

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, OCTOBER 4, 2010**

1. CALL TO ORDER

Schneider called the meeting to order at 6:40 p.m.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL

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

4. APPROVAL OF AGENDA

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

5. APPROVAL OF MINUTES: September 13, 2010 regular meeting

Allendorf moved, Greves seconded a motion to approve the minutes of the September 13, 2010 Minnetonka City Council regular meeting. Hiller, Wagner, Ellingson, Allendorf, Greves, Schneider voted "yes." Wiersum "abstained". Motion carried.

6. SPECIAL MATTERS

A. Update from Hennepin County Commissioner Jan Callison

County Commissioner Jan Callison provided an update on the county's budget. She noted the county board set the maximum property tax levy increase at .72 percent. The general operating budget will see a decrease of 1.8 percent or \$25.6 million. She said the county has seen an increase in the number of people seeking services including a 17 percent increase in food support requests and a 5.8 percent increase in medical assistance requests.

Wiersum asked how many positions were eliminated last year due to budget cuts. Callison explained the head count has remained relatively flat as positions have not been filled after people retire.

Wagner asked if there would be cuts to rail projects and other types of capital projects. Callison indicated the county administrator's

recommendation for the Regional Rail Authority was to reduce the levy increase from \$4 million to \$3 million. She said the reduction would work because of the delay it takes to get some of the rail lines built. The Central Corridor line remains on schedule.

Allendorf asked if the zero increase for the general operating budget included the Hennepin County Medical Center's budget. Callison said the zero increase included the medical center's budget and noted there is around \$30 million budgeted for uncompensated care.

Schneider said he supported the decentralizing social services and asked for further information on the initiative. Callison said the county was working to provide services regionally to meet the needs of the community. The price for this initiative was quite high given the economic times.

Wiersum asked if there was an opportunity to make more of the services available at the county's service centers online. Callison said the county would likely be looking at what services it made sense to put online.

Wagner requested an update on solid waste management. Callison stated there was not a timeline presently, but the county was working in collaboration with six area counties to reduce expenses in the long run and create greater efficiencies.

Greves said there has been discussion about the "new normal" and what it would take for government entities to thrive in the challenging economic times. The state demographer and economist said that one of the main ways to thrive would be to look at productivity investment. She asked how the county was moving toward productivity investment. Callison said the challenge for the county was that it did so many things in so many different areas. A lot of what the county does is to serve people as the social service arm for the state. She said the productivity measure in that area was a challenge because it is difficult to effectively evaluate the services. The county evaluates its social services by looking at outcomes and its relationship with the nonprofits that provide services.

Schneider thanked Callison for attending the meeting and providing the council with an update.

B. Proclamation declaring October 5, 2010 as City Open House Day

Schneider read the proclamation. He encouraged all residents to attend the open house.

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

No one appeared.

9. BIDS AND PURCHASES: None

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

A. Claims for council authorization – September 27, 2010

Allendorf moved, Greves seconded a motion to approve the August 23, 2010 claims which includes electronic fund transfers (EFTs) numbered 1339 through 1351 and checks numbered 229819 through 230109 totaling \$1,668,205.41. All voted “yes.” Motion carried.

B. Agreement with Hennepin Technical College for fire training

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

C. Resolution appointing election judges and absentee ballot board for the State General Election on November 2, 2010

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-102. All voted “yes.” Motion carried.

D. Time extension for filing of PREMIER PLACE, a reconfiguration of the existing properties at 16229 Temple Drive South and 16103 and 16115 Temple Lane

Allendorf moved, Greves seconded a motion to approve the twelve-month time extension. All voted “yes.” Motion carried.

E. Council policy on use and selection of auditing services consultants

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-103. All voted “yes.” Motion carried.

F. Agreement with United Health Group regarding the Bren Road interchange project

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

G. Amending the contract with Ehlers and Associates, Inc. for professional services regarding the city's utility rates

Allendorf moved, Greves seconded a motion to approve the amendment to the contract to provide that costs of the contract may not exceed \$32,000 and consultant services are to be completed by November 15, 2010. All voted "yes." Motion carried.

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

12. **INTRODUCTION OF ORDINANCES:**

A. Ordinance amending Section 710 of the city code regarding increases/changes in fees

Community Development Director Julie Wischnack presented the staff report. She explained all fees were being consolidated into one document and the goal was to recover costs with the expenses. Staff reviewed neighboring community fees to assure that the city was comparable.

Allendorf asked what the hotel base fee was. Wischnack indicated all hotels had to be inspected and were charged \$185 plus \$5 per room. There could also be other associated fees such as pool inspections and restaurant inspections depending on the hotel.

Wiersum asked if the city in aggregate captured the proper amount of fees to cover staff expenses. Wischnack said the building permit and environmental health fees captured the proper amount. She noted the planning area made changes to its fees to better capture the proper amount but it still is an area that might need further changes to capture the actual costs of providing the services.

Greves noted that last year staff indicated the fees associated with inspecting school kitchens did not capture the actual cost of the inspections. Wischnack said the revised fees better reflected the actual costs.

Wagner requested further information on valuation based fees. Wischnack explained how the value based fees were calculated.

Schneider suggested the valuation based fees language be made clearer in the ordinance so residents could figure out what their fees would be.

Wiersum moved, Wagner seconded a motion to introduce the ordinance. All voted "yes." Motion carried.

13. PUBLIC HEARINGS:**A. Ordinance amending the city charter regarding the primary election and city manager's purchasing authority**

City Attorney Desyl Peterson presented the staff report.

Schneider opened the hearing at 7:21 p.m. No one spoke.

Hiller asked if the proposed change to the primary date matched up with the city's ordinance related to campaign signs. Peterson said the issue would be addressed when the sign ordinance is updated.

Schneider closed the hearing at 7:22 p.m.

Wiersum moved, Allendorf seconded a motion to adopt Ordinance No. 2010-16. All voted "yes." Motion carried.

B. On-sale liquor licenses for Applebee's Neighborhood Grill and Bar, 12653 Wayzata Boulevard

Gunyou gave the staff report. He noted there was a change in ownership for Applebee's which required a new on-sale liquor license.

Schneider opened the hearing at 7:44 p.m. No one spoke.

Greves moved, Allendorf seconded a motion to continue the hearing to November 8, 2010. All voted "yes." Motion carried.

14. OTHER BUSINESS:**A. Appeal of the planning commission approval of an expansion permit to allow an expansion of a non-conforming garage at 17622 Ridgewood Road**

City Planner Loren Gordon gave the staff report.

Peterson noted the case that went to the Supreme Court had two different holdings. One was that the Court of Appeals was using the wrong standard for variances. The standard had been used for over 20 years and was the standard the city was using. That standard was overturned and the Supreme Court said the city had to have a much more restrictive way at looking at variances. She said equally as important was the second holding on the issue of allowing nonconforming uses to expand. That holding was the city could establish a mechanism by ordinance to allow

nonconforming uses to expand. Staff recommended to the council that a new process involving an expansion permit be established, and that was previously done. The planning commission reviewed both the old variance application that the court had sent back, and the property owner's new application for an expansion permit. The commission denied the variance but approved the expansion permit. Peterson said she and the city's litigation attorney were comfortable that the planning commission acted legally and correctly.

Paul Chamberlain, an attorney representing the neighbor, Beat Krummenacher, said the city was a quasi-judicial body that was subject to review by the state judiciary. Chamberlain said Krummenacher's objection was the expansion and construction of a separate building using the base of the roof of the garage as a foundation for a new structure for the yoga studio. There was no problem with the idea that the garage should be improved because it is an eyesore but the improvement could be done within its confines. The case has taken a lot of resources and he questioned if the city's judgment was good in challenging the issue further. He said the city was defying what the Supreme Court has held as a matter of law to be improper and he disagreed with the idea that the ordinance could be amended after the fact by saying that an expansion permit was different from a variance. State statute provides that in order to grant a variance, the hardship standard must be applied.

Chamberlain said because of the fact that there was an eyesore to start with and a beautiful building to end with, that the conclusion was that it must be OK to allow that. But that was not a fair conclusion. It was a fair conclusion to allow the quality of the structure by keeping it in the same size limitations. He asked the council to think in terms of whether an expansion permit was different from a variance. If one was improper, then the city could not get around it by calling it something else.

Schneider noted that it was Chamberlain's opinion that the city was disregarding the law and that was not something the city attorney had stated was OK to do.

Joanne Liebler, 17622 Ridgewood Road, indicated she was not trying to create additional litigation or legal battles for the city, as this has been dragging on for two years. Liebler noted her neighbor has chosen to pursue this case by suing the city and herself. She said she has tried to do everything in the design to ensure that her neighbor doesn't feel injured. She felt the improved garage was improving the property value of the adjacent property as well as her own. The design was designed to echo and emulate the design of the house. The original variance request was not for the height of the garage. The variance was required because of the garage's setback distance from the street.

Peterson reiterated that an expansion permit was not the same as a variance. Half of the court's decision was in favor of the city by saying the city rightfully provided a mechanism to allow the expansion of a nonconforming use. The court ruled the city had used an appropriate mechanism but the variance process was not the only mechanism to allow for an expansion of a non-conforming structure.

Schneider said the council had read the actual language in the statute and that the standards provided in the expansion permit were different from the requirements for a variance.

Wiersum noted an expansion permit was a new process for the city as a result of this case. Not all variances deal with expansion of nonconforming uses. The expansion permit was a sub-segment of a variance. He said he did not think the expansion permit was the same as a variance. He was in favor of upholding the planning commission's ruling.

Allendorf said it was his understanding that the court decision didn't say the city could only use the ordinances and tools that were in place two years ago. Peterson confirmed that was correct. Allendorf noted that there was now a different tool to use to look at an expansion of a nonconforming use and that was how the issue was being judged. He supported upholding the planning commission recommendation.

Schneider said he didn't think the term "subset of a variance" was the correct terminology because the variance language was in a different section of the statutes. He noted the expansion permit was new for the city but it had been in state statute for some time.

Greves commented she read through the entire ruling and agreed the Supreme Court upheld the city's right to allow for expansions of non-conforming uses, just not through the variance process. She indicated this was done through the expansion permit process and was in favor of upholding the planning commission's decision because the proposal met the standards for an expansion permit.

Hiller said the real issue was reevaluating the proposal under the current standards. He said the proposal met the specific guidelines set out and he was obligated to support the recommendation.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2010-104 upholding the planning commission's decision which denies the variance and approves the expansion permit to allow an expansion of a non-conforming garage at 17622 Ridgewood Road. The action is based on the following findings:

- 1) A variance is not appropriate because the property has a reasonable use with the improvements that existed before expansion of the detached garage.
- 2) An expansion permit is appropriate because the proposal is reasonable and would meet the required standards for a permit, because:
 - a. REASONABLENESS: It would be difficult to locate the detached garage at another location on the property due to the topography of the site, width of the lot, location of the existing home, location of the driveway and existing vegetation. The use itself is reasonable in that it meets all dimensional standards under the city code and is an improvement to what was an outdated building in disrepair. The pitched roof is a reasonable and practical solution to correct the flat roof design which was causing structural deterioration.
 - b. UNIQUE CIRCUMSTANCE: The non-conforming setback is a circumstance that is not common to every similarly zoned property. The property owner did not cause the situation because the garage already existed when she bought the property. The improvements are not solely for the owner's convenience because they would significantly improve the appearance of the building and the neighborhood. Economic considerations are not the sole factor because there is no other reasonable location for the structure on the property.
 - c. NEIGHBORHOOD CHARACTER: The garage improvements would not alter the character of the neighborhood. The improvements would visually enhance the exterior of the garage. There is also a detached garage on the property to the east that is set back 17 feet from Ridgewood Road.
- 3) The after-the-fact nature of the application for an expansion permit is excusable because the applicant constructed the improvements in good faith pursuant to city authorization, relied on two court decisions and the well-established legal standard in effect at the time, and did not willfully or intentionally violate the city's ordinance.

Approval is subject to the following condition:

 - 1) The garage cannot be used for any commercial activities.

All voted "yes." Motion carried.

15. **APPOINTMENTS and REAPPOINTMENTS:** None

16. **ADJOURNMENT**

Greves moved, Wiersum seconded a motion to adjourn the meeting at 7:55 p.m.
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk