

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, SEPTEMBER 10, 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 Brad Wiersum, Terry Schneider, Al Thomas, Dick Allendorf, Bob Ellingson, Tony Wagner, and Jan Callison were present.

4. APPROVAL OF AGENDA.

City Manager John Gunyou noted an addendum related to item 14A.

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

5. APPROVAL OF MINUTES: July 23, 2007 regular meeting

Wiersum moved, Thomas seconded a motion to approve the minutes of the July 23, 2007 Minnetonka City Council regular meeting. Wiersum, Schneider, Thomas, Allendorf, Ellingson, and Callison voted "yes." Wagner abstained. Motion carried.

6. SPECIAL MATTERS: None.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule of upcoming meetings.

Callison said she heard work on the County Road 73 bridge is ahead of schedule and the bridge may reopen around October 1 instead of November 1.

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

No one appeared.

9. BIDS AND PURCHASES:

A. Contract for the purchase of a respirator air emergency support vehicle.

Gunyou gave the staff report.

Wiersum moved, Wagner seconded a motion to amend the 2008-12 Capital Improvement Program and award the contract to the low bidder, Pierce Manufacturing, Inc. in the amount of \$198,758. All voted "yes." Motion carried.

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

A. Claims for council authorization – August 27, 2007.

Allendorf moved, Thomas seconded a motion to approve the August 27, 2007 claims which includes checks numbered 206260 through 206560, totaling \$1,375,928.81. All voted "yes." Motion carried.

B. Claims for council authorization – September 10, 2007.

Allendorf moved, Thomas seconded a motion to approve the September 10, 2007 claims which includes checks numbered 206561 through 206827, totaling \$1,499,485.64. All voted "yes." Motion carried.

C. Ordinance authorizing the sale of Outlot B, Vista.

Allendorf moved, Thomas seconded a motion to adopt Ordinance No. 2007-30 authorizing the sale of Outlot B, Vista. All voted "yes." Motion carried.

D. Extension of approval for the Lipe Addition final plat at 5342 Picha Road.

Allendorf moved, Thomas seconded a motion to approve a one-year time extension. All voted "yes." Motion carried.

E. Agreement with School District 276 to authorize city funding for improvements to athletic fields at Minnetonka High School.

Allendorf moved, Thomas seconded a motion to approve the agreement. All voted "yes." Motion carried.

F. Conditional use permit to operate a massage business out of the home at 6170 Creek View Ridge.

Allendorf moved, Thomas seconded a motion to adopt Resolution No. 2007-115 approving a conditional use permit for a home occupation at 6170 Creek View Ridge. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) This resolution must be recorded with Hennepin County.
- 2) The property and business owner must obtain a massage business license from the city, and comply with the massage service regulations of Section 810 of the City Code.
- 3) All customer and visitor parking must be located on the paved driveway. Parking is not permitted on Creek View Ridge.
- 4) No exterior signs are permitted, and any interior signs must not be visible from surrounding properties.
- 5) Business hours are limited between 8:00 a.m. to 9:00 p.m.
- 6) Any change to the approved use that results in a significant increase in traffic or a significant change in the character of the business would require a revised conditional use permit.
- 7) Any violation of the terms or conditions of this conditional use permit renders the permit null and void.
- 8) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

G. Resolution requesting cooperative agreement funding for the TH 7/Highland Road north frontage road.

Allendorf moved, Thomas seconded a motion to adopt Resolution No. 2007-116 requesting cooperative agreement funding for the TH 7/Highland Road north frontage road, City of Minnetonka Project No. 4806R. All voted "yes." Motion carried.

H. Resolution ordering the abatement of long grass nuisance conditions.

Community Development Director Ron Rankin said the properties on Horn Drive and Creek Ridge Court remain in violation.

Allendorf moved, Thomas seconded a motion to adopt Resolution No. 2007-117 ordering the abatement of the nuisance conditions. All voted "yes." Motion carried.

I. Resolutions ordering the abatement of nuisance conditions.

Rankin said the property on Excelsior Boulevard was now in compliance.

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

- 1) Resolution No. 2007-118 ordering the abatement of nuisance conditions existing at 2339 Hopkins Crossroad.
- 2) Resolution No. 2007-119 ordering the abatement of nuisance conditions existing at 9629 Oak Ridge Trail.

All voted "yes." Motion carried.

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

12. **INTRODUCTION OF ORDINANCES:**

A. **Ordinance rezoning 506 Milbert Road from R-1, low density residential, to PUD, planned unit development for a two lot subdivision.**

Gunyou gave the staff report.

Wagner moved, Allendorf seconded a motion to introduce the ordinance and refer it to the planning commission. All voted "yes." Motion carried.

Callison asked what date the item would be heard by the planning commission. City Planner Julie Wischnack said it would be heard at the September 13 meeting.

13. **PUBLIC HEARINGS:**

A. **Public hearing to consider a temporary on-sale wine license.**

Gunyou gave the staff report.

Callison opened the hearing at 6:44 p.m. No one spoke.

Callison closed the hearing at 6:44 p.m.

Schneider moved, Wiersum seconded a motion to grant a temporary on-sale wine license. All voted "yes." Motion carried.

B. **Public hearing to consider a resolution that vacates part of a public drainage and utility easement at 5739 Kipling Avenue.**

Gunyou gave the staff report.

Callison asked for clarification on when staff does an administrative lot division. Wischnack said there are circumstances that allow a minor subdivision. One situation is a legal description change. Another situation is a lot line adjustment with no new parcel created by the subdivision.

Callison opened the hearing at 6:46 p.m.

Steve Hansen of 5723 Kipling Avenue said the process will give his family more of a view of the park. He said the homeowner will be able to lower the price of his home without lowering the value of the home.

Callison closed the hearing at 6:47 p.m.

Wagner moved, Allendorf seconded a motion to adopt Resolution No. 2007-120 approving the vacation of the public drainage and utility easement at 5739 Kipling Avenue. This resolution is based on the following findings:

- 1) The petitioners are owners of the land abutting said easement and, therefore, are proper petitioners.
- 2) The city no longer needs a portion of this easement.
- 3) Vacating this easement is in the public interest.

Approval is subject to the following condition:

- 1) The property owners must deed seven-foot public drainage and utility easements along the new lot line in conjunction with the administrative lot division.

All voted "yes." Motion carried.

C. Public hearing to consider the vacation of an unneeded portion of city right-of-way at 14517 Excelsior Boulevard.

Gunyou gave the staff report.

Callison opened the hearing at 6:49 p.m.

Callison closed the hearing at 6:49 p.m.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2007-121 vacating a portion of public right-of-way adjacent to 14517 Excelsior Boulevard.

Approval is based on the following findings:

- 1) The petitioner is the owner of the land abutting said easement and, therefore, is a proper petitioner.
- 2) The city no longer needs this easement.
- 3) Vacating this easement is in the public interest.

Approval is subject to the following conditions:

- 1) The vacation reserves unto the city of Minnetonka, its successors and/or assigns a perpetual easement for drainage and for utility purposes over, under, across, and upon all that part of said public right-of-way described above and now vacated.
- 2) The applicant must provide title evidence as required by the city attorney.

All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Items concerning demolition and construction of a new house at 2529 Bantas Point Road.

Wischnack gave the staff report.

Wagner asked how the property's floor area ratio compares with the properties around it. Wischnack said this was an example of how the McMansion policy allows consideration of what is appropriate for areas that don't have street frontage. In this case consideration was given to areas visible from the lake shore area and a thousand feet in either direction.

Wiersum said the staff report contained comments from the neighbors indicating previous houses in the area were required to be parallel to the lot lines. He said in this proposal it looks as if the re-orientation is closer to parallel to the side lot lines but it is not exactly parallel. He asked if there has been a requirement for houses with narrow lots and multiple variances to be parallel to the lot line. Wischnack said it has been a requirement in the past in particular with the adjacent parcel but that property had more issues related to a nearby area of water. She said the revised proposal gives this property a better alignment with the lot line.

Allendorf noted the issues raised in the email included in the addendum seemed to have been addressed by the changes. He asked if Wischnack agreed. Wischnack said the revised plan addressed each of the points raised in the email.

Allendorf said the driveway has been moved from five feet from the property line to 16 feet from the street. He asked if the change would allow for a car to be parked in the driveway with the garage door closed without the car sticking out into the cul de sac. Wischnack said originally the plan was for the driveway to be 12 feet from the street. She said as a reference the city requires 20 feet for parking spaces. Wagner said he did calculations indicating it would be 16 feet for a Ford Explorer. Wiersum said he has a small car and it would be 14 feet for a car his size.

Callison said looking at the revised plan there is still room to move the house closer to the lake. She asked if this had been considered. Wischnack said there was discussion of shifting the house toward the lake shore but the option was not explored any further.

The applicant, Gary Medin of 2529 Bantas Point Road, asked for clarification of a building variance provision requiring a front yard setback from 25 feet to 11 feet. Wischnack said the setback referenced pertains to the northwest corner to the street and the southwest corner of the home to the street.

Medin's builder Duane Myers of 1411 Lancaster in St. Louis Park said he wasn't previously aware of the second front yard setback. Staff pointed out on a map where the setbacks were located. Medin and Myers said they now understood the provision. Callison suggested they visit with staff to confirm their understanding of the provision.

Callison said it was her expectation that if the shoreland buffer requirements being discussed get modified that the new requirements would apply to this property so it is treated the same as other properties on the lake.

Wiersum moved, Thomas seconded a motion to adopt Resolution No. 2007-122 which approves the following outlined items for construction of a new house at 2529 Bantas Point Road:

Conditional Use Permit

- For construction within the floodplain.

Lot Variances

- Lot area 22,000 square feet to 8,758 square feet
- Lot depth 125 feet to 53 feet

• Buildable area:

- Minimum size from 3,500 square feet to 536 square feet
- Minimum dimension (length/width) of buildable area from 40 feet to 7.5 feet

Building Variances

- Front yard setback 35 feet to 9 feet; and from 25 feet to 11 feet
- Flood plain setback 20 feet to 0 feet
- Required low floor elevation from 933.5 to 932.2 for the attached garage
- Required elevation of driveway from 932.5 to 930.8

Approval is based on the following findings:

- 1) There are several practical difficulties associated with the subject property:
 - a. The subject property was platted in 1914; it is substandard by current city code standards;
 - b. The lot is encumbered by setback requirements associated with property lines, shoreland, and floodplain areas, as well as a driveway not benefiting the subject property. These issues result in minimal building area, making it difficult to construct a house meeting setback requirements; and
 - c. The lot variances would be required to construct any new home on the site.
- 2) There are several unique circumstances associated with the lot:
 - a. The subject property is a substandard, legal lot of record.
 - b. The subject property is located at the end of a curved cul-de-sac. As such, the proposed house placement would not impact public safety or established building lines.
- 3) Numerous variances have been approved for various homes in the surrounding neighborhood, including similar lot, front yard setback, floodplain, and impervious surface coverage variances.
- 4) The construction of a modern home would make the property more compatible with others in the surrounding neighborhood and would not alter the essential character of the neighborhood.
- 5) The existing structure's low floor elevation is not located at least two feet above the floodplain elevation of 931.5 as required by ordinance. The proposed home, with the exception of the attached garage, will meet ordinance requirements for low-floor elevation separation from floodplain, thus, eliminating a nonconforming situation on the subject property.

Approval is subject to the following conditions:

- 1) Submit/complete the following before the city issues a building permit:

- a. Submit proof of having recorded this resolution with the county before the city issues a building permit.
 - b. Submit a revised survey illustrating reduction in the building size and relocation to setbacks as outlined in the preceding part of this resolution.
 - c. Submit a construction management plan; this plan must outline parking and construction access with defined stockpile and material storage areas.
 - d. Install temporary rock driveway, erosion control, tree protection and lake protection fencing, subject to review by the city's natural resources staff. These items must remain in place throughout the course of construction.
 - e. The property owner must submit an emergency evacuation route from the structure directly to land above the designated 100-year flood elevation, subject to staff approval.
- 2) Maintain a low floor elevation above 933.5 for all new living space and a low floor elevation of 932.2 for the attached garage.
 - 3) Structure must be designed to comply with ordinance 300.24.9(j).
 - 4) Install and maintain a 19.5-foot buffer of native vegetation adjacent to the shoreline. A 19.5-foot conservation easement must be dedicated over the vegetative buffer and must be recorded with the county.
 - 5) Revegetate areas where demolished structures are removed.
 - 6) Permits may be required from other outside agencies, including but not limited to the United States Army Corps of Engineers, Minnesota Department of Natural Resources, Minnehaha Creek Watershed District and the Lake Minnetonka Conservation District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
 - 7) The applicant/property owner must have a National Flood Insurance Program Elevation Certificate completed, as required by the Federal Emergency Management Agency (FEMA) before issuance of a certificate of occupancy.
 - 8) This variance will end on December 31, 2008, 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.

Allendorf noted that since the planning commission's discussion on the item to the council discussion that the staff and applicant had done a good job in addressing the neighbor's concerns.

B. Items for the 2008 Preliminary Tax Levy.

Gunyou gave the staff report.

Callison asked what action the council was taking at this meeting and what the process was going forward. Gunyou said the specific action was to set the maximum 2008 tax levy for truth in taxation purposes. The truth in taxation notices mailed out in November will be based on the preliminary tax levy. Property taxpayers will receive parcel specific notices that include information from all the taxing jurisdictions. There will be a public hearing during the first part of December in which people can comment on the proposed budget and tax levy. Council will subsequently adopt a budget and levy later in December for 2008. Gunyou said between that time and now staff will be developing the detailed budget proposals that will come back to the council in a study session. The information will also be made available online.

Schneider asked Gunyou to clarify for residents why the proposed levy calls for a 4.7 percent increase and yet 7 out of 10 homeowners would see their property taxes decrease. Gunyou said for the first time in a number of years commercial property values are increasing while residential property values are either the same or decreasing. Therefore the revenue increase the city receives will be spread differently, with a greater portion of the tax increase spread on commercial properties. Another factor is the phase out of the state's limited market value program. Finally, a major tax increment financing district is being returned to the tax rolls creating a bigger commercial tax base.

Wagner said the public safety proposal changing fire department staffing calls for studying a future deployment plan but also calls for capital costs in the budget. He said typically a study is completed before the capital costs are determined. Gunyou said because the implementation will occur fairly quickly and the city already knows it has to transition to the duty crews, there will be a capital investment required for such items as beds. Even though the exact costs have yet to be detailed, the amount approved by the council will be reserved. Once the costs are identified, the council would be asked to approve the expenditure.

Wiersum asked for examples where the state or other governing authorities have required the city to do things without providing an increase in funding. Gunyou said one example is the county now requires cities to schedule court appearances. He said the city's guiding philosophy is not to be the cheapest or most expensive but to be reasonable. He said the city hears from residents regularly that it does a good job managing their money. When the decision was made to increase funding to improve roads there were far more calls about when a particular road would be scheduled rather than concerns about raising taxes too much for that need.

Wiersum noted city property taxes were increased to pay for roads but in some of the comparable cities assessments are used to pay for road improvements.

Wiersum moved, Thomas seconded a motion to adopt the following resolutions authorizing a total preliminary levy for the 2008 budget of \$27,268,554.

- 1) Adopt Resolution No. 2007-123 setting a preliminary 2008 tax levy and budget for truth-in-taxation purposes.
- 2) Adopt Resolution No. 2007-124 setting a preliminary 2008 tax levy for the Bassett Creek Watershed Management Tax District.

All voted "yes." Motion carried.

C. Comprehensive guide plan update.

Gunyou said when the comprehensive plan process began one of the council's requests was that items not be sprung on the council at the last minute. Accordingly, a number of study sessions and reviews have been scheduled throughout the process. Periodic updates will also be provided.

Assistant City Manager Geralyn Barone gave the staff report.

Schneider asked how residents could follow and participate in the process. Barone said information will be provided on the web site and in the city's newsletter. When specific geographic areas are being looked at, notifications of meetings will be sent out to the residents in the areas.

Wagner asked if schedules have been set for when specific geographic areas will be studied. Barone said some of the areas are already in progress while others are yet to be determined. The

Minnehaha Creek Area is a study area and a study session has been scheduled for September 17 for that area.

Callison said the schedule looks daunting and asked if the schedule was posted on the web site. Barone said she would make sure it is available.

Wagner said when the development moratorium was approved by the council, it was decided that any guide plan changes would be reviewed by the comp plan committee. He asked if the committee had reviewed any guide plan amendments. Barone said none had come before the group, but the intent is to have the group review those amendments.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointments to the comprehensive plan steering committee and the senior citizen advisory board.

Callison moved, Allendorf seconded a motion to appoint:

- Robert Walker, to the comprehensive plan steering committee, to fill the remainder of the term, effective September 10, 2007 and expiring on December 31, 2008.
- Wanda Griep, to the senior citizen advisory board, for the remainder of a two year term, effective September 10, 2007 and expiring on May 31, 2009.

All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Wagner seconded a motion to adjourn the meeting 8:08 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk