

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, DECEMBER 8, 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 Dick Allendorf, Brad Wiersum, James Hiller, Terry Schneider, Bob Ellingson, Tony Wagner, and Jan Callison were present.

4. APPROVAL OF AGENDA.

City Manager John Gunyou noted two addenda for Item 13-C.

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

5. APPROVAL OF MINUTES:

A. October 27, 2008 regular meeting.

Schneider moved, Allendorf seconded a motion to approve the minutes of the October 27, 2008 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

B. November 10, 2008 regular meeting.

Schneider moved, Allendorf seconded a motion to approve the minutes of the November 10, 2008 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS: None.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou 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. Contract for the purchase of a new fire engine.**

Gunyou gave the staff report.

Hiller moved, Wiersum seconded a motion to amend the 2009-13 CIP to reflect the higher costs and the contract be awarded to Pierce Manufacturing, Incorporated in the amount of \$308,416. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Claims for council authorization – December 8, 2008.**

Allendorf moved, Wagner seconded a motion to approve the December 8, 2008 claims which includes checks numbered 216378 through 216654, totaling \$992,123.24. All voted "yes." Motion carried.

B. Proposed order for liquor license violation for The Wine Shop

Allendorf moved, Wagner seconded a motion to adopt the attached Findings of Fact, Conclusion, and Order for The Wine Shop. All voted "yes." Motion carried.

C. Designation of the city's official newspaper for 2009.

Allendorf moved, Wagner seconded a motion to designate Lakeshore Weekly News as the city's official newspaper for 2009. All voted "yes." Motion carried.

D. Authorization of formal agreement with Teens Alone for 2009.

Allendorf moved, Wagner seconded a motion to approve the contract renewal for the year 2009, not to exceed \$2,000. All voted "yes." Motion carried.

E. Authorization of formal agreement with RELATE Counseling Center for 2009.

Allendorf moved, Wagner seconded a motion to approve the contract renewal for the year 2009, not to exceed \$18,000. All voted "yes." Motion carried.

F. Items concerning a three-lot subdivision of the existing property at 10001 Minnetonka Blvd.

Wagner asked how this vertical subdivision will impact future redevelopment.

Community Development Director Julie Wischnack indicated this subdivision is similar to a condominium plat, and staff does not have concerns about future redevelopment.

Wagner moved, Wiersum seconded a motion to:

- 1) Adopt Resolution No. 2008-142 which approves the Registered Land Survey, date stamped October 8, 2008. Approval is subject to the following conditions:
 - a. The following items must be submitted to the city before the city releases the RLS for recording:
 - (1) An electronic CAD file of the final plat in microstation or DXF.
 - (2) The following documents must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's review and approval:
 - (a) Title evidence that is current within thirty days before release of the final plat.
 - (b) A minimum 10-foot wide drainage and utility easements adjacent to the public right-of-ways.
 - (c) Drainage and utility easements over the 100-year storm elevation as determined by the city engineer.
 - (d) Private utility easements over all existing and required utilities.
 - (e) Stormwater pond maintenance agreement outlining the responsibilities of all property owners.
 - (f) A common access easement between the public right-of-way and individual lots. The easement must state the cost and maintenance responsibilities of each property owner.
 - (g) Parking easement. This easement must:
 - (i) Include existing parking areas and those proof-of-parking areas noted on the approved proof of parking plan dated June 28, 1999.

- (ii) State the cost and maintenance responsibilities of each property owner.
 - (h) Proof-of-Parking Agreement. This agreement must outline the cost responsibilities associated with construction of proof-of-parking of each property owner.
 - (i) Restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat.
These documents must be recorded with the RLS, and a drawing of any easement must be attached to the easement deed.
 - (3) Separate water and sanitary sewer services must be installed to each property.
 - (4) The city's building official must confirm that the building complies with all building code requirements.
 - b. Unless the city council approves a time extension, the RLS must be recorded within one year of council approval.
 - c. If the RLS is not accepted and recorded by the county, city approval is rendered null and void.
 - 2) Adopt Resolution No. 2008-141 which approves multiple variances associated with the Registered Land Survey, date stamped October 8, 2008 dividing the existing property at 10001 Minnetonka Boulevard into three lots.
 - Proposed Tract A:
 - Side Yard Setback Variance from 35 feet to 0 feet
 - Rear Yard Setback Variance from 35 feet to 0 feet
 - Parking Variance from 19 spaces to 8 spaces
 - Proposed Tract B:
 - Side Yard Setback Variance from 35 feet to 0 feet
 - Rear Yard Setback Variance from 35 feet to 0 feet
 - Impervious Surface Variance from 85% to 100%
 - Parking Variance from 33 spaces to 10 spaces
 - Proposed Tract C:
 - Side Yard Setback Variance from 35 feet to 0 feet.
- Approval is based on the following findings:
- a. The proposal would meet the required standards for a variance, because:

- (1) Setback and Impervious Surface: Though technically necessary, the setback and impervious surface variances would not visually alter the existing building or the existing parking lot. Rather, the subdivision would simply allow for separate ownership of these areas.
- (2) Parking: The existing larger property could accommodate all required parking through a previously approved proof-of-parking plan. A shared parking agreement and easement, together with this proof-of-parking plan, would ensure adequate parking would be provided for all lots in the proposed subdivision.

Approval is subject to the following conditions:

- a. The resolution must be filed in conjunction with the RLS for the property.
- b. If the RLS is not accepted and recorded by the county, city approval is rendered null and void.

All voted "yes." Motion carried.

G. Request for twelve-month extension of multiple variances for construction of a new home at 2813 McKenzie Point Rd.

Allendorf moved, Ellingson seconded a motion to approve the twelve-month time extension of City Council Resolution No. 2008-025, which is the revised resolution removing the shoreland buffer and conservation easement requirement. All voted "yes." Motion carried.

H. Approval of an encroachment agreement with TTM Operating Corporation, Inc.

Allendorf moved, Wagner seconded a motion to authorize the Mayor and City Manager to execute an encroachment agreement with TTM Operating Corporation, Inc. for the purpose of installing telecommunications on street right of way and public easements. All voted "yes." Motion carried.

I. Agreement with the city of Wayzata to provide environmental health services.

Schneider expressed concern about the agreement lacking an end date or a specified review date.

City Attorney Desyl Peterson indicated the current agreement with Wayzata included an expiration date of December 31, 2008, because it was the first time this contract had been in place. The new proposed contract does not include an end date, but it does allow the city to get out of it with 90-day notice. It also calls for an annual evaluation of fees.

Wagner indicated he is comfortable with setting an end date.

Wiersum concurred.

Callison stated an end date is not necessary, as staff will be administering it and will bring up issues as they may arise.

Schneider moved, Hiller seconded a motion to approve the agreement with the city of Wayzata to provide environmental health services for a term of three years. All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES:

A. Reorganization of city history activities.

Community Relations Manager Jacque Larson gave the staff report.

Community Commission Chair David Hakensen expressed support for the proposed change in the city history activities.

In response to a question by Allendorf, Larson indicated the history commission found itself at a crossroads with the completion of the Burwell House and the fact that some of its activities overlap with other groups. She also explained the historical landmark designation program.

Callison inquired what body would be able to deal with questions surrounding historic structures in the community, should the history commission dissolve. Larson indicated the Minnetonka Historical Society helps monitor that.

Callison suggested the ordinance language be refined to specify there be one person on the community commission with an interest in history.

Wiersum moved, Allendorf seconded a motion to introduce the ordinance. All voted "yes." Motion carried.

13. PUBLIC HEARINGS:

A. Public hearing for Crossroads Delicatessen restaurant on-sale liquor licenses.

Callison opened the hearing at 6:53 p.m. No one spoke.

Callison closed the hearing at 6:53 p.m.

Wagner moved, Schneider seconded a motion to grant the licenses for 2008 and also grant the renewal of the licenses for 2009. All voted "yes." Motion carried.

B. Public hearing to consider applications by Pairings Food & Wine Market, LLC, for:

- 1) on-sale wine and on-sale 3.2 percent malt beverage liquor licenses for Pairings Food Market.**
- 2) off-sale intoxicating liquor license for Pairings Wine Market.**

Wischnack gave the staff report.

Allendorf asked if any members of the public have expressed objections to the off-sale liquor license, which would increase the city's total to 12. Gunyou indicated no one has objected.

Callison opened the hearing at 6:57 p.m.

Schneider moved, Allendorf seconded a motion to:

- 1) open the public hearing for the on-sale wine and 3.2 percent malt beverage licenses, and continue the hearing to January 5, 2009.
- 2) open the public hearing for the off-sale intoxicating liquor license, and continue the hearing to January 5, 2009.

All voted "yes." Motion carried.

C. 2009 Truth in Taxation Hearing.

Gunyou gave the staff report.

Wiersum asked Gunyou to explain PERA (Public Employee Retirement Association) for the benefit of the public.

Gunyou indicated PERA is a state-wide plan that is a defined benefits plan that city employees are required to participate in. The city has no say in the management of the fund.

Hiller asked for an explanation of the budget and property tax increases. Gunyou indicated the general fund operating budget is increasing only about 3 percent. With the addition of new debt service for a recently sold, voter-approved park referendum bond and the HRA levy, should the council approve it, the total increase would be 4.2 percent. Despite increases in some fees, revenue from sources other than property taxes is forecasted to decrease. Therefore, an increase in the levy by 5.7 percent, plus 0.7 percent for the HRA levy, is necessary to offset the decrease in other revenue.

Wiersum asked how general state aid works and why Minnetonka does not receive any. Gunyou explained the state has a system using a complex formula developed over time wherein the state tries to hold down property taxes by giving money directly to cities. Cities with larger commercial taxes, like Minnetonka, tend not to receive any of this aid.

Callison opened the hearing at 7:41 p.m.

Pam Scherling, 3925 West End Lane, asked about the tax figures reported in the newspaper that are significantly higher than the figures presented at the council meeting. She also inquired if the Williston Center is fee-supported or if it receives a city subsidy.

Finance Director Merrill King indicated the increase for the 2009 budget, which is quoted in the newspaper, is based upon the adjusted, rather than the originally proposed, 2008 budget and includes capital fund expenditures, which vary significantly from year to year.

Gunyou indicated the Williston Center is fee-supported, unlike the recreation centers in other communities, most of which receive tax subsidies. King added that the proposed improvements to the Williston Center will be financed partially by the Community Investment Fund and partially by member fees.

David Paquette, 3730 Shady Oak Road, expressed concern about the significant tax increases and assessments on his home. He also asked if the city can reduce staffing numbers due to slower

development. He stated the city council needs to be a voice of reason when dealing with the state government's tax policies.

Gunyou noted staff is being reduced and reassigned in the community development department.

Mike Slomke, 17584 Groveland Place, asked for clarification on the adjusted 2008 budget and how the city will handle a significant reduction in home values.

Gunyou indicated a 3.7 percent increase is the tax increase that will be seen by the average homeowner on a \$346,000 home. He also discussed how each homeowner can experience a different tax impact relative to the entire residential and commercial tax base of the city. The city only determines the city budget piece of the tax pie and the state's property tax structure determines how the impact is spread on each homeowner.

Callison urged residents to attend the citizens academy to better understand the state's tax structure and the city's related role.

Slomke commented on the excessively high tax rates in the city and the state; he asked what the city is doing to prevent additional tax burdens on the citizens given today's economic realities.

Dorothy Welch, 2502 Bantas Point Lane, expressed concern about equitable taxation around the city. She stated the lakeshore portion of the city is being taxed disproportionately high.

Perry Moraal, 5222 Glen Ave, stated his property taxes have increased over \$400 per year the last couple of years, and no home improvements have occurred in that time.

Gunyou discussed the state's limited market value program which artificially held down a home's taxable value. As the state phases out the program, some homeowners are seeing increases.

Jeff West, 2933 Beechwood Ave, commented that his property taxes have more than doubled in the seven years he has lived in Minnetonka.

Gunyou noted over the last seven or eight years, the biggest factor affecting property taxes is the state's changes in the property tax structure, especially as they relate to school district levies.

Wiersum and Callison urged residents to contact their state legislators to address the complexities of the property tax system.

Steven Griggs, 4039 Victoria Street, urged the council to “think green” to help reduce costs. One example is to eliminate the large number of trash haulers in every neighborhood, which damages roads unnecessarily. He stated the city should not increase the budget at all this year, given the state of the economy.

Callison closed the hearing at 8:45 p.m.

Callison recessed the council meeting at 8:45 p.m.

Callison resumed the meeting at 8:55 p.m.

14. OTHER BUSINESS:

A. Items concerning a 2-lot subdivision of an existing property at 10323 34th Circle West.

City Planner Loren Gordon gave the staff report.

Wiersum asked about the right-of-way in each lot. Gordon explained the staff report shows a rough estimation of the right-of-way and outlots

Curt Fretham, 15400 Highway 7, stated there is only one difference between the proposed development and the previously approved PUD. That difference is this plan includes an onsite quasi-affordable single family home. He indicated there are three points of disagreement with city staff. The first is does this project provide for the public good. The second is whether the property provides for a PUD. The third issue is the debate about the lot size.

Fretham stated the project does meet one of the criteria for serving the public good, and it is not necessary to meet all requirements. Additionally, the proposal is within the spirit of the number 2 exemption. The lots as proposed do meet the lot size of the previously approved PUD.

Schneider asked what the term “quasi-affordable” home means. Fretham stated it does not quite meet the city’s standard for affordable housing, but it is close to it. He estimated that the existing home on the lot is in the \$300,000 range.

Roberta Haswell, 10301 34th Circle West, asked that the council rely on the work and recommendation of the planning commission.

Kris Nystrom, 10330 34th Circle West, stated the original proposal showed the house on the new lot to be approximately 5,000 square feet. She cited other expensive homes in the circle that have sat on the real estate market for a period of time. She urged the council to vote against the proposal.

Wagner stated this proposal does not create affordable housing, and the lot also is less than the half-acre minimum.

Callison expressed agreement with Wagner that the proposal does not provide benefit to the community, threatens the character of that neighborhood, and the lot is too small to subdivide.

Wiersum stated no matter how he looked at the numbers, the lot is not big enough to divide.

Schneider concurred with the council's comments.

Wagner moved, Allendorf seconded a motion to adopt Resolution No. 2008-143 which: (1) denies rezoning the existing property at 10323 34th Circle West from R-1 to PUD; and (2) denies FRETAM FOURTH ADDITION, PHASE II date-stamped October 8, 2008. Denial is based on the following findings.

1) Rezoning:

a) As outlined in City Code Section 300.22 Subdivision 1, the purpose of the planned unit development district is to provide a zoning district which encourages and provides for the goals outlined in the following.

1. New techniques of building design, construction and land development.
Finding: The applicant's proposal does not include an innovative building design, construction, or land development. the applicant's proposal does provide for any new techniques. Rather, it merely divides an existing property, creating substandard lots, for construction purposes.

2. Provision of housing affordable to all income groups.

Finding: The proposal does not include affordable housing.

3. Energy conservation through the use of more efficient building designs and sitings and the clustering of buildings and land uses.
Finding: The proposal does not include an energy conservation component.
4. Preservation of desirable site characteristics and open space and protection of sensitive environmental features, including steep slopes, poor soils and trees.
Finding: Trees would be preserved under the applicant's proposal. However, this is not inherently a function of the proposal itself; trees may likewise be preserved without subdivision of the existing property.
5. More efficient and effective use of land, open space and public facilities through mixing of land uses and assembly and development of land in larger parcels.
Finding: The proposal does not include a mix of land uses, nor would such mix be allowed under the low-density residential comprehensive plan designation of the site.
6. High quality of design and design compatible with surrounding land uses, including both existing and planned.
Finding: The proposal would result in lots similar in size to others in the surrounding area. However, the requested rezoning and subdivision request does not in and of itself promote that compatibility. In fact, the existing property is arguably similar in size to other lots in the surrounding area and, as such, already compatible.
7. Sensitive development in transitional areas located between different land uses and along significant corridors within the city.
Finding: The proposal is not located in a sensitive transitional area nor does it promote sensitive transitional development
8. Development which is consistent with the comprehensive plan.

Finding: The property is guided low-density residential. The proposal would result in an allowable density of 3.75-units per acre.

b) As outlined in City Code Section 300.22 Subdivision 3, a PUD development must have a minimum area of five acres. The applicant's proposal does not meet this minimum standard, as the proposed PUD would have a total area of just over one-half acre. Neither does the proposal meet the following criteria for waiving this standard:

1. Unusual physical features of the property itself or of the surrounding neighborhood such that development as a P.U.D. will conserve a physical or topographic feature of importance to the neighborhood or community;

Finding: There are no unusual or unique natural features of the site which would be preserved because of this proposal.

2. The property is directly adjacent to or across a right-of-way from property which has been developed previously as a P.U.D. or planned unit residential development and will be perceived as and will function as an extension of that previously approved development;

Finding: Though nearby, the property is not directly adjacent to or across the street from a PUD. An existing PUD to the south was original approved in 1978 for development of six unit, including single family homes and duplexes, and later revised to allow for development of six single-family homes.

3. The property is located in a transitional area between different land use categories or on an intermediate or principal arterial as defined in the comprehensive plan;

Finding: The subject property is located adjacent to a golf course. However, staff does not find that rezoning of the property is necessary to provide for an appropriate transition between the golf course site and the existing single-family homes in the area. In fact, from a planning perspective, no transitional

area is needed between the recreational use and low-density residential uses.

4. The property is proposed to be developed with single family dwelling lots having a minimum area of 15,000 square feet; or

Finding: The property would not be developed at this standard. The lots resulting from the requested rezoning and plat would be less than 11,000 square feet.

5. The property contains steep slopes, wetlands, public waters or a substantial number of significant trees that could be preserved through the clustering of buildings or other design techniques not generally allowed by the existing zoning district.

Finding: The proposal does not contain steep slopes, wetlands or public waters and the tree preservation proposed is not a function of the PUD itself.

2) Plat:

a) Based on information provided by the applicant, the subject property has a total area of 23,201 square feet, which includes area already encumbered by a public street. Without the requested rezoning, the property could not be divided without variance.

b) The median lot size for area properties is 15,000 square-feet. The applicant's proposal would result in lots of less than this median size.

c) The existence of area properties less than 15,000 square feet in size does not warrant the creation of additional lots of less than 15,000 square feet.

- 3) The property is zoned and guided for single-family use and is currently improved with a single-family home. This constitutes reasonable use of the site. As such, denial of the applicant's requested rezoning and proposed plat would not deny a property owner reasonable use of the property.

All voted "yes." Motion carried.

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

16. **ADJOURNMENT.**

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 9:31 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk