

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MAY 19, 2008**

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 Bob Ellingson, Brad Wiersum, James Hiller, Terry Schneider, and Jan Callison were present. Tony Wagner and Dick Allendorf were excused.

4. APPROVAL OF AGENDA.

City Manager John Gunyou noted addenda to items 13A and 14B.

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

5. APPROVAL OF MINUTES:

A. April 7, 2008 regular meeting.

Schneider moved, Hiller seconded a motion to approve the minutes of the April 7, 2008 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

B. April 21, 2008 board of review meeting.

Schneider moved, Hiller seconded a motion to approve the minutes of the April 21, 2008 Minnetonka City Council board of review meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Retirement recognition of Ron Rankin, Community Development Director.

Callison read the recognition and presented Rankin with a plaque.

Schneider said there have been many projects that have had a lot of emotion involved and Rankin without exception remained even keeled.

Wiersum thanked Rankin for his service. He also thanked Rankin for being such a gentleman in the way he has dealt with the council and residents.

Ellingson said Rankin has done a terrific job in responding to resident concerns.

Rankin thanked the council for the recognition. He said the city's fortune of strong, principled and forward looking leadership has been his fortune as well. He acknowledged that the current council and their predecessors have made the city a great place to work and live and the organization is one of purpose driven, responsive good work. He said the most distinctive aspect of the city organization is the quality and character of the employees.

B. Recognition of Police Reserve Officer Billy Gerard.

Wiersum read the recognition.

Gerard thanked the city and the police department for the honor of wearing the uniform.

C. Community survey results.

Dr. William Morris of Decision Resources gave the presentation.

Callison said the survey contained questions relating to natural resources protection. She asked how much time it takes for people to evaluate the questions and think them through noting that some of the responses seemed contradictory. Morris said the contradiction isn't necessarily caused by lack of information. He said suburban residents in general are not always consistent in response to policy proposals. People often comment that they like the absolute standard rather than shifting down to a standard that is nebulous. He said by and large the survey indicates a balance between what people feel are property holders rights versus the common good of the city. The survey indicates that Minnetonka residents tend to be very community minded in terms of wanting to keep the natural resources character.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou gave a legislative update. In January there were four items discussed with the city's legislative delegation as priorities. One was the comprehensive funding package for transportation that passed and will provide about ten percent more funding for roads. The city also was looking for more funding to be provided for direct property tax relief to taxpayers. The legislature approved a small increase to the state program that provides direct property tax relief to taxpayers depending on their income. The third item the city pushed for was that levy limits not be imposed. The legislature did pass legislation enacting levy limits for the next three years. Gunyou said it was fortunate that a few years ago when there were discussions about the city's street improvement program, part of the discussion was to phase in the program but because it wasn't known what the state would do, the program was phased in more quickly. He said that was good foresight on the city's behalf because the up and running street improvement program would not have been possible with the levy limits that will now be imposed. The last item that was being asked for was a refund of state sales tax paid on the new water treatment plant. The item was deleted at the last minute from the omnibus tax bill, so the city will not receive this refund.

Gunyou also reported on the schedule for upcoming council meetings.

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

No one appeared.

9. BIDS AND PURCHASES:**A. Consideration of bids for the remodeling of Fire Station 1.**

Gunyou gave the staff report.

Wiersum moved, Hiller seconded a motion to award the contract to RAK Construction, Inc. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Claims for council authorization – May 12, 2008.**

Schneider moved, Ellingson seconded a motion to approve the May 12, 2008 claims which includes checks numbered 211738 through 212035, totaling \$1,309,571.08. All voted "yes." Motion carried.

B. Amendment to invasion of privacy ordinance.

Schneider moved, Ellingson seconded a motion to adopt Ordinance No. 2008-16 an amendment to invasion of privacy ordinance. All voted "yes." Motion carried.

C. Request to move several houses and garages on Wilshire Drive to Grove City, Minnesota.

Schneider moved, Ellingson seconded a motion to approve the permit, subject to the following stipulations:

- 1) City staff approve in advance any tree trimming in connection with the move.
- 2) That the move be directly monitored by appropriate city staff.
- 3) That the move be a continuous trip from the property to outside the city limits, and that the house cannot stop or be parked within the city.

All voted "yes." Motion carried.

D. Resolution ordering the abatement of nuisance conditions existing at 11200 Oakvale Road N.

Rankin reported as of earlier in the day there was only partial compliance.

Schneider moved, Ellingson seconded a motion to adopt Resolution No. 2008-053 ordering the abatement of nuisance conditions existing at 11200 Oakvale Road N. All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES: None.

13. PUBLIC HEARINGS:

A. Items regarding The Exchange plat.

City Attorney Desyl Peterson gave the staff report.

Callison opened the hearing at 7:09 p.m. No one spoke.

Callison closed the hearing at 7:10 p.m.

Schneider moved, Wiersum seconded a motion to continue the item to June 9, 2008.

All voted "yes." Motion carried.

B. Public hearing to consider applications for Redstone American Grill liquor licenses.

Rankin gave the staff report.

Wiersum said the city takes violations to liquor laws seriously. He asked what recourse the city has for the violations that occurred. Rankin said that in the past there have been situations where there has been a sale of a company at the corporate level or an acquisition of a chain by a different company where there was a lapse in the transfer of ownership and there was delay in notification to the city. There is a 20 day accommodation in the ordinance. In this case the city was not notified of an ownership change for a number of years and it was also represented to the city that there was no change of ownership. The council has the authority to hold a public hearing on the alleged violation of the ordinance.

Peterson said what distinguishes this situation from prior ones is the length of time it took to notify the city and there appears to have been false statements made in the application for renewal. The council has the authority to fine the applicant and also has the ability to suspend the liquor license for a period of time.

Callison asked staff to explain why the ownership information is important for liquor licenses. Peterson said one of the concerns is the city wants to know who is actually running the liquor licensed operation. This is a holdover from the days of people using liquor licenses for ways of laundering money. The city wants to know what kind of capital is involved in the corporation to make sure the corporation is significantly capitalized so they don't attempt to take short cuts in relation to the enforcement of ordinances. The city also wants to make sure the company pays its taxes and water bills. Finally, the city wants to make sure the people involved are legally permitted to be involved.

Rankin said the city has a variety of establishments, some of which are chain operations where the owners are not directly involved in the operation. In other cases the owners are directly involved in the day to day operations of the business. In either case the city wants to know who is involved and responsible for the day to day operations. The ordinance requires an owner or a manager to

reside in the area so there is a responsible party the city can directly contact in the event it is necessary.

Callison opened the hearing at 7:18 p.m.

Virginia Bell of 4925 Coventry Road W spoke on behalf of the Redstone Grill. She said the applicant is aware of the importance of compliance with the liquor license and the issues before the council. If there has been a violation it was inadvertent and unintentional and was made prior to the present management being in place. On January 7, 2008 professional management came on board and contacted the city about the change in ownership and change in management. There has been a big change in how the business is being run. She said the alleged violations were a result of a bookkeeper who did not understand what she was supposed to be doing with respect to the forms. The new management has been in continuous contact with city staff and the disclosures have been made.

Bell said there has not been any harm done. The controlling ownership of Redstone Grill has not changed from when the initial liquor license was approved in 2001. Four new ownership interests have been added since that initial approval and the most recent was disclosed immediately. She said if there is a suspension or revocation of the license there would be a disastrous result for the Redstone Grill. If there was a suspension for any amount of time the Redstone Grill would probably be out of business and that would impact its 100 employees. The other locations being opened elsewhere would also be impacted because a revocation of the license here would prevent those locations from getting liquor licenses. She said the company has been attempting to cooperate with the city and recognizes the importance of the ordinances and the need to comply.

Hiller asked if Redstone pointed out the problem to the city. Rankin said the issue was brought to staff's attention by Redstone. He added Dean and Michelle Vlahos who were part of the original ownership, are long standing restaurant operators in the city. Because of their experience staff is even more concerned that the ordinance was overlooked.

Schneider said he was comfortable approving the license. The violation is not as serious as a sale of liquor to a minor. But the magnitude and length of duration of the nondisclosure is significant and should require the item to come back to the council for action on a potential penalty. He said the excuse of assigning the forms to

a bookkeeper was not a good answer. He said he likely would not be open to a suspension or revocation of the license and that a fine would get the attention and understanding that the city takes violation of the ordinance seriously.

Wiersum said he agreed with Schneider that the violation is neither trivial nor is it dire. He said that many residents value the restaurant and the city does not want to do anything that will seriously jeopardize the entire business. At the same time it is not appropriate to ignore the violations. He said it is encouraging that the new management brought the issues to light.

Schneider moved, Wiersum seconded a motion to continue the hearing to June 30,2008 and to direct staff regarding to follow-up on Redstone's apparent violations of the ordinance. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Presentation on a joint housing project between the city and Hennepin Technical College.

Community Development Supervisor Elise Durbin gave the staff report.

Sandy Kretsch of 13100 Collegeview Drive in Eden Prairie spoke on the proposal. Kretsch is an architectural drafting instructor at Hennepin Technical College. She said the main level floor will be a finished 1,280 square feet. The lower level finished area will be 968 square feet. The house will have a solar area on the south side. She said the proposal is to build the footprint at approximately the same location as the existing house in order to reduce the disturbance to the site. It will be built with a southeastern orientation so that the southern exposure will give passive solar exposure. The west and east will be shaded with trees. The walk out gives the opportunity for a sun room on both the main and lower levels. She said there will be a glazing sliding door between the sunroom and the living area that will serve as a transparent wall. Its purpose is to gather heat during the day and during the evening the heat will be moved to the inside of the house to the main level where there is an open space. A compact footprint is planned so that all the construction dimensions are two foot increments and materials are not wasted.

Tom Haller of 13100 Collegeview Drive in Eden Prairie said he is a carpentry instructor at the college. He said the site is a beautiful site

with a walk out and three big trees in the back. There is an open wetland area in the back. He said one of the first premises of green buildings is to reduce the footprint. He said the walls will be built tight to keep energy in the house. One of the primary focuses of LEED buildings is to conserve energy.

Kretsch said there will be geothermal heating and cooling that will use less fossil fuels. The LEED rater has advised that another option is to build a passive house that will put more money into super insulated walls and a well ventilated building to lower energy costs. She said a photovoltaic system would cost around \$32,000 to heat a home of this size. The roof will be built at an angle to allow a photovoltaic system to be installed in the future if they should become more economical. She said permeable pavers have been proposed for any outdoor paving. There is a proposed rain garden for runoff. The proposal calls for a light colored roof to reduce cooling costs. Sensor controlled shades will insulate the solar room during times when sun is not being collected. Thermal mass will be used for flooring, allowing heat to be gathered and stored. Window awnings and large overhangs are proposed for shading. In-floor radiant heat will be used to help reduce heating costs. She said recyclable materials will be used in construction. Drought resistant landscaping will reduce water usage. Kretsch said the LEED rater will review and advise on the construction documents. After the house is build the rater will test various aspects of the house.

Haller said what is happening in the industry is that LEED is one of the pilot programs that looks at how houses can be built more efficiently. Haller and his partner built energy efficient homes in the late 1970's when there was also an oil energy shortage. Builders are now going back to what they were doing 30 years ago. He said a well built house should last 100 to 200 years.

Callison asked since the city will own the property and will own the house at some point during the process if there are liability issues. Peterson said the city will have liability that it would not otherwise have. The standard agreement requires the college will obtain the necessary liability insurance and builders risk insurance. She said she would like to clarify the warranty provision to make it clearer that the college is responsible to honor the warranty.

Callison asked if the sample joint powers agreement would come back to the council for action. Peterson said the recommendation was for the council to approve the sample agreement, subject to

her subsequent approval. If the council was not comfortable with that approach, the agreement could come back.

Hiller said the current assessed market value of the house is \$213,000. The proposal calls for construction to add another \$220,000. He asked if it is envisioned that the city will get back approximately \$440,000 from the sale of the house. Rankin said the current value is based on the value of the lot and the existing building. The existing building would be demolished. He said the land value will likely be higher than what the assessor has on the record. Staff estimates the house will sell for around \$350,000. Hiller noted that currently the house is renting out as an affordable unit. Rankin confirmed this and said the city owns around a dozen homes around the city. A number of those are rented at an affordable rate while others are rented at market rates.

Wiersum asked if the house could be sold as an affordable unit or if the costs involved would preclude that. Rankin said the combination of the new house, its location, and the desirability of the lot would make it difficult to write down the costs. He said there have been preliminary discussions with Hennepin Technical College about other locations in the city where there might be the opportunity to build affordable housing.

Wiersum asked if the city owns just the one lot of the three that project into the park. Assistant City Manager Geralyn Barone said the city owns the one lot. Years back there was interest in making Purgatory Park a golf course and the park board identified properties across the city that would be appropriate for the expansion of parks. She said the three lots were identified for possible acquisition. As the city went through its open space referendum process and identified properties for acquisition, the three lots fell off the list because of the topography.

Hiller said he was concerned that the city could sell the lot for around \$213,000. With the additional costs of the proposed home the city could see a loss of around \$80,000. He said he wasn't sure there is value to residents in investing the proposed amount. Another concern is because the existing unit has been rented to an individual for the past 11 years as an affordable unit and there is a shortage of affordable units in the city, the city should be reluctant to lose another affordable unit. He said there should be a compelling reason to sell the land.

Gunyou noted the city originally paid \$145,000 for the property. If the house is built at \$100 per square foot the construction cost

would be around \$200,000 meaning the city's capital investment in the property would be around \$350,000. Since the house will likely sell for at least \$350,000 there would be no net loss to the city. Hiller said the value to residents is what the land could currently sell for. Gunyou agreed if the city did not undertake the project and could sell the land today for about \$215,000, it would recoup around \$70,000.

Wiersum said he could see Hiller's point but he challenged anyone to find a 2,000 to 2,200 square foot house in the city that would cost \$100 a square foot to build. He said staff is being modest in the potential sales value of the house. Because of the location of the house and the potential LEED certification he is not concerned the city will lose money on the project. The exciting project has many positives, including providing learning experiences for students and promoting LEED buildings, sustainability and energy efficiency. He is however concerned about requiring the current resident to move. Schneider agreed the city should do its best in accommodating the renter. He said he also shared Hiller's concerns about losing an affordable unit. Looking at the plan and with the land trust model he said the unit could potentially be an affordable unit. Talking with staff the concern is that the parcel was purchased with park funds and the final cost of the project is unknown. But he said there will be value created because of the free labor and the lower cost for materials, so when the house is complete the city can decide if it makes more sense to sell the house at the highest possible market rate and split the money between affordable housing and park property. The other option would be to convert the \$220,000 house to an affordable unit. He supports the project, and said establishing a relationship with the Hennepin Technical College has long term positive benefits. He challenged the college to focus on affordability and designing a good affordable house.

Ellingson said he thought the proposal was a good idea because of the reduced footprint size of the house. One of the issues the city has faced over the years is because the city has the largest minimum lot size in the Twin Cities the tendency is to get large expensive houses. Half acre lot subdivisions are routinely approved because that is what the ordinance allows. Builders have difficulty selling the large houses because they don't meet the marketplace needs. The homes are also energy inefficient. He said this is a good demonstration of the need to reduce house sizes and to make homes more energy efficient.

Callison said she appreciated the conversation about affordability. The city also faces a challenge of new homes that sell for \$400,000

to \$450,000. She was involved with the WHALT house in Eden Prairie done by Hennepin Technical College and it was a challenge to get it built and made affordable. She said this house is not the place to look for affordability. Residents are not losing value on the proposal. Value will be gained by having skilled workers who can build these types of homes. She said the comprehensive guide plan steering committee is very interested in sustainability and green design. She challenged staff to use this learning experience to inform ordinances and policies so the project has an impact beyond this lot.

Hiller asked if there was anything that could be done for the current renter. Durbin said discussions have been held with the property management company to work with the tenant to find other locations. The tenant has contacted city staff and staff has taken a more proactive approach than normal to look for affordable units.

Wiersum asked for the timetable of the project to let the renter know how much time they have to look for another place to live. Durbin said the tenant has been given notice as of July 1. She said the timeline is flexible depending on when the home needs to be demolished in order for the foundation to be poured.

Schneider moved, Wiersum seconded a motion to authorize execution of a joint powers agreement. Ellingson, Wiersum Schneider and Callison voted "yes." Hiller voted "no." Motion carried.

B. An ordinance adding a repeat nuisance fee.

Peterson gave the staff report.

Callison asked if the language allowing the council to reduce or lower the fee was too broad. Peterson said the city is always judged by whether the action of the council is reasonable regardless of the language in the ordinance. Decisions have to be fair so people are treated equally.

Schneider said he asked for the changes in the language because there will be exceptions where it won't make sense to charge the fees.

Wiersum said the approach was reasonable and the council would be prudent in dealing with the few exceptions.

Wiersum moved, Hiller seconded a motion to adopt Ordinance No. 2008-17 an ordinance adding a repeat nuisance fee. All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointment to the park board.

Callison moved, Hiller seconded a motion to appoint Patrick Robben to the park board, to serve the remainder of a two year term, effective May 20, 2008 and expiring on January 31, 2010. All voted "yes." Motion carried.

16. ADJOURNMENT.

Wiersum moved, Schneider seconded a motion to adjourn the meeting at 8:17 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk