

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, APRIL 23, 2007**

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

**4. APPROVAL OF AGENDA.**

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

**5. APPROVAL OF MINUTES:**

**A. March 26, 2007 regular meeting.**

Wagner moved, Thomas seconded a motion to approve the minutes of the March 26, 2007 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

**B. April 11, 2007 board of review meeting.**

Wagner moved, Thomas seconded a motion to approve the minutes of the April 11, 2007 Minnetonka City Council board of review meeting. Ellingson, Wagner, Wiersum, Schneider, and Callison voted "yes." Allendorf and Thomas abstained. Motion carried.

**6. SPECIAL MATTERS:** Proclamation declaring April 27, 2007 as Arbor Day in Minnetonka.

Thomas read the proclamation.

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

Gunyou reported on the schedule for upcoming council meetings. The Board of Review meeting is Wednesday, April 25 at 6:30 p.m. The joint meeting with the Planning Commission has been postponed until May 14.

There is no council meeting on April 30 but there is a community open house from 5:00. to 7:30 p.m. for the comprehensive plan in the community center. The next regular council meeting is May 7.

Callison asked for a brief discussion regarding global warming issues. She gets contacted on a regular basis about the U.S. Mayor's Climate Protection agreement and whether or not the city is a signatory on the agreement. She hasn't signed it in part because the agreement contains a list of actions that the city would commit to and given the city's governance structure, the mayor doesn't have the authority to commit the city to undertake those actions. Callison asked if the council would be supportive of having city staff begin to look at the actions the city is currently taking and the proposed actions in the agreement, and bring back some ideas to the council. Schneider said he was supportive but would encourage discussion on general energy savings be rolled into the process. Callison agreed that was appropriate. Gunyou said the city has a staff energy committee and the mayor's request would be a natural extension of that committee's work.

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

Winnie White-Scherber, 14605 Orchard Road, made a quilt on behalf of West Hennepin Affordable Housing Land Trust/Homes Within Reach. The quilt is being raffled off for fundraising purposes. Raffle tickets are being sold for \$1.

Callison thanked White-Scherber for being a long time strong advocate for affordable housing.

**9. BIDS AND PURCHASES:**

**A. Items pertaining to the 2007 Pavement Rehabilitation Program, Phase I.**

- 1) Consideration of bids**
- 2) Agreement with the city of Plymouth**

City engineer Lee Gustafson gave the staff report.

Callison noted that in the past, street projects were postponed because of higher costs. Now with some excess funds due to favorable bids she asked if there are any postponed projects that could be moved forward. Gustafson replied the idea had been looked into and originally he thought there would be some opportunities. He said one example is the streets in the Boulder Creek area that were postponed. Gustafson initially thought the city had the plan and specifications completely done but they were not.

Therefore an area like that cannot just be added to this project. He indicated as the city moves forward with this project, some streets may be done that don't require complete plan specifications. Gustafson said that staff feels the city will get the same good bid prices next year due to the slow housing market and aggressive bids. The savings would be used to accelerate some projects to take advantage of the good bidding market.

Allendorf asked why the Trunk Water Utility fund was being used. Gustafson said improvements will be made to the water and sanitary sewer facilities in the area; therefore, the funding will cover the costs associated with those repairs.

Wagner moved, Thomas seconded a motion to:

- 1) Award the bid for the 2007 Pavement Rehabilitation Program, Phase I, Project No. 06404 to Midwest Asphalt Corporation in the amount of \$2,246,439.70
- 2) Approve a Joint Powers Agreement with the City of Plymouth
- 3) Amend the CIP to increase the budget for the Trunk Water Utility fund from \$250,000 to \$400,000

All voted "yes." Motion carried.

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

**A. Claims for council authorization – April 23, 2007.**

Allendorf moved, Wiersum seconded a motion to approve the April 23, 2007 claims which includes checks numbered 203696 through 203956, totaling \$1,022,518.94. All voted "yes." Motion carried.

**B. Conditional use permit to operate a flower mart at 11400 State Highway 7 (Country Village Shopping Center) for Linder's Greenhouses, Inc.**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-051 approving the Linder's Greenhouses' request for a conditional use permit to operate a flower mart at 11400 State Highway 7. Approval is based on the findings in the staff report and is subject to the following conditions:

- 1) Record this resolution with Hennepin County before operation of the flower mart.
- 2) The flower mart may be operated annually from April 15th through July 20<sup>th</sup> on a daily basis from 8:00 AM to 8:00 PM.

- 3) The flower mart, and its fencing perimeter, must be configured as shown on Exhibit A of this resolution. The drive aisle immediately west of the flower mart and all parking spaces accessible from that drive aisle must be completely enclosed in patio fencing.
- 4) The end parking space at the north and south ends of the subject drive aisle remain unobstructed by the flower mart. To prevent parking in the area, these four parking spaces shall also be marked off as shown on Exhibit A of this resolution.
- 5) Display of items must be arranged in as compact a manner as reasonably practicable.
- 6) Any change in proprietor, operator, location, or items sold at the flower mart renders this permit invalid.
- 7) Business operator shall secure all applicable licenses and approvals from the city, Hennepin County, or other appropriate jurisdictions.
- 8) This conditional use permit does not approve any signs at the site. A sign permit application must be submitted for staff review and approval. Any proposed sign must meet requirements outlined in city code.
- 9) No portable sanitation facilities are permitted on the site.
- 10) The city council may reasonably add or revise conditions of approval to address any future unforeseen problems.
- 11) 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.
- 12) The city council may revoke this conditional use permit if any future traffic, parking or public safety issues arise as a result of the flower mart use.
- 13) The site must be completely cleaned of all merchandise, equipment and debris within 3 days of the last day of operation.
- 14) The water supply for the market cannot be from a fire hydrant.
- 15) Violation of any these conditions of approval or conditional use permit standards outlined in the city code will result in immediate revocation of this conditional use permit.
- 16) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

**C. Request for an amendment to a preliminary plat condition of approval for John and Ruth Reed at 3140 County Road 101.**

Callison noted the item was approved in the recent past and was before the council due to a change in the condition that relates to a variance. She was concerned that by changing the language it would imply the council was willing to grant a variance for the property when the variances were granted when it was originally approved. Since the lot is questionable in terms of development, she said it may not be appropriate to indicate now that additional variances would be approved for new construction on the property.

City planner Julie Wischnack said the complication in the subdivision is the extra right-of-way that was dedicated during the process. The applicants would like even more conditions changed to reflect their wishes. Staff was looking for a condition that addressed a future variance and not commit the city but changed the language slightly in the revised condition. Wischnack said the council had other options: a) strike the condition entirely; b) leave the condition as is in the existing resolution; c) take staff's recommendation for the change; or d) reword it in another fashion.

Callison said the language at issue was a provision that said "a setback variance of no greater than seven feet may be considered. Such a request must follow normal variance procedures as outlined in city code. The city is under no obligation to approve a setback variance." She said under the existing language she believed the applicants already had the option to ask for a variance without implying that seven feet would have some sort of special consideration.

Allendorf said he also didn't see any change or benefit to the language that might set the owner or future owners of the lot up for the expectation the city would do something. He agreed with Callison that the owners could come in through the normal process and procedure and that the city shouldn't give the false impression that something would necessarily be done.

John Reed, the property owner, said that when the project was started the southern area of the buildable area was close to 30 feet wide until the county decided it needed seven feet for the right of way. The city looked at the buildable area with the 40' x 40' requirement which was met even with the seven feet. What was left, however, was 21 feet for the best part of the buildable area. Reed said what the current language says is the city expects any building to meet all setback requirements. He doesn't believe that is doable. He suggested the clause be removed and any variances that are necessary when an actual building plan is presented would be considered but would not necessarily have to be approved. The

statement currently says under the current situation all setbacks must be met leaving 21 feet to build on.

Callison asked Wischnack if it is possible to build on the buildable area without a variance. Wischnack said she believed there would be an adequate buildable area and staff recommended approval of the original subdivision with the buildable area variance which is about 3,200 square feet. She said whenever a subdivision is granted the ultimate idea is that the building occurs without the benefit of variances. Callison said a smaller structure may be required. Wischnack agreed.

Wagner said he agreed with Callison, and when the proposal comes in to build the house, it needs to stand on its own merits.

Schneider moved, Allendorf seconded a motion to deny the amendment request.

All voted "yes." Motion carried.

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

**12. INTRODUCTION OF ORDINANCES:**

**A. Ordinance regulating temporary structures.**

Peterson gave the staff report.

Thomas pointed to the definition of "temporary structure" and asked how a storage shed with a frame covered by metal might fall under the definition. Peterson said the definition may include such a structure. Thomas suggested looking into the issue. Peterson agreed.

Thomas then asked how a greenhouse covered in plastic or plexiglass might fall under the definition. Peterson said one of the examples given is for a hoop house, and there are greenhouses that commonly have the hoop house effect with the plastic covering. Under the definition, that would be considered a temporary structure. Thomas said he would continue to think about that because he didn't want to put greenhouses out of business. He said when permits are granted for plant selling places, a lot of times those are the hoop houses with plastic over them. However, they are there for a limited time, as opposed to a resident who has one set up in their yard for their own use. Peterson said that even if the structures fell under the definition, there is one exception that says

if the owner has gotten a building permit the structure is no longer temporary. She added some of the greenhouses may have been erected with building permits. Thomas said he was concerned if a person had a small greenhouse that the person considered permanent and didn't need a building permit, the definition may now reclassify those structures as temporary.

Wagner asked for clarification whether a resident who has a permanent storage shed on their property could not also have a temporary storage shed. Peterson confirmed the zoning ordinance only allows one. Wagner asked if the ordinance applies regardless of parcel size. Peterson said that was correct. Wagner said because the city has limits on the amount of detached storage on a property, he was uncomfortable with allowing a small shed that is permanent for storing items like a lawnmower and then disallowing a temporary storage structure to store a boat for the winter as well.

Wiersum said he recently purchased a small deck box and the brochure had pictures of decent sized snap-together plastic sheds that probably meet the requirements of the proposed ordinance's snow load. He questioned if that type of structure would be considered temporary or permanent. He said he wanted to make sure there was clarity so that residents know what the requirements are and are not. He said the proposed ordinance spelled quite a few things out well but there were sufficient grey areas that needed further work.

Gunyou said the distinction the proposed ordinance was trying to make was between permanent and temporary structures. For example, he said some of the fabric structures are permanent and could be installed under the normal building permit process. Wiersum said he appreciated that but he wants to make sure people have clarity on what the expectations are, and there are those who might think if they snap something together they shouldn't need a building permit. He understood the proposed ordinance to say if a structure will be on the property for more than six months a year, it will be defined as a permanent structure and as a result, a building permit will be required.

Thomas asked if a detached gazebo would be considered an accessory structure and therefore mean that a resident could not have a gazebo and a storage structure. Peterson said a gazebo is intended for human occupancy and therefore the resident could also have a storage structure. Thomas said that potentially a storage shed with a door and window could thus also be considered in the same manner.

Callison said at the study session on the issue she was supportive of including the temporary in with the permanent in terms of counting total storage space. Upon thinking further about the issue she wondered if because people nowadays have more stuff to store, and if they are not allowed to store things under a cover, if they will then store it outside, which may be more unsightly for the neighbors. She asked others to consider if the ordinance has the right storage limit.

She also asked since the rationale behind the proposed ordinance was to deal with nuisances, is the restriction included on construction in terms of withstanding wind and snow load appropriate. Peterson said because it is a public safety issue, it is a valid basis for a nuisance ordinance.

Callison said she received one phone call relating to the proposed ordinance from a person concerned that the standards were too onerous, particularly the wind and snow load requirements. Also the visibility of the structure should be considered in terms of placement in the yard. If it is out of sight it may not be as big an issue as if it is sitting up near the property line.

Wagner agreed with the concern about placement and said the issue should be taken into consideration.

Allendorf asked what the ordinance was regarding outside storage. Peterson said she didn't have the ordinance in front of her so she would follow up when the proposed ordinance is brought back to the council.

Allendorf moved, Wagner seconded a motion to introduce the ordinance regulating temporary structures. All voted "yes." Motion carried.

**B. Ordinance amending city code 830.025 regarding lodging establishments.**

Gunyou said the item was a housekeeping amendment to make sure the ordinance is consistent with state law.

Wiersum moved, Thomas seconded a motion to introduce an ordinance amending city code 830.025 regarding lodging establishments. All voted "yes." Motion carried.

**C. Extension of the moratorium ordinance regarding electronic signs.**

Peterson said the current moratorium is effective through June 4. The city was on schedule to meet the deadline until last week when it received the draft report from the consultant. Staff attempted to come up with a recommendation for the council and planning commission to consider at the now postponed study session. Staff concluded the issue is enormously complex and more refinement of the recommendation is necessary. Thus a little more time is needed. The proposed extension is for two months. Peterson indicated it is doubtful that much time will be needed but rather than having to ask for another extension she chose to propose two months. She said she notified Clear Channel so they were aware of the proposed extension.

Wiersum moved, Schneider seconded a motion to introduce the ordinance extending the moratorium ordinance regarding electronic signs. All voted "yes." Motion carried.

**13. PUBLIC HEARINGS:**

**A. Public hearing to consider applications by Leeann Chin, Inc., for on-sale wine and on-sale 3.2 percent malt beverage liquor licenses for Chin's Asia Fresh restaurant, located at 11300 Wayzata Boulevard, Suite G.**

Gunyou gave the staff report.

Callison opened the hearing at 7:17 p.m.

No one spoke.

Wagner moved, Allendorf seconded a motion to continue the hearing to May 21, 2007. All voted "yes." Motion carried.

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

Gunyou presented the staff report.

Callison opened the hearing at 7:19 p.m.

No one spoke.

Callison closed the hearing at 7:19 p.m.

Schneider moved, Wiersum seconded a motion to adopt Resolution No. 2007-052 increasing storm water utility fees. All voted "yes." Motion carried.

**C. Public hearing to consider municipal water and sanitary sewer rate increases.**

Gunyou gave the staff report.

Callison opened the hearing at 7:21 p.m.

No one spoke.

Callison closed the hearing at 7:21 p.m.

Wiersum moved, Allendorf seconded a motion to adopt Resolution No. 2007-053 providing for a change in municipal water rates and sanitary sewer service charges. All voted "yes." Motion carried.

**14. OTHER BUSINESS:**

**A. Items concerning the proposed expansion of the General Mills Federal Credit Union at 9999 and 10001 Wayzata Blvd for HTG Architects.**

Planner Susan Thomas gave the staff report.

Wagner asked for confirmation that the parking variance did not have to do with the number of spaces required but rather with the setbacks. Ms. Thomas said that was correct. Wagner noted that currently there isn't a lot of parking used on the property. He asked if there was any consideration given to more green area and proof of parking. Ms. Thomas said staff did not discuss that specifically with the applicant but it was a viable option on the site.

Sean Raboin with HTR Architects said the firm went with the ordinance's required parking for the square footage and the applicant's number of employees does not fill all the parking stalls. With the allotted 28 cars in the drive up it is likely if anyone was waiting behind 27 cars they would return at a later time. Raboin indicated the applicant is willing to proceed and look at more green space if plausible with the overall design. Wagner said he would like to see that as a condition of approval or suggestion to staff to look at it.

Wagner moved, Thomas seconded a motion to:

- 1) Approve the preliminary plat. Approval is based on the following findings:
  - a. Complete the following before final plat approval:
    - (1) Show the following on the final plat:
      - (a) At least ten-foot-wide drainage and utility easements next to public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines.
      - (b) A drainage and utility easement over storm sewer improvements. The easement must extend a minimum of 10 feet from the edge of the treatment system and required grit chamber. The easement must include access from the public roadway.
    - b. The following items must be submitted to the city before the city releases the final plat:
      - (1) An electronic CAD file of the final plat in microstation or DXF on a CD disk.
      - (2) The following documents for the city attorney's approval:
        - (a) Title evidence that is current within thirty days before release of the final plat.
        - (b) Provide restrictive covenants to be recorded against the property. The covenants must include conditions that have not been met as of the release of the plat.
  - c. Any other requirements included with final plat approval.
- 2) Adopt Ordinance No. 2007-13 approving the proposed master development plan and final site and building plans, with variances. This ordinance is based on the following findings:
  - a. The proposal meets all minimum zoning ordinance requirements.
  - b. The proposal would meet the required standards for a variance, because:
    - (1) The proposal is reasonable for two reasons:
      - (a) The existing, non-conforming northerly parking lot presents a practical difficulty

from both a functional and aesthetic standpoint. Maintaining the existing setback line is reasonable.

(b) The westerly parking lot would follow the setback line of an existing drive aisle and would be adjacent to another parking lot. As such, the variance would have little to no impact on surrounding buildings.

(2) The Wayzata Boulevard area is characterized by office development and associated parking lots. The requested setback variances would not alter this character.

c. The addition could be supported by the existing roadway system.

Approval of the site and building plans is subject to the following conditions:

a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:

- Site plan date-stamped February 28, 2007.
- Grading plan date-stamped February 28, 2007.
- Building elevations date-stamped February 28, 2007.

The above plans are hereby adopted as the master development plan and as final site and building plans.

b. Prior to issuance of a grading permit, the following must be completed:

(1) Submit the following for staff review and approval:

(a) Final site, grading, drainage, utility and erosion control plans.

(i) Plans must limit the driveway radii to 10 feet.

(b) A hydrology report for the entire site. Rate and volume must be less than existing conditions.

(c) Infiltration calculations.

(d) Calculations for the underground stormwater retention system verifying correct sizing based on added impervious surface and site soil type.

(e) Profiles for all watermain, sanitary, and storm sewer lines as required by the city engineer.



- f. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
  - g. Space presented as storage area on the plans must remain as such or additional parking would be required.
  - h. Construction must begin by December 31, 2008, unless the planning commission grants a time extension.
- 3) Approve the applicant's appeal of the maximum trip generation outlined for the properties at 9999 and 10001 Wayzata Boulevard. Approval is based on the following findings:
- a. Though the development would generate more vehicle trips that outlined city code, no major traffic impacts are anticipated.
  - b. The Ford Road/Wayzata Boulevard intersection would continue to operate at Level of Service A.
  - c. New vehicle trips from the proposed development would not increase the delay at any major intersection by more than four seconds.
- 4) Adopted Resolution No. 2007-54 approving the conditional use permit for a drive-up bank facility. This resolution is based on the finding that the proposal meets all conditional use permit standards. Approval is subject to the following conditions:
- a. Public address systems must not be audible from any residential parcel.
  - b. Record this resolution with the county before the city issues a building permit.
  - c. The city council may reasonably add or revise conditions to address any future unforeseen problems.
  - d. 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.

Staff is directed to discuss with the applicant that proof of parking may be used to provide more green space.

All voted "yes." Motion carried.

**B. MERIT Organizational Component.**

Gunyou gave the presentation.

Callison congratulated Gunyou on the good report card. Gunyou thanked the council for support of the MERIT system. He said it was unique for any other city to offer such a program and assured the council that employees take the system very seriously.

Wiersum said the scores particularly on courtesy and respect in dealing with residents is a strong positive because many people who call the city have complaints. The way those calls are handled with continued positive results speaks well of the staff and reflects well on the city.

**15. APPOINTMENTS and REAPPOINTMENTS:**

**A. Appointment to the comprehensive guide plan steering committee.**

Callison moved, Thomas seconded a motion to appoint Lee-Hoon Benson, to the comprehensive guide plan steering committee, effective April 23, 2007 and expiring at the completion of the plan update in 2008. All voted "yes." Motion carried.

**16. ADJOURNMENT.**

Thomas moved, Allendorf seconded a motion to adjourn the meeting 7:48p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk