

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, FEBRUARY 22, 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 Brad Wiersum, James Hiller, Tony Wagner, Bob Ellingson, Dick Allendorf, Amber Greves, and Terry Schneider were present.

**4. APPROVAL OF AGENDA**

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

**5. APPROVAL OF MINUTES: January 25, 2010 regular meeting**

Wiersum moved, Allendorf seconded a motion to approve the minutes of the January 25, 2010 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

**6. SPECIAL MATTERS: None**

**7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS**

Gunyou reported on the schedule for upcoming council meetings.

Greves said she had a nice time at the annual fire department banquet. She praised the firefighters and police officers for their good work. Schneider complimented the firefighters for how they live the city's shared values.

**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 – February 22, 2010**

Allendorf moved, Wiersum seconded a motion to approve the February 22, 2010 claims which includes electronic fund transfers (EFTs) numbered 1182 through 1194 and checks numbered 225535 through 225829, totaling \$5,474,708.91. All voted "yes." Motion carried.

**B. Resolution recognizing Minnetonka as an Active Living Hennepin Communities partner agency**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2010-014 recognizing Minnetonka as an Active Living Hennepin Communities partner agency. All voted "yes." Motion carried.

**C. Resolution approving an outdoor seating area for Scoreboard Bar and Grill Restaurant at 5765 Sanibel Drive**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2010-015 which amends and replaces an existing conditional use permit for outdoor seating areas at the Scoreboard restaurant at 5765 Sanibel Drive, with the following variance:

- Setback Variance from Residential from 200 feet to 124 feet.

Approval is based on the following findings:

- 1) Aside from the above described setback variance, the proposal meets the required conditional use permit standards.
- 2) The intent of the setback requirement as it relates to outdoor seating is to minimize the impact seating may have on residential neighborhoods. The proposed seating area meets this intent and is, therefore reasonable.
  - a. Shady Oak Road, a four-lane street, would separate the outdoor seating area from the residentially-zoned properties.
  - b. The two closest residentially-zoned properties are located directly west of the outdoor patio. One is parkland, Lone Lake Park, which is owned by the city. The second is privately owned undeveloped residential property. In addition, severe slopes and Woodland Preservation areas on the park property and the vacant property to the north, would significantly limit development potential.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, the following occur:
  - a. The existing cross-parking easement between the Sundial and Scoreboard properties must be submitted for review and approval of the city attorney. The city attorney may require an update to the existing cross-parking easement.
  - b. Submit a survey detailing the location of property lines, the 100-year storm elevation, the existing building and proposed outdoor seating area. The proposed seating area must meet

- all minimum setbacks from property lines and 100-year storm elevation.
- c. Submit a letter of credit or cash escrow 150% of an estimated cost or 125% of a bid cost to complete landscaping as indicated on the Amendment to Conditional Use Permit plan date-stamped January 5, 2010.
- d. This resolution must be recorded with the county and a copy of the resolution must be returned to the city.
- 2) Outdoor seating areas on the site must be maintained in substantial conformance with the following plans, unless modified by the conditions below:
- o Phase 1 site plan/floor plan, for the south side outdoor seating area, dated June 4, 1999. Attached to this resolution as Exhibit A.
  - o Amendment to Conditional Use Permit plan and Elevations, including landscaping, for the west side outdoor seating area, date-stamped January 5, 2010. Attached to this resolution as Exhibit B.
- 3) The outdoor seating areas must be surrounded by an uninterrupted enclosure, unless as required by the fire marshal.
- 4) The outdoor seating areas must be equipped with refuse containers and patrolled hourly, during the restaurants hours of operation, for litter pick-up.
- 5) Speakers or audio equipment which is audible from adjacent parcels is not permitted.
- 6) The use of the outdoor seating must comply with the following hours:
- o SOUTH SEATING AREA: Any use of the seating area is prohibited after 10:00 p.m. every day of the week.
  - o WEST SEATING AREA: Customers may not be formally seated by restaurant employees in the west outdoor seating area after 10:00 p.m. Sunday through Thursday or after 11:00 p.m. Friday and Saturday.
- 7) The outdoor seating areas on the south and west sides of the building must meet minimum fire code standards as required by the fire marshal. Violation of the fire code will result in penalties as outlined in City Code 1310 and may include closure of the outdoor seating areas.
- 8) Existing exterior trash and recycling storage areas must be enclosed with materials compatible with the principal structure.
- 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 would require a revised conditional use permit.
- 11) The applicant must agree to these conditions in writing.

12) This resolution repeals and replaces Resolution 99-125, adopted by the Minnetonka City Council on July 12, 1999.

All voted "yes." Motion carried.

**D. Professional services agreement with Springsted Inc. for public safety plan**

Schneider pulled the item from the consent agenda. He said the approach and the proposal seemed appropriate but asked what the funding source would be. Gunyou said the funds were included in the CIP as part of the capital replacement fund. The actual contract would be considerably less than the \$100,000 that was budgeted.

Wagner asked if the study would include possible partnerships with neighboring cities. Gunyou indicated it would.

Schneider moved, Allendorf seconded a motion to approve the professional services agreement between the city and Springsted Inc. for a public safety plan. All voted "yes." Motion carried.

11. **Items requiring Five Votes:** None.

12. **INTRODUCTION OF ORDINANCES:** None

13. **PUBLIC HEARINGS:**

**A. 2010 Community Development Block Grant Funds**

Community Development Supervisor Elise Durbin gave the staff report.

Greves noted after the \$450 deduction three out of the five nonprofits that applied for funds received the same funding level from 2009 to 2010. ICA's funding was increased but ResourceWest's funding was decreased. She asked the reason for the decrease and she recommended that if the final allocation from HUD was greater than expected, that consideration be given to giving some of the additional funds to ResourceWest. Durbin said the 2010 funding was based on the EDA's recommendations. The EDA had a long discussion about the funding and that there were a limited amount of funds. She said the EDA felt all of the organizations were worthy of the requested amounts but a decision had to be made about allocating the funds. Wiersum said the allocation for the organizations was not linear but the EDA took the shortage and divided it equally. He said an argument could have been made to divide the shortage proportionally and the impact to ResourceWest would have been slightly less. He agreed with Durbin that the amount of funding was not as high as the EDA would

have liked given the needs. He said the one time programming artificially bumped up the funding some of the organizations received. Wagner said the EDA looked at the funding issue in October and all the organizations were worthy. One of the things the EDA looked at was where there was some complimentary support in place. ICA and ResourceWest have a close partnership in how they support people in the community. He said this was part of the reason the EDA recommended lower funding for ResourceWest.

Wiersum asked given the dramatic increase in the amount of people applying for the home improvement program if thought was given to reducing the amount given individually in order to provide funds for more people. Durbin said staff has discussed what the maximum amount should be. The emergency loan maximum was set at \$5,000 because if the amount was greater lead based paint rules apply. She indicated the \$20,000 threshold was more subjective. With that amount an impact can be made on a home. Staff would continue to look at the appropriate maximum amount.

Wiersum asked if there were opportunities to leverage federal funds to extend the utility of the dollars. Durbin said staff takes a look at all the programs available in order to maximize the available funds.

Schneider agreed the \$20,000 threshold was high enough to make a significant impact on a home but he suggested staff continue to look for ways to spread the funds more broadly focusing on elements of the requests that would have the most impact.

Schneider opened the hearing at 6:51 p.m.

Jeanne Swedberg, the program coordinator for H.O.M.E. West thanked the city for the ongoing partnership. Over the past year, the organization provided around 1,600 more hours to 85 seniors in the city. It is anticipated that the increase in the number of people to be served and the increase in the age of people served would continue. She said she was inspired by the city's commitment to community building.

Julie Martinez from HOME Line, a tenant advocacy organization, said that it is anticipated in 2010 the organization will serve 150 to 160 Minnetonka renters.

Scott Zemke from Community Action Partnership of Suburban Hennepin, thanked the city for its continuing support.

Judy Elling from ResourceWest, thanked the city for its support. She said the organization has made huge strides in reaching out to clients in

Minnetonka and other suburbs. There were over 9,000 requests for resource referrals last year, a 26 percent increase from 2008. There was a 36 percent increase in the number of unemployed among the families coming in for the core children's programs.

Cathy Maes from ICA Food Shelf thanked the city for the support. She said ICA's numbers are on the increase with 653 households served groceries in December 2009, an all time high.

Schneider closed the hearing at 6:58 p.m.

Allendorf asked for clarification on the funding numbers. Durbin noted the council information did not include the 2010 EDA recommended funding.

Wiersum thanked the organizations for their work.

Schneider asked if there was general support for Greves' suggestion of additional HUD funding going to ResourceWest and gave direction to staff to follow through with the council's recommendation if the additional funding becomes available.

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2010-016 approving the projected use of funds for the year 2010 of the Community Development Block Grant program. All voted "yes." Motion carried.

**B. Ordinance amending the city charter**

City Attorney Desyl Peterson gave the staff report.

Wagner noted currently the council approves the claims for council authorization and even with the proposed ordinance change related to the city manager's purchasing authority that process for council approval would not change. Peterson confirmed the council would continue to review and approve the claims list.

Hiller asked if the state threshold for competitive bid was a stable number or if the state changes the limit amount often. Peterson indicated the threshold has changed twice in the past ten years.

Wiersum said the proposed change seemed logical. He asked what would need to occur to change the charter if the state decided to raise the competitive bid limit to a level beyond what the council was comfortable. Peterson said it would be an involved process to change the charter again. Wiersum asked if either proposed option did a better job at addressing a situation where the council became uncomfortable with the

threshold. Peterson said option one would do a better job by giving the council more control. Under option one, changing the threshold would require council approval of an ordinance.

Allendorf asked what criteria the state uses in setting the competitive bid limit. Peterson said the limit is likely recognition by the legislature that local governments are complex organizations that at times need to act more quickly than competitive bidding thresholds allow. Allendorf said criteria the legislature used could have been that the legislature looked at the number of bids and determined that most were around \$100,000. Another possibility was the legislature saw that not many bids were for over \$100,000. He asked if option two could be modified to change the city manager's purchasing authority to match the competitive bidding limit up to a specified amount. Peterson said the modification could be made but would require the item to return back to the charter commission for its approval.

Schneider said he was unable to attend the charter commission when the item was discussed but he did submit a memo based on the staff recommendation making a case for option one. The memo included the point Wiersum raised that the city has no way knowing what the state legislature may do. He said he has seen a significant amount of pressure being built up by the construction and design industry for more flexibility for the use of design build for state projects. It therefore may not be out of the question that the state decides that because of the benefit of design build, the competitive bid limit is substantially raised. He said option one provides the option for the council to address a situation where it becomes uncomfortable with the limit set by the state.

Wagner said one potential issue was that four members of the council could decide to frequently change the city manager's purchasing authority. He asked if the number of votes for council approval could be increased to five. Peterson said there was merit to the point Wagner raised and to make the change would require that the item go back to the charter commission. Schneider agreed there was merit to Wagner's idea and suggested the purchasing limit could automatically reset to the competitive bid level unless the council set a different limit by ordinance rather than require council approval every time the state changes the competitive bid level.

Wiersum said he came to the meeting thinking option two was the better approach because it was simpler. However given the council discussion he said he would rather have the prerogative rest with the council rather than the state legislature and also having to go through the charter commission process to change the limit. He agreed with Wagner that requiring four votes for council approval was too low a threshold.

Greves said her concerns mirrored a lot of Wagner's concerns. She said option one opened up the possibility for the process to become political. She agreed requiring five votes for council approval was a good suggestion and said Schneider's suggestion for streamlining the process was also good.

Allendorf said Schneider's suggestion establishing an opt out process worked against the five vote approval requirement. He said if the opt out option was adopted he preferred four councilmember votes for approval. Wagner asked what the process would be if the council chose the opt out option and the state changed the threshold again. Peterson said the council would have to opt out every time the state made a change.

Hiller said if the situation came to be where the council was in constant disagreement, then the opt out option was not preferable.

Peterson suggested the council introduce the ordinance with the four items that were not discussed. The item related to the city manager's purchasing authority would be brought back to the charter commission.

Schneider opened the hearing at 7:26 p.m.

Schneider closed the hearing at 7:26 p.m.

Wiersum moved, Wagner seconded a motion to and introduce the ordinance with four of the changes. All voted "yes." Motion carried.

#### **14. OTHER BUSINESS:**

##### **A. 2010 Assessment Report**

City Assessor Rebecca Malmquist gave the staff report.

Wagner noted foreclosure and short sale information was excluded from the data. He asked if the sales and median sale price information was based on non foreclosed and non short sale properties. Malmquist confirmed that was correct.

Allendorf asked Malmquist to further explain the difference between the notification of market value mailed out by the city and the property tax statement mailed out by the county. Malmquist said it was important to note that the property tax statement shows the 2009 market value used for taxes payable in 2010. The property tax statement also includes the 2008 market value used in determining 2009 property taxes. Wiersum said the

city's notice pertains to what residents will pay in 2011. The county's property tax statement pertains to what a resident owes in 2010.

Wiersum said his understanding was the veterans' exclusion applies to veterans that have a disability. Malmquist said the exclusion applies to those with a 70 percent to 100 percent non permanent disability or a 100 percent permanent disability. Wiersum suggested calling the exclusion the "veterans' disability exclusion" for clarification purposes. Malmquist said the exclusion was officially called the "disabled veterans' exclusion."

Schneider noted Malmquist's report showed the average home sale price in the city and that differed from the average home value in the city that is often used in other areas.

## 15. APPOINTMENTS and REAPPOINTMENTS:

### A. Resolution appointing commissioners to the Bassett Creek Water Management Commission

Schneider moved, Greves seconded a motion to adopt Resolution No. 2010-017 appointing Bonnie Harper-Lore as commissioner and Tony Wagner as alternate commissioner to the Bassett Creek Water Management Commission to serve a term of office beginning February 1, 2010 and ending on January 31, 2013. Wiersum, Hiller, Ellingson, Allendorf, Greves, and Schneider voted "yes." Wagner abstained. Motion carried.

### B. Appointments to the community commission, park board, police advisory committee and the senior citizen advisory board

Schneider moved, Wagner seconded a motion to approve the following reappointments to the Minnetonka Boards, Commissions and Committees:

- Heather Odland, to the community commission, to serve a two-year term, effective February 23, 2010 and expiring on January 31, 2012.
- Lucienne Taylor, to the community commission, to serve a two-year term, effective February 23, 2010 and expiring on January 31, 2012.
- Marvin Puspoki, to the park board, to serve a two-year term, effective February 23, 2010 and expiring on January 31, 2012.
- David Hayek, to the police advisory committee, to serve the remainder of a two-year term, effective February 23, 2010 and expiring on October 1, 2011.

- Christopher Meyer, to the senior citizen advisory board, to serve the remainder of a two-year term, effective February 23, 2010 and expiring on May 31, 2010.
- Loy O'Boyle, to the senior citizen advisory board, to serve the remainder of a two-year term, effective February 23, 2010 and expiring on May 31, 2010.

All voted "yes." Motion carried.

**16. ADJOURNMENT**

Wiersum moved, Greves seconded a motion to adjourn the meeting at 7:49 p.m.  
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk