

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MARCH 8, 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 James Hiller, Tony Wagner, Bob Ellingson, Dick Allendorf, Amber Greves, Brad Wiersum, and Terry Schneider were present.

4. APPROVAL OF AGENDA

Assistant City Manager Geralyn Barone noted addenda to items 13A and 13C.

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

5. APPROVAL OF MINUTES:

A. February 8, 2010 regular meeting

Allendorf moved, Greves seconded a motion to approve the minutes of the February 8, 2010 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

B. February 22, 2010 regular meeting

Allendorf moved, Greves seconded a motion to approve the minutes of the February 22, 2010 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Presentation and proclamation for 12th Annual Empty Bowls event

Barb Westmoreland from Hopkins Public Schools and Dr. Jim Block, the community chair for Empty Bowls, gave the presentation. Schneider read the proclamation.

B. Proclamation declaring March 11, 2010 as Caring Youth Day in Minnetonka

Greves read the proclamation.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS

Barone 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 8, 2010

Allendorf moved, Wagner seconded a motion to approve the March 8, 2010 claims which includes electronic fund transfers (EFTs) numbered 1195 through 1205 and checks numbered 225830 through 226118, totaling \$1,775,838.20. All voted “yes.” Motion carried.

B. Resolution receiving petition and authorizing the preparation of feasibility report for the Ranchview Court Roadway and Utility Improvements

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2010-018 receiving a petition for roadway and utility improvements and authorizing the preparation of a feasibility report for the Ranchview Court Roadway and Utility Improvements conditioned upon receiving the required letter of credit for study and report expenses. All voted “yes.” Motion carried.

C. Resolution for the Oak Lea Drive storm sewer improvement project

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2010-019 accepting the plans and specifications, and authorizing the advertisement for bids for the Oak Lea Drive Storm Sewer Improvement Project No. 06604. All voted “yes.” Motion carried.

D. Items concerning the 2010 Street Rehabilitation Program Project No. 10401

Allendorf moved, Wiersum seconded a motion to:

- 1) Adopt Resolution 2010-020 accepting plans and specifications, and authorizing the advertisement for bids.

- 2) Adopt Resolution 2010-021 declaring and designating prescriptive easements for highway purposes over certain properties at 14824 and 14830 Kral Road.
- 3) Adopt Resolution 2010-026 declaring and designating prescriptive easements for highway purposes over certain properties at 14816, 14824, 14832 and 15100 Crestview Lane

All voted "yes." Motion carried.

E. Amendment to the Metropolitan Council Family Affordable Housing Program Cooperation Agreement

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2010-027 approving the amendment to the FAHP cooperation agreement.
All voted "yes." Motion carried.

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

12. **INTRODUCTION OF ORDINANCES:**

A. Ordinances regulating right-of-way:

- 1) **Right-of-way management ordinance**
- 2) **Amendments to the use of undeveloped right-of-way ordinance**

City Attorney Desyl Peterson gave the staff report.

Greves moved, Wiersum seconded a motion to introduce the two ordinances. All voted "yes." Motion carried.

B. Amendments to the telecommunication antenna ordinance

Peterson gave the staff report.

Wiersum moved, Allendorf seconded a motion to introduce the ordinance and refer to the planning commission.

Allendorf said when he looked at the amendment it looked more like a codification that should be in the zoning rules and if it came to him for comment, he would feel he wasn't qualified on the various items because it was so detailed oriented. He asked if staff had run past antenna requests through the provisions to determine if there would be a lot of objections. Peterson said staff could try to do what Allendorf was suggesting but there have been no requests to locate in the right of way. Schneider noted the ordinance was based on the standards used by the city of Plymouth that seem to be working reasonably well.

All voted "yes." Motion carried.

13. PUBLIC HEARINGS:

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

Community Development Director Julie Wischnack gave the staff report.

Hiller asked if there was a date that staff could commit to when the amendment would be back before the council. Wischnack said the plan was to get the amendment to the council no later than April 5.

Wiersum asked how many votes would be needed to follow the staff recommendation to table the application. Peterson indicated four votes would be needed to table the application. Five votes would be needed to approve the license.

Schneider asked if the recommendation was to table the application or to continue the public hearing. Wischnack said the council would likely want to look at the policy before addressing the application so separate meetings would be appropriate. Peterson recommended keeping the public hearing open because there may be comments relevant at the time the council acts.

The applicant, John Wolf, 825 E Lake Street in Minneapolis, said the application was before the council a month ago and he was disconcerted with the process. The application as set forth in the city ordinance was provided to staff in a timely manner. All questions about the application have been answered. The application is within a permitted use for the I394 district and falls under the city's prevailing liquor license ordinance. The ordinance does not set a limit to the number of stores or any restrictions in terms of distance requirements. Big Top was granted a license in July 2009 and he was confused as to what had changed from that time until now. The council has indicated that the market is complete in terms of the stores that are currently in the city. He said that determination should be made by the economic factors rather than through public policy. He believes his store would fill a need in the city. Councilmembers have told him the market is adequately served in terms of the number of liquor stores but someone with his concept of everyday low pricing is something not found in the city and if residents want that concept they could shop in another city. He said that concept does not make sense to him because if Minnetonka residents have to go elsewhere, the market is not served.

Wolf said questions have also been raised about the seriousness of the name of the store and the connotations about how the business would be run. He said the only people who have contacted the council with concerns were other liquor retailers. He added increasing the number of stores in the city won't increase alcohol consumption within the city but rather would increase the possibility that more purchases would happen in Minnetonka. All the reports shown at the recent study session showed that there was no correlation in the city between the increase in the number of liquor stores with increased detriment to residents. He said the delay in approval has put his lease in jeopardy and that he has already hired key employees for the store. He questioned why the proposed change in the city's liquor license policy was being done during the middle of the application process and why his license was the tipping point for the city. He urged the council not to table the application and to take a vote or let him know what the issues were with his application.

Scott Harris, an attorney with Leonard, Street and Deinard, 157 S 5th Street in Minneapolis, said Wolf contacted him after learning there was a recommendation to table the application. He said the council carefully looked at the issue of the number of liquor stores in the city just several months before Wolf's application. A decision was made in July 2009 to not change the existing ordinance. Staff recommendation at the March 1, 2010 study session was not to make changes related to the number of stores in the city and the data did not support changes were necessary. He said Wolf's application appeared to fully comport with the city's standards and criteria related to liquor stores. The issue before the council was one of fairness. The city was now looking at changing the criteria applicable to liquor licenses before considering Wolf's application. Harris questioned if the council was singling out Wolf's license and said Wolf's business would bring in tax revenue and jobs to the city.

Schneider said there has been no discussion that there were issues with Wolf's application. The issue was that the majority of the council indicated there should be a policy change establishing a maximum number of liquor stores in the city. He said the council has not thoroughly looked at the issue in the past. There has been discussion with each application that has appeared before the council in the past few years. Prior to the March 1, 2010 study session the council had never looked at the data and discussed pros and cons of limiting the number of licenses. He said the majority of council members indicated support at the study session for limiting the number of licenses and that was a significant change in council attitude and the potential policy. The recommendation to continue the application was not being done to challenge the applicant's license but was to determine if the potential policy change would occur. Peterson said Schneider was correct with his comments. She said liquor licenses are a privilege and not a right unlike zoning matters where people have property

rights. There is no obligation for the council to approve a license even if a person meets the minimum requirement in the ordinance. The council had the right to discuss a public policy change.

Greves agreed with Schneider's comments but said there was significant discussion about the need for future discussion about a potential policy change when the council approved Big Top's application. Schneider said no matter when the council has the discussion about changing the policy, there would always be someone looking to open a liquor store in the city questioning why the policy was changing at that time. He agreed with Hiller's suggestion of setting a date for deciding for the potential policy change. He said this might aid the applicant in negotiating a lease.

Allendorf moved, Hiller seconded a motion to continue the public hearing and application until April 19, 2010. All voted "yes." Motion carried.

B. On-sale liquor licenses for El Toro Mexican Restaurant, 12608 Wayzata Boulevard

Wischnack gave the staff report.

Schneider opened the hearing at 7:24 p.m. No one spoke.

Wiersum moved, Wagner seconded a motion to continue the hearing to April 5, 2010. All voted "yes." Motion carried.

C. Restructuring of Economic Development Activities

Wischnack gave the staff report.

Schneider pointed out there would be an eight year maximum term for members of the EDAC. Best efforts would be made to achieve the skill sets and balance of the commission. He said he liked the idea of putting the work plan in writing as Wagner had suggested. The work plan would cover two years but would be updated annually.

Allendorf asked that the EDAC minutes be included in the council packet. Schneider said the intent would be to have the commission function similar to the planning commission with televised meetings. Wischnack said staff would continue to provide minutes as the issues come up.

Wagner noted the proposed changes had been discussed for months. As issues became more complicated, the role of the EDA became more complicated as well. He said the changes would broaden the type of people involved with the city's EDA. As a village center or redevelopment area around the light rail becomes more focused upon, there now would

be a structure to bring in technical experts. He said it had been a pleasure to serve with the other EDA commissioners over the past six years.

Hiller asked if the EDAC and the subcommittees would be subject to all the open meeting requirements. Peterson replied the open meeting laws would apply. Hiller said he would like to see the meetings televised. His only concern was adding language to the two year work direction about changes to the plan would be added as needed by the council. Schneider said the council would have the prerogative to change the plan at any time.

Wiersum said he agreed with Wagner's comments. The changes would allow the city to get more expertise in the process while at the same time putting the appropriate responsibility on the council. He said during the discussion about the HRA levy, residents who were members of the EDA were put in a position of acting as a taxing authority. If there's any heat to be taken for taxing decisions, it should fall upon the elected council and not on volunteer residents.

Schneider said information would be included in the Minnetonka Memo about the changes and recruitment of qualified individuals. The changes would provide opportunities for more people to get involved.

Wagner suggested outreach be done with Twin West and other business networks.

Schneider opened the hearing at 7:36 p.m. No one spoke.

Schneider closed the hearing at 7:36 p.m.

Wagner moved, Wiersum seconded a motion to adopt the following

- 1) Resolution 2010 -022 establishing an economic development advisory commission
- 2) Resolution 2010-023 amending Resolution No. 88-8637 and Resolution No. 94-9715, the enabling resolutions establishing an economic development authority for the city of Minnetonka.

All voted "yes." Motion carried.

D. Items pertaining to Trunk Highway 169/Bren Road interchange improvements

Wischnack gave the staff report.

Wiersum asked where the funding would come from if the \$1 million that had been applied for was not received. Wischnack said it was possible the

bid would come in lower than expected. Another possibility would be further discussions with United Health Group. MNDOT might also have other funds available. Schneider asked if the special service assessment district would be modified. Wischnack said the district would not be modified. The overlay ordinance includes trip generation fees generated by the new development. She said the city would be secure in being able to pay back the loan because of the length of the term and interest rates.

Wiersum asked if the bid were to come in lower than expected, what funds would not be fully tapped. Wischnack replied revenue from United Health, MNDOT, and DEED would be used in the first realm. The MIF revenue would not be depended on. If there are any savings, the PFA loan would be lower.

Schneider opened the hearing at 7:43 p.m. No one spoke.

Schneider closed the hearing at 7:43 p.m.

Hiller moved, Wiersum seconded a motion to:

- 1) Adopt Resolution 2010-024 for application to the Public Facilities Authority for Trunk Highway 169/Bren Road interchange improvements
- 2) Adopt Resolution 2010-025 on the adoption of the five-year reconstruction plan and the issuance of a general obligation bond for Trunk Highway 169/Bren Road interchange improvements

All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Ordinance amending the city charter

Peterson gave the staff report.

Wagner moved, Allendorf seconded a motion to adopt Ordinance No. 2010-02. All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None

16. ADJOURNMENT

Greves moved, Wiersum seconded a motion to adjourn the meeting at 7:46 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk