

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, OCTOBER 9, 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 Tony Wagner, Dick Allendorf, Terry Schneider, Bob Ellingson, Brad Wiersum, Al Thomas, and Jan Callison were present.

4. APPROVAL OF AGENDA.

City Manager John Gunyou reviewed the changes and additional comments provided in the addendum dated October 9, 2006 which related to:

- Item 10B, deletion of the ordinance requiring shared parking requirement for 6001 Shady Oak Road and 11000 Red Circle Drive.
- Item 10G, revised council letter and resolution related to fire alarm response fees, clarifying a revised interest rate and corrected statute and ordinance citations.
- Item 11A, revised council letter and resolution clarifying the variance is only to keep Xcel's rights as they exist today and does not change the abandonment already on the site.
- Item 14A, withdrawal of the plat request by Michael Burg.

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

5. APPROVAL OF MINUTES: None.

6. SPECIAL MATTERS:

A. Acknowledgement of Landmark Designation.

Callison acknowledged Joyce Block with a landmark designation of her home at 13705 Minnetonka Drive and presented her with a plaque.

Block thanked the city for its consideration of her application and for the landmark designation.

B. Present awards to 2006 photo contest winners.

Callison presented awards to the three winners of the 2006 photo contest:

- Cathy Armajani for her Natural Minnetonka entry;
- Jonathan L. Eisenberg for his Minnetonka Lifestyle entry;
- Frederick Stechmann for his Minnetonka's Heritage entry.

C. Proclamation declaring October 10, 2006 as City Wide Open House Day.

Wagner read the proclamation declaring October 10, 2006 as City Wide Open House Day.

Callison reiterated the invitation to citizens of all ages to attend the open house on October 10 from 5 to 8 p.m. There will be rides on fire trucks, wood-working demonstrations, free hot dogs, as well as the opportunity to learn about local government.

D. Proclamation declaring week of October 23-27, 2006 as Minnesota Manufacturer's Week.

Schneider read the proclamation declaring week of October 23-27, 2006 as Minnesota Manufacturer's Week.

E. Kid's Voting Proclamation.

Allendorf read the Kid's Voting Proclamation.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou introduced Julie Wischnack as the new city planner, noting she was previously an associate with SRF and prior to that served as city planner for the cities of Hutchinson for seven years and Minnetrista for six years. Callison welcomed Wischnack to the city.

Gunyou reported on the schedule for upcoming council meetings.

Wagner added that information about Southwest Light Rail will be available at the open house on October 10. He encouraged citizens to stop by to receive more information.

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

No one appeared.

9. BIDS AND PURCHASES:

A. Consideration of contract award for replacement of the cab on Ladder 2.

Gunyou provided an overview of the staff report.

Allendorf noted the total budget for this is \$250,000, and the cab replacement is \$95,000 of that \$250,000. He asked if that was the amount for the total refurbishing.

Gunyou stated the total cost of all the refurbishing will be less than the budgeted purchase of a new truck, so the city will save money with this approach.

Wiersum moved, Wagner seconded a motion to award the contract for replacing the cab on Ladder 2 to Sutphen Corporation. All voted "yes." Motion carried.

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

A. Claims for council authorization – October 9, 2006.

Allendorf moved, Schneider seconded a motion to approve the October 9, 2006 claims which includes checks numbered 199674 through 199975, totaling \$1,145,322.28. All voted "yes." Motion carried.

B. Ordinance deleting the shared parking requirement for 6001 Shady Oak Road and 11000 Red Circle Drive.

Callison removed this item from the consent agenda and asked for an update by the city attorney.

City Attorney Desyl Peterson reported the ordinance relates to two approvals the council gave earlier this year, and staff recommends deleting the shared parking requirement. The letter from the attorney for the Jennings, who own Jimmy's restaurant on the Red Circle Drive property, references approvals granted in 1987. There was a provision that required a cross access and parking agreement. The city is not changing that 1987 approval; staff is asking for changes to the approvals from this year. Secondly, she stated it is a novel theory that there is a property right to this provision in the approval from 1987. The attorney's letter does not

reference any citations to court cases, and she does not believe there is any support for that theory. She believes it is fully within the council's power to approve the ordinance and does not think there is a significant risk in doing so.

Callison clarified this is the situation where the property owners have not been able to come to an agreement regarding shared parking. Peterson concurred.

Wagner stated Jimmy's restaurant will have to find alternative parking on its own or request a variance. Peterson concurred, noting their parking variance application is currently going through the process.

Schneider clarified even if this agreement had stayed in force, it did not replace the parking requirement; this only allowed the flow of traffic between the two businesses for the convenience of the customers.

Peterson agreed, adding that the reason it was originally included in the approvals was to allow the customers to have a seamless experience on the property. However, the parties have not been able to agree, so it is better for the city to bow out.

Allendorf moved, Wiersum seconded a motion to adopt Ordinance No. 2006-19 amending Ordinance No. 2006-04 and Ordinance No. 2006-14 regarding master development plans for 11000 Red Circle Drive and 6001 Shady Oak Road. All voted "yes." Motion carried.

C. Resolution appointing election judges for the General Election on November 7, 2006.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2006-130 appointing election judges for the General Election on November 7, 2006. All voted "yes." Motion carried.

D. Resolution declaring existence of public right-of-way for Opportunity Court.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2006-131 declaring the existence of public right-of-way for Opportunity Court. All voted "yes." Motion carried.

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

Schneider removed this item from the consent agenda because there were citizens present to discuss the fees.

Leona Jondahl, 302 Parkers Lake Road, Wayzata, thanked the council for the opportunity to address this issue. She wishes to appeal the storm water fees charged to four parcels of her property over the past three years: 128, 220, 302 Parkers Lake Road, and 15545 Ranch View Court. She requested no future billings until the property is developed, as well as correction of the addresses in the city record. There is no such property number as 128 or 220, and there is no such street as Ranch View Court.

Jondahl stated this issue should be resolved due to the contributions of the Jondahl family over the years. Since the initial purchase in 1959, the family has expended money, energy, and labor contributing to the establishment of the storm sewer system for the 40 acres, of which they own 26.5 acres. MnDOT has a plan for correction of the outlet at the south end of 394, which has been a long-standing issue. She believes the development of the Baxter property in the Evergreen section will also solve the flooding problems of one particular area, which is the northwest corner of the family's 26 acres.

Callison asked for background from the staff regarding the issues before the council tonight.

Gunyou stated there are two issues: one is the long-standing dispute over the responsibility for the stormwater system, and the other is the payment of a fee that all properties have been assessed throughout the city for the last three years – this is a stormwater fee similar to the water and sewer fees. Staff believes these fees are owed to the city, just as every property is required to pay them, and it is not appropriate to make an exception in this case.

Callison asked Gunyou to comment on the question of the erroneous addresses as mentioned by Ms. Jondahl. Gunyou stated the correct addresses can be verified, but noted that the parcels are correctly identified and the fees were calculated properly.

Callison asked if the same fee calculation is used for every property in Minnetonka. Gunyou responded affirmatively.

Schneider asked if the calculation of fees exclude wetlands. City Engineer Lee Gustafson responded the calculation does exclude wetlands as well as rights-of-way.

Callison stated there is a development proposed next to the Jondahl property, and that might provide some relief from some of the issues. That seems to be separate from the storm water charge under consideration. It makes sense that the council moves ahead with the certification of that charge, expecting Ms. Jondahl to pay it, and dealing with the storm water issues as the development comes forward or as her property develops - with MnDOT's involvement as well.

Ms. Jondahl stated her family has maintained that storm sewer for those 40 acres since 1959.

Ken Jondahl, 116 Parkers Lake Road, Wayzata, indicated he is the son of Leona Jondahl. He asked the council to consider the fact that the ordinance that is on file is one that came up after the fact. The property in question is agricultural. He asked the city planners what the city has done with agricultural property in Minnetonka as well as what other communities are doing with this ordinance. He asked what the goal of the ordinance is as well. Those are important pieces of information for the citizens to understand.

Gunyou indicated staff would have to check, but he does not believe the city distinguishes agricultural property when assessing this fee. There are distinctions for certain types of property, but when the fee was initiated, the goal was to keep it simple. There is a residential fee, and there are calculations that do discount rights-of-way and wetlands for larger areas.

Gunyou explained this is a fee that is collected city-wide to pay for city-wide storm sewer improvements. It is not associated with any individual parcel; it was implemented to fund all the storm drainage needs throughout the city. Priorities are set in the CIP, and there is also a petition process. He noted the city does not special assess for these improvements.

Callison asked about actions taken by neighboring communities in this regard. Gunyou responded Minnetonka was comparatively late in establishing this fee, and it is a commonly used funding mechanism by communities.

Callison asked if the calculation is based on the size of the property. Gunyou responded affirmatively.

Allendorf stated he is trying to understand Ms. Jondahl's argument that she has maintained this system for the last 40 years and how

that fits in with what the council is doing tonight and what she is asking the council to do.

Gunyou does not believe there is a direct relationship between the two issues. The city assesses fees to fund storm sewer improvements, but there is no mechanism to offset what some property owners might feel they have contributed or not contributed in the past. If property owners believe they are due compensation, there is a separate legal system for dealing with those claims.

Gunyou noted this has been an ongoing dispute for over two decades, and said it is important to distinguish between the two issues. The issue of whether there has been a private contribution should not be tied to the fee, since that would open up the possibility that anyone could dispute a fee the city is charging with the same argument. If someone does not like the pothole in front of their house, they could dispute the fee for that purpose, or even try to negotiate a settlement. Staff recommends keeping the fee clean and separate from those issues.

Callison asked if this fund would be used to address some of these drainage issues. Gunyou responded it would, and added that funds are not specifically earmarked for particular properties - similar to street improvements. The city does not levy special assessments on individual properties, but rather, pools the money and makes decisions based on city-wide priorities.

Ms. Jondahl noted if she does not pay this fee, it will be attached to her property taxes, and that is an assessment. Under Green Acres' law, water and sewer are to be postponed until she develops.

Peterson responded Ms. Jondahl's understanding is incorrect. Green Acres applies to special assessments for public improvements. If the city installs some public improvements along the street that fronts her property and tries to assess those public improvements, that is when the Green Acres law applies. In this case, there is no special assessment for public improvements; rather, it is a fee or charge and because she has refused to pay it, state law allows the city to collect it by certifying it against the taxes. It ends up being collected in the same manner as a special assessment, but it is not a special assessment for a public improvement.

Callison suggested Ms. Jondahl speak to the city attorney after the council meeting or tomorrow to get further clarification on that point.

Ms. Jondahl stated there has been significant damage done to her property, and her family has fixed it. Callison responded she appreciates that.

Ms. Jondahl added her family has dug two ponds and established all of the drainage to get all the water coming from Plymouth and Minnetonka out of that 40 acres, and the only storm sewer that they have is the one that is connected to the drainage they have done. The damage to the road has not been repaired by the city. None of this has been taken care of.

Schneider stated he understands staff's concern for maintaining a straightforward fee structure, and that making an exception could open the door for other special exceptions. He is not saying a special exception in this case is the appropriate way to address it. However, something does need to be adjusted in this particular area. How it is done procedurally is not as important as recognizing that there has been a contribution and an evolution of impact on the property because of storm drainage characteristics that have been out of proportion to what anybody else in the city has experienced.

Schneider explained he is referring to the large wetland that is to the south of Ms. Jondahl's property, which has huge pipes coming in from the northwest and the east from Carlson Center, Plymouth, and Minnetonka. Because Minnetonka and Plymouth require that the rate control of these ponds upstream hold the water back, in theory they should not be releasing it at any greater rate than they did pre-development. He is not sure if that is the case, but the reality is the volume of water that has been flowing into this wetland is magnified significantly because of all the development that has occurred over the last 10 or 15 years.

Schneider continued that several years ago during reconstruction of 394, MnDOT chose to restrict one outlet with one four-inch pipe. All the water that was coming in for several years in pipes was being held up by this four-inch restriction. That raised the elevation, killed some trees, and created some different water storage characteristics on the Jondahl property. There needs to be some balancing of that impact. MnDOT has studied it and a few years ago changed it to a 12-inch orifice, which opened it up a little bit. They have recently issued a report indicating it is because of these restrictions that the area has filled up with sediment and is not draining any better than it did with the four-inch pipe. Schneider explained MnDOT has agreed that when funding becomes available, they will dig that strip out and allow more water to go

through in order to alleviate some of the impact on the Jondahl property.

Schneider indicated he sympathizes with Ms. Jondahl and stated he believes something needs to be done to correct and monitor the drainage flow so it does not continue to become worse. The impact of this situation, in addition to being charged a fee, does seem somewhat inequitable. He sympathizes with her that she should not have to pay a fee when she is not getting the drainage results that should be expected on this large property. Because there is no public sewer or public water, her needs are a little bit unique compared to other households. Whether this issue is acted on or not, he requested that staff work closer with the Jondahls and MnDOT to see what can be resolved over the next year.

Wagner asked whether or not these 26 acres have city sewer. Gunyou confirmed they do not.

Wagner asked if there are other properties like that in Minnetonka. Gustafson responded this is the only Green Acres property in the city, and to his knowledge there are very few properties, probably less than five, without sanitary sewer or water.

Wagner concurred with Schneider that he is not worried about setting a precedent with this case, as it is a fairly unique property.

Wiersum stated there are two issues here. He sympathizes with the property owner from the perspective that when the city passed the stormwater utility fee, it was a fee that went to homeowners and properties, even large properties such as schools. At the same time, when he considers this issue, he can understand the frustration of the property owner. It sounds like this is a jurisdiction problem. There is water coming from Plymouth and Minnetonka, and there is an issue created by MnDOT. There are a number of public units contributing to the problem, and it appears the property owner is the one paying for the fact that there is not a clear responsibility among governmental jurisdictions to take care of the problem.

Wiersum said it is clear that this is an issue about which public authority has the real responsibility for the problem, and it is bothersome the property owner is suffering from this ambiguity. He does not like to set precedent, but he thinks there are two issues. One is the stormwater utility fee, which everyone in the city pays. That is legitimate, but there is also an unresolved problem. He

suggested deferring the stormwater fee until there is some resolution reached.

Gunyou said it is important not to start modifying the fee when someone objects. There are a lot of unique circumstances that anyone might claim, and it is important to understand that this fund will fund improvements to Ms. Jondahl at some point. Improvements are being made throughout the city, and the squeaky wheel should not drive the policy decision on priorities. The fee should be treated as the policy has always intended. He suggested staff follow through with the other issues that Schneider outlined, see if the jurisdictional issues can be addressed, and work with Ms. Jondahl to see what the possibilities exist.

Allendorf supported separating the issues: keeping the fee intact and then following up directly and immediately with MnDOT to ensure this does not go on for several more years. He understands that MnDOT recently completed a report which indicated there was a problem on the Jondahl property. He asked when that was completed, what recommendations it included and what timing was suggested.

Gustafson indicated the MnDOT report was completed on June 28, 2006. Some recommendations included in the report were with regard to sedimentation in the area causing lower flow problems. It does not impact in any way the 100-year outflow of this area. The problems referenced in the report are related to low flow - establishing more of an ordinary high water mark. He wants to reassure the council this is not a high flow problem. There is no schedule recommended in the report, so it would be appropriate to open discussions about that with MnDOT.

Allendorf recommended that the city come back with some suggested timeframe so this does not go on forever.

Schneider commented that although the report identifies the numerous issues and problems to be resolved, it was not meant to be a timetable for a CIP. He commended MnDOT for the very thorough job done in the report. His understanding in a recent conversation with Ms. Jondahl was that MnDOT indicated to her verbally that they recognize there is a problem and they need to fix it, particularly the drainage outlet. However, there is no money available to fix it right now, and it will be included in a future budget. He suggested the city play the role of facilitating with MnDOT, as this involves a number of jurisdictions, including the Watershed District and MnDOT.

Callison stated the direct issue before the council is whether or not to certify the failure to pay the delinquent water and sanitary sewer charges. She recalled Schneider indicated it might be appropriate not to certify the delinquency, because the property owner did not get what she wanted from a city service. She suggested that is a tough position to take, and believes it may create future problems if citizens are able to dispute their fees because they feel they did not get what they wanted from the service.

Callison noted this fee potentially provides part of a solution to the Jondahls because it generates funds to help implement a solution that Schneider has been very diligent in working toward. She thinks the bigger picture will be lost if the council focuses on the fee question. The bigger question is trying to put to bed a long-standing issue that would have been resolved previously had it not involved so many entities. She suggested authorizing the certification and asking staff to work closely with the parties involved to get a resolution of the other issues. She noted there is a development that might also help improve this situation.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2006-132 authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor.

Callison clarified the motion is to approve a resolution that would certify the late payments as special assessments on the property owner's tax bill, with the understanding that staff will begin to look at some solutions for the drainage issue.

Schneider expressed agreement with staff's concern about tweaking individual fees. He thinks this is the right direction with having the staff get more involved, and he is very supportive from that standpoint. However, he indicated he will probably vote against the motion because he feels this is a very unusual situation in that it is the only Green Acres property in the city, and the purpose of the fund is to provide stormwater facilities. In his opinion, there has been a significant value contributed for stormwater retention that has not been recognized, and that is far greater than the \$700 in fees. This situation would be a candidate for some kind of consideration, and he will vote against the resolution because he wants to make it clear he does support some kind of connection between the two issues.

Wagner, Allendorf, Ellingson, Wiersum, Thomas, and Callison voted "yes." Schneider voted "no." Motion carried.

Callison told Ms. Jondahl she should expect to hear from staff on this, and she thanked Schneider for the work he has done on this issue.

F. Request for a one-year time extension for the STRATFORD WOOD SECOND ADDITION preliminary plat at 5243 Black Friars Lane.

Allendorf moved, Schneider seconded a motion to approve a one-year time extension for the STRATFORD WOOD SECOND ADDITION preliminary plat at 5243 Black Friars Lane. All voted "yes." Motion carried.

G. Resolution authorizing the certification of fire alarm response fees to the Hennepin County Auditor.

Callison noted there have been some changes to the resolution, and they will be incorporated into the motion.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2006-133 authorizing the certification fire response fees to the Hennepin County Auditor, as revised per the addendum. All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Items concerning the demolition of Xcel-owned structures in Glen Lake.

Wiersum moved, Thomas seconded a motion to:

1) Adopt Resolution No. 2006-134 approving the proposed variance, as revised per the addendum, to allow inside storage for a towing company at 14521 Excelsior Boulevard, and a vacant unused building at 14523 Excelsior Boulevard, despite the buildings being removed. This resolution 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) If the variance were denied, the existing buildings, which are in poor condition and are unsightly, would remain.

b) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:

(1) The aesthetics of the site would be improved.

(2) The property owner would continue to maintain existing rights on the property.

Approval is subject to the following conditions:

- a) Submit proof of recording this resolution with the county prior to the city issuing a demolition permit.
- b) Submittal of a signed agreement, with the city, prior to issuance of a demolition permit.
- c) All conditions of the agreement between the city and the property owner must be met.
- d) This variance will end on December 31, 2007, unless the city has issued a demolition permit for the project covered by this variance or approved a time extension.

2) Approved the agreement with Xcel Energy for demolition.

All voted "yes." Motion carried.

12. **INTRODUCTION OF ORDINANCES:** None.

13. **PUBLIC HEARINGS:** None.

14. **OTHER BUSINESS:**

A. **Preliminary plat for a two-lot subdivision, with lot depth variance, at 11601 Timberline Road for Michael Burg.**

Callison noted this item was withdrawn by the applicant.

15. **APPOINTMENTS and REAPPOINTMENTS:** None.

16. **ADJOURNMENT.**

Thomas moved, Allendorf seconded a motion to adjourn the meeting at 7:28 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Laura L. Ronbeck
Acting City Clerk