

Callison acknowledged support to look at creating a policy to address the issue.

Thomas favored a policy being in place so that buyers would see the policy before purchasing a lot for a dream home. The rules need to be in place first. He felt the proposal would change the characteristic of the neighborhood and did not support the application.

Allendorf supported looking at a policy or ordinance to treat property owners the same. He felt comfortable with the variance and current setback, especially because of the wetland on the north. He favored taking action to approve the application.

Schneider moved, Wagner seconded a motion to approve Item 14A, a resolution approving a lot division at 5808 Louis Avenue with a lot width at the setback variance from 110 feet to 102 feet for each lot.

Ellingson stated that the ordinance in place when the builder purchased the proposed site allows one residence. Ellingson did not think the variance was that unreasonable, but he favored thinking about the proposal and possibly improving it.

Brandvold considered requesting action be postponed until the applicant was able to be present.

Callison asked if the item could be place on the next council agenda. Barone answered in the affirmative.

Schneider was comfortable with studying the issue, but he did not feel it was feasible to create a new policy by the next meeting. The issue needs more deliberate thought.

Schneider moved, Wagner seconded a motion to withdraw the previous motion and continue discussion until the next city council meeting for a resolution approving a lot division at 5808 Louis Avenue with a lot width at the setback variance from 110 feet to 102 feet for each lot. All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Thomas moved, Allendorf seconded a motion to adjourn the meeting at 8:02 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk