

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, AUGUST 21, 2006**

1. CALL TO ORDER.

Mayor Callison called the meeting to order at 6:31 p.m.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL.

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

4. APPROVAL OF AGENDA.

City Manager John Gunyou reviewed the changes provided in the addendum dated August 21, 2006, which related to:

- Item 14A, Mayview Lot Division, application permanently withdrawn.

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

5. APPROVAL OF MINUTES:

A. July 10, 2006 regular council meeting.

Wiersum moved, Thomas seconded a motion to approve the minutes of the July 10, 2006 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Retirement recognition of Geoffrey Olson, Planning Director.

The council recognized Geoffrey Olson, Planning Director, for his 11 years of service to the citizens of Minnetonka.

Allendorf stated he worked with Olson and his staff in 1998/1999 on the Comprehensive Plan, and Olson was engaging and resourceful. He wished Olson the best in his retirement.

Schneider recalled he was involved with the hiring of Olson as planning director and stated Olson has stepped up to the plate and has done wonderful work for the city.

Thomas stated Olson is the only planning director he has worked with over the last 11 years. As a number of controversial issues have arisen over the years, Olson was very good at explaining things in layman's terms. He appreciates all the time Olson spends with members of the council and planning commission as well as residents in the community.

Wagner commended Olson for all he has done from an educational standpoint regarding planning.

Wiersum stated Olson has a real touch in working with residents, and he and his staff reflect well on the residents of Minnetonka and members of the council. He thanked Olson for all his efforts in his position.

Ellingson commented his neighbors always call Olson with questions, and he has proven to be helpful time and again.

Callison added Olson has been in a pivotal and visible position for the city, and he has matched the city's values of teamwork and respect for other people. Callison read aloud the certificate of appreciation for Olson.

Olson thanked the council for their kind words. He stated this is the best job he has ever had, which is due to the quality of government in Minnetonka. He was taken aback by the quality of the first council meeting he attended, as compared to other council meetings he had attended in the past. Despite changes in personnel on the council and staff, those values have continued throughout his 11 years of employment with the city.

B. Proclamation recognizing August 22, 2006 as Minnetonka's 50th Anniversary.

Callison read the proclamation recognizing August 22, 2006 as Minnetonka's 50th Anniversary. She noted the Eden Prairie City Council also passed a proclamation in honor of this event, expressing best wishes to the residents of Minnetonka on this important heritage of their city. Callison invited all residents to attend the jubilee celebration at the civic center on August 22.

C. Proclamation declaring the week of September 25-30 as Dollar Wise week.

Thomas read the proclamation declaring the week of September 25-30 as Dollar Wise week.

Callison recognized former Councilmember Ken Tauer and welcomed him back to city hall tonight.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings. He noted there will be new opportunities for residents to participate in the budget process this summer and fall. He reminded residents to check the *Minnetonka Memos* for further information. There will be three sessions in October where residents and businesses can learn more about the budgeting process and property taxes, and can also provide input.

Callison reported there is a primary election on September 12, and absentee ballots are available through city hall.

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

Grace Sheely, 14325 Grenier Road, expressed concerns about what has happened with the Glen Lake project. The developer has proceeded without the required permits from the city or permission from the Nine Mile Creek Watershed District. The developer has also proceeded without silt fences and he has clear cut a property, removing 70 trees in the wetlands. She understands there is a neighborhood meeting to discuss this situation on August 29, but she has not been invited, nor has the Glen Lake Pedestrian Committee. She noted she cannot attend the meeting and requested it be audio- or video-recorded. The meeting is not publicized on the city's website and she asked how the city plans to notify residents.

Sheely asked when the city will take corrective measures for the developer's actions. The Nine Mile Creek Watershed District postponed action, so buildings should not have come down. She indicated she was told by the developer that she would not have to look at the new building because it would be below the tree line and was behind trees. However, she will now be looking at seven stories of lights because the area is clear cut.

Sheely expressed appreciation for the city staff, as they have worked with her on this issue. She has been fielding a lot of neighborhood questions about what is going on, which is taking up a lot of her time. She is in mourning for what has happened, as the situation is horrific.

Sheely questioned why trees were removed on Saturday when no one was there to stop it. She would like an accounting of all the errors that happened. She understands the city neglected to tell the developer all the permits required, but he is a developer and should know how to proceed. She will be very upset if the lake is damaged. She urged the council to look at what is happening on this project and examine whether the right developer was brought on board. She requested the city advertise the neighborhood meeting on the web, and that a full accounting be done of all the errors made by the developer and the city.

Gunyou responded notifications were sent out last week to 1,200 people, and it was the same expanded notification area the city sent to in the past. Staff will check why Sheely did not receive a notice. He noted the meeting should now be posted on the city's website.

Callison asked about the details of the meeting. Gunyou responded the meeting is at 5:30 p.m. on August 29 in the community center. It could not be held at the Glen Lake activity center because it was fully booked. He added any resident is welcome to tape the public meeting; the city only videotapes regular council meetings. The intent of the meeting is to provide an update on all the projects going on in the Glen Lake area. The meeting was planned for some time before the tree incident.

Gunyou noted there are both public and private projects happening in Glen Lake. The pedestrian planning group had its last meeting, so City Engineer Lee Gustafson will be reporting their findings and recommendations. Glen Lake Park and Kinsel Park renewals are in different stages of planning, and city staff will report on those. Staff also plans to provide an update on the new Alano building. Staff has also invited the developer, Tom Wartman, to update neighbors on plans to relocate the Gold Nugget.

Gunyou agreed the tree removal referenced by Sheely never should have happened, and staff is exploring a variety of legal actions against the developer. He assured Sheely the city takes these violations very seriously, and that penalties up to and including criminal charges are being considered. At a minimum, the developer will be required to replace trees and pay financial penalties to fund reforestation in the area.

Callison asked if there is a concern regarding buildings being removed without permits. Gunyou responded demolition permits were issued, which require that certain conditions must be met. Staff is reviewing whether all of the stipulated requirements were met. Various permits allow different things to take place at different times: demolition, grading, building, etc.

The development agreement requires different conditions to be met for each of those permits.

Gunyou thanked the neighbors for bringing the situation to the city's attention, noting that a stop-work order was immediately issued. Any further activities will only proceed upon city approval. After carefully documenting the violations, the city directed the developer to remove the cut trees to avoid damaging the underlying ecology and wetland area.

Callison asked Gunyou to respond to Sheely's comments regarding the city's relationship to the developer and the project. Gunyou responded the city does not develop residential and commercial projects, it reviews proposals from private developers. In this case, Mr. Wartman came to the city with a development proposal, which was reviewed and eventually approved. This is not a partnership; the city is overseeing it like any other private development. Unlike some cities, Minnetonka did not issue an RFP and hire a developer to complete the project. Mr. Wartman owns the land, and under the development contract, is required to do certain things at certain times. The city monitors his performance.

Callison stated these are unfortunate circumstances, and the council will also be watching what action the city will be taking to prevent any reoccurrence.

Schneider asked if there will be a resolution of the penalties by the neighborhood meeting on August 29. City Attorney Desyl Peterson responded she will have determined a course of action by the meeting; however, it will probably not be resolved by then.

Wagner suggested Wartman visit the council and answer for these actions, as they are in clear violation of the spirit of the development agreement.

Ellingson reported he received a call from a neighbor that morning and he visited the site. The city responded very quickly to a neighbor's call, but the trees were cut down before anyone knew it was happening.

Mayor Callison asked if anyone else wished to discuss matters not on the agenda. Don Grabanski, 4215 Redding Ridge Drive, asked which councilmember represents his ward. Wiersum responded Redding Ridge Drive is in his ward.

Grabanski stated since he moved into Minnetonka, two more people have moved into the neighborhood, and the cul-de-sac pavement is deteriorating. Additionally, there are four or five waste haulers that use the cul-de-sac. He spoke with the street department a month ago and they

indicated they would call him back after reviewing the street, but they have not. He and his neighbors would be more than glad to sign a petition to get the road fixed.

Grabanski added there are tent worms in his neighborhood and surrounding areas, which can be very destructive. He asked if it is his obligation to cut these things out of the trees.

Callison asked staff to contact Grabanski with information regarding when Redding Ridge Drive is scheduled for paving in the street improvement program. She also suggested Grabanski discuss with his neighbors the possibility of using only one garbage hauler to reduce traffic wear and tear. Callison added there is a city forester who can contact Grabanski regarding the tent worms.

9. BIDS AND PURCHASES: None.

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

A. Claims for council authorization – August 14, 2006.

Allendorf moved, Wagner seconded a motion to approve the August 14, 2006 claims which includes checks numbered 198353 through 198783, totaling \$3,544,270.52. All voted “yes.” Motion carried.

B. Final approval of the RIDGEWOOD HEIGHTS plat at 18517 Ridgewood Heights for R. P. Properties LLC.

Allendorf moved, Wagner seconded a motion to approve the RIDGEWOOD HEIGHTS final plat that was received on August 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.

C. Resolution decertifying soils Tax Increment Financing District No. 1 (Hedberg Project).

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2006-102 approving a modification to the Tax Increment

Financing plan for Soils Tax Increment Financing District No. 1 (Hedberg Project) and decertifying that district.

All voted "yes." Motion carried.

D. Final approval of the LOCUST HILLS plat at 2400 and 2500 Bantas Point Lane for Locust Hills Development LLC.

Allendorf moved, Wagner seconded a motion to approve the LOCUST HILLS final plat that was received on August 4, 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.

E. Resolutions ordering the abatement of nuisance conditions.

Community Development Director Rankin recommended that property numbers 1 and 5 be deleted because they are in compliance, so that the only properties with resolutions being adopted are 2, 3, and 4.

Allendorf moved, seconded Wagner a motion to adopt the following resolutions ordering the abatement of the nuisance conditions:

- 1) 301 Sunnyvale Lane – in compliance.
- 2) Resolution No. 2006-103 ordering the abatement of nuisance conditions existing at 3620 Elmo Road.
- 3) Resolution No. 2006-104 ordering the abatement of nuisance conditions existing at 5707 Kipling Avenue.
- 4) Resolution No. 2006-105 ordering the abatement of nuisance conditions existing at 5715 Kipling Avenue.
- 5) 14018 Excelsior Boulevard – in compliance.

All voted "yes." Motion carried.

F. Approve a Utility Easement Agreement with Ms. Christine Ann Reily for property at 5901 Bell Circle.

Allendorf moved, Wagner seconded a motion to Approve a Utility Easement Agreement with Ms. Christine Ann Reily for property at 5901 Bell Circle. 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 for special assessments of 2005-2006 projects.

Gustafson presented the staff report.

Wagner asked about staff's rationale for spreading some of the nuisance project assessments over 10 years at 6.5 percent interest. Gunyou responded the city allows abatement agreements for larger assessments, tailoring the time to the specific circumstances. For example, it might involve an elderly homeowner who does not have the financial wherewithal to undertake the required remedy. The interest rate has varied over time, and it may be time to change the rate again.

Wagner stated his biggest concern is that interest rates are rising, and the city is borrowing against its own cash reserves. Additionally, a couple of these projects are repeat nuisance offenders, and he does not like the idea of allowing them to spread \$13,000 over 10 years at a favorable rate.

Schneider commented it may be appropriate to index the interest rate so there is not significant subsidization. He suggested in the nuisance area, particularly with repeat offenders, the city's focus should be on the amount of assessment; perhaps a penalty that will get their attention.

Gunyou supported Schneider's suggestion. The city loses money on chronic offenders, since staff has to revisit the same properties a number of times. He suggested creating a deadline for compliance, followed by a steep penalty. A negative incentive may help with some of the repeat offenders.

Callison noted this is an issue that has come before the council over the years, and she appreciates staff's attention to it.

Wiersum asked if the city always collects what is due. He also asked about whether the city recoups the cost of mowing the lawn for residents who are negligent. He likes the idea of taking punitive action so all nuisance costs are covered when the city has to take abatement action.

Gunyou responded by the time it gets to the nuisance stage, the mowing that has to take place oftentimes has to be done twice. In addition, heavier duty mowers often need to be used. The city tries to make it a disincentive so when the homeowner finds out the charge is \$175, they will take care of it themselves. In many cases, no one responds, so the city must initiate the mowing. He said staff would evaluate whether the city is charging enough to cover properties that require multiple inspections.

Gunyou stated assessing against the property is the best way to ensure the city does collect the bills. That is how the city handles water bills if they go in arrears too far. The county can seize property if taxes are not paid, so the city is virtually assured of receiving reimbursement.

Allendorf expressed support for indexing the interest rate. He agrees with Wagner that 10 years is a long time to pay off the assessment. He asked if there are any rules set up for why it is 10 years as opposed to five, and suggested standards be set so it is not dependent on someone's ability to pay.

Rankin responded staff has a rule of thumb that if the amount is less than \$1,000, it is a one-year assessment. If it is over \$1,000, it can be three years, and then one year is added to the assessment for each additional \$1,000 up to 10 years.

Allendorf stated he is glad to hear there is a standard so that citizens are treated fairly.

Wagner indicated his biggest concerns are indexing interest rates and dealing with repeat offenders to fully recover costs. He noted abatement agreements are done through staff and then they come back to the council; the council does not set the term or the amount. Rankin responded the amount is known when the property owner signs the abatement agreement, so staff will have determined what it is ultimately going to cost them to have the work done. The resident is agreeing to work through the abatement process and to accept the special assessment that will be levied against them.

Callison noted the assessments before the council are for 2005/2006, so they would not be affected by this discussion about any future changes in policy.

Callison opened the hearing at 7:33 p.m.

Hope Lerner, 5336 Highway 101, received a bill for \$2,600 for trees cut down that she was not aware of. Notes were placed on her door, but she did not receive them. She asked why the city did not send a registered letter to ensure she was notified.

City Forester Emily Barbeau explained the process for tree removal, including a staff visit to the site, marking of the trees, a note left on the door, followed by a letter. After 25 days, if the property is still noncompliant, another notice is left on the door indicating the property is noncompliant and the property owner needs to contact the city or a price quote will be solicited from the city's contractor, and the tree will be removed. In this instance, there were two work orders for two different trees. She noted an orange ring is placed around each tree and the pink work order tag is placed on each tree.

Barbeau noted in the case of the Lerner property, a second diseased tree was found when staff returned to the site to see if the first tree had been taken care of. Staff then went through the same process for notifying the resident about the second tree before obtaining a contract to have both trees removed.

Lerner stated she never received any of the notifications. Callison asked if she noticed the two trees marked on her property. Lerner responded she did not notice the marking; she noticed the trees missing after she received this assessment notice from the city two weeks ago.

Callison asked if there is an issue regarding whether the city met the notification requirements in this case. Peterson responded the requirements were met.

Schneider acknowledged the idea that residents might like to be able to sign off on the notices. However, in many cases there are absentee landlords or abandoned properties. If there is a requirement to sign off before any work can be done, the work might never get done. That is why the policy has evolved the way it is. The marks on the trees, notices, and mailings are the best way for the city to ensure timely compliance, rather than certified letters.

Wiersum stated the issue is diseased trees. Extending the process increases the likelihood of having more diseased trees in the community. He does not think the council has any interest in extending the process. People need to understand their responsibilities as it relates to their property.

Allendorf stated he is not advocating for a change, but he asked staff if it would be onerous to have a certified letter instead of a mailed letter. The resident would not be signing off on approval of the process, rather just acknowledging a letter was received. Perhaps that would not elongate the process unless someone simply was not there.

Gunyou noted there were two separate notices in Lerner's case. Without determining the veracity of her statements, it would be highly unlikely that two separate notices and mailings would be lost.

Jo Colleran stated the certified mail process could lengthen the compliance process. If the resident is not home to receive the certified letter, the post office leaves a note telling the resident to come pick up the letter. The resident may very well never pick up the letter. Additionally, staff may not receive confirmation the resident received the letter; it is the same as receiving a letter through the regular mail. Last year staff marked approximately 2,400 diseased trees; the year prior it was 2,900, and staff dealt with 1,300 to 1,800 property owners. Tracking the number of trees removed on a timely basis is challenging.

Peterson indicated she spoke with the husband of the property owner at 12785 Amy Lane, which has a proposed assessment of \$294 for a tall grass situation. He also raised the issue regarding lack of notice. She believes proper notice was given, and he disputes that. Peterson encouraged him to attend the council meeting and object, but he indicated it was not worth his time for the \$294. He did ask Peterson to indicate to the council he felt he did not receive adequate notice.

Bob Johnson, 15655 La Bon Terrace, noted he does not dispute the fact he had a diseased elm tree. He has had several over the years; some he has cut down and for others he has hired people to cut them down. The city did cut down one tree and he received a special assessment bill of \$4,000 for one tree. He has hired a contractor to cut down trees before, and he cannot believe it costs that much to cut down one tree. The tree was adjacent to a power line, and at some point the power company has some responsibility for the tree. For a previous tree on his property in close proximity to the power line, the power company did cut down and remove part of the tree. He protested the charge of \$4,000.

Callison asked if Johnson had decided not to cut down this tree. Johnson responded no, he did not decide to do that. He had removed all of the other trees marked by the city at his house. He

received the first notice. He cannot remember the exact timeline, and he appreciates that the city wants to get the tree removed. However, the tree has been dying for five years and now it has to come down in 20 days. It can be difficult to get a contractor to cut down the tree in 20 days. Regardless, \$4,000 is not a fair price.

Callison noted the city contracts with one company to make the service available to residents so a better rate can be obtained. She asked staff to elaborate.

Barbeau responded if a resident needs an extension because a contractor cannot cut the tree down within the 20 days, staff is happy to accommodate that. In this instance the resident removed the one tree. There was bad access to this particular tree and it was hanging over a pool; there were other smaller trees in the area and a fence. The city obtained a price quote from the contractor who does tree removals on private properties when residents either do not remove the tree or cannot finance the removal on their own. The price quote given was \$3,675 to remove the tree and drag the debris.

Barbeau noted Johnson's tree was marked on June 21; the recheck was done on July 27, and at that time a noncompliant notice was posted. A price quote was received from the contractor on August 3, and the contractor completed the work on August 8. Staff proceeds if it does not hear from the resident about plans for removal.

Johnson noted it is true there is a fence, but it is only around the pool. Callison noted the council does not have the information to discuss whether it should be \$3,600 or \$3,000 or \$5,000. The city has a history with this contractor, and there have not been issues with price in the past. That is simply what the contractor charged based on their expertise. She stated that is the price the city has paid and is now seeking reimbursement.

Barbeau noted contractor prices vary widely based on the size of the company, the level of professionalism, safety training, and other factors. The city's contractor is a large company and employees have gone through the most updated safety training.

Johnson asked if the city takes just one bid. When he has a tree removed, he seeks out three or four bids.

Callison noted the city is dealing with a large number of trees.

Gunyou noted the city uses one contractor that is bid at the beginning of the year, and individual price quotes are received for each situation. In all cases, staff encourages residents to remove the trees on their own or to make their own arrangements. There is no guarantee the city's price will be the lowest or highest. It is incumbent on the resident to arrange for removal, and if the city has to proceed, it will be at the price quoted.

Schneider noted city staff cannot obtain three or four bids for each individual home, as it would triple or quadruple staff time. The city does work diligently to get a qualified contractor at the beginning of the year. In the past during the bidding process, particularly for trees on boulevards and parks, the city has reviewed the schedule and sometimes challenged the price for removal of a particular type of tree. The contractor has explained the parameters for access, including what trees would be required to be taken down in little pieces rather than just dropped. He does not know whether \$4,000 is the correct price or not, but the city has paid that price for public trees because of specific circumstances.

Callison closed the hearing at 7:51 p.m.

Callison stated in past years, the city has paid for tree removal or part of the tree removal and did not pass it on to the homeowners. It is an expense and can be considerable. She noted it comes down to property owners getting the bids, noticing the letters and notices, and taking responsibility for their property. She expressed support for the staff recommendations.

Schneider moved, Allendorf seconded a motion to adopt the following resolutions:

- 1) Resolution No. 2006-106 adopting special assessments for privately installed sewer and water improvement projects.
- 2) Resolution No. 2006-107 adopting special assessments for Nuisance Abatement Project Nos. 4894N-55, 4894N-56, 4894N-57, 4894N-58, 4894N-59, 4894N-62, 4894N-63, 4894N-64, 4894N-66, 4894N-68, 4894N-69, 4894N-70, 4894N-71, 4894N-72, 4894N-73, 4894N-74, 4894N-75, 4894N-76, 4894N-78 and 4894N-79.
- 3) Resolution No. 2006-108 adopting special assessments for Nuisance Abatement Project Nos. 4894N-40, 4894N-45, 4894N-46, 4894N-51, 4894N-52 and 4894N-61.
- 4) Resolution No. 2006-109 adopting special assessments for Nuisance Abatement Project No. 4894N-60.

- 5) Resolution No. 2006-110 adopting special assessments for Nuisance Abatement Projects Nos. 4894N-54, 4894N-65 and 4894N-67.
- 6) Resolution No. 2006-111 adopting special assessments for Nuisance Abatement Project No. 4902.
- 7) Resolution No. 2006-112 adopting special assessments for Retrofit Fire Sprinkler Project No. 4874F-8.

All voted "yes." Motion carried.

14. OTHER BUSINESS:

- A. **Lot division, with lot width and lot area variances, for a two-lot subdivision at 5454 Mayview Road for Engineering Design & Surveying.**

Gunyou reported this item was withdrawn by the applicant and will not return to the agenda unless a new application is filed.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Wiersum moved, Thomas seconded a motion to adjourn the meeting at 7:52 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Laura L. Ronbeck
Acting City Clerk