

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, APRIL 19, 2010**

**1. CALL TO ORDER.**

Acting Mayor Tony Wagner called the meeting to order at 6:30 p.m.

**2. ROLL CALL**

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

**3. APPROVAL OF AGENDA**

City Manager John Gunyou noted addenda to items 13A and 15A.

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

**5. APPROVAL OF MINUTES:**

**A. March 22, 2010 regular meeting**

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

**B. April 5, 2010 local board of appeal and equalization meeting**

Greves moved, Hiller seconded a motion to approve the minutes of the April 5, 2010 local board of appeal and equalization meeting. All voted "yes." Motion carried.

**6. SPECIAL MATTERS: Presentation of Local Government Innovation Award**

Wagner presented the award to Community Development Director Julie Wischnack. Wischnack thanked the council for being open to new ideas. She noted the award was a result of a team effort.

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

Gunyou reported on the schedule for upcoming council meetings.

Allendorf reported that the 494 Corridor Commission had a meeting that was attended by 82 people. He and Wischnack were proud to have such a good turnout.

## **8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA**

Mark Zierden, 6622 Golden Ridge Drive in Eden Prairie, said he was representing the GAL Softball League. He thanked the city for its support and invited the council to the opening day ceremonies.

Rachel Anderson, 13540 Knollway Drive North, said she wanted to bring up concerns related to the proposed Goodwill store approved by the planning commission. She indicated the planning commission's decision was based on a traffic study at the Goodwill stores in Hopkins and Maple Grove conducted on April 1 between the hours of 4:30 p.m. and 6:30 p.m. She said the numbers that came out of the study do not represent the actual situation since those hours are not a Goodwill store's busy times. The Maple Grove store offers a 50 percent discount on children's clothes on Thursdays to draw customers in. She said it would make more sense to do the study at the end of a month rather than at the very beginning or during holiday times at the end of the year. The city's traffic study consultant estimated the proposed Goodwill would generate 138 trips per hour during the 4:30 p.m. to 6:30 p.m. time period. The city's ordinance allows for 80 trips. The study did not look at weekend traffic that would be heavier than Thursday afternoon traffic.

Anderson said Goodwill stores do not operate like traditional retail stores because they have customers, delivery trucks, and a steady stream of donation traffic. She asked the city to do another study that would better represent the real amount of traffic before a decision is made to approve the project. She was also concerned about using Horn Drive as an entrance and exit for delivery trucks and customers. Horn Drive is the only access point for the 45 homes to get in and out of the neighborhood. There is a petition signed by 74 residents requesting the access to Horn Drive be eliminated. She said residents have asked what recourse would be available if there was a situation where Horn Drive was blocked by traffic waiting to enter and exit the business. Another question is how construction traffic would be managed if the project were approved.

Wagner asked if the neighborhood filed an appeal to the planning commission's decision. Anderson said the neighbors did not know that was an option. City Planner Loren Gordon said the planning commission's decision was based on the site plan approval. The approval is a final decision unless an aggrieved party appeals the decision to the council. City Attorney Desyl Peterson said the appeal should be submitted in writing. Anderson indicated an appeal would be submitted.

Karen Parisian, 910 Horn Drive, showed a picture of traffic on Wayzata Boulevard where trucks load and unload their vehicles even though there are signs in the area indicating that is not allowed. She spoke with Police Chief Mark Raquet and Sergeant Allen Ringate about her concerns. She said Ringate indicated he was greatly concerned about the additional traffic that would be generated by a Goodwill store. She asked why the city was not enforcing the no loading and unloading restrictions. She showed another picture of a truck bringing a trailer into the Horn Drive neighborhood. The truck got stuck and blocked the entrance and exit from the neighborhood for more than an hour. She said that type of situation is what the neighborhood has to deal with on a regular basis. She asked what the neighbors could do other than call the police to get the restrictions enforced.

Wagner noted he had spoken to Gunyou earlier in the day about some of the issues Parisian raised. He noted when the council approved the new ordinance for the car dealerships there was a discussion about how deliveries on the portion of Plymouth Road to the Toys 'r' Us would be managed. Gunyou said the issue was complicated because of the conditional use permit approvals. There was a lot of older language that governs each of the car dealers and thus the requirements are different. When the matter came to staff's attention, there was discussion about being more aggressive with ticketing violators. He suggested that if any resident has a concern that is not being addressed satisfactorily by the police department, the resident should contact him directly. He said the first time he heard about the concerns raised by Parisian was towards the end of the previous week. Wagner asked Parisian to contact Gunyou if the issues continue and the city would work more diligently with the dealerships. If Parisian does not get a satisfactory response she should then contact a councilmember.

Ellingson asked if Wayzata Boulevard was marked as no parking. Wagner indicated he thought Wayzata Boulevard and Horn Drive have posted no parking signs.

Linda Stewart, 13910 Knollway Drive South, said she had concerns related to the Ridgedale Festival building. She said she had documents showing the agreements with developers. Her April 19, 2001 letter asked the city to address several different items including a stipulation the garbage dumpsters be stored inside enclosures and the recycling bins be stored inside the building. She showed a photo showing three enclosures behind the Toys 'r' Us building with open covers. The photo also showed the recycling bins without covers and outside the building. Another stipulation for the building was there were to be no delivery trucks longer than "C50." There also were to be no deliveries on Sundays and no truck could exceed 50 feet in length. She showed a picture illustrating a 53 foot truck with a trailer that was the same size as all the trailers that come in and out of the Toys 'r' Us loading dock. She showed another picture illustrating the damage the trucks cause to the curb and fences in the neighborhood. She noted there was a stipulation that the gate was to be locked

when delivery hours were over and the picture was taken when the delivery hours were over. She said the city has been called resulting in the security personnel of the building locking the gate for a short time before allowing it to be left open again.

Stewart showed a photo of the holding pond on the northwest corner of the property behind the Schmitt Music store. The stipulations agreed upon designated a 946 foot pond. The pond was to be dry unless there was rain. The pond would drain into Lake Ashley and would then remain dry again. She said the water goes up to the building foundation and the pond has never been dry. Neighbors are frustrated that city actions only last for a short period of time and then it is up to the neighborhood to ensure the stipulations in the agreements are followed. She also had an October 14, 2008 letter that was a response to neighbor's requests to have the speed limit on the frontage road lowered to 30 miles per hour and to have a three way stop sign installed at Horn Drive. Both of the items were investigated and deemed not necessary. She said the neighbors still feel the requests are necessary and would be happy to provide further petitions.

Wagner asked Gunyou to comment on Stewart's concerns. Gunyou said that staff would look into each of the issues and would work with the neighbors to address the concerns.

Stewart said there was one no parking sign on the east side of Horn Drive that was knocked over by a snowplow. The no parking signs on the west side of Horn Drive were removed when the curb and gutter was worked on and the signs were never replaced. She said the distance between the placement of signs should also be looked at.

## **9. BIDS AND PURCHASES:**

### **A. Bids for 2010 street rehabilitation program**

Gunyou gave the staff report.

Hiller asked how quickly projects could occur that would be funded by the extra revenue. City Engineer Lee Gustafson said the projects involved mill and overlay that could be turned around quickly and could be completed this year.

Allendorf moved, Greves seconded a motion to award the bid for the 2010 Street Rehabilitation Program to Midwest Asphalt, Corporation in the amount of \$1,384,251.32. All voted "yes." Motion carried.

### **B. Bids for the Oak Lea Drive storm sewer improvement project**

Gunyou gave the staff report.

Greves moved, Allendorf seconded a motion to Award the bid for the Oak Lea Drive Storm Sewer Improvement project to Dave Perkins Contracting, Inc. in the amount of \$156,169.00. All voted "yes." Motion carried.

**C. Bids for Shady Oak Road landscaping**

Gunyou gave the staff report.

Ellingson said looking at the map it appeared all the plantings were along Shady Oak Road. He previously visited residents who lived in the neighborhood that had a ditch being extended in their backyard. The residents were told the city would be involved in landscaping their yard. He asked if there was any progress on that issue. Gustafson said the plantings were completed last year.

Allendorf questioned why there was an unusual disparity between the bids specifically for the alternates. Gustafson said that in situations where the contractor has a similar project in the same area there might already be a water truck in the area and that could be the reason for the lower bid. Allendorf said it was always nice to get a low bid but given the disparity in the bids the question would be if the same service could be provided by the low bidder.

Allendorf moved, Greves seconded a motion to award the bid for the CSAH 61 (Shady Oak Road) Landscaping Project No. 4930 to Fairs Nursery in the amount of \$214,623.60, which includes bid alternates 1 and 2. All voted "yes." Motion carried.

**D. Bids for 2010 manhole rehabilitation project**

Gunyou gave the staff report.

Wagner asked staff to explain why the low bidder was not being recommended. Gunyou said staff did not feel the contractor had the ability to meet the specifications. Peterson said the bid did not meet the specifications because the contractor did not meet the requirement of having five years experience.

Wagner asked how many years remained for the program. Gunyou said he believed it was the second and final year for the program.

Greves moved, Hiller seconded a motion to awarded to Thul Specialty Contracting in the amount of \$173,910.00. All voted "yes." Motion carried.

**E. Bids for Stonegate booster station project**

Gunyou gave the staff report.

Allendorf moved, Greves seconded a motion to award bid to Municipal Builders, Inc. All voted "yes." Motion carried.

**F. Quotations for water treatment plant (WTP) #13 motor control center**

Gunyou gave the staff report.

Greves moved, Allendorf seconded a motion to award quote to Electrical Mechanical Services, Inc. All voted "yes." Motion carried.

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

**A. Claims for council authorization – April 12, 2010**

Greves moved, Allendorf seconded a motion to approve the April 12, 2010 claims which includes electronic fund transfers (EFTs) numbered 1214 through 1225 and checks numbered 226393 through 226757, totaling \$1,843,262.53. All voted "yes." Motion carried.

**B. Resolution approving an addendum for contract for private redevelopment between the city, EDA, and PHS/Beacon Hill Inc.**

Greves moved, Allendorf seconded a motion to adopt Resolution No. 2010-037 approving an addendum for contract for private redevelopment between the city, EDA, and PHS/Beacon Hill Inc. All voted "yes." Motion carried.

**C. Resolution for a conditional use permit to install a wireless telecommunication facility on the property at Faith Presbyterian Church, 12007 Excelsior Boulevard**

Ellingson asked that the item be pulled from the consent agenda. He said although he was not opposed to the tower it struck him as inappropriate to put towers at churches. He noted there was a proposal a while back to put a cell phone tower at Glen Lake Elementary School. The neighbors objected to the proposal and it never came before the council. He said although installing the tower might be a permitted use in a residential area

because there was an institution in the area, he still questioned if the city really wanted to allow the towers at churches.

Wagner said it was his understanding that if a tower met the requirements and the property owner gave permission, the council had limited discretion. Gunyou confirmed Wagner was correct. Allowing the installation is really dependent on the underlying approval from the property owner. In the case of the school that Ellingson mentioned, the school withdrew its approval. In this case the church has agreed with the provider. He said the city has no discretion involving health related benefits. Peterson said another factor was the Federal Telecommunications Act that tells the city it cannot prohibit the towers in the community and the towers must be allowed where they need to be. She said staff feels the best place for the towers in residential areas is on institutional properties.

Wagner asked if there was another tower the proposed application could co-locate on in the area. Gordon said there was an independent study performed and the determination was made that the site was acceptable based on other things in the area.

Greves noted that the council packet and at the planning commission hearing there was no mention that there was a charter school located in the church. The city sent notices to the 61 property owners in the area. She asked if the church felt compelled to have a discussion with the charter school and parents before the decision was made. Gordon said he was not aware that the church and charter school had any discussion about the item. Greves said she asked the question because of the concerns raised and subsequent action with the Glen Lake Elementary School proposed tower. Wagner said that as Peterson indicated, in that situation the school withdrew its approval and the city was not involved.

Allendorf said the area around Glen Lake Elementary School does not have many trees and therefore the neighbors raised concerns that the antenna would be unsightly. He noted the area around the church has a lot of trees and a nearby cemetery, and the tower would not be too visible to the neighbors.

In response to Greves' comments about locating the tower at a school, Peterson said because of the Federal Telecommunications Act, the city cannot take into account any potential health impacts. Greves said she raised similar concerns when the council discussed allowing administrative approval for co-locating on towers. Her concern at that time was even though the city could not deny towers based on health concerns, she wanted to see as many affected people notified as possible.

Ellingson said he had no health concerns related to the towers but his concerns related to aesthetic concerns. He said there was an aesthetic argument that could be made related to what the council wanted the community to look like. He noted that the wireless technology was competition to cable TV and that 80 percent of the city's residents have access to the internet over cable. The company proposing this installation is owned by Comcast and Google among others. The proposal would not create competition for cable but was another form of internet service. He said there was a lot going on in the industry and the council did have say about the appearance of the community. He also had questions about the proposed 90 foot height. The size limit is 75 feet. If a second provider can co-locate then the additional height is allowed. He said he doubted another company would come in to provide wireless service given there is a cable monopoly and thus it was a speculative satisfaction of the requirement.

Wagner said the council was governed by the Federal Communications Act and there was an ordinance specifying the rules that CUPs must be adopted under. The proposal meets all the requirements.

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-038 which approves a conditional use permit for a 90-foot telecommunication tower to be located on the east side of the existing Faith Presbyterian Church parking lot at 12007 Excelsior Boulevard.

Approval is based on the following findings:

- 1) The proposal meets the conditional use permit standards as outlined in City Code 300.34–Telecommunication Facilities.
- 2) The proposed 90-foot height is reasonable, as it allows for realistic collocation opportunities.

Approval is subject to the following conditions:

- 1) The city's consulting engineer must finalize an intermodulation and height study for the proposed telecommunications facility confirming that: (1) the proposal would not interfere with existing radio frequencies used in the area; and (2) the proposed 90-foot height is appropriate.
- 2) This resolution approves only the telecommunication facility at 12007 Excelsior Boulevard, detailed in associated site plans and elevations date-stamped January 27, 2010. This resolution does imply or ensure future approval of any other telecommunication facilities in the community, regardless of their physical or wireless connection to the Excelsior Boulevard site.
- 3) The site and facility, including ground mounted equipment, must be developed in substantial conformance with the following plans:
  - Site Plan date-stamped January 27, 2010
  - Enlarged Site Plan date-stamped January 27, 2010

- Tower Elevation and Antenna Plan date-stamped January 27, 2010
- 4) All utility and/or fiber connections to the telecommunication tower and/or ground mounted equipment must be underground.
  - 5) The telecommunication tower, ground mounted equipment, and associated utilities must be located and installed to minimize impacts within the critical root zones of adjacent trees, including the group of large oak trees west of the existing accessory building and the large walnut tree south of the existing parking lot.
  - 6) The telecommunications tower/antennas must be painted "Winter Sky" or another color consistent with the color of the city's water towers, as reviewed and approved by staff.
  - 7) No advertising message or identification sign larger than two square-feet may be affixed to the telecommunications facility.
  - 8) The telecommunications facility may not be artificially illuminated unless periodically necessary to facilitate service to ground-mounted equipment.
  - 9) No telecommunication employees are allowed on the site on a permanent basis. Occasional or temporary repair and service activities are allowed.
  - 10) The applicant must obtain appropriate electrical and building permits prior to installation of the antennas.
  - 11) Prior to issuance of any required electrical or building permits, complete the following:
    - a) Submit individual written statements from the property owner and applicant, or their authorized representatives, agreeing to the conditional use permit conditions, agreeing to remove the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city's right to assess removal costs under City Code Section 300.34.5(n).
    - b) Submit appropriate easements for location of and access to the proposed telecommunication tower and ground-mounted equipment. These easements must be prepared by an attorney knowledgeable in the area of real estate. They are subject to the review and approval of the city attorney.
    - c) Record this resolution and required easements with the county. A copy of the recorded documents must be returned to the city.
    - d) The applicant must agree to the above conditions in writing.
  - 12) The city council may reasonably add or revise conditions to address any future unforeseen problems.
  - 13) 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.

Allendorf, Greves, Hiller, and Wagner voted "yes." Ellingson voted "no."  
Motion carried.

**D. Agreement with the city of Edina for the Trunk Highway 169/Bren Road interchange improvements**

Allendorf moved, Greves seconded a motion to approve the agreement.  
All voted "yes." Motion carried.

**11. Items requiring Five Votes:**

**A. Resolution authorizing summary publication of right-of-way ordinance**

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-039 authorizing summary publication of right-of-way ordinance. All voted "yes." Motion carried.

**B. Resolution vacating a public utility easement at 9703 Data Park Drive for United Health Group**

Dennis Spalla from United Health Group, 9900 Bren Road E, thanked the council, planning commission, and staff for all the teamwork on the project.

Wagner said the council is excited about the project and appreciates the additional jobs that would be created.

Allendorf said the project was very complex and he was appreciative of staff's ability to follow all the nuances and changes to make sure everything conformed.

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-040 approving the request. All voted "yes." Motion carried.

**12. INTRODUCTION OF ORDINANCES: None**

**13. PUBLIC HEARINGS:**

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

Greves moved, Hiller seconded a motion to continue the item to May 3, 2010. All voted "yes." Motion carried.

**B. Off-sale liquor license for US Liquor & Wine, 11333 State Highway 7**

Gunyou gave the staff report.

Wagner opened the hearing at 7:37 p.m. No one spoke.

Ellingson moved, Greves seconded a motion to continue to May 24, 2010. All voted "yes." Motion carried.

#### 14. OTHER BUSINESS:

##### A. Organizational MERIT

Gunyou presented the information.

Allendorf asked why the public safety ratings showed a slight decline from the previous year. Gunyou said it was likely due to slightly lower scores in the traffic and speeding areas.

Allendorf said he appreciates that more often than not, a staff person answers the phone when he calls. He said when he calls other cities he often gets a staff person's voice mail. Gunyou attributed that to the culture of customer service in the city, and noted that staff has always prided itself on being responsive to residents.

Wagner said with the quick rise in sensitivity to higher taxes, the survey reinforced the actions the city took in addressing budget issues last year. He said he was amazed at how positive the employee reaction was given the difficult year.

#### 15. APPOINTMENTS and REAPPOINTMENTS:

##### A. Recommendation for appointment to the Riley-Purgatory Bluff Creek Watershed District

Wagner moved, Allendorf seconded a motion to approve the letter of support to the Hennepin County Board of Commissioners recommending appointment of Phil Kirkegaard as manager to the Riley-Purgatory-Bluff Creek Watershed District. All voted "yes." Motion carried.

#### 16. ADJOURNMENT

Greves moved, Hiller seconded a motion to adjourn the meeting at 8:17 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk