

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JUNE 28, 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 Bob Ellingson, Dick Allendorf, Amber Greves, Brad Wiersum, James Hiller, and Terry Schneider were present. Tony Wagner was excused.

4. APPROVAL OF AGENDA

Wiersum moved, Greves seconded a motion to accept the agenda with the addenda adding items 8.1, removing item 10D, amending item 10G, and adding item 12A. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES: May 24, 2010 regular meeting

Allendorf, moved, Wiersum seconded a motion to approve the minutes of the May 24, 2010 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS

A. Recognition of former EDA members Ellen Weishar Cousins, Daniel Duffy, Bunny Robinson, and Bill Yaeger

Schneider recognized former EDA member Daniel Duffy for his many years of service and dedication to the City of Minnetonka. An award was presented and a round of applause offered to Mr. Duffy.

Schneider also recognized Ellen Cousins, Bunny Robinson and Bill Yaeger for their efforts on the EDA. In their absence, he thanked each for their service to the community.

B. Presentation of awards received for Opus Overlay District project

Schneider reviewed the awards received for the Opus Overlay District. He thanked staff for their excellent efforts on this innovative project.

C. Review of the 2009 Financial Report with the city's audit firm of Kern, DeWenter, Viere, LTD.

Kara McGaffey, Kern, DeWenter, Viere, Ltd., reviewed the 2009 Financial Report highlights with the Council.

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

Mike Pagh, CEO of St. Therese Southwest, updated the Council on the status of the Glen Lake Senior Housing development. He reported upon completion 150 units would be available. At this time, a commitment was received from HUD and the organization was now working to arrange finances.

Tim Litfin, community education director of the Minnetonka School District, invited all to participate in the 2010 Tour de Tonka on Saturday, August 7, 2010. The Two Mile Smile event would be held on Tuesday, July 28, 2010. Mr. Litchen indicated registration has begun and was already ahead of last year's numbers.

8.1 EXECUTIVE SESSION FOR THE PURPOSES OF DISCUSSING KRUMMENACHER VS. CITY OF MINNETONKA

City Attorney Desyl Peterson updated the Council on the recent actions taken by the Minnesota Supreme Court. She requested this item be further discussed in executive session.

Wiersum, moved, Greves seconded a motion to adjourn the City Council meeting to an executive session at 7:12 p.m. to discuss the Krummenacher vs. City of Minnetonka case. All voted "yes." Motion carried.

The Council meeting reconvened at 7:40 p.m.

City Attorney Peterson reported the council provided direction to counsel on how to proceed with the case.

9. BIDS AND PURCHASES:

A. Items concerning the Williston Center renovation project

Gunyou indicated bids came in approximately seven percent higher than anticipated for the scope of the project. Staff recommended several project alterations to reduce the total project costs by \$73,000. The CIF

would be used to cash flow the center and would be paid back from operations over 10 years.

Hiller questioned if staff should increase the contingency fund given the fact the expense for the renovations had increased. Recreation Services Director Dave Johnson indicated there were some unknowns in the project and the \$113,000 contingency fund would meet the needs at this time. The City anticipated receiving several energy rebates to assist with overages.

Greves asked if the metal lockers would hold up as well as the proposed polyurethane lockers. Johnson stated the metal lockers would last and would be easier to replace if damaged.

Wiersum moved, Hiller seconded a motion to amend the city's CIP to reflect added costs for the project, and accept the following bids for the nine critical packages needed to begin construction and ensure that the project is completed in a timely manner. The remaining bid packages will be reviewed by council at the July 19, 2010 meeting.

Package	Recommended Contractor	Bid Amount
CONCRETE/MASONRY	Steenberg-Watrud	\$441,584
STRUCTURAL STEEL	Twin City Wire, MFI Inc.	\$143,464
CARPENTRY	George F. Cook Construction	\$421,000
POOL	Aqua Logic, Inc	\$550,500
PLUMBING	Minnetonka Plumbing	\$197,500
HVAC	Albers Mechanical	\$435,000
ELECTRICAL	Lew Electrical	\$368,450
EARTHWORK & DEMO	Stocker Excavating	\$92,763
	TOTAL	\$2,650,261

All voted "yes." Motion carried.

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

A. Claims for council authorization – June 14, 2010

Allendorf moved, Greves seconded a motion to approve the June 14, 2010 claims which includes electronic fund transfers (EFTs) numbered 1257 through 1277 and checks numbered 227600 through 227992 totaling \$2,562,918.80. All voted "yes." Motion carried.

B. Claims for council authorization – June 28, 2010

Allendorf moved, Greves seconded a motion to approve the June 28, 2010 claims which includes electronic fund transfers (EFTs) numbered

1278 through 1289 and checks numbered 227993 through 228288 totaling \$2,110,399.99. All voted "yes." Motion carried.

C. Resolution appointing election judges and absentee ballot board for the State Primary on August 10, 2010

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010- appointing election judges and absentee ballot board for the State Primary on August 10, 2010. All voted "yes." Motion carried.

D. Resolution approving a lot division, with variances, for subdivision of the existing property at 5435 Woodland Road

This item was removed by staff in light of the recent Supreme Court ruling on variances.

E. Resolution approving a conditional use permit to operate a part-time pre-school program at 131 Cheshire Lane

Greves questioned the square footage or size of the building proposed for the preschool program. Gordon explained the building was approximately 19,000 square feet.

Greves moved, Allendorf seconded a motion to adopt Resolution No. 2010- which approves a conditional use permit for a preschool program for Mini-Hops Gymnastics at 131 Cheshire Lane. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- 2) A maximum of 12 students per preschool class, for a maximum enrollment of 48 students.
- 3) Provide a minimum of 51 required parking stalls.
- 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 approving a conditional use permit for an accessory apartment at 2336 Linner Road

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010- approving a conditional use permit for an 846-square foot accessory apartment at 2336 Linner Road. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
 - b. Final plans must meet all wetland and floodplain setback and low floor requirements.
 - c. Submit a conservation easement for staff review and approval over a wetland buffer and a drawing of the easement area. The buffer must extend from the south property line to the edge of the existing rock wall, and must be a minimum of 16.5 feet wide from the wetland boundary, subject to city staff review.
 - d. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
- 2) The accessory apartment must be constructed and maintained in substantial compliance with the site plan, floor plans, and building elevations date-stamped May 3, 2010.
- 3) The structure must be owner occupied. The property owner must reside in either unit on a continuous basis except for temporary absences throughout the period during which the permit is valid.
- 4) The apartment must comply with all building, housing, electrical, plumbing, heating and related codes of the city.
- 5) All other provisions of the ordinance relating to single family dwelling units must be met, unless specifically amended by this resolution.
- 6) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 7) 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.
- 8) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

G. Agreement with LSA Design, Inc. to conduct a transit service analysis and evaluation study

Hiller clarified that \$67,000 of these expenses were funded from the development fund. He was concerned about the new EDA taking on the

three research projects and if it was necessary at this time. Hiller requested this item hold off. Wischnack stated the HRA levy would fund the other two studies and \$75,000 was set aside for them. She added that council has requested this study be completed to prepare the city for light rail services.

Wiersum indicated the HRA levy should be used for proactive topics. He was concerned about the development fund as well but felt the transit service analysis study was necessary at this time.

Schneider agreed and stated this study was time sensitive. He felt the other two projects could be reevaluated to allow the council to focus on transit issues.

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

H. Resolution approving a conditional use permit for a detached garage at 2720 Olde Wood Court

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010 - approving a conditional use permit for a detached garage, over 12 ft in height, at 2720 Olde Wood Court. Approval is based on the finding that the proposal meets all required conditional use permit standards as outlined in City Code 300.16. Subd.2 and Subd.3.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. Record this resolution with the county. A copy of the recorded resolution must be returned to the city.
 - b. Locate surveying pins defining rear and side property lines for staff inspection or submit an updated survey defining the location of the garage.
 - c. Install tree protection/erosion control fencings for staff inspection. This fencing must be maintained throughout the course of construction.
- 2) The garage must be located and constructed in substantial compliance with site plans and building elevations date-stamped May 14, 2010.
- 3) No additional curb cuts are permitted to access the garage.
- 4) The garage may not be used for commercial activities.
- 5) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 6) 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.
- 7) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

I. Resolution approving Transit Improvement Area Designation

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010- approving the applications and the transit improvement area plans.
All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

Schneider requested item 14C be moved up on the agenda as the resident was in attendance.

14. OTHER BUSINESS:

C. Resolution ordering the abatement of nuisance conditions existing at 3804 Vandan Road

Community Development Director Julie Wischnack gave the staff report.

Winslow Neidlinger, 3804 Vandan Road, explained he had not had any complications in mowing his property over the past 25 years until the recent road construction when the roadway was dropped three feet and created a steeper slope. He felt the property was devalued by the county and should be restored.

Vivian Neidlinger, 3804 Vandan Road, indicated the slope was now so steep the water ran off quickly and grass was not growing. The slope was too steep for a tractor or push mower.

Allendorf questioned if one of the four alternatives suggested by staff were acceptable to the homeowners. Mr. Neidlinger stated the city and county created the problem and he felt they should be responsible for the solution.

Schneider asked if the County plans showed a 4:1 slope. Wischnack stated the construction information was reviewed and before the construction project the existing grade was 4:1. After the project the grade was changed to a 3:1 slope, which made the grade steeper.

Wischnack explained the county did contact property owners along 101 prior to reconstruction to gain feedback on the type of plantings that should be used. No feedback was provided by the Neidlinger's requesting additional plantings.

City Engineer Lee Gustafson indicated negotiations with the county should have been done during the construction phase or during the landscaping meetings. He indicated that the residents had likely been paid for an easement both on the County Road 101 side and the driveway side.

Schneider questioned if the grade could be returned to a 4:1 grade with a two foot retaining wall. Gustafson stated the project was complete and the county was not interested in investing additional funds to address the landscaping.

Greves asked if the end result matched up with the county's plans. Staff indicated that they did.

Schneider felt the property needed to be brought into compliance. However, a long term solution should further be discussed. Wischnack clarified that if the item were further discussed no city funds would be expended on this property. She stated she would continue to speak with the property owners to work to resolve the issues.

Wiersum suggested the property owner hire a neighbor kid to mow the slope as this would be a cheaper solution than having the city abate the property.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2010-061 ordering the abatement of nuisance conditions in one week, if not already completed existing at 3804 Vandan Road. All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:

A. Introduction of an ordinance amending city code 300.29, Subd. 3 regarding expansion of non-conforming uses

Peterson reviewed the ordinance amendments with the council.

Hiller questioned what issues would arise if council did not approve this ordinance. Peterson explained the expansion of non-conforming uses would not be allowed.

Wiersum asked when the ordinance would go to the planning commission. Peterson indicated the ordinance would go before the planning commission on July 15th and could be back to the council for final approval on July 19th.

Schneider suggested the council forward any comments or questions to staff prior to the July 15th meeting. He questioned if the ordinance

amendment would require a five vote majority. Peterson indicated this would have to be determined by the council.

Hiller expressed concern about how quickly this item was moving through the city for approval. He felt the council did not fully understand the implications within the document and needed time for further discussion.

Schneider indicated the council could take time if needed to address this issue. Several homeowners were looking to expand their non-conforming uses, which, currently was not allowed. He recommended the ordinance proceed. Gunyou stated the objective of this ordinance was to replicate the current ordinance with a slightly new mechanism the court would find acceptable.

Wiersum felt Hiller made a valuable point but stated he would be supportive of the ordinance proceeding.

Allendorf moved, Greves seconded a motion to introduce an Ordinance amending city code 300.29, Subd. 3 regarding expansion of non-conforming uses and send the ordinance to the Planning Commission. Ellingson, Allendorf, Greves, Wiersum, and Schneider voted "yes". Hiller voted "no". Motion carried.

13. PUBLIC HEARINGS:

A. Ordinance amending the city charter regarding city manager's purchasing authority and primary election

Peterson gave the staff report.

Schneider recommended moving forward with the option recommended by the charter commission.

Hiller stated the first option concerned him if the council were to split in the future. He saw no issue at present and suggested future councils be allowed to address this issue.

Wiersum indicated an ordinance would have less flexibility. He recommended the first option proceed as this was also being followed by the State.

Greves explained she was in favor of the first option as well. Allendorf and Ellingson agreed.

Schneider opened the hearing at 8:16 p.m.

Greves moved, Wiersum seconded a motion to continue the public hearing until August 16, 2010 and introduce Ordinance No. 2010-amending the city charter regarding the city manager's purchasing authority and primary election according to the charter commission's recommendation. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. **Appeal of the planning commission denial of a side yard setback variance for construction of a detached garage at 15012 Cherry Lane**

Gordon gave the staff report.

Peterson stated the site has a reasonable use with the current garage structure and the recent Supreme Court decision required the council to uphold the planning commission's recommendation.

Wiersum agreed the council did not have the legal authority to approve the variance at this time, given the recent Supreme Court decision. He suggested the applicant withdraw the variance request at this time and resubmit at a more appropriate time.

Greves stated the applicant submitted their proposal prior to the Supreme Court decision and should be approved under the previous regulations.

Ellingson questioned if the Supreme Court case applied only to non-conforming uses. Peterson stated this was not the case, but applied specifically to when a variance can be approved.

Hiller asked if the council should not address variance requests at this time until further reviewing the Supreme Court decision. Peterson indicated variances can be discussed but the restrictive standard requires that variances can only be approved if the property owners show there is no reasonable use of the site, which is very rare.

Allendorf suggested the appeal be continued to a future meeting giving the council time to draft a resolution regarding variances.

Greves understood the differences between a variance and a conditional use permit. She asked why approval is generally given for additional garage space beyond the double garage standard when a CUP is needed, yet having a double garage is deemed having "reasonable use" and therefore an exclusionary factor when a variance is considered for additional garage space. Peterson explained a conditional use permit was a permitted use with conditions. A variance was a request to do something the ordinance does not allow, which requires a greater burden of proof.

Lisa and Jason Ullett, 15012 Cherry Lane, stated the hardship with regard to the proposed garage placement was that the house was not placed on the lot perpendicular to the street, nor is it centered on the lot. The proposed garage location addressed driver's safety along with proper water run-off. Ms. Ullette stated the proposed location was the best location given the layout of the lot. She added that many of her neighbors provided letters or emails of support. Mr. Ullette requested the Council reconsider the garage variance given the information provided this evening.

Peterson stated the homeowners gave an excellent presentation but reiterated to the Council none of this changed the fact that the owners did have reasonable use of the site based on the recent Supreme Court ruling.

Ann Flanagan, 15024 Cherry Lane, indicated she was supportive of her neighbors' request to add a garage to their property. She felt the two foot variance was a minimal request and asked that the council remain flexible.

Allendorf questioned why it was the business of the council whether the applicant had a two or four car garage, and how this was determined a reasonable use. Gordon stated the purpose of the ordinance was to spell out the conditions of how residents build on their property, along with the established garage sizes.

Wiersum asked if it was feasible for the neighbor (Ms. Flannigan) to sell two feet of her property to the Ullette's as it would not be possible to approve this request otherwise.

Hiller stated variance requests were going to continue to come to the city and approvals may take approximately six months if not more. He suggested the council discuss the real issues at hand further before taking action on this request.

Schneider indicated the variance implications were far-reaching and this area of the ordinance was complex. A solution would not be brought back at the next meeting and would need to be done holistically. He saw no basis for approving the variance request as a two car garage provided reasonable use of the property.

Allendorf agreed stating there was no hardship for the variance request.

Greves felt the driveway location and the topography of the site created a hardship, especially in the winter. The neighborhood would be greater

impacted by rerouting the driveway and removing trees. She stated she would support the variance.

Wiersum agreed with Schneider and Allendorf as having only a two car garage was not a hardship.

Wiersum moved, Allendorf seconded a motion to uphold the planning commission's decision. Wiersum, Allendorf, and Schneider voted "yes". Ellingson, Greves, and Hiller voted "no". The motion failed. The appeal was denied because of insufficient votes to overturn the planning commission.

B. Concept plan for Bren Road Highlands at 11809 Bren Road

Gordon reviewed the concept plan for Bren Road Highlands with council. The property is guided for medium density and is zoned R-1. The planning commission reviewed the concept plan in June and recommended a change from medium to low density for the site. The commission also approved of the home style proposed for the development.

Allendorf questioned what the proposed density was for the parcel. Gordon stated the site was 5.1 acres and was proposed to have 19 lots, which was just under four units per acre.

Allendorf expressed concern about the concept plan process. Gordon stated the comments made by council at this time provided guidance as to how to make the project better.

Schneider stated a project that came in at 4.2 units per acre would not require a comprehensive plan amendment and should be considered by the developer.

Ellingson questioned why the guide plan had to be amended if the developer was proposing fewer units per acre than four. Gordon explained the city's obligation was to provide consistency between the land use plan and zoning. Peterson indicated the R-1 zoning district was a holding zone until property was redeveloped. When redevelopment occurs, the land use plan and zoning must match.

Ellingson asked if the council could consider the marketability of the development. Gordon stated the specific review did not consider market conditions, but policy impacts the marketability of future developments.

Schneider expressed concern about the discussion held by the planning commission regarding the marketability of this development. He did not feel the marketability of developments was up for the council to decide.

Tom Gonyea, Gonyea Development, presented the council with further information on the Bren Road Highlands concept plan. He explained single family homes fit the site well due to the topography and would range in price from \$300,000-500,000. Gonyea thanked the council for their continued feedback.

Ian Peterson, Pulte Homes, reviewed the home styles proposed for the development. He explained the market has changed significantly and that building in the marketplace has shifted from townhomes to single family homes. Peterson indicated Pulte Homes was completing a similar project in Wayzata that has been very successful.

Wiersum stated no objection to single family homes on this site, but was concerned about changing the guide plan. He suggested the single family development add several twinhomes to reach the proper density.

Hiller indicated the proposed density was a concern, and stated the twinhomes could provide for several affordable units within the development. He wanted to assure that the development would attract the proper price point and younger families to the city.

Allendorf questioned if Pulte Homes would consider several twinhomes. Peterson stated this would be possible but was not the norm. It became more complicated when twinhomes were mixed with single family homes as twinhomes often had a homeowners association. Gonyea stated the front two corners of the property were fully wooded and would remain untouched. Additional density could be added in this area, however the mature trees were seen as a bonus. He explained he was working with the site as it stands to offer the best possible product to the potential buyers.

Greves asked how drainage on the site was proposed. Gordon reviewed how the drainage would flow through the property to the west and the south. Greves requested the developer further consider rain gardens to capture additional runoff. She stated the mix of housing would be a consideration to her.

Schneider indicated there was an emphasis being placed on homes for young families. He stated a detached product would be a challenge and recommended several housing products be offered in this development to create diversity. Schneider commented he would like to see the developer meet the density issue.

Gonyea questioned if the council would be in favor of homes along Bren Road. Schneider stated he would only be in favor of this if the homes accessed a private street or cul-de-sac. Gordon indicated visibility may be

an issue with this concept and stated it would be a challenge for this development to have two driveways.

Pat Devine, Brentwood Townhome resident, stated he enjoyed the current view of the hill behind his home. He recommended the council allow for a lower density. Devine suggested the current topography be further taken into consideration as the hill will have to be reshaped to allow for 19 lots on the site. He requested that additional lots not be crammed onto the hill as it would diminish the beauty of the site.

Peterson noted the development was bearing in mind the current topography and mature trees on the site. The natural amenities were an enhancement to these lots. Originally the density for the parcel was up around 23 lots but was lowered after further review.

15. APPOINTMENTS and REAPPOINTMENTS: None

16. ADJOURNMENT

Greves moved, Wiersum seconded a motion to adjourn the meeting at 9:49 p.m.
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk