

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, OCTOBER 8, 2007**

**1. CALL TO ORDER.**

Mayor Callison called the meeting to order at 6:32 p.m.

**2. PLEDGE OF ALLEGIANCE.**

All joined in the Pledge of Allegiance.

**3. ROLL CALL.**

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

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou noted an addendum to item 10E.

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. Proclamation declaring October as Toastmasters Month in Minnetonka.**

Wagner read the proclamation.

Sandy Ryan said Toastmasters is a wonderful organization that teaches people how to speak in public and improve leadership skills and confidence.

**B. Proclamation declaring October 9, 2007 as City Wide Open House Day.**

Thomas read the proclamation.

**C. Proclamation declaring week of October 22-26, 2007 as Minnesota Manufacturer's Week.**

Wiersum read the proclamation.

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

Gunyou reported on the schedule for upcoming council meetings. There is no meeting October 15. The next regular meeting is October 22. He said that a recent buckthorn workshop attracted 110 people. The number of people who attended is an indication of the interest in keeping the city ecologically sound. Gunyou also extended an invitation to the city's open house October 9.

Wagner said he was at the buckthorn workshop and concurred with Gunyou's comments. He said he also attended a neighborhood meeting on October 4 related to the proposed development in the I-394 County Road 73 area. He invited any resident of the area who has any questions to contact him.

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

Luann Tolliver of 14801 Wychewood Avenue gave an update on the Nine Mile Creek Watershed District's activities. She said over the past couple of years the district has been working on its mandatory 10 year water management plan. She said the board solicited input from residents and also the cities in the district. The plan was approved by the state in January and the district is now working via its technical advisory committee on updating the rules needed to implement the plan.

Tolliver said the watershed district has a repair and maintenance fund. A few years ago the fund was divvied up among the six cities in the district. Minnetonka's share was around \$31,000. The recently completed Wing Lake storm sewer enhancement qualified for use of the funds. Tolliver presented the city with a check for \$31,453. She expressed thanks on behalf of the board to city staff for being leaders on the technical advisory committee.

Callison thanked Tolliver for the check and also for the time Tolliver has put in working for the watershed district. Callison said she appreciated Tolliver's comments on following the city's model for getting feedback from residents by conducting neighborhood meetings. She said the city also values the contributions and investments the watershed district has made, and that has made a difference to the city's water quality.

**9. BIDS AND PURCHASES: None.**

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

**A. Claims for council authorization – October 8, 2007.**

Allendorf moved, Wiersum seconded a motion to approve the October 8, 2007 claims which includes checks numbered 207128 through 207470, totaling \$2,848,595.33. All voted "yes." Motion carried.

**B. Resolution appointing election judges for the November 6, 2007 General Election.**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-131 appointing the election judges for the November 6, 2007 General Election. All voted "yes." Motion carried.

**C. Proposed orders for tobacco license stipulations.**

Allendorf moved, Wiersum seconded a motion to issue Finding of Fact, Conclusion, and Order for each of the establishments listed below:

- |    | <u>Licensee/Establishment/Offense/Fine</u>                              |
|----|---|
| 1) | <u>L &amp; H Technology Corp./The Little Store/1<sup>st</sup>/\$250</u> |
| 2) | <u>Kazim Corporation/Treats &amp; More/1<sup>st</sup>/ \$250</u>        |
| 3) | <u>Glenrose, Inc./Glenn's 1-Stop/1<sup>st</sup>/ \$250</u>              |
| 4) | <u>Twin Cities Stores, Inc./Oasis Market #582/1<sup>st</sup>/ \$250</u> |

All voted "yes." Motion carried.

**D. Resolution adopting the 2008 meeting schedule for the Minnetonka City Council.**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-132 adopting the 2008 meeting schedule for the Minnetonka City Council. All voted "yes." Motion carried.

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

Humberto Alarcon said in 2006 he was living with his mother, wife, and children at 18 Westwood Circle. There was a neighborhood dispute involving dogs in the home that led to the house being condemned. The house was demolished and Alarcon applied for a permit to build a new house. He said the neighbors blocked the building of the new house and the city denied the permit.

The city did eventually approve a permit for a one story house with a basement. Alarcon said his builder advised him that a 1,800 square foot house near Ridgedale wasn't worth building. Alarcon continued to pay his water and sewer bill for two years but learned

other cities do not continue to charge for sewer and water when a house is torn down. Minnetonka's ordinance requires a minimum payment when a premises is not connected to the city's sewer and water system. Alarcon asked the council to forgive the amount he owed because he was not living on the property.

Callison asked for staff to comment. Finance Director Merrill King said when a property is demolished but accessibility to the water and sewer system remains, the ordinance requires the owner to pay a minimum charge. She said Alarcon paid the minimum charges in 2004 and 2005. In 2006 the amount was assessed on his property. Once the amount is assessed, there is a \$50 administrative charge and interest is added to the total, in addition to \$10 late fees that have accumulated to the account.

King said that once a home is demolished and there is no intent to rebuild on the property, the homeowner is responsible for capping the access to the system at the street. If that is done, there is no minimum utility charge.

Wagner asked for clarification on the requirements for demolition situations versus empty lot situations. As an example, he pointed to the lot divisions that were done north of Minnehaha Creek and west of the Burwell House, and asked if those lots are being charged the minimum fee. Community Development Director Ron Rankin said if someone has a vacant lot and is planning for a future home there is no charge until a connection is made. Once the initial connection is made a minimum amount is charged even if the home is demolished. Wagner asked since there is access to water service if the landowner has the actual ability to draw water out of the system. King said to actually draw water from the system hardware such as a spigot is needed. Currently the property does not have the items necessary.

Wiersum asked what the minimum quarterly charges are. King said Alarcon is currently being charged the quarterly \$39.75 sewer fee. The property is also charged the minimum quarterly storm water fee of \$14.40. Wiersum asked if it would be expensive for Alarcon to cap the access and then remove the cap when he decided to build on the property again. City Engineer Lee Gustafson said it would be several thousands of dollars to do so.

Thomas said he was concerned because the total number of delinquent accounts and the amounts being certified to the county over the last five years have substantially increased. He asked if there was an explanation for the increase. King said she was

concerned about the trend as well, and staff will do an analysis before the next certification. She said one reason might be that the rates have increased over a number of years while the threshold of \$100 for certification has not changed. She said staff will also evaluate if the late penalty rate is sufficient to act as a deterrent.

Thomas asked when the city actually receives the money. King said the city is paid when it receives its tax proceeds in July and December. The amount includes interest and the administrative penalty. She said the preference is to receive the payments on time because there is a lot of administrative work involved in notification requirements and certifying the delinquent accounts to the county.

Callison said that Alarcon indicated the staff recommendation complies with the city ordinance. She asked if the council had the ability to deviate from the ordinance's requirement. City Attorney Desyl Peterson said the ordinance does not provide for a variance procedure. She said she would be concerned if the council granted Alarcon's request, since others on the certification list in similar situations will have been treated differently.

Schneider said he agreed that because of the ordinance, the council did not have the ability to grant Alarcon's request. He said that he sees a disconnect in the ordinance for the way that a newly developed lot that has a stub is exempt from the minimum charge and an empty lot that has a stub is charged. He believes that they both should be subject to the charge.

Callison said there appeared to be enough council interest in the issue to have further conversation and have staff provide a rationale for the difference in the ordinance. Gunyou said staff will take a look at possible changes to the ordinance.

Wagner asked whether the matter before the council should be postponed to allow further discussion. Gunyou indicated that there is a county deadline for certification so action was required.

Alarcon said he hopes to be living in a house on the property soon, because it is a nice area with a new park nearby.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2007-133 authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor, with the exception of the property owner currently on military deployment overseas.. All voted "yes." Motion carried.

**F. One-year extension of the Stratford Woods Second Addition preliminary plat approval at 5243 Black Friars Lane and 18900 Stratford Road.**

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

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

**12. INTRODUCTION OF ORDINANCES:**

**A. Ordinance rezoning 15407 Lake Shore Avenue from R-1, low density residential district, to PUD, planned unit development for Clark Kent Homes LLC.**

Gunyou noted it was a PUD because of the moratorium.

Allendorf asked if the item would have been allowed to come in as a PUD without the moratorium and if any natural resources were being lost as a result of the PUD. Gunyou said the PUD allows for the most control and restrictions, since it gives the council more discretion.

Callison asked staff to include language having R-1 zoning ordinances apply to the item.

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

**13. PUBLIC HEARINGS:**

**A. Items concerning vacation and final plat for the Opus Corporate Center expansion project at 10350 Bren Road West.**

Wischnack gave the staff report.

Allendorf asked if the current Outlot A was owned by Opus. Wischnack said portions of Outlot A were owned by Opus. The property line goes up to the trail and the city has an easement and does not own the underlying property. Allendorf clarified that the transfer of city owned land to Opus is being compensated by the transfer of Outlot A land to the city. Wischnack said the city is receiving back approximately three times more than it is transferring.

Callison said at the public hearing a lot of time was spent discussing traffic issues. She asked for an update.

Gustafson said the change from a stop sign to a yield sign on Green Circle Drive led to staff looking at the area and deciding the sight lines needed improvement. Work has been done on clearing the low vegetation. There is a Russian Olive tree about 100 feet from the intersection creating an obstruction. The tree will be removed. Gustafson said the police department has indicated there have not been any accidents at the intersection.

Callison asked if any traffic enforcement has been done to see if drivers are obeying the yield sign. Gustafson said he did not know if the police department had done so but that staff from the engineering department did observe traffic at the intersection and it appears to be functioning well. He said staff continues to believe the yield sign is a better option than a stop sign at the intersection.

Thomas asked staff to comment on moving the trail and the impact on the wetland. Wischnack said there are two incidental wetlands that are very narrow, and will be filled as part of the project. The trail and bridge will be relocated fairly close to the existing locations.

Wiersum said drivers continue to drive fast on Green Circle Drive. He asked if the intersection were to be redone in the future if there is a better geometry that would improve the traffic flow. Gustafson said there is one geometric change that could be done to improve the intersection. The change would require the complete reconstruction of a bridge and would also involve some wetland issues. He said the city could look at the geometric change to the intersection when the bridge is scheduled to be reconstructed.

Schneider said he shared Wiersum's concern about the long term viability of the intersection's configuration. He said he has driven the area several times since the item was first discussed, and has some ideas for possible solutions. He will share his ideas with staff.

Allendorf asked when the roads are scheduled to be redone. Gustafson said a master plan for the Opus area is on hold while comprehensive planning proceeds. How the land will be used will affect the traffic projections. Background data related to traffic counts for every road that comes into the Opus area has been completed. Allendorf said if the long term is really a short term he wants to weigh that as temporary fixes are discussed.

Callison opened the hearing at 7:32 p.m. No one spoke.

Callison closed the hearing at 7:32 p.m.

Wagner moved, Allendorf seconded a motion to:

- 1) Adopt Resolution No. 2007-134 declaring right of way.  
Adoption is subject to the following conditions:
  - a. The applicant provide a one-time maintenance payment of \$25,000, prior to issuance of a building permit for the proposed structure.
  - b. The applicant is required to construct the public roadway as identified in the development agreement.
  - c. This action is contingent on adoption of an ordinance ordering the disbursement of part of city owned property legally described as Tract B, Opus 2 Fourth Addition.
- 2) Adopt Resolution No. 2007-135 vacating Green Circle Drive and associated trail, curb and gutter, and drainage and utility easements. Approval is subject to completing the following conditions:
  - a. Deeding new easements to the city. Descriptions and/or documents providing new easements are subject to staff approval.
  - b. Provide title evidence as required by the city attorney.
  - c. This action is contingent on adoption of an ordinance ordering the disbursement of part of city owned property legally described as Tract B, Opus 2 Fourth Addition.
- 3) Introduce the ordinance transferring title of city-owned property.
- 4) Approve the Opus Campus Addition final plat that was received on September 27, 2007, subject to the following conditions:
  - a. Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat; and
  - b. Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.
  - c. The resolution vacating the drainage and utility easements must be recorded with the plat.
  - d. Additional easements must also be recorded with the final plat.
  - e. This action is contingent on adoption of an ordinance ordering the disbursement of part of city owned

property legally described as Tract B, Opus 2 Fourth Addition.

All voted "yes." Motion carried.

**B. Public hearing to consider applications by Champps Operating Corporation, for on-sale and Sunday on-sale intoxicating liquor licenses for Champps Americana, 1641 Plymouth Road.**

Gunyou said very little is changing, other than ownership.

Callison opened the hearing at 7:34 p.m. No one spoke.

Callison closed the hearing at 7:35 p.m.

Wiersum moved, Wagner seconded a motion to continue the hearing to November 5, 2007. All voted "yes." Motion carried.

**14. OTHER BUSINESS:** None.

**15. APPOINTMENTS and REAPPOINTMENTS:**

**A. Appointments to community commission, park board and LMCD.**

Callison moved, Thomas seconded a motion to appoint:

- Paul Thyren, to the community commission, for a two year term, effective October 9, 2007 and expiring on January 31, 2009.
- Chris Jewett, to the LMCD, for the remainder of a three year term, effective October 9, 2007 and expiring on January 31, 2010.
- Linda Witte, to the park board, for the remainder of a two year term, effective October 9, 2007 and expiring on January 31, 2008.

All voted "yes." Motion carried.

**16. ADJOURNMENT.**

Thomas moved, Wiersum seconded a motion to adjourn the meeting 7:37 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk