

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, FEBRUARY 23, 2009**

1. CALL TO ORDER.

Mayor Schneider 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 Tony Wagner, James Hiller, Dick Allendorf, Amber Greves, Brad Wiersum, Bob Ellingson, and Terry Schneider were present.

4. APPROVAL OF AGENDA

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

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

5. APPROVAL OF MINUTES: January 26, 2009 regular meeting

Allendorf moved, Wiersum seconded a motion to approve the minutes of the January 26, 2009 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Recognition of former history commission members

Schneider read the recognition honoring history commission members DeeAnn Bloom, Joan George, Betty Johnson, David Olson and Joe Van Sloun.

B. Retirement recognition of Joyce Stadt, dispatcher

Schneider read the recognition.

Stadt said she was thankful and grateful to the city for all the opportunities over the years.

C. 25th consecutive year of GFOA Certificate of Achievement for Excellence in Financial Reporting

Jim Knutson, Minnesota GFOA state representative, presented the certificate of achievement.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS

Gunyou reported on the schedule for upcoming council meetings.

Schneider noted that prior to the meeting three people were interviewed for a park board opening.

8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA

No one appeared.

9. BIDS AND PURCHASES:

A. Bids for Lone Lake Park site improvements, Project No. 4544

Gunyou gave the staff report.

Wagner moved, Greves seconded a motion to award of bid #2009-001-PW to Barber Construction, Inc. for Park Renewal improvements at Lone Lake Park with a bid of \$79,118.50. All voted "yes." Motion carried.

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

A. Claims for council authorization – February 23, 2009

Allendorf moved, Wiersum seconded a motion to approve the February 23, 2009 claims which includes checks numbered 217994 through 218321, totaling \$1,216,012.80. All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES:

A. Items regarding redevelopment of existing single-family residential properties at 5431 and 5439 Williston Road

City Planner Loren Gordon gave the staff report.

Allendorf said the item was before the council before the comprehensive plan was reviewed. He asked what the comprehensive guide plan committee thought about the property.

Gordon said the proposal was last reviewed in 2004. At that time the planning commission recommended denying the proposal. The applicant then asked for the item to be withdrawn. During the comprehensive plan review the site was discussed but no action was taken.

Schneider asked if parts of the site qualify as a woodland preservation area. Gordon said it would not.

Wagner noted that parking was a key variance being looked at. He asked what the city historically has done when a building's use does not need to meet the parking ordinance but potentially could convert to a different use. Gordon said the code allows staff to evaluate the parking situation for this type of senior complex. The evaluation would include what might accommodate overflow parking for visitors and for potential conversion.

Hiller said because of the proximity of other senior housing, he would like the planning commission to comment on their viewpoint in considering the project part of the village.

Wiersum moved, Wagner seconded a motion to introduce the ordinance and refer to planning commission Wagner, Hiller, Allendorf, Greves, Wiersum and Schneider voted "yes." Ellingson voted "no." Motion carried.

Schneider asked Ellingson why he would vote against a referral to the planning commission. Ellingson said he realized it was a routine motion but the proposal does not fit the comprehensive guide plan and the planning commission rejected the proposal. Schneider said the council was obligated by statute to forward the proposal to the planning commission for a hearing.

13. PUBLIC HEARINGS:

A. 2009 Community Development Block Grant funds and reprogramming of CDBG funds from prior years

Community Development Supervisor Elise Durbin gave the staff report.

Allendorf noted six of the 15 applicants qualified. He asked why the other nine applicants did not qualify. Durbin said a few of the applications came in over the allowable income amount. Also, staff determined it could only handle the administration of six applicants.

The remaining qualifying applicants were recommended to move into the emergency repair program where they are now being served.

Schneider asked if a rehabilitation program applicant has a lot of equity in their home if it counts against the \$25,000 asset limit. Durbin said the equity does not count against the limit.

Wiersum said the process was thorough and feedback was heard from many groups. Wagner agreed. He said the process allowed the EDA to delve into the details of the goals of the applicants. Schneider asked if there was a way to streamline the process while still allowing the EDA to thoroughly look at the details. Wagner said there are always opportunities to streamline the process. Wiersum agreed that anything that can be done to streamline the process to help the organizations be more efficient is a worthwhile goal.

Greves asked Durbin to comment on the decision making that went into recommending some of the 2009 block grant recipients for reprogramming funds as well. Durbin said the organizations that submitted applications this year were included in the council packet. It was up to the EDA to review the applications and make recommendations. The EDA looked at what was in definite need this year. They also looked at one time funding versus reoccurring funding. She said there is some overlap.

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

Marcy Harris, of Community Action Partnership of Suburban Hennepin County, thanked the city for its past support. She said the organization has seen more people this year especially in the foreclosure prevention area. She said the rehab program is equally important because the funds allow people to remain in their homes.

Kitty Engle, of Senior Community Services H.O.M.E. Program, thanked the council for its support.

Cathy Maes, of ICA, and Judy Elling, of the Hopkins Minnetonka Family Resource Center, thanked the city for the pragmatic and thoughtful process.

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

Wagner moved, Wiersum seconded a motion to adopt the following:

- 1) Resolution No. 2009-007 approving the projected use of funds for year 2009 of the community development block grant program.
- 2) Resolution No. 2009-008 approving the reprogramming of CDBG funds from program years 2005, 2006, 2007

All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. **Items concerning restaurant improvements at West Ridge Market located at 11544 Wayzata Blvd**

Gordon gave the staff report.

Wiersum noted that one of the variances is for an extension of the patio to the west. He said if the patio were extended to the north a variance would not be needed. He asked if the applicant had considered that option. Gordon said the extension to the west was included because of the flow of the current patio and to allow more seating overlooking the wetland area.

Wiersum asked the applicant to comment on the neighborhood comments critical of the property manager.

Hiller asked if the sound level of the general noise could be made performance based. Gordon said there are sound levels in place for all commercial properties adjacent to residential properties.

Greves said she visited the site and the patio is already getting close to the slope to the north. She asked if there was any environmental impact of adding an additional 600 square feet of surface. Gordon said staff could monitor erosion around the wetland edge as a result of the additional patio space and hard cover generating more runoff.

Allendorf said it was encouraging to see a new restaurant moving into the city. He said it would be nice to have a larger sign facing I394. He noted the staff recommendation indicated the front door is facing east so the sign should be on the east. Gordon said the words "Baja Sol" and "Cantina" is considered as one height according to the city's sign ordinance. He said staff struggled with what is the most reasonable solution for the sign issue. The planning commission's recommendation is to follow the applicant's request.

Wagner asked if there were ways to tighten up the language about garbage pickup and delivery times to address neighborhood concerns. Community Development Director Julie Wischnack said a similar concern came up with another restaurant and the city included a provision in the liquor license about dumping glass. Gordon said signage communicating delivery hours could be included.

Scott Tubman, of CSM Corporation, said the reason the patio extension to the west is due to wetland setbacks. Addressing a concern from Wiersum, Tubman said the complaints of neighbors are taken very seriously. There is a log of every complaint that has ever been lodged against the property showing the response that was made. Since the most recent planning commission meeting every tenant has been contacted reiterating the acceptable hours of delivery. A "no idling" sign will be installed.

Schneider added if there is any possibility to using pervious pavers to reduce the amount of hard surface runoff. Tubman said alternatives could be looked at but the problem with pervious pavers is stepping on the void spaces.

Greves asked what cleaning solutions Don Pablos used for the patio area. Tubman said he was not sure.

Allendorf asked for Tubman's perspective on the signage issues. Tubman said he understood the planning commission's recommendation was for a five foot sign on the south elevation and a 26 inch sign on the east elevation. He said he would like the council to consider increasing the east sign to 36 inch letters as suggested by a planning commissioner. Allendorf asked if the increase in the size of the letters would create precedence. Gordon said precedence would not be established but there are issues of fairness for the other tenants.

Wagner said in the original approval the Macaroni Grill is allowed a five foot sign on the south façade facing I394. Building "B" that includes the former Don Pablos was allowed a five foot sign on the east façade but only a 26 inch sign on the I394 side. He said the most important sign for this proposal to be successful is visibility from I394. He said the applicant has asked the council to be able to swap the facades and because the building space is bigger on the east façade, be allowed 10 more inches.

Wiersum said he too welcomes another restaurant going into the space given the challenging economic times. He said visibility is a

factor in a restaurant's success and the site is a more challenging restaurant site from others in the city.

Bill Kranz, of Baja Sol Restaurant Group, said visibility is a challenge for this site. The main focus is to get the largest and most visible sign on the south exposure. A 26 inch sign has been proposed for the east exposure. Based on the planning commission discussion the company reviewed a 36 inch sign. The letter "C" in Baja Sol Cantina would be 36 inches. The rest of the letters would be 22 inches. He said erosion control could be addressed through landscaping in the final plan. He said as far as cleaning the patio the company uses power washing with mostly water.

Wagner agreed signage is critical for the site.

Ellingson said the applicant is entitled to a five foot sign on the east side and the only variance being granted would be for the sign on the south side. He questioned why the entrance is on the north side.

Schneider said when the item first came before the council in putting in the Don Pablos he raised the concern that the restaurant could not be seen because of the location of the entrance and the signage. He said staff was being put in a difficult position because the ordinance is written so prescriptively. He suggested looking at more of a performance based signage criteria that would ask the applicant to submit a design. If the design meets the general character of colors, size, shape, and script, it would be approved. The city should be approving signs that are aesthetically creative rather than a box that fits within a specific size. He said he remains concerned about the location of the entrance and there needs to be something to orient people to where the entrance is.

Kranz said the restaurant is planning on putting an awning that would identify the front entrance. Schneider asked if a logo on the awning would require council approval. Gordon said using the logo on the awning would require a site plan review. Kranz said using the logo on the awning was not critical. Schneider suggested extending the awning over the sidewalk to further clarify where the entrance is located.

Hiller said he works in the area and shares the concerns about visibility and signage issues.

Allendorf moved, Hiller seconded a motion to:

1) Adopt Resolution No. 2009-009 approving an amendment to the conditional use permit for a 7,810 square-foot restaurant with 1,220 square-foot outdoor seating area at 11544 Wayzata Boulevard, with the following variances:

- Setback variance for the outdoor seating area from 50 feet to 20 feet from the northwest property line.
- Setback variance for the outdoor seating area from 200 feet to 185 feet from the residential property to the west.

Approval is based on the following findings:

a. The proposal meets the required conditional use permit standards.

b. The proposal meets the required standards for a variance, because:

(1) UNDUE HARDSHIP: The location of the building, existing outdoor seating area, and adjacent wetland provide a hardship in locating the patio expansion to meet the setback requirements.

(2) UNIQUE CIRCUMSTANCE: West Ridge Market was developed as part of a mixed use project which integrates retail, service commercial, restaurant uses with the surrounding residential developments. The mix of land uses is a circumstance not common to other retail centers in the city.

(3) INTENT OF THE ORDINANCE: Although the seating area is located 185 feet from a residential property line, it is over 250 feet from the actual building. This meets the ordinance intent to provide adequate spacing between the two uses.

(4) NEIGHBORHOOD CHARACTER: The outdoor seating area would not negatively impact the character of the surrounding neighborhood. It would not be highly visible from surrounding properties, and would be buffered by the adjacent wetland and vegetation.

Approval is subject to the following conditions:

a. Complete the following prior to issuance of a building permit or beginning any site work:

(1) Record this resolution with the County. A copy of the recorded resolution must be returned to the city.

(2) The delinquent water and sewer bill must be paid in full.

- (3) The adjacent wetland must be delineated and the floodplain elevation staked in the field to verify setback requirements. If necessary, city staff can administratively approve adjustments to meet the setback requirements provided the patio expansion does not exceed 600 square feet, and does not extend any closer to the property lines.
- (4) Submit a detailed landscaping plan for staff review and approval which complies with the zoning requirements for minimum landscaping. A combination of sound wall and landscaping must be installed on the west side of the patio for noise mitigation.
- (5) Install lenses, shields, or louvers on the light fixtures on the back of the building to ensure there are no direct, off-site views of the light source.
- b. Delivery and garbage hauling hours are limited to 7:00 a.m. to 10:00 p.m. daily.
- c. The patio must be fully enclosed with a knee wall or railing acceptable to the city. The wall must be of an increased height on the west side to screen the patio from residential properties to the west.
- d. Access to the patio must be through the principal building only. All emergency exits from the patio must be equipped with self-closing and self-latching gates.
- e. The outdoor seating area must be equipped with refuse containers and patrolled daily for litter pick-up.
- f. Use of the outdoor patio must cease by 10:00 p.m. each day.
- g. No music or audio paging shall be used in the outdoor patio.
- h. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- i. 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.
- j. The applicant must agree to these conditions in writing.
- k. This resolution repeals and replaces Resolution No. 97-019 adopted by the city council on February 10, 1997.

- 2) Adopt the amendment to the WEST RIDGE MARKET SIGN PLAN AND CRITERIA which allows a 26-inch tall wall sign on the south elevation for the restaurant tenant at 11544 Wayzata Boulevard. Approval is based on the findings that the proposal would meet all ordinances and standards for sign plan review.

All voted "yes." Motion carried.

B. Reaffirmation of previous preliminary plat approval and final plat approval of HOPACA HOLLOW, located at 4404 and 4412 Wilson Street

Gordon gave the staff report.

Hiller asked Gordon to clarify if the city would have asked for the reconsideration even with the glitch in timing. Gordon confirmed that was correct and said staff could work around a missed deadline on a process related issue.

Wagner said typically the renewal of plats is pretty much a formality. He asked for a legal perspective of not reaffirming the plat. City Attorney Desyl Peterson said the reason the city grants extension of the time period is because generally nothing has changed. In this case there has been a change in the regulations between the time it was approved and now.

Wagner said part of the rationale of not reaffirming is the major change to the tree ordinance. He asked if there were any early indications of what percentage impact this plan would have on the woodland preservation ordinance. Gordon said the original impact was calculated to be 50.2 percent to the woodland preservation area. It appears that percentage would decrease somewhat.

Wiersum asked if the applicant had come back with the exact same submission and wanted to extend the final plat approval for another year, would the staff recommendation be the same given the changes to the tree ordinance. Gordon said it was understood the plat was going to change but because of the tree preservation ordinance, the recommendation was going to be to apply the ordinance to the new project application.

Wiersum asked if it made sense to include a sunset on the applications given the number of extension of plat approvals the city receives. Gordon said extending the time limit might make sense but the problem with applying that to all applications is that it

is not known what events will change over that time. Gunyou noted when the development fees were recently updated, there was discussion about how the more complex projects take more staff time and the adjusted fees should reflect that. He said Wiersum's suggestion might be an option for projects with additional extensions that require starting over.

Hiller asked if there currently was a fee for an extension. Gunyou said there was not.

Greves asked if the tree ordinance could be applied whether the reaffirmation occurred or did not occur. Gordon said if the council reaffirmed the plat, the original approvals would carry forward and the tree ordinance could not be applied.

Schneider said he has seen the time limit work against the city. Imposing an artificial time limit could be counterproductive in a situation where staff has put in a lot of time in a difficult negotiation.

Curt Fretham, of 15400 Highway 7, said he started working on the project in 2004 when he purchased the south half portion of the property. When he met with city staff he went over two and three lot scenarios. The city staff encouraged him to include the piece of property to the north because they didn't want the two pieces of property to be developed separately. After meeting with that property owner he showed staff a plan that had five new lots and a public street that would take out a lot of the trees. A number of plans have been worked on since. All meet the city's minimum requirements with no variances required.

Fretham said he made the extension request on December 5. The minutes to the meeting where the preliminary plat was approved included a provision that said "the city must approve the final plat within one year of the preliminary plat approval or receive a written application for time extension or the preliminary plat approval will be void." He said he gave the request for the time extension prior to expiration. Staff has indicated the extension must be approved before it expires. He said the minutes indicate the extension just has to be received.

Fretham said the site is complicated because of the trees. The neighbors, the city, and he all want to save as many trees as possible. He has spent \$80,000 in engineering fees on a four lot development trying to figure out how to save as many trees as possible. He said the staff report recommends more public hearings. Fretham said there have been three public hearings.

More hearings will result in the same feedback from neighbors and little will be gained by that process.

Fretham said minor lot line adjustments are common especially if they are done for a reason. In this case the lot lines were adjusted to spread the building pad in width to allow for the homes to be more rectangular. He said he met with people who are interested in living in the properties and one complaint was there was not a useable backyard because the backyard was right up against the tree preservation area. Reshaping the homes allows the homes to be further away from the trees. In addition, a turnaround was included to allow garbage pickup. He said this is not an unreasonable request or a reason to deny a final plat. The staff report indicated the grading plan was altered to accommodate the lot lines and the turnaround. He said the grading plan was altered because the preliminary plat had a lot of retaining walls. He said people would not buy a lot with a 14 foot retaining wall. The changes were made to improve the plat. He disagreed with the staff report that the conservation easement had been changed. The tree protection easement had been slightly altered. Fourteen trees have been removed from the tree preservation area. Twenty trees have been added to the area.

Wagner asked for clarification about the setback from the conservation easement to the building pads. Fretham said in the preliminary plat the setback was around 20 feet and is now two to three times that.

Allendorf asked Peterson to comment on the timing issue. Peterson said the extension is not automatic and the request has to be approved or denied by the council.

Hiller asked if the city has granted similar requests for extensions with minor changes in the past. Peterson said the council could allow minor changes in granting the request for the extension. Hiller asked if the changes were minor. Peterson said from what she has seen the changes could be seen as relatively minor.

Wagner asked staff to comment on the trading of trees. If the tree preservation ordinance was not in place would the trade have been considered a good trade in terms of moving the tree protection lines around in order to get the trees.

Gunyou said staff typically recommends extensions when there are no major changes since the original approval. In this case, there were minor changes in the proposed development, but there had

been a significant change in the governing rules as a result of the new tree ordinance. Considering the amount of time that had passed since the initial approval, staff thought it important for council to reconsider the development proposal.

Gordon explained that staff received the initial request for the extension on December 5. At that time staff asked for a signed written request and did not receive a formal written request asking that the plat be extended. An email was received in mid-January but did not include the formal written request. An application for the final plat was received on January 19. He said staff would like the opportunity to review the application in more detail.

Allendorf asked how many trees would be lost with the original application compared to if the new ordinance was applied to the property. Gordon said staff has not validated the information provided by the applicant. Staff believes there will generally be more impact to the site with the grading in the 2009 proposal compared to the 2006 proposal. Allendorf said the information in the council packet indicated that six more trees would be saved under the original application. Wischnack said that information was based on what the applicant submitted, and emphasized that staff has not validated the data. If the council made a decision on the final plat, staff would ask to come back with the final numbers.

Allendorf said staff was indicating the major change was the tree ordinance. If the original proposal saved more trees than one where the ordinance is applied, he said he didn't understand why the staff would recommend denial. Gunyou said at this point staff did not know the number of trees that would be impacted. he also reminded council that the new tree ordinance does not just count the number of trees, but rather, considers the impact on the woodland preservation area, acreage and other issues.

Wagner said the city had an approved four lot proposal and applying the tree ordinance would likely reduce the number of lots. He said despite being a supporter of the tree ordinance, he had difficulty in a situation where a property was approved and potentially the city would take a lot away from the applicant.

Wiersum said in the discussion on the previous agenda items the council talked about assisting a restaurant by looking at the sign ordinance. Similarly given the difficult real estate market, he said he was hard pressed to make someone who has invested in plans based on the rules that were in place at the time the plans were

made, to be required to meet the new ordinance. He said he would rather test the tree ordinance on a more black and white case.

Ellingson said the minutes that Fretham referred to regarding the timing issue were from December 2006. The applicant asked for an extension in 2007. That request was granted and did not include language about a time limit for another request. Ellingson said the timing issue therefore was irrelevant. He said the list of trees that would be saved includes eight that are elm trees and two that are box elder trees. The elm trees will eventually have to be removed due to Dutch Elm disease. The box elder trees tend to blow over. He said this, along with the staff saying it has not verified the tree count, makes the tree count issue irrelevant. The issue being overlooked is the site is very difficult to develop, and questioned whether it should be developed at the density proposed.

Hiller said he was concerned that the council usually grants similar requests for extensions with minor changes and in this situation it is unclear what impact the tree ordinance will have on the proposal. He asked how much time staff would need to provide more information for the council. Wischnack said staff could have the information at the next council meeting.

Schneider said he would recommend putting the time extension issue aside. He said the critical factor was that if the proposal falls under the tree ordinance, it would trigger a PUD and the developer would be asked to minimize impacts that could mean one less lot. Are there things that could be done within the plan to improve the tree preservation implications? Discussions about what could be done with lot arrangements or site placement to mitigate impact on trees would take place during the PUD process. He said he was inclined to give an extension to let the staff and applicant determine if anything could be done with the four lot subdivision that would improve the net impact on trees.

Gunyou asked if the council would be interested in seeing multiple options to see how the tree ordinance may apply. Schneider said options would be valuable, since that would allow the council to see what was being gained by doing a three lot subdivision. But he said he was reluctant to require having the site re-engineered.

Allendorf said if applying the new tree ordinance to the site doesn't preserve more trees, the reason to deny the application is eliminated. He said he would like to see the number of trees if the tree ordinance is applied and if it is not applied. He agreed with

Schneider that staff should take a look at the site as if a PUD were applied to see if the site could be improved.

Greves asked how much staff time would be needed to meet Allendorf's request. Would it be better to deny the reaffirmation and have the applicant resubmit the plan to allow staff time to review the proposal in more detail? She said the timing issue is salient. The tree ordinance has been in place for some time now. She said it felt like the reaffirmation and final plat were being rushed through.

Wiersum said if the applicant were required to resubmit the proposal the city loses the flexibility to see if the tree ordinance does apply to the property.

Schneider said another implication is that it is one thing to spend time with the applicant to count trees and look at alternatives but restarting the process would require new public hearings, postings, mailings, and meetings.

Greves said public input is important in order to look at both sides of the tree ordinance.

Ellingson noted in other projects the city worked with the developer to save as many trees as possible only to have the developer clear all the trees. He asked if this proposal was approved if the developer could do all the grading and take out all the trees he is entitled to remove as opposed to if the final plat was denied and the developer would not be allowed to remove any trees. Gunyou confirmed that if the final plat was approved, then the developer could remove trees. If the plat was denied and resubmitted, the tree ordinance would apply.

Allendorf moved, Wagner seconded a motion to continue the item to March 9, 2009.

All voted "yes." Motion carried.

C. Items concerning TERRATONKA, an 8-lot subdivision of existing properties at 3100 Forest Lane, 3200 and 3218 Eldorado Trail West

Gordon indicated the applicant asked for the item to be pulled and rescheduled for March 9.

D. Ordinance amending the city charter regarding council vacancies, employee ethics code, acquisition of property for park purposes, street vacations, and managing rights-of-way

Peterson gave the staff report.

Wiersum moved, Greves seconded a motion to adopt Ordinance No. 2009-03 All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Reappointment to the park board

Schneider moved, Allendorf seconded a motion to reappoint Tess Komarek to the park board, effective February 1, 2009 and expiring on January 31, 2011. All voted "yes." Motion carried.

16. ADJOURNMENT

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 9:25 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk