

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

**1. CALL TO ORDER.**

Wagner 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 Tony Wagner were present. Mayor Terry Schneider was excused.

**4. APPROVAL OF AGENDA**

Wiersum moved, Greves seconded a motion to accept the agenda as amended removing Items 10K and 14B. All voted "yes." Motion carried.

**5. APPROVAL OF MINUTES: June 7, 2010 regular meeting**

Greves moved, Allendorf seconded a motion to approve the minutes of the June 7, 2010 Minnetonka City Council regular meeting. Ellingson, Allendorf, Greves, Wiersum, and Hiller voted "yes." Wagner abstained. Motion carried.

**6. SPECIAL MATTERS: None**

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

City Manager John Gunyou reported on the schedule for upcoming council meetings. He said Night for Neighbors was August 3<sup>rd</sup> and a record number of people have registered their event.

Greves explained she attended a workshop by the Minnehaha Creek Watershed District regarding shorelines and all information was forwarded to the council members.

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

No one appeared.

**9. BIDS AND PURCHASES:**

**A. Bids for the Williston Center renovation project**

Gunyou reviewed the first round of bids was approved by council at last month's meeting and this was the second round of bids for the Williston Center renovation project. The completion date was estimated to be the first of February.

Wiersum moved, Hiller seconded a motion to accept the bids received from the contractors listed in the staff report for the ten remaining packages totaling \$752,137. Approval of these bid packages will result in a budget reduction of \$20,264 from the amount indicated at the June 28th meeting when the first series of bid packages were opened. The amount saved will be shifted to the project's contingency fund. All voted "yes." Motion carried.

**B. Bids for the Shady Oak Beach community play area**

Gunyou gave the presentation noting this expense was within the CIP.

Greves asked staff for an explanation of the amenities within the play area. Chris DesRoches, Flagship Recreation, reviewed the park features with the Council.

Allendorf questioned why the recommended bidder was not the low bidder. Recreation Services Director Dave Johnson stated the manufacturers were asked to submit a bid for \$180,000 and several vendors were not able to meet this request. An additional \$10,000 was included in the bids to provide for contingencies. The bidder selected was the most creative, providing the most unique amenities while staying within the city's budget.

Greves moved, Ellingson seconded a motion to award the bid to Flagship Recreation for the amount of \$183,257 for the Shady Oak Beach Community Play Area project. This amount includes the \$10,000 alternate bid for additional equipment. All voted "yes." Motion carried.

**C. Bids for Glen Lake Plaza Station renovation**

Gunyou gave the presentation.

Hiller asked if the additional \$400,000 in funding would be covered by the Shady Oak Beach project. Wischnack explained the surplus from the Shady Oak Beach grant would partially supply the additional funding for this renovation.

Hiller questioned how many hours per day the water features would be running. Greg Stokes, Commercial Quad Engineering, noted the flow calculations were designed to be controlled. The rock could have set points to allow for eight hours of usage per day or less, depending on the design usage of the park. The other fountains would have activation devices with a set duration of use which would then automatically shut off.

Hiller asked how the water runoff would be reused. Stokes explained the park would have a 10,000 gallon runoff basin and the water would be reused for irrigation. Additional runoff would flow into the rain gardens.

Hiller expressed concern about the amount of water runoff being created daily by the Glen Lake Station. He noted the council has advocated for water conservation in the past and this plan would go against that philosophy.

Wiersum indicated a water recycling system would increase the cost of the water features. He understood the cost could be paid up front for recycling or the city could reduce the overall expense by reusing the water when possible. Wiersum wanted the city to proceed with the renovations as the council has had requests from the public for park improvements. Community Development Director Julie Wischnack indicated recirculation would treat the water and have it reused. The concern with this option would be the upfront costs along with the long term maintenance of the system. She stated the reclamation option would allow the water to be reused and was a mindful effort on behalf of the city to not waste the water.

Wagner asked if the bid included an alternate to fix the existing fountain. Wischnack stated the expense to fix the existing water feature was \$136,000. This expense would not improve the landscaping or concrete in the area or provide for on-going chemical treatments to the system.

Grace Sheely, 14325 Greiner Road, expressed concern about the project due to the excessive use of water. She urged the council to look at the use of water as a budget point, as water was becoming a valuable resource. She encouraged the council to reconsider the needs for this park and allow the neighboring residents to provide additional input.

Wagner questioned what the long term maintenance fees would be for the renovations being made to Glen Lake Station. Wischnack indicated the water feature contract does have a one year maintenance agreement included which could be continued into the future.

Wagner asked if the water usage could be further reduced at the park. Wischnack indicated the water usage came down to recirculation of the

water or a reclamation system with a timed water feature. The council discussed that the recirculation was too expensive at this time. She explained the water reclamation could be reported to council to provide feedback on the water usage at the park and adjustments could be made if necessary.

Allendorf questioned how the city could best manage the water flow to reduce waste. Stokes stated he completes water features all over the country and indicated the proposed water feature was designed to use 100 gallons per minute. Approximately half of the water would be reclaimed and used for irrigation. The water usage could all be controlled by the system or zones could be established. He noted any excess water would run off into a rain garden and would not be running into the storm sewer.

Allendorf was encouraged that the city could control the water based on the number of residents visiting the park or by establishing zones for the system.

Wagner asked what the operating costs for the park would be on a yearly basis. Stokes stated this system would have very low support and maintenance costs in comparison to a re-circulated system.

Wiersum indicated the city wants to be conscious of the water usage and felt it was better that the water runoff would seep back into the aquifer than into the storm sewer.

Wagner questioned what the expense would be for a 16,000 gallon underground water storage cistern. Stokes stated the proposed pipes would need no alteration making the only expense an additional 6,000 gallon chamber which would run approximately \$20,000.

Wagner asked if the city had specific uses for the water, if the cistern size were increased to reduce runoff. Wischnack indicated staff chose the proposed size to meet the realistic use of the water. She noted the council would have to consider if there was enough space.

Hiller explained he received 22 emails from concerned residents about the inconsistency with water conservation efforts regarding this project. He understood there was an additional expense with re-circulating the water, but this would coincide with the city's conservation efforts. He encouraged the council to further investigate the cost estimates for a recirculation system and maintaining this system. He added he would not support this project until receiving this information.

Allendorf stated this fountain has been discussed in great detail and felt the council would benefit from recirculation system numbers. Wischnack stated a recirculation expense would be \$134,000 for the current fountain and would need routine/yearly maintenance. To maintain the reclamation system the city has budgeted \$2,600 per year where a recirculation system would cost roughly \$8,000 per year.

Greves expressed opposition to recirculation as the reclamation process would address the park's need for increased irrigation. She also had concerns with water issues and stated that she had previously raised the consistency issue. She had been uneasy with the boulder feature since it was introduced but trusted that the design would work out. She suggested the water feature of the boulder could be eliminated to reduce water usage at the park.

Hiller stated he was open to considering this suggestion.

Wiersum indicated he was torn on this issue as he wanted to be a good steward to the environment and conserve water. He was not a fan of water features as each was costly and required maintenance, but did add to the quality of life. Wiersum suggested the water usage be reduced.

Ellingson requested the council remember the reasons why this renovation was requested. It was to bring vitality to the area and would add a lot to the community. He was in favor of reducing the water usage, but did not want to eliminate the renovation.

Greves agreed with Ellingson that the council may have lost sight of what the community had desired in the plaza. She questioned if the community's thinking had shifted based on the comments Hiller had received. Greves indicated that she wanted to represent what the community wanted.

Wagner commented although he has been historically opposed to this project and the incremental cost above the original budget, he would vote in favor of the renovation and the water feature as this was the input provided by the citizens and because the funding was changed to the more appropriate park fund from the development account. He indicated the water feature has been discussed in detail through countless hours and numerous meetings and requested the council take action this evening. Any further delay and staff analysis would not be supported by Wagner.

Allendorf indicated staff has worked with the experts to present council with a balanced water feature meeting the needs of the community. He

did not want the council to be swayed by last minute emails as this issue has been positively discussed by the residents for the past two years.

Wiersum stated this was the last best opportunity to meet the vision of the Glen Lake residents.

Allendorf moved, Wiersum seconded a motion to award the bid for the Glen Lake Station renovation to Morcon Construction, Inc. in the amount of \$555,790.13 and amend the Capital Improvements Program to reflect the project's revised costs and method of financing.

Hiller questioned if the motion required five votes. Wagner stated this was the case. Hiller indicated he would not be supporting the motion as presented.

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

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

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

Allendorf moved, Greves seconded a motion to approve the July 12, 2010 claims which includes electronic fund transfers (EFTs) numbered 1290 through 1297 and checks numbered 227289 through 228571 totaling \$1,452,198.60. All voted "yes." Motion carried.

**B. Resolution approving agreement with the Minnehaha Creek Watershed District for data usage**

Allendorf moved, Greves seconded a motion to adopt Resolution 2010-062, a resolution approving the license agreement with the Minnehaha Creek Watershed District. All voted "yes." Motion carried.

**C. Revised resolution of intent to develop proposal for joint facility with Minnehaha Creek Watershed District**

Allendorf moved, Greves seconded a motion to adopt Resolution 2010-063 regarding the joint facility with the MCWD, adding Council Member Hiller to the design and development team. All voted "yes." Motion carried.

**D. Amendment to the existing conditional use permit at 12007 Excelsior Boulevard**

Allendorf moved, Greves seconded a motion to adopt the Resolution 2010-064, amending an existing conditional use permit for an educational facility at 12007 Excelsior Boulevard. Approval is based on the following findings:

The proposal meets the required conditional use permit standards as outlined in City Code Section 300.16 Subdivisions 2 and 3(a) and is consistent with previous conditional use permits approved for an educational facility at the site.

Approval is subject to the following conditions:

- 1) Record this resolution with the county and return a recorded copy of the resolution to the city.
- 2) School enrollment is limited to 230 students. Annual enrollment numbers must be submitted to the city prior to July 15th of each year.
- 3) Daytime church activities, such as funerals, must not be scheduled during student drop-off/pick-up times.
- 4) Maintain signs on Nelson Drive identifying "Entrance Only" and "Exit Only" drives.
- 5) Obtain any necessary permits from various city departments and divisions, including: permits from the Building Division to ensure the building meets minimum building code requirements; and permits from Environmental Health Division;
- 6) All external doors must be signed to meet requirements for emergency response.
- 7) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 8) 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.
- 9) The applicant must agree to these conditions in writing.
- 10) This resolution repeals and replaces Resolution No. 2009-040 adopted on May 18, 2009.

All voted "yes." Motion carried.

**E. Resolution amending the existing conditional use permit for Rakhma, Inc. at 5126 Mayview Road**

Allendorf moved, Greves seconded a motion to adopt Resolution 2010-065 amending an existing conditional use permit for community-based residential care facility at 5126 Mayview Road. Approval is based on the following findings:

- 1) The proposal meets the required conditional use permit standards as outlined in City Code Section 300.16 Subdivisions 2 and 3(i) and is consistent with previous conditional use permits approved for a community-based residential care facility at the site.

2) The proposal requires no physical changes to the home. Rather, the requested amendment simply allows full occupancy of the existing bedrooms.

3) The proposal would not significantly impact traffic generation or parking demand on the property.

Approval is subject to the following conditions:

1) Record this resolution with the county and return a copy of the recorded resolution to the city.

2) Occupancy of the community-based residential care facility is limited to 12 residents. Prior to full occupancy, the house must conform to the requirements of the Minnesota State Building Code.

3) The facility must meet licensing requirements for food and lodging establishments including those for commercial kitchens.

4) Maintain a contract/agreement with Immaculate Heart of Mary for use of existing parking lots to accommodate overflow parking as needed.

5) If required by the police department, a background investigation must be performed to verify the qualification of the director and the responsible operation of the program. The costs associated with the investigation must be borne by the applicant.

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.

9) This resolution repeals and replaces the existing conditional use permit adopted by motion on January 11, 1993.

All voted "yes." Motion carried.

**F. Resolution approving a conditional use permit for an accessory apartment at 14465 Orchard Road**

Allendorf moved, Greves seconded a motion to adopt Resolution 2010-066. This resolution approves a conditional use permit for an accessory apartment at 14465 Orchard Road. Approval is based the following findings:

1) The proposed apartment would meet all conditional use permit standards as outlined in City Code 300.16 Subd. 2 and Subd. 3.

2) The size of the proposed apartment is reasonable.

a. The rambler-style layout of the existing home provides for a logical up/down split of the home.

b. The presence of an apartment of this size would not be apparent from the exterior of the home. Given this, the size

would not alter the single-family character of the area or substantially impact the surrounding neighborhood.

Approval is subject to the following conditions:

- 1) A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city prior to issuance of a building permit.
- 2) The accessory apartment must be constructed and maintained in substantial compliance with the site plan, floor plans, and building elevations date-stamped June 1, 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. Resolution approving a conditional use permit to operate a commercial kennel at 6133 Baker Road**

Wiersum questioned if the city was able to address pet waste odor concerns. He did not feel a dumpster would control the odor and recommended a stipulation be added to assure that the waste was bagged. This would ensure that the odor was mitigated before concerns were raised by the neighbors. City Planner Loren Gordon indicated the waste would be removed from the site several times each week. John Sturgis, 6133 Baker Road explained the waste would be picked up and bagged immediately before being placed in the dumpster. He stated his dumpster would have a hard, secured lid and be surrounded by a fence. Gordon suggested the resolution be modified under 501.1C to include the word "containment" after the word "removal". The council was in support of this addition.

Wiersum moved, Hiller seconded a motion to adopt Resolution 2010-067 with the noted addition. This resolution approves a conditional use permit for commercial kennel to be operated out of the site and building at 6133 Baker Road. Approval is based on the following findings:

- 1) Given the location of the subject property, a commercial kennel is an appropriate land use on the site.
  - a. The property is bound by major roadways which provide good access and would accommodate traffic generated by the use.
  - b. The property is surrounded by light industrial and retail uses. The use would not, therefore, impact of the use on residential land uses.
  - c. The existing site has been vacant, and underutilized, for some time.
- 2) The proposal would meet the intent of required conditional use permit standards outlined in City Code 300.21 Subd.6(b).
- 3) The proposed use represents a logical and feasible adaptive reuse of an existing building.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, complete the following:
  - a. Record this resolution with the county and return a copy to the city.
  - b. Apply for and obtain a city kennel license.
  - c. Submit a waste management/removal/containment plan, detailing how often animal waste will be removed from the site.
  - d. Submit a final landscape plan for review and approval of natural resources staff. The plan must include genus and species of proposed plantings and must meet minimum value requirements as outlined in city code.
  - e. Submit a letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.
- 2) The maximum number of animals on the site is limited to 200.
- 3) The kennel must conform to all provisions of:
  - a. City Code 850 – Noise Regulations
  - b. City Code 300.28 Subd. 5 – Performance Standards Regulating Odor
  - c. City Code 925 – Animal Control Regulations
- 4) This resolution does not approve any signs. Separate sign permits must be submitted for staff review and approval.
- 5) The city council may reasonably add or revise conditions to address any future unforeseen problems. In particular, the city may add or revise conditions to address disturbance caused by frequent howling, yelping or barking.
- 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) Failure to obtain and maintain a valid city kennel license or comply with building, health and maintenance requirements outlined in city code will render this conditional use permit null and void.
- 8) Failure to obtain and maintain any required county and state license and permits will render this conditional use permit null and void.
- 9) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

**H. Items concerning the Trunk Highway 169/Bren Road interchange improvements**

Allendorf moved, Greves seconded a motion to adopt Resolution 2010-068 and Resolution 2010-069 approving Layout #1E, and approving cooperative land acquisition agreement with MnDOT for the Trunk Highway 169/Bren Road interchange improvements.

All voted "yes." Motion carried.

**I. Sewer agreement with Hopkins**

Allendorf moved, Greves seconded a motion to approve the sewer agreement with the City of Hopkins. All voted "yes." Motion carried.

**J. Agreement with HKGI to conduct a master plan study for the Highway 7/County Road 101 Village Center**

Allendorf moved, Greves seconded a motion to approve the agreement for professional Services with HKGI to conduct a master planning process for the 7 / 101 village center area. All voted "yes." Motion carried.

All voted "yes." Motion carried.

**11. ITEMS REQUIRING FIVE VOTES: None.**

**12. INTRODUCTION OF ORDINANCES:**

**A. Ordinance rezoning the property at 3318 Groveland School Road from B-2, limited business, to PUD, Planned Unit Development**

Gunyou gave the staff report.

Wagner questioned if there was a downside to the PUD and if the site would be rezoned if variances were allowed. Gordon said he did not feel

the PUD had any downsides as it allowed for tighter rules in the B-2 zoning district. The site could be rezoned, but did not feel this would be necessary with the current property owner.

Wiersum moved, Greves seconded a motion to introduce the ordinance and refer it to the planning commission. All voted "yes." Motion carried.

### 13. PUBLIC HEARINGS:

#### A. Items concerning "Gifts and Greens Show" fundraiser at the Episcopal Parish of St. David at 13000 St. Davids Road

Gunyou reviewed the temporary liquor license fundraiser request.

Wagner opened the hearing at 7:50 p.m.

Barbara Claire Pitcher, junior warden at St. Davids, 13000 St. Davids Road, stated the Gifts and Greens Show was a great outreach opportunity for the community while assisting the church in supporting further outreach ministries.

Wagner closed the hearing at 7:52 p.m.

Allendorf moved, Wiersum seconded a motion to:

- 1) Grant the temporary liquor license and
- 2) Approve the temporary banners.

All voted "yes." Motion carried.

#### B. Precious metal dealer license for Gold Buyers At The Mall, LLC, 12401 Wayzata Blvd, #2125

Gunyou reviewed the license request.

Wagner opened the hearing at 7:53 p.m.

Greves moved, Wiersum seconded a motion to continue the hearing to August 16, 2010. All voted "yes." Motion carried.

### 14. OTHER BUSINESS:

#### A. Extension of the FETTERLY VIEW final plat located at 11519 Fetterly Road West

Gordon reviewed the staff report. Three extensions had been previously approved by council. Staff was recommending the council deny the

extension request for the Fetterly View final plat as the wetland delineations had expired, and there were changes to city ordinances.

Dick Heimerl, 11519 Fetterly Road, said he had requested several extensions in the past. He assumed that his extension request this May would again be approved by the council. He expressed concern with the state of the housing market at this time, which was leading to his delays. Heimerl further reviewed the concerns of the city and requested the council approve the extension, which would reduce the costs associated with re-submittal, given the current state of the economy.

Wiersum asked if a variance on the property could be considered, given the recent activity at the Supreme Court level. Gordon explained the application fees for the preliminary and final plat were \$400 and \$800, respectively. The right-of-way variance was previously approved in 2006. If the item were denied the applicant could reapply and the variance would have to be reviewed along with the plat. Wischnack stated the variance request could be completed through an easement.

Allendorf requested the neighbors review this issue again and provide feedback on the plat without going through the entire re-submittal process. Gordon stated a condition could be added to the motion for approval. He indicated the wetland delineation has expired and this cost would have to be incurred by the applicant, likewise with compliance to the stormwater management plan and recent tree ordinance.

Allendorf suggested conditions be added to a motion for approval of the extension this evening. Gordon stated this could be completed.

Wagner indicated plats normally do not extend this long, but given the recent Supreme Court case he did not want the applicant to have to complete this process from the beginning. He would not normally support any further extension of this plat, but that with the recent court decision he is open to an extension in this instance.

Wiersum noted the applicant was not making money on the plat at this time and felt the extension was pertinent in this situation given the recent Supreme Court decision. Gordon suggested the council table action on the proposed resolution allowing the applicant to hold a neighborhood meeting after which time staff could provide further information to council.

Wiersum questioned if a two or three month extension should be approved to allow staff to review the wetland delineations along with the tree and stormwater ordinances. This would also allow time to complete a neighborhood meeting.

Allendorf moved, Wiersum seconded a motion to table action on the resolution and ask the applicant to hold a neighborhood meeting. Council directs staff to review the plat with respect to the wetland delineations, the tree ordinance and the stormwater ordinance.

All voted "yes." Motion carried.

**B. Concept plan for Hillside Senior Living at 5431 and 5439 Williston Road**

This item was pulled from the agenda at the applicant's request.

**15. APPOINTMENTS and REAPPOINTMENTS:** None.

**16. ADJOURNMENT**

Wiersum moved, Greves seconded a motion to adjourn the meeting at 8:22 p.m.  
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk