

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JANUARY 25, 2010**

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

4. APPROVAL OF AGENDA

City Manager John Gunyou noted addenda to items 10C, 13A, and 13C.

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

5. APPROVAL OF MINUTES:

A. January 4, 2010 regular meeting

Allendorf moved, Wiersum seconded a motion to approve the minutes of the January 4, 2010 Minnetonka City Council regular meeting. Allendorf, Greves, Wiersum, Hiller, Ellingson, and Schneider voted "yes." Wagner abstained. Motion carried.

6. SPECIAL MATTERS: Recognition of Eagle Scout Michael Schnack

Schnack gave a presentation on his project of restoring the canoe landing in Jidana Park. Schneider commended Schnack for all the work.

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 – January 11, 2010**

Allendorf moved, Greves seconded a motion to approve the January 11, 2010 claims which includes electronic fund transfers (EFTs) numbered 1155 through 1162 and checks numbered 224650 through 224925, totaling \$982,906.15 All voted “yes.” Motion carried.

B. Claims for council authorization – January 25, 2010

Allendorf moved, Greves seconded a motion to approve the January 25, 2010 claims which includes electronic fund transfers (EFTs) numbered 1163 through 1173 and checks numbered 224926 through 225200, totaling \$1,907,380.16. All voted “yes.” Motion carried.

C. Agreement with Intermediate School District #287 for police liaison services for 2010

Allendorf moved, Greves seconded a motion to approve the agreement with Intermediate School District #287 for police liaison services with the addendum. All voted “yes.” Motion carried.

D. Resolution approving a 3-lot subdivision of existing properties at 10500 Bren Road East

Wagner asked for the item to be pulled from the consent agenda. He said given recent council dialogue on station studies in the Opus and Shady Oak areas that he wanted more information from staff. He noted the area is located in a zone where there would be an easement or land required for the Southwest light rail. He asked for more information about dividing already combined properties in areas that would likely be redeveloped in the next 10 to 15 years. City Planner Loren Gordon said the proposed subdivision would create an additional two lots from the existing lot. There would be four property owners along the light rail corridor in the Opus area. The actual station would be north of the proposed plat. He said a single owner could bring up redevelopment issues if he/she were an unwilling participant. Multiple owners could complicate matters even more but could also be more beneficial because more variables would be in play as the number of owners increase. He said staff would be more concerned if the station were planned for that specific parcel and the parcel was being divided right at the station location.

Wagner asked if the proposal included an easement for light rail use in the future or if that would have to be acquired. Gordon said one of the conditions for approval of the subdivision was to obtain an easement that

should have been recorded when Opus was platted. The easement was for secondary road purposes and the situation would be corrected with the proposal.

Wagner moved, Greves seconded a motion to adopt Resolution No. 2010-006 which grants preliminary and final approval to BREN TRAIL, date stamped November 6, 2009. Approval is based on the following findings:

- 1) Except for the requested variances, the proposal meets the required standards and ordinances for a preliminary and final plat.
- 2) The requested setback variances are reasonable, because:
 - a. The proposed plat, and associated setback variances would meet the intent or required setbacks. Though the proposed plat would result in the creation of a property line and, as such, creation of new properties, it would not result in any visual or physical change to the existing site.
 - b. The safety of the traveling public and building occupants would not be compromised by the creation of new property lines. Similarly, these new property lines would not alter the existing building lines established by the site's existing structures.
- 3) The requested parking spaces variance is reasonable, because:
 - a. Proposed property lines could become an unusual alignment of a property line to ensure existing parking is allocated according to city code requirements.
 - b. A shared parking arrangement between properties, and approval of necessary parking space variance, is more reasonable than the arbitrary creation of an unusual alignment of a property line.

Approval is subject to the following conditions:

- 1) The following items must be submitted to the city before the city releases the final plat:
 - a. A revised final plat, which includes:
 - (1) Drainage and utility easements, which fully incorporate all existing public and private utilities. These easements are generally illustrated in Exhibit A of this resolution.
 - (2) A transportation easement which fully incorporates all existing and proposed public transportation corridors. This easement is generally illustrated in Exhibit B of this resolution.
 - b. An electronic CAD file of the final plat in microstation or DXF.
 - c. 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 approval:
 - (1) Title evidence that is current within thirty days before release of the final plat.

(2) A shared access and parking easement to benefit Lot 1 and Lot 2. The easement must state the maintenance responsibilities of each owner.

(3) 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 final plat, and a drawing of any easement must be attached to the easement deed.

2) Individual sanitary sewer and water services to individual buildings as required by the city's building and public works staff.

3) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

E. Resolution approving a conditional use permit for a drive-thru window at 4950 County Road 101

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-007 which approves a conditional use permit for a drive-thru window at 4950 County Road 101. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

1) Complete the following prior to issuance of a building permit:

a) This resolution must be recorded with Hennepin County and a copy of the recorded resolution must be returned to the city.

b) Submit a landscape plan for staff review and approval. The landscape plan must mitigate for the landscaping along the base of the building that will be removed.

2) Signs must be installed to control traffic along the one-way drive-aisle.

3) The public address system must not be audible from any residential parcel.

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 the above conditions in writing.

All voted "yes." Motion carried.

F. Resolution to authorize use of Hennepin County Affordable Housing Incentive Funds by Homes Within Reach

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-008 to authorize use of Hennepin County Affordable Housing Incentive Funds in Minnetonka by Homes Within Reach. All voted "yes."
Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES: None

13. PUBLIC HEARINGS:

A. Temporary on-sale liquor license for Bet Shalom, 13613 Orchard Road

City Attorney Desyl Peterson gave the staff report.

Schneider opened the hearing at 6:45 p.m. No one spoke.

Schneider closed the hearing at 6:45 p.m.

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

B. Off-sale liquor license for Crazy Johnny's Discount Wine & More, 12324 Wayzata Boulevard, Suite B

Peterson gave the staff report.

Greves asked how many liquor stores would be located in the Ridgedale area if the license was approved. Peterson said there would be five stores in the area.

Wiersum asked what the highest number of liquor stores historically in the city was. Peterson said in terms of off sale stores, approving this license would give the city the most liquor stores it has ever had.

Schneider opened the hearing at 6:48 p.m.

Lee Monskey, the manager of Haskells at 12900 Wayzata Boulevard, said he was concerned about having multiple liquor licenses on one street and in one geographical area. He said his store was willing to compete with other stores but there was an issue of having too many licenses in one area.

Wagner noted that for the past three years, the council has had a discussion about possibly limiting the number of licenses in the city with every new liquor license application. Councilmembers were conflicted between allowing the free market to determine the proper number of liquor licenses in the city and having too many stores in the city. He said he shared some of Monskey's concern about having too many stores in one area. He asked staff to provide more information about the city of Burnsville's rationale of its standard of three quarter miles between liquor stores. He sensed that in getting close to the one license per 4,000 residents threshold, the city could be reaching the point of having too many stores especially given that 40 percent of the stores are located within a two mile area.

Wiersum said he also had some concern about the saturation aspect. First class cities as defined by statute are limited to one liquor store per 5,000 residents. When the issue first arose a few years ago, he wondered why Minnetonka needed more liquor stores than the statutory first class cities. The issue wasn't resolved and his point of view did not prevail. Soon another liquor license was before the council and he did not hear any concerns raised by residents so he voted for approval. He said he thought the city could be reaching the saturation point and the council has discussed the idea of having a study session on the issue.

Allendorf said he thought it was proper to let the market sort out the question of how many liquor stores should be in the city.

Ellingson said when the council approves a business license it might have some obligation in making sure the business succeeds. He noted that in a previous council discussion, former councilmember Al Thomas made a comment that approving the license for a new store would put an existing liquor store out of business and that was what ended up happening. Ellingson said normally he would agree that the free market should decide what businesses succeed, but in this instance the type of business was different because the council has the authority to regulate the sale of alcohol. He noted the council recently passed the social host ordinance because of the concern about the consumption of alcohol by minors. One of his concerns about this specific business was that discounting the price for liquor might lead to more drinking. As a social policy society might want to keep alcohol prices high to discourage consumption similar to how rising cigarette prices has reduced smoking and increased gas prices reduces gas consumption.

Hiller said he asked Gunyou earlier in the day if there was an increase in the number of consumption related problems being reported by the police. He was informed that to date an increase has not taken place. He asked if

there was information available at what point communities start seeing issues related to having too many liquor licenses in an area.

Schneider said the council could limit the number of licenses but said it was unlikely the council could require a store to sell liquor at a premium price. Peterson confirmed that the council did not have the authority to make that requirement. Schneider agreed for the past few years the council has had a similar discussion every time a new license came forward and the issues warranted a study session. He recommended continuing the hearing until March 8 and adding the liquor license discussion to the March 1 study session agenda. Wagner said he supported that idea. He said he doesn't want to make liquor licenses so valuable that people are bidding for the license due to an artificial cap on the number of stores.

The applicant, John Wolf, 4622 Drexel Avenue in Edina, said past council discussion has always concluded that the city should let the market determine the number of licenses and raising prices to lower consumption should be a policy set at the state level. He hasn't heard any concerns from Minnetonka residents about opening the liquor store. He said he owns another liquor store in Minneapolis that is located in a low socio-economic neighborhood and the store prides itself in being a good neighbor that offers residents true value. The question should not be if more liquor stores would lead to more consumption, but rather if Minnetonka residents are getting good value for what they pay. He said currently Minnetonka residents are paying more for liquor than Minneapolis residents. The proposed store would be warehouse style with a limited number of products. He described the store as Costco or Sam's Club on steroids. Wolf agreed with Wagner's concern that once the number of licenses is limited, the licenses become very valuable. He said his store would give residents from surrounding communities another choice and another reason to come to Minnetonka.

Ellingson said when he asks residents what would make Minnetonka a better place to live, more liquor stores is not identified as a priority. He asked why Wolf thought Minnetonka would be a good location for a warehouse style store. Wolf said the store would be close to Eden Prairie, Edina and Wayzata's municipal stores that have very high prices. The store's location close to the I494 and I394 corridors and proximity to downtown Minneapolis would also be beneficial.

Greves agreed with the idea of having a study session to have a more in depth discussion about the issue.

Wiersum said it would be helpful to future applicants to understand what the council's views and policy are. He agreed with Ellingson that liquor

stores are not the same as other type of businesses because the council has the authority to say yes or no to a liquor license. He asked if the council had the authority to set a policy allowing or prohibiting licenses from being transferred between businesses. Peterson said the city's policy has always been that the licenses are not transferrable.

Allendorf said it was important to him to look at what other city's do and per capita information, because he wanted the policy to be based on facts rather than on individual councilmembers' subjective thoughts about the right number of licenses in the city.

Allendorf moved, Wiersum seconded a motion to continue the hearing to March 8, 2010. All voted "yes." Motion carried.

Diane Hayden, 2116 Indian Road, said she had been to Big Top Liquor three times and there were no other customers during any of her visits. She added Byerlys and Trader Joes have a distinct liquor buying clientele and a warehouse style store would be unique in the city and that it would bring consumers to neighboring businesses.

C. Use of the Community Investment Fund to finance renovation of the Williston Center

Recreation Services Director Dave Johnson gave the staff report.

Greves asked Gunyou to explain for residents how the Community Investment Fund (CIF) can be used and how previous councils have used the fund. Gunyou said the easiest way to look at the CIF is as a trust fund or endowment. The interest earnings can be used to fund one time capital projects that have a wide community benefit. One example of a past use was partnering with the Hopkins School District to build the Lindbergh Center. The fund is also being used for the creek development project that will have a wide community benefit. He said the fund was established around 20 years ago when the city had a windfall in pre-payments in assessments for water and sewer improvements. The city council appointed a citizen committee to come up with a recommendation of what to do with the revenue. The committee looked at several options from lowering utility rates to one time rebates but ultimately recommended establishing the CIF. The council decided to establish the trust fund to benefit future generations. Gunyou said the fund could not be used for operating expenses because it is not a dependable, ongoing source of revenue. The availability of the fund ensures there are no tax subsidies used for these type of recreational operations.

Greves noted the Williston renovation would still leave the CIF healthy and intact. Gunyou confirmed that was correct. He said the city was just

spending what was available and was not overcommitting money for the project.

Wiersum noted Johnson indicated there would be efficiencies gained with the renovation including with the swimming pool and HVAC system. He asked if it was anticipated that the operating expenses would increase, decrease or be about the same given the increase in the facility's size. Johnson said there would be a more complete analysis of the operating costs at the next hearing. The biggest cost issue is with staffing and the number of staff will not increase. There will be added space but with the pool mechanical system it is anticipated there will not be a spike in utility costs. Johnson said there would be a cost reduction for the next five to ten years in the number of repairs on the various systems.

Gunyou noted that there had been a number of options for Williston discussed over the past several years. About six years ago the city looked at whether or not it should keep the Williston Center. The conclusion was that because the facility is an inexpensive way to house recreation programs, the city should continue to operate the center. He said the savings directly offset the need for property tax revenue to help subsidize the city's recreation programs. The cost of a new facility would be around \$13 million to \$14 million. The council said the building had to be self supporting and it has been. A year or two ago the council looked at a number of renovation options with different price ranges. The council selected an option that fell in the middle of the price ranges. The decision to renovate was driven by the fact that much of the facility has reached its useful life, and the ultimate factor was the need to replace the swimming pool liner and equipment. Gunyou said there would be around a 50 percent savings in water use with the new equipment for the pool. In summary, the renovation will make the facility much more functional.

Schneider opened the hearing at 7:49 p.m.

Elaine Baumgardner, 3600 Robinwood Terrace, said she was a frequent user of the Williston Center. She asked what type of water system would be used for the swimming pool noting the Lifetime Fitness Center now uses a system with saline water that is better for skin. Johnson said staff is in the early stages of aquatic planning but most likely a chlorine system would be used. He said the system would incorporate ultra-violet light to eliminate bacteria and that would greatly reduce the amount of chlorine used. Staff will look at whether a Bromine and saline solution would be a cost effective option.

Tina Persson, 3610 Sunrise Drive, said she was a member of the center and starts her day there with a workout. She noted currently that the entryway in the winter gets icy and asked that the new design makes sure

that ice and snow near the entrance can be cleared easily. She also asked that fans and ventilation be adequate in the treadmill area and that the current televisions in the fitness area are moved to the new area. She said she was excited about the locker room redesign. She encouraged the installation of an indoor running and walking track around the tennis area because the track at the Lindbergh Center is nearly inaccessible during the school day. Johnson said the existing entrance has ice issues because members have to go down stairs to enter the building. The new entrance will eliminate that type of entry and will be much more open and friendly. He said the new fitness area will be built specifically as a fitness area. He added an indoor running track was included in early plans but was removed because of the cost. Long term an indoor running track could be incorporated when the tennis building needs to be replaced and the Williston Center fund grows.

Dennis Dickinson, 4515 Redwood Circle, said he understood tax dollars were not being spent for the renovation but noted that the cost would come to around \$1,200 per member. The 3,000 members represent about five percent of the city's population and he questioned if the renovation met the community benefit requirement of the CIF. He said there are a number of health clubs in the area and questioned the use of public money to duplicate the other services. Schneider said he was involved when the CIF was established and there was a lot of debate about the meaning of communitywide benefit. The decision was that there would never be one particular project that everyone in the city would use. He said the Williston Center benefits the broader community and provides an amenity and quality of life that other communities do not have. He agreed that the expenditure per member was high but because the facility is used for recreation programs there was a wider benefit. He added the investment was for at least 25 years so the annual contribution was not as significant and there was a good rationale basis that the renovation met the community benefit requirements. The CIF cannot be used to lower taxes but because the renovation would create opportunities to save tax money, in effect, taxes would be lower.

Johnson noted that Dickinson was correct that the membership number was around six percent of the city's total population. He said a question is included in the annual survey asking if the respondent has visited the Williston Center over the past year. The typical response shows that around 33 percent to 35 percent of the city's residents use the center every year.

Michelle Pasko, 13024 Murial Road, said she thought the Williston Center was a fantastic facility and the renovation was exactly what the CIF was for. Her entire family uses the facility and asked that the water temperature of the swimming pool not be changed when the pool is

replaced. She said the center is not a health club but rather was a beneficial facility for the entire city.

Josh McGrath, 15707 Dawn Drive, said he goes to the teen nights on a regular basis and his participation is not included in the membership numbers. He said more people would attend the teen nights if the swimming pool was improved.

Zack Leaf, 16506 Elm Drive, said he uses the batting cages and agreed getting in and out of the facility can be difficult. He said he agreed with the proposed improvements to the swimming pool.

Jim Bechthold, 11320 Fetterly Road, said he looked at the information on the city's web site that indicated an \$85,000 loss for the Williston Center in 2006. He said he was against government using funds to participate in a business. He noted there are a lot of facilities in the area that try to make money doing the same thing as the Williston Center. He noted the Jewish Community Center has a running track, indoor and outdoor pools with diving boards and has approximately the same cost to use as the Williston Center. The center has instituted a free membership program over the past year for people who have lost their job. He said the city should only provide services that are not competing with other businesses and nonprofits. He suggested using the CIF to provide money to buy insulation for homes or for establishing a program to assist residents in purchasing a high efficiency furnace. Schneider said that type of program may qualify for CIF use, and could be considered in the future. Johnson said he did not have the information at the meeting to explain the 2006 information Bechthold cited. He said the loss may include a depreciation amount and the operating costs do not factor in depreciation.

Kevin McGrath, 15707 Dawn Drive, noted the Jewish Community Center is a secular facility. He said the Williston Center is a community center that differs from fitness clubs. The center provides a safe place for teens to use.

Garrett Young, 2213 Oakland Road, said the Williston Center has the voice of the community at its core and is a quirky facility. He said the staff is friendly and there is an adequate amount of equipment. He suggested one way to improve the lighting in the tennis area would be painting the dark brown trusses a lighter color.

Maureen Daly, 13579 Wentworth Trail, said the facility is important because seniors and family use it and many of them cannot afford some of the other clubs. She said it would be nice to have eight lanes in the swimming pool.

Diane Hayden, 2116 Indian Road, said she has heard others support the idea of having an area for people to walk or jog similar to what is available at the Plymouth dome. She said she is a member of both the Williston Center and Lifetime Fitness and that the two facilities are different. The Williston Center is more family oriented.

Perry Torvik, 4006 Huntingdon Drive, noted the previous discussion included some support for limiting the number of liquor stores and that contrasted with it being OK to have health clubs on every corner of the city. He questioned at what point would there be too many health clubs in the city. He said a prior audit showed the city's numbers related to the Williston Center were not correct and that the facility was not operating at a profit. He said any business that does not pay property taxes should be able to make money.

Schneider said he was impressed by the number of people who came and spoke on the issue.

Allendorf moved, Wagner seconded a motion to continue the public hearing to March 22, 2010. All voted "yes." Motion carried.

D. Items concerning BLACK OAKS ESTATES:

- 1) Vacate public right-of-way easement**
- 2) Establish public right-of-way**
- 3) Final plat**

Gordon gave the staff report.

Allendorf asked why the city could claim a piece of property located in Plymouth. Peterson said because Minnetonka has occupied and maintained the property, the city has a prescriptive easement. The city is allowed to own land outside the city boundaries.

Schneider opened the hearing at 8:27 p.m.

Kevin Nickels, 135 Black Oaks Lane in Plymouth, asked if the current owners of the land were notified of the item. Gordon said the right-of-way easement was part of the public portion of Black Oaks Lane. Nickels said there had been a lot of previous discussion about the sixth property lot and asked to see the driveway access to the lot. Gordon said the applicant has proposed two solutions for the access to lot six. One would be a driveway that would come off of the private portion of Black Oaks Lane. This would require the owners of the private lane to allow the access. Nickels said there was a unanimous vote of the owners against allowing the access. Gordon said the alternative would be an easement across lot seven from Black Oaks Lane. The owner would need to secure the

access. The conditions of the preliminary plat anticipate both options. Schneider said ultimately the access would depend on what the developer could obtain. If he cannot obtain the easement, the developer would be required to put the other access in. Nickels asked for clarification about the process. Schneider said the developer would have to negotiate with the association for access off the private portion of Black Oaks Lane. The city would not be involved with the negotiations.

Greves thanked Nickels for his questions because she had been unclear where the negotiations stood between the developer and the other property owners.

Schneider closed the hearing at 8:30 p.m.

Wagner moved, Wiersum seconded a motion to:

- 1) Adopt Resolution No. 2010-009 which vacates existing public right-of-way at 16611 Black Oaks Lane. Approval is based on the following findings:
 - a. The petitioner is the owner of the land abutting the subject right-of-way and are, therefore, proper petitioners.
 - b. Upon filing of BLACK OAKS ESTATES plat, the city will no longer require the subject right-of-way for roadway purposes.
 - c. Vacating the subject right-of-way is not counter to the public interest.

The vacation is subject to the following conditions:

 - a. The city council reserves unto the city of Minnetonka, its successors and/or assigns, the following perpetual easement:

A perpetual easement for drainage, utility, and snow storage purposes over, under, across, and upon all that part of said public right-of-way described in this resolution and now vacated.
 - b. This vacation of an existing easement is effective only upon proper recording of BLACK OAKS ESTATES.
- 2) Adopt Resolution No. 2010-010 which establishes public right-of-way over and adjacent to a portion of Black Oaks Lane. Approval is based on the following findings:
 - a. A 270-foot portion of Black Oaks Lane, legally described on EXHIBIT A and depicted on EXHIBIT B, is located outside of dedicated public right-of-way and granted roadway easement.
 - b. The city of Minnetonka has maintained this existing roadway as a public road for at least ten continuous years. Maintenance includes periodic upgrades and regular snowplowing.

- c. Under Minnesota Statute 160.05, when a road has been used and kept in repair by a public entity for at least six continuous years, the road is “deemed dedicated to the public”.
 - d. Maintaining the paved portion of Black Oaks Estates is complicated by poor soils in the area. To ensure proper and ongoing maintenance, right-of-way is required beyond the existing, paved portion of the roadway.
 - e. The city of Minnetonka having met the requirements of Minnesota Statute 160.05 determines that it is in the public interest to document the existing of public right-of-way over the 250-foot portion of Black Oaks Lane, legally described on EXHIBIT A and depicted on EXHIBIT B.
- 3) Adopt Resolution No. 2010-011 which grants final plat approval to BLACK OAKS ESTATES, date-stamped January 8, 2010. Approval is subject to the following conditions:
- a. Final plat drawing for staff review and approval. The revised plat must not show vacated right-of-way and must correct typographical errors.
 - b. Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted “yes.” Motion carried.

- 14. **OTHER BUSINESS:** None
- 15. **APPOINTMENTS and REAPPOINTMENTS:** None
- 16. **ADJOURNMENT**

Wiersum moved, Greves seconded a motion to adjourn the meeting at 8:32 p.m.
All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk