

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, SEPTEMBER 14, 2009**

1. CALL TO ORDER.

Mayor Schneider called the meeting to order at 6:31p.m.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL

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

4. APPROVAL OF AGENDA

City Manager John Gunyou noted addenda to items 9A, 13A, 13C.

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

5. APPROVAL OF MINUTES:

A. August 3, 2009 regular meeting

Wagner moved, Greves seconded a motion to approve the minutes of the August 3, 2009 Minnetonka City Council regular meeting. Hiller, Greves, Ellingson, Wagner, and Schneider voted "yes." Allendorf and Wiersum abstained. Motion carried.

6. SPECIAL MATTERS:

A. Citizen lifesaving award

Schneider read the recognition and presented Tanner Jensen with the certificate.

Jensen said he was happy he could save his grandfather's life. Jensen's grandfather Curtis Hort wished all grandfathers had a grandson like Jensen. He also praised Jensen's parents and the police force.

B. Mesothelioma Awareness Day proclamation

Greves read the proclamation.

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.** Items concerning public safety storage addition
- 1) Quotes for pre-fabricated concrete panels
 - 2) Quotes for steel roof trusses
 - 3) Quotes for steel erection

Gunyou gave the staff report.

Greves asked if the budget included costs other than the three quoted construction items. Gunyou said the budget typically includes other costs, like design fees. Public Works Director Brian Wagstrom said in addition to the three quotes the department would be getting additional quotes for the roofing, overhead garage doors, and the flat surface concrete work. The electrical work would be done by the city's contract electrician. City staff would be hanging the heating unit. By managing the project internally, the city would see some savings. Greves asked if it is anticipated that the costs would come in close to the budget. Wagstrom indicated he thought they would.

Wiersum moved, Wagner seconded a motion to award quotes to low bidders:

- 1) Pre-fabricated wall panels: FabCon \$64,903.00
- 2) Steel Supply: J. L. White Company \$29,150.00
- 3) Steel Erection: Red Cedar Erectors \$11,400.00

All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Claims for council authorization – August 10, 2009**

Allendorf moved, Wagner seconded a motion to approve the August 10, 2009 claims which includes electronic fund transfers (EFTs) numbered 1081 through 1085 and checks numbered 221452 through 221752, totaling \$2,214,198.80. All voted "yes." Motion carried.

B. Claims for council authorization – August 24, 2009

Allendorf moved, Wagner seconded a motion to approve the August 24, 2009 claims which includes electronic fund transfers (EFTs) numbered 1086 through 1089, checks numbered 221753 through 221818, and checks numbered 221861 through 222086, totaling \$2,739,313.46. All voted "yes." Motion carried.

C. Claims for council authorization – September 14, 2009

Allendorf moved, Wagner seconded a motion to approve the September 14, 2009 claims which includes electronic fund transfers (EFTs) numbered 1090 through 1092, checks numbered 221819 through 221860, and checks numbered 222087 through 222460, totaling \$2,102,860.47 All voted "yes." Motion carried.

D. Ordinance amending the city code regarding background investigations

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2009-11 amending the city code regarding background investigations. All voted "yes." Motion carried.

E. Resolution establishing just compensation for Sherwood Forest easement

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-068 establishing just compensation for easements at 2217 Black Oak Drive in the amount of \$49,000 to be paid from the Storm Water Fund as part of the previously approved budget. All voted "yes." Motion carried.

F. Resolution approving cooperative agreement with Hennepin County for the CSAH 101 improvements project

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-069 approving the Hennepin County cooperative agreement for the CSAH 101 improvements project. All voted "yes." Motion carried.

G. Resolution concerning tax-forfeited land within the city of Minnetonka

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-070 pertaining to tax-forfeited land within the City of Minnetonka.
1) Approve the classification of non-conservation tax-forfeited land.
2) Approve the sale of certain tax-forfeited lands within the City of Minnetonka to the adjacent owners.

All voted "yes." Motion carried.

H. Resolution declaring and designating public right of way for Hopkins Crossroad

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-071 declaring and designating certain city owned property as public right-of-way for Hopkins Crossroad. All voted "yes." Motion carried.

I. Items concerning Kinsel Road right-of-way

Allendorf moved, Wagner seconded a motion to:

- 1) Adopt Resolution No. 2009-072 declaring and designating certain city owned property as public right-of-way for Kinsel Road.
- 2) Authorized the mayor and city manager to execute the attached permit for use of city property for private driveway purposes.

All voted "yes." Motion carried.

J. Resolution for administration of the Wetland Conservation Act

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-073 for administration of the Wetland Conservation Act. All voted "yes." Motion carried.

K. Resolution approving a conditional use permit, with variance, for a detached garage located at 14218 Quigley Road

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-074 which approves a conditional use permit for a detached garage at 14218 Quigley Road, with the following variances:

- 1) Side yard setback variance from 15 feet to 10 feet.

Approval is based on the following findings:

- 1) Aside from the requested setback variance, the proposed garage would meet conditional use permit standards as outlined in City Code 300.16.3(g).
- 2) The proposed garage would meet the variance standard as outlined in City Code 300.07.1.
 - a. UNDUE HARDSHIP: While the garage could be situated to meet the required 15-foot setback, such location would result in greater impact to the critical root zones of these trees than the proposed 10-foot setback. The property owners desire to maintain these spruce trees presents a practical difficulty.
 - b. UNIQUE CIRCUMSTANCE: A conditional use permit and variance are required solely because the subject property already contains a large accessory structure. If the structure

did not exist, the proposed garage with 10-foot setback could be administratively approved through the building permit process. This is a unique situation not common to all residentially zoned properties.

c. INTENT OF THE ORDINANCE and NEIGHBORHOOD CHARACTER: The proposed garage would be located in relatively the same position as an existing storage shed and directly east of a detached garage on the adjacent property. Given these existing conditions, the proposed garage would not negatively impact the character of the neighborhood

- 3) The property contains mature vegetation which would adequately screen the existing and proposed accessory structures.
- 4) The subject property is 1.5-acres in size, providing adequate area of two accessory structures.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, the following must occur:
 - a. Record this resolution with the county. A copy of the recorded resolution must be returned to the city.
 - b. Install erosion control and tree protection fencing subject to the review and approval of natural resources staff. In particular, tree protection fencing must be located to protect three large spruce trees in the general vicinity of the proposed garage.
- 2) The garage must be constructed in relative conformance with the following plans:
 - a. Site Plan date-stamped August 3, 2009.
 - b. Building Elevations date-stamped August 3, 2009.
- 3) The garage is not to be used for commercial activities.
- 4) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 5) 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.
- 6) The applicant must agree to these conditions in writing.

All voted "yes." Motion carried.

L. Resolution approving a conditional use permit for an outdoor seating area for Panera Bread located at 12967 Ridgedale Drive

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-075 which approves a conditional use permit for an outdoor seating area at 12967 Ridgedale Drive. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Prior to installation of enclosure and seating, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- 2) The area must:
 - a. Be surrounded by an enclosure which includes bollards or some other safety feature acceptable to city staff.
 - b. Be sized and located in general conformance with the site plan date stamped June 29, 2009; and
 - c. Be equipped with refuse containers and patrolled twice daily for litter pickup; and
 - d. Not have speakers or audio equipment that is audible from adjacent residential parcels.
 - e. Must not encroach on any required handicap accessibility components of the existing or proposed site plan.
- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) 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.
- 5) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

M. Resolution approving a conditional use permit to locate an automotive accessories business within the existing commercial building at 15700 Wayzata Boulevard

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-076 which approves a conditional use permit for a 2,400-square foot automobile accessories business with service bay at 15700 Wayzata Boulevard. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- 2) The use must comply with all building and fire codes.
- 3) There may be no vehicles stored outside on the property overnight.
- 4) All repairs and installation must be done within the building. Servicing of vehicles must not occur in the parking lot.
- 5) Must have no public address system audible from any residential parcel.
- 6) Must have no sales, storage or display of motor vehicles.
- 7) Must have no gasoline pumps.
- 8) The city council may reasonably add or revise conditions to address any future unforeseen problems.

- 9) 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.
- 10) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

N. Resolution authorizing the installation of no parking signs near Scenic Heights Elementary

Greves asked for the item to be pulled from the consent agenda. She said she was happy to see the permanent placement of parking signs along Scenic Heights Drive. She has been contacted by residents in the area about the issue. She asked if there had been any petition presented by the neighborhood for sidewalks. City Engineer Lee Gustafson said there had been several discussions with residents about parking signs and a sidewalk. Residents had been instructed how to submit a petition. At this point no petition has been received. Submitting a petition is still a possibility.

Schneider noted there was a side street with no parking signs in front of the school. He asked if there were hours the restriction applied, or if residents had visitors during non-school hours if the signs would be enforced if no complaints were received. Gustafson indicated the residents would need to contact the police department and something could be worked out in advance.

Greves moved, Allendorf seconded a motion to adopt Resolution No. 2009-077 approving the following traffic control devices.

- 1) No parking on the west side of Scenic Heights Drive from Scenic Lane South to 1000 feet south.
- 2) No parking on the north side of Scenic Drive from Scenic Heights Drive to 225 feet east.

All voted "yes." Motion carried.

O. Resolution adding a council policy regulating gifts, donations and sponsorships

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-078 adding a council policy regulating gifts, donations and sponsorships.

All voted "yes." Motion carried.

P. Resolution finding that the Glenhaven TIF district qualified as a redevelopment district

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-079 making a finding that the Glenhaven TIF district qualified as a redevelopment district.

All voted "yes." Motion carried.

Q. Ordinance amending the nonconforming use section of the zoning code

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2009-12 which amends section 300.29 regarding non-conforming uses in the shoreland district.

All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Resolution to accept a conservation easement at 14505 McGinty Road West

Schneider read the recognition of the donation by Andrew Fuller.

Fuller said donating the conservation easement was something he had been looking forward to for a number of years. He said his deceased wife would have been highly supportive and all his five children have urged him to donate the easement to the city. He was delighted the land would continue to be the home for his turkeys, deer, and squirrels.

Hiller moved, Wiersum seconded a motion to adopt Resolution No. 2009-080 accepting the conservation easement. All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES: None.

13. PUBLIC HEARINGS:

A. Resolutions for special assessments of 2008-2009 projects

Gunyou gave the staff report.

Wiersum said he noticed the interest rate for the assessment to Alano was well below the market rate. The other interest rates were around 5.5 percent. He asked why there was a difference in the interest rates. Gunyou said the difference relates to the city's long history with Alano.

The city relocated Alano several times, including the most recent. With the Glen Lake redevelopment the city entered into a partnership in which the city paid a portion of the costs of Alano moving to their existing location. As part of the overall arrangement, a favorable interest rate was negotiated to allow Alano to pay the assessment off over time. He said the deal also recognizes the value Alano brings to the community.

Wagner said the staff report indicated there would be a new policy related to the nuisance and abatement projects. He asked if this was because there were a number that were very small and it was onerous for staff to manage the projects or if it was possible for those under \$250 in a year to be assessed all at once. Gustafson said the nuisance abatement projects are categorized by a one, three, and five year assessment period. Diseased trees would be spread out in a similar fashion next year. The assessment period would be based on the dollar amount. Wagner said he appreciated the change.

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

Steve Westmark, 14600 Minnetonka Drive, said he started removing the smaller trees but was given very little time to complete the clean up. He thought being assessed over \$500 for removing smaller trees was excessive. He also didn't like how he was treated when he contacted the city. Schneider noted that in dealing with diseased trees there was a time frame necessity. Natural Resources Manager Jo Colleran said the city ordinance requires a 20 day removal time period for trees identified as having Dutch elm disease. This is because the beetle can spread the disease to other trees. She said often staff tries to extend the period to 30 to 45 days because the process of a resident obtaining a low quote from multiple contractors can take some time. Staff tries to work with residents but the difficulty is that when the trees are cut down the wood cannot be left because the bark is still intact and the beetles will still hatch out. The goal of the program is to control the wood sanitation to prevent the spread of the disease. She said Westmark's trees were identified as diseased in August 2008. Removal was done in December and five notifications were sent during the time period. She said the city does not send out for quotes to try to find the lowest quote but rather the city's contractor is sent out to do the work. The city has around 2,000 diseased trees every year. Staff deals with around 1,500 property owners every year and conducts around 3,500 inspections. Schneider said while it would be good for the city to get the lowest possible price, it also was not a good idea for the city to be the most cost effective way for residents to remove tree because residents would then start having the city do all the work.

Gordon Wong, 14311 McGinty Road West, said he received a letter about the council meeting but had not received a letter about what his

assessment was about. Gustafson indicated the property was mowed four times. The abatement total was around \$1,500.

Vincent Plansky, 2028 Essex Road, said he received an assessment to have his lawn mowed. He lives in a wooded lot that he is trying to restore to prairie. When he received the notice he was given three days to cut the grass and he notified staff he was going on vacation. His lawn was mowed and he received an assessment of \$170. He said the assessment amount was unreasonable. Schneider noted the city had a procedure for formally converting property into a prairie. Collieran provided information about qualifying for a prairie restoration.

Schneider closed the hearing at 7:09 p.m.

Allendorf moved, Wiersum seconded a motion to adopt the following resolutions with the addendum:

- 1) Resolution 2009-081 adopting special assessments for CSAH 73/South Frontage Road Improvements Project No. 4913.
- 2) Resolution 2009-082 adopting special assessments for Alano Parking Lot and Landscaping Improvements project.
- 3) Resolution 2009-083 adopting special assessments for 2009 Nuisance Abatement Projects, one year assessment term.
- 4) Resolution 2009-084 adopting special assessments for 2009 Nuisance Abatement Projects, three year assessment term.
- 5) Resolution 2009-085 adopting special assessments for 2009 Nuisance Abatement Projects, five year assessment term.
- 6) Resolution 2009-086 adopting special assessments for 2009 Diseased Trees Project No. 4902.

All voted "yes." Motion carried.

B. Temporary on-sale liquor license for ResourceWest, for use at 14600 Minnetonka Boulevard

Judy Elling of ResourceWest, 117 8th Avenue North in Hopkins, said the event had been held at the Community Center for the past five years. The event accounts for around 13 percent of the organization's annual budget.

Schneider opened the hearing at 7:12 p.m.

Schneider closed the hearing at 7:12 p.m.

Hiller moved, Greves seconded a motion to grant the license. All voted "yes." Motion carried.

C. Amendment to an off-sale intoxicating liquor license previously granted to Trader Joe's East, Inc.

Gunyou gave the staff report.

Schneider opened the hearing at 7:13 p.m.

Bruce Spalding, the general manager of the Trader Joe's, said he was present to answer any questions. Schneider asked what the time frame was for opening the store. Spalding said the goal was for the store to be open sometime in November.

Schneider closed the hearing at 7:14 p.m.

Wiersum moved, Wagner seconded a motion to approve the off-sale intoxicating liquor license. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Update to Intercongregation Communities Association (ICA) Operation Management Plan

Principal Planner Susan Thomas gave the staff report.

Wiersum asked for clarification of information in the staff report stating, "Regular food deliveries in box trucks will occur during hours of operation identified above (Monday through Friday 9:00 a.m. to 4:00 p.m. and to 5:00 p.m. for office staff)." He asked if regular food deliveries were to occur until 4:00 p.m. or 5:00 p.m. since staff would likely be present until 5:00 p.m. Thomas said the intent was for regular operation of the food shelf would be limited to Monday through Friday from 9:00 a.m. to 4:00 p.m. with deliveries occurring until 5:00 p.m.

Cathy Maes, 4019 Thrushwood Lane, the executive director of ICA, thanked the council and staff for working on the issues related to the management plan. She said deliveries on the weekend are different than deliveries during the week. Weekend deliveries are small and usually involve a volunteer car from a food drive from a local community organization or business. The weekday deliveries typically come in box trucks that arrive between 9:00 a.m. and 4:00 p.m. when volunteers are present to unload the deliveries.

Wagner moved, Allendorf seconded a motion to approve the updated Operation Plan for ICA Center at St. David. All voted "yes." Motion carried.

B. Ordinance amending the zoning regulations regarding retail sales in residential districts

City Attorney Desyl Peterson gave the staff report.

Wagner moved, Wiersum seconded a motion to adopt Ordinance No. 2009-13 which amends the zoning regulations regarding retail sales in residential districts. All voted "yes." Motion carried.

C. Ordinance amending Section 300.34 regarding Telecommunications Facilities

City Planner Loren Gordon gave the staff report.

Wiersum asked how much latitude to deny requests the council has under the current ordinance. He recalls that the federal communications law limits the council's ability to deny and asked how the authority would change under the administrative review process. Peterson said the federal law prohibits the city from having regulations that are so restrictive that they would prevent the companies from operating. As long as the city demonstrates there are areas that the facilities can be located in the city, there is the authority to deny a request. The city does not have to show that the property owners will rent to the companies. She added the federal law says the city cannot deny a request solely on concerns about the affects of the energy that comes from the towers. Gordon said for the review process the conditional use permit criteria would be applied. The ordinance proposes that the administrative review criteria take the same cues as the conditional use permit process.

Wiersum noted the city would not be giving up any authority with the proposed change. The process would be administrative but the same criteria would be used. If residents had particular concerns, they would have the right to petition the council to review the administrative approval. Gordon confirmed that was correct.

Greves thanked staff for the revisions to the ordinance. When the ordinance was previously before the council she raised questions about the notification requirements to residents. She said the changes present a happy medium between the city's wish to expedite the process while still allowing for public input. While the city's authority to deny may be limited, it provides educational opportunities and greater transparency.

Allendorf moved, Greves seconded a motion to adopt Ordinance No. 2009-14 which amends City Code Section 300.34 regarding telecommunications facilities.

All voted "yes." Motion carried.

D. Items for the 2010 Preliminary Tax Levy:

- 1) Resolution setting preliminary 2010 tax levy and budget**
- 2) Resolution setting preliminary 2010 tax levy for the Bassett Creek Watershed Management Tax District**
- 3) Resolution setting preliminary 2010 HRA tax levy and budget**

Gunyou gave the staff report.

Allendorf applauded the permanency and forward looking nature of the cuts. He said the proposed levy increase previously discussed was 2.45 percent. He asked why the proposed levy was now 2.5 percent. Gunyou said earlier discussions did not include the Bren Road abatement calculation. Allendorf noted that one potential reduction in the levy was to use reserves for the fire pension issue. Gunyou said the option would be discussed during the more detailed study session in November.

Wiersum said the proposed levy speaks well for fiscal prudence with a budget that was actually two percent lower than last year. He asked how the expected value of homeowners' properties in the city in the upcoming assessment compared with last year's assessment. He said many residents likely would see their home values decline while seeing a modest tax increase and would question why. Gunyou said the basis for the proposed levy was the current year's assessment. Home values have decreased but not to the extent that they have in other communities. He said another factor to consider was that even though the budget was going down, the other sources of revenue are decreasing even more.

Wagner said the proactive approach and having key unions agree to renegotiation of contracts helped make decisions easier in financially positioning the city for the long term. He said he wanted re-emphasize Gunyou's comment that the budget was decreasing but taxes were increasing due in part to the other sources of revenue that have declined quite a bit in the past year.

Hiller said he was impressed that almost a year ago there was news the state's budget was in trouble, and city staff immediately took steps making it easier to deal with issues now. He said residents are pleased with the services delivered by the city. He asked if the issues around the potential revenue from the Beacon Hill TIF district would be resolved before the final budget was determined. Gunyou said the TIF district issue would be addressed in October. Depending on what happens those funds could be used for economic development issues. If a portion or all of the revenue was put back on the tax rolls it would have an effect on homeowners' taxes.

Allendorf noted the city's investment income was down significantly. He asked if the city was positioned in a way to take advantage when the market starts to recover. Finance Director Merrill King said the city is positioned well. The city has the authority to invest as long as ten years but the practice has been to not invest longer than five years. She said the city has not invested more than two years ahead during the recession. Gunyou noted that by state law, city investment options are very restricted. For example, the city cannot buy stocks. The portfolio is laddered so that the investments come due at different times depending on the city's cash flow needs.

Greves echoed Wagner's comments about the cooperation from staff and the unions. She noted the transition was difficult, but the challenge was handled well.

Schneider said periodically residents come forward saying they could help the city make good decisions on the budget. It is always a challenge to factor those thoughts into the budgeting process because of the complexity of the city funds. He asked if it would be possible to conduct a mini-citizen academy on the budget. If there was enough resident interest, adding the mini-citizen academy might be a good way to tap into that feedback. Gunyou said staff is always looking for new avenues to allow residents to learn about the budget and to provide input.

Allendorf asked if there was a citizen advisory group or any other advisory group that helps staff look at different investments. Gunyou said the city has a variety of professional advisors that King works with in placing investments.

Hiller moved, Wagner seconded a motion to adopt the following resolutions:

- 1) Resolution 2009-087 setting preliminary 2010 tax levy and budget
- 2) Resolution 2009-088 setting preliminary 2010 tax levy for the Bassett Creek Watershed Management Tax District
- 3) Resolution 2009-089 setting preliminary 2010 HRA tax levy and budget

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT

Wiersum moved, Greves seconded a motion to adjourn the meeting at 8:04 p.m.
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk