

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, APRIL 20, 2009**

1. CALL TO ORDER.

Acting Mayor Wiersum called the meeting to order at 6:33 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 and Bob Ellingson were present. Terry Schneider was excused.

4. APPROVAL OF AGENDA

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

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

5. APPROVAL OF MINUTES: March 23, 2009 regular meeting

Wagner moved, Allendorf seconded a motion to approve the minutes of the March 23, 2009 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Recognition of Captain Scott Boerboom for graduation from FBI Academy

Wiersum read the recognition.

Boerboom thanked the council, the city, and the police chief for supporting the program.

B. Presentation by the MN Department of Agriculture on the gypsy moth treatment program for the city

Lucy Hunt from the Minnesota Department of Agriculture gave the presentation.

Wagner asked if there would be increased monitoring in the city and how long it would take to determine if the treatment has worked. Hunt said the proposed treatment is a bacterial insecticide that would be sprayed over the foliage. The caterpillars that eat the sprayed foliage will die. The standard traps that are used only attract adults. She said numerous traps would be used. If no moths are found in the traps, then it would be known this year that the treatment worked. She said there was an extremely good record for the proposed treatment.

Wiersum asked what happens to a tree that has been defoliated. Hunt said defoliation removes the leaves from the tree. A tree needs its leaves to produce carbohydrates. A vigorous healthy tree can survive defoliation and would re-leaf. She said multiple years of defoliation stresses a tree's energy reserves and could cause a tree to die.

Wiersum asked if the battle against the gypsy moth was being won or if infestation was inevitable in the state. Hunt said eventually the gypsy moth would be in the state. The department's goal is to hold that eventuality off for as long as possible. For every dollar that is put into the program, three dollars are saved when it comes to quarantine costs, nuisance factors, and tree removal costs. She said the state has successfully managed the bug for over thirty years. Several states are involved in a program that uses the same management techniques to slow the spread. The spread has slowed from 13 miles a year down to three miles a year.

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: None

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

A. Claims for council authorization – March 23, 2009

Allendorf moved, Hiller seconded a motion to approve the March 23, 2009 claims which includes checks numbered 218918 through 219343, totaling \$2,509,011.04. All voted "yes." Motion carried

B. Encroachment agreement with Enventis Telecom

The item was postponed at the applicant's request.

C. Resolution for conditional use permit for wireless telecommunications equipment at 4350 Baker Road

Allendorf moved, Hiller seconded a motion to adopt Resolution No. 2009-024 which approves a conditional use permit for wireless telecommunications facilities to be located on the existing building at 4350 Baker Road. Approval is based on the following findings:

- 1) The city code recognizes telecommunications facilities as valuable public resources.
- 2) The proposed telecommunications antennas meet the conditional use permit standards as outlined in city code.

Approval is subject to the following conditions:

- 1) The following must be submitted prior to issuance of building or electrical permits:
 - a. This resolution must be recorded with the county and a copy of the recorded resolution must be returned to the city.
 - b. The applicant must agree, in writing, to the conditions of this conditional use permit.
 - c. The property owner must agree, in writing, to the conditions of this conditional use permit. This includes agreeing to removal of the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city's right to assess removal costs as outlined in city code.
- 2) The antennas and accessory equipment must be installed in substantial conformance with the site plan and elevations date-stamped February 17, 2009.
- 3) The antennas must not extend above the cornice line of the screening walls, and must not project out further than three feet from the face of the walls.
- 4) The antennas must be a color similar to the existing screening walls.
- 5) No advertising message or identification sign larger than two square-feet may be affixed to the antennas or associated equipment.
- 6) The antennas may not be artificially illuminated, unless required by law or by a governmental agency to protect the public's health and safety.
- 7) On-site, permanent employees associated with the telecommunications facilities are not allowed.

- 8) If rendered obsolete, the antennas must be removed in accordance with City Code 300.34.5.
- 9) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 10) Any change to the approved use that results in a significant increase in traffic or a significant change in character requires a revision of this conditional use permit.
- 11) Violation of any condition of this conditional use permit or city code requirement renders this permit null and void.

All voted "yes." Motion carried.

D. Resolutions approving agreements for environmental clean-up funds for 10600 Wayzata Blvd

Allendorf moved, Hiller seconded a motion to:

- 1) Adopt Resolution No. 2009-025 entering into an agreement with DEED
- 2) Adopt Resolution No. 2009-026 entering into an agreement with Hennepin County

All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Agreement with Xcel Energy for Dominick Drive

Wagner moved, Greves seconded a motion to:

- 1) Authorize the mayor and city manager to execute the attached agreement with Xcel Energy in the amount of \$86,500.
- 2) Amend the CIP.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES: None

13. PUBLIC HEARINGS:

A. Resolution vacating portions of public right-of-way adjacent to 2608 Crosby Road

City Planner Loren Gordon gave the staff report.

Wiersum opened the hearing at 7:06 p.m.

Wiersum closed the hearing at 7:06 p.m.

Hiller moved, Wagner seconded a motion to adopt Resolution No. 2009-027 which vacates three parcels of existing right-of-way adjacent in 5608 Crosby Road. Approval is based on the following findings:

- 1) The petitioners are owners of the land abutting the subject right-of-way and are, therefore, proper petitioners.
- 2) The city no longer requires the subject right-of-way for roadway purposes.
- 3) Vacating the subject right-of-way is not counter to the public interest.

The vacation is subject to the following conditions:

- 1) Parcel No. 1: The city reserves a perpetual easement for drainage, utility, and snow storage purposes over, under, across, and upon the entirety of Parcel No. 1.
- 2) Parcel No. 2: The property owners must record in the chain of title a waiver of city responsibility and enter into an agreement with the city, in a form approved by the city attorney that indemnifies the city, its agents, employees, and contractors against any future liability, including those arising out of negligence.
- 3) This resolution must be recorded with the county and a copy of recorded resolution returned to the city.

All voted "yes." Motion carried.

B. On-sale liquor licenses for Romano's Macaroni Grill, 11390 Wayzata Boulevard

Gunyou gave the staff report.

Wiersum continued the hearing from March 23. No one spoke.

Wiersum closed the hearing at 7:07 p.m.

Allendorf moved, Hiller seconded a motion to grant the on-sale liquor licenses. All voted "yes." Motion carried.

C. Off-sale liquor license for Big Top Liquors, 12937 Ridgedale Drive

Gunyou gave the staff report.

Wagner said he has been open to the free market on liquor but noted Big Top would be the fourth liquor store within a half a mile

radius of Ridgedale. He asked what discretion the council had in voting on the matter. City Attorney Desyl Peterson said there was no right to obtain a liquor license. She said the council had a fair amount of discretion in approving or denying a liquor license when it was first before the council. The council had the right to decide if there was enough of a particular license in the city or if the licenses should be issued for different locations in the city.

Schneider joined the meeting at 7:11 p.m.

Greves asked if the council could have the discussion on approving or denying the license at this meeting or if it was required to open the public hearing and continue it until May. Peterson said the discussion could occur at either meeting.

Allendorf asked if staff had received input from the other liquor stores. Gunyou answered staff had not heard from any of the other liquor stores.

Ellingson asked for clarification on the number of liquor licenses in the city. Community Development Supervisor Elise Durbin said there are nine off sale stores and 11 licenses have been granted. Ellingson said that when the license for the Wine Shop came before the council, there was a discussion about looking at limiting the number of licenses per 5,000 in population similar to what the city of Minneapolis does. He said the number of licenses in the city seemed reasonable as did adding one more.

Wiersum said the limit of one license per 5,000 in population applied to class A cities. During the discussion about the Wine Shop liquor license he asked the question why the limit should only apply to a class A city and not other cities. He said he voted against issuing the liquor license for the Wine Shop but subsequently has voted for other licenses that have come before the council.

Ellingson said he read a news story that Trader Joes was requesting a liquor license for its Minneapolis store in the Lyndale Avenue area but would need approval by the legislature because the location was too close to another liquor store. He said it seemed inappropriate that the legislature was getting involved in the location of a liquor store. He also noted that in the past people were selling their liquor license for a profit but because the business is not that lucrative, that is not occurring any more. He said Minnetonka's approach seemed reasonable balancing the number of licenses while allowing an open market. There likely was

a natural limit to the number of stores the community would support.

Hiller said in the long term the issue about the number of licenses should be discussed by the council but it wasn't appropriate to decide the matter when a specific business was before the council ready to open a store.

Greves said she was concerned about the number of licenses in the city and the location for the requested license. She said with 11 licenses the city would have a liquor store for every 4,682 residents.

Wagner said his concern was the number of clustered liquor stores in the Ridgedale area.

Schneider said the historical premise behind setting a limit based on population was that there was an implicit limitation on the number of licenses that was not written down. Back in those days a person who wanted to obtain a liquor store had to buy out an existing store. Over time that approach went away and the council approved a fair and reasonable number. He said the public purpose of setting a limit on the number of licenses was determining if a business would be jeopardized to such a degree that the business would be obligated to do things that are not legal, such as selling to minors. He said the Ridgedale area is a regional market and the liquor stores serve the hundreds of thousands of people that go through the area.

Peterson said there was a state law limit on the number of licenses the city could issue. The city of Minnetonka had a referendum where the voters lifted the limit and gave the council the ability to issue an unlimited number of licenses. She said the law has changed since then.

Schneider opened the hearing at 7:22 p.m. No one spoke.

Wagner moved, Ellingson seconded a motion to continue the hearing to May 18, 2009. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Items concerning water and sanitary sewer connection fees

City Engineer Lee Gustafson gave the staff report.

Wagner said there was benefit in simplifying and adding predictability to the rate structure, particularly for large commercial developments. He asked how costs associated with previous developments compared with the proposed new rate structure. Gustafson explained in most cases the city would not have specific projects to support the development. Other projects involved upgrades to lift stations and other facilities or increasing the size of a small water main. Similar to traffic improvements, there is only so much system capacity. He said each property should pay for the system capacity that it uses so the last person in the door does not have to upgrade everything in the area.

Gunyou said the current rate structure was based on what it cost to initially install the system decades ago. People could then buy in accordingly as they developed. This made sense for the first decade. After that, the process became complex and unfair. He said similar to other cities, the new process would be based on the CIP. The costs of maintaining, expanding, and improving the system as reflected in the CIP would be spread across all the development that takes place when the capacity is needed.

Schneider said one analogy would be a pension fund where an actuarial analysis is done that indicates so much money has to be put in every year to pay future pensions. Similarly paying for the sewer and water system at the right amount of time would allow the system to be funded as it matures, evolves, and gets rebuilt.

Wiersum said the need for a change seemed clear. The current system is antiquated and inefficient. From a pure productivity perspective the current system does not make sense. He said two things were being proposed. One was changing the way connection fees are determined. The other change is a meaningful increase in the fees. Given the magnitude of the increases, he asked if it was a matter of not collecting enough money in the past or was the idea to build a cushion in anticipation of future costs. Gunyou said it was more a matter of the city falling behind. The old system did not lend itself to increasing fees, because it was based on historical costs of putting in the old system. The difference has been made up in the utility funds by raising usage rates. Philosophically this is unfair because growth is not paying its own way. He said the concept of the SAC fee is that there should be an upfront charge when someone is increasing the demand to the system and then the rates would be paid going forward for actual usage.

Allendorf said that for almost everything that is done in determining taxes and fees, fairness is judged by comparisons with other cities

like Plymouth or Edina. He asked how he would explain to a developer why Minnetonka's WAC and SAC fees were higher than those cities. Gustafson said deciding what to base the fee recommendations on was the toughest policy decision. The fees were based off the capital improvement plan and the dollars that are needed going forward. Staffs from Edina and Plymouth have struggled with the same questions. He said Edina staff has indicated that at times they keep their fees artificially low and address the shortfall through development agreements or operating charges. Plymouth is a newer city and, unlike Minnetonka, does not have the old cast iron pipes that are brittle and wear out differently. Plymouth has mostly ductile iron pipe that is much stronger and rigid. Their system was built at a time when future costs were lower. This makes Minnetonka distinctly different than Plymouth.

Allendorf said if he had to explain Minnetonka's fees compared to the other cities, Gustafson's explanation about Plymouth was understandable. He said the explanation about Edina would be understandable if one could say that provisions in the development agreements added to the fees made the comparison with Minnetonka more equal. Gunyou noted that the proposed fees fall in between what Plymouth and Eden Prairie charge.

Hiller asked how the goal of establishing flexibility to use fee revenue for existing and future utility improvements would be met and how that goal wasn't achievable in the past. Gustafson said the increase in fees was needed because the city was falling behind and the fees would help pay for systemwide infrastructure improvements.

Greves said one of the recommendations was that the fees would need to be reviewed on an annual basis. She asked what standard would be used to adjust the fees. Gustafson explained that the national publication "Engineering News Record" does a regional analysis each year. Many cities and governmental agencies use the analysis to determine the percentage of construction cost increases in the past year. He noted the current system already uses the analysis. Ideally a detailed study would be done every five years to make certain the city is where it should be financially in accordance to the CIP.

Greves said she shared some of Allendorf's concerns. Overall the recommendations made sense from a system standpoint. From a policy standpoint, one of the city's goals is to attract businesses to the city, and where reasonable and feasible, to attract potential development. Given the additional cost burden for commercial

businesses, she asked if the fees could be a detractor for a business wanting to develop in the city. Gunyou said the fees likely would not be viewed as a deal breaker, and noted that the city is currently undercharging some developments for buying into the system. He noted that the utility funds are not funded by property taxes, but rather by the users. The question is whether capital expansion costs should be paid by initial connection fees or by ongoing operating charges that everyone pays in their rates. From a philosophical policy standpoint, staff believes too much of the capital costs are currently being put on the utility rates. If the proposed charges were less the fund would still need to be kept healthy, so the ongoing rates would need to increase to make up the difference.

Wiersum said the city has not changed the fees for a number of years. He said it would be helpful to look at when the comparable cities last increased their fees. He said he would be troubled if it were true that Minnetonka truly was falling behind and had to charge higher quarterly water and sewer rates. Gustafson said Plymouth recently raised its rates. He said Edina has not raised its rates for a number of years.

Allendorf asked if the tradeoff for having higher SAC and WAC fees was to lower utility charges for both commercial and residential users. Gunyou said higher SAC and WAC fees would take pressure off utility rate increases. Because of increasing operating costs, it is unlikely the rates would decrease. He said even the operating costs vary from city to city because the costs of where the water is obtained, treated, and delivered differs for each city. The proposed change would introduce greater revenue from expansion and new businesses that are increasing demand, while taking pressure off operating cost increases.

Allendorf asked if it was possible to calculate what the increase in utility fees would be absent the new policy and with the new policy in place. Gunyou said the calculation could be done, but that was a great deal of variation in the assumptions. He suggested postponing the item given the council discussion in order to allow staff to gather more information.

Wagner said Gunyou's suggestion was a good one. The council discussion indicated that the proposed system made sense but the question was the financial piece going forward. He suggested looking further at the issue during the CIP review.

Wiersum suggested using the term “adjust” instead of “increase” because he believes there is an opportunity to lower the utility rates if costs were to substantially decrease.

Schneider asked for further information on how the proposed connection fee level was determined. Finance Director Merrill King said a fund analysis is regularly conducted by staff and was recently checked by consultants when the fee rate structure was modified in June 2008. The analysis includes looking at reserve level goals as well as all revenue and expenses to the fund forecasted into the future for ten years. Connection fee revenue is part of the forecast, as are the infrastructure costs related to increased capacity and betterment of the system. Because connection fees are tied closely to real estate development, their revenue is difficult to forecast. She further explained it often is unknown what the infrastructure costs are going to be until the street is actually torn up. As King did the analysis she forecasted the connection fees to be around \$200,000 a year compared to a \$450,000 annual cost, so the rates are still supplementing these costs. She said the forecast is made using professional judgment and won't cover a one-for-one infrastructure cost. If an analysis was done looking at how much rates would go up or down relative to the connection fee, it is unlikely there would be a one-for-one match.

Schneider said his concern was taking the projected number and applying a proposed fee for the connection charge. He said King did a good job explaining the other factors. He said he believed that a good amount of the future anticipated capital improvement projects related to replacing the ductile pipes, which should not be the responsibility of the new development, but should be part of the existing rates. There should be a difference between what would be charged to a new user for the expansion and improvement of the system versus the ratepayer paying for the replacement of materials that were put in years ago.

Gunyou said the item would be brought back to the council after staff gathered more information.

B. Organizational performance

Gunyou gave the presentation.

Allendorf said prior to when he joined the council, there was a push for there to be connections and looped trails throughout the city. He asked what initially drove the decisions for the city's trail system given that the community survey now indicated that residents want

trails in parks and natural areas for recreation use but there is not a lot of support for looping and connecting trails. Peterson said her recollection was there was strong sentiment in the community that people wanted to be able get from one major park to another. The connectivity was the important thing to people. Schneider said he was on the park board when the trail discussion occurred. He said the survey showed 70 percent to 80 percent support for connecting the trails but that was based on how the question was asked. When actual drawings were developed, support scaled back. That was when the plan was devised to segment the trails and to rate the segments.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointment to the community commission

Schneider moved, Wiersum seconded a motion to appoint Paul Ansolabehere to the community commission, to serve the remainder of a two year term, effective April 21, 2009 and expiring on January 31, 2010. All voted "yes." Motion carried.

16. ADJOURNMENT

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 8:40 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk