

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, OCTOBER 25, 2010**

1. CALL TO ORDER

Schneider called the meeting to order at 6:30 p.m.

2. PLEDGE OF ALLEGIANCE

All joined in the Pledge of Allegiance.

3. ROLL CALL

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

4. APPROVAL OF AGENDA

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

5. APPROVAL OF MINUTES: None

6. SPECIAL MATTERS

A. Recognition of 2010 photo contest winners

Schneider thanked all residents that took part in the 2010 photo contest. He presented each of the winners with a certificate.

B. Proclamation declaring November as Pancreatic Cancer Awareness Month

Wiersum read a proclamation declaring November 2010 Pancreatic Cancer Awareness month.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS

Gunyou reported on the schedule for upcoming council meetings. Greves indicated organic waste recycling would now be available in the municipal buildings through a \$4,600 waste abatement incentive grant the city received.

Schneider reported there was a ground breaking for the Shady Oak Beach play area. He also reported the metro area was awarded a \$5 million federal grant of which a portion will go towards Southwest Light Rail planning.

8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA

Rich Spielberg, 5428 Glenavon Avenue, said there has been a small street project near his home that has had no activity for nearly a month. He added there was a nuisance property next to his home at 5516 Glenavon Avenue. A couch was outside with empty beer bottles. In addition, a number of trees had fallen onto his property from the nuisance property and were damaging his fence. Schneider requested staff follow up on these concerns.

Jesse Quiner, 12476 Orchard Road, expressed concern with the speed of traffic on Orchard Road. He noted a child was hit several years ago leaving the park. He requested the city post additional speed limit signs to keep the children in this area safe.

Schneider suggested staff look into this further.

9. BIDS AND PURCHASES:**A. Quotes for tree inventory**

Gunyou presented the staff report.

Wiersum indicated he had a few Ash trees in his yard that he was hoping to save realizing treatment was expensive. He suggested the city look into creating a program using its buying power to help provide assistance for residents who wanted to try to save their trees. Gunyou indicated the city was providing educational information for residents on the Emerald Ash Borer, but noted there was still debate about whether available treatments are effective.

Wiersum moved, Hiller seconded a motion to award the tree inventory to Rainbow Treecare not to exceed the amount of \$63,000. All voted "yes." Motion carried.

B. Quotes for the Shady Oak Beach community play area site preparation

Gunyou gave the staff report.

Greves moved, Wagner seconded a motion to award the Shady Oak Beach community play area site work contract, including base work and alternates, to Odessa II Construction in the amount of \$72,687.50. All voted "yes." Motion carried.

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

A. Claims for council authorization – October 11, 2010

Allendorf moved, Greves seconded a motion to approve the October 11, 2010 claims which includes electronic fund transfers (EFTs) numbered 1352 through 1359 and checks numbered 230110 through 230339 totaling \$1,064,371.42. All voted “yes.” Motion carried.

B. Claims for council authorization – October 25, 2010

Allendorf moved, Greves seconded a motion to approve the October 25, 2010 claims which includes electronic fund transfers (EFTs) numbered 1360 through 1374 and checks numbered 230340 through 230691 totaling \$2,239,090.52. All voted “yes.” Motion carried.

C. Lease agreement with T-Mobile for Williston water tower

Allendorf moved, Greves seconded a motion to approve the lease with T-Mobile Central, Inc for space on the Williston water tower and grounds, contingent on receiving the necessary planning and public works staff approvals. All voted “yes.” Motion carried.

D. Ordinance amending Section 710 of the City Code regarding increases/changes certain fees, and resolution to publish a summary of the ordinance

Allendorf moved, Greves seconded a motion to adopt Ordinance No. 2010-17 amending Section 710 of the City Code regarding increases/changes certain fees and Resolution No. 2010-106 to publish a summary of the ordinance. All voted “yes.” Motion carried.

E. Resolution approving a limited use permit with MnDOT for the TH 169/Bren Road interchange improvements

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-107 authorizing execution of a Limited Use Permit with the Minnesota Department of Transportation for the TH 169/Bren Road interchange improvements. All voted “yes.” Motion carried.

11. ITEMS REQUIRING FIVE VOTES: None.

12. INTRODUCTION OF ORDINANCES:**A. Ordinance amending the city code regarding subdivision requirements**

Peterson gave the staff report.

Hiller expressed concern with the amendment given the fact the zoning ordinances would likely be revised eventually as well. He said he was a little leery of making the changes piecemeal along the way and it may be better to wait and make the changes in a comprehensive manner.

Wiersum indicated he had the same concern, but spoke with Peterson earlier in the day and she clarified for him that the amendment simply made housekeeping changes that should have been handled years ago.

Schneider said one of the main reasons for the amendment was that the definition of what would qualify for a variance under the standard was more favorable to the city's normal discretion. He understood revisions to the zoning ordinance were needed as well. He said he favored looking at the revisions that had the highest level of concern for residents and then going back to revise some of the more esoteric provisions later. As an example he cited the city's long standing history of allowing a variance for a two car garage up to five feet to the property line. That had been the community standard for a number of years. He said there was no reason that the council could not make that an ordinance standard rather than a variance.

Wagner requested further information on the notice standards. Peterson said the notice standard would be the longest distance.

Schneider expressed concern with the language regarding the number of lots sharing a driveway could not exceed three. Peterson explained the language was the current ordinance language and a variance could be approved allowing for additional lots.

Schneider noted that all sides appeared to be in agreement that the state statute needed to be changed to clarify that the standard in effect before the recent court decision should still be used.

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

13. PUBLIC HEARINGS:

A. Ordinance amending the city charter regarding the community investment fund

Gunyou indicated that council had previously discussed various aspects of this proposal, and recommended council consider the guidelines and charter amendment together. Because of this, staff will bring to council at a future meeting, an ordinance governing the new fund, along with these charter amendments.

Schneider concurred with the recommendation. He suggested the EDAC be allowed to provide input as well, and that a joint EDAC/EDA meeting be scheduled. This would allow for greater discussion. Peterson noted the notice for the public hearing would need to be republished.

Wagner asked what implications there might be if the decision were delayed, on funding for the Bren Road interchange. Peterson explained the money in the special assessment fund can be used to pay public improvement bonds and that the Public Facilities Authority's loan was a public improvement bond. Therefore the funds could be used for the Bren Road loan.

Greves noted the economic investment fund guidelines were discussed at a past work session and there seemed to be some consensus reached. She asked what type of questions remained that needed to be discussed further.

Schneider said it wouldn't be known exactly what the ordinance would look like until there was more discussion. He said it was likely the ordinance would include more specificity than the broad principles that had been discussed.

Wagner agreed the council had discussed with clarity, the guidelines at a recent work session meeting. He indicated he did not want this ordinance to become overly prescriptive but be tied to the goals in the village areas. Wiersum agreed. He wanted to see the council be more proactive, but perhaps further definitions along the lines of priorities was needed.

Allendorf agreed the issue was discussed at the August work session meeting at length. He expressed concern with the ordinance becoming too prescriptive as well as he didn't want the city's hands tied for future development.

Schneider noted there needed to be balance between being a good steward of the city's resources while providing the ability to take advantage of an opportunity that might come up that would be beneficial to the city.

Hiller indicated this was the first chance the council had for an in depth discussion about the entire policy and where the funds would come from and how the fund would be used. He said the Bren Road project was a good project that needed \$5 million as a cash flow. The worst case scenario would be ending up with zero balance and the best case would be ending up with \$20 million in the fund. He saw great potential for the fund as a development fund and has been an advocate for such a fund so

the city could do projects that were needed such as light rail and developing the village areas. His concern related to using the special assessment construction fund (SACF) versus the economic investment fund (EIF). He noted the cash flow of this major project has not been discussed. He indicated further decisions have to be made as to how the fund would function and under what rules.

Gunyou clarified that nothing was being proposed that would change the current balance of the community investment fund (CIF). Schneider noted the rate of future growth could be affected if funds were diverted into the economic investment fund. Gunyou said the proposed charter change would allow the council to decide what to do with the excess funds rather than the current requirement that any excess in the SAF had to go to the CIF.

Hiller commented the role of the funds could change. If the funds were taken out, the control of these funds would be a concern. He questioned how the city would get this money set aside for the project and used for the proper things. He stated budget discussions have raised concerns as to how the city would find ways to accumulate funds, and not use these funds elsewhere. Hiller wanted to remain firm that funds will be available and accumulated only if and when the city had plans and not the other way around. He disliked having a fund that implies that the fund would be available immediately when the money would only become available over 20 years. He understood the city needed to complete the development, but wanted to be assured the funds would be available.

Schneider indicated the funds being set aside were a special allocation or excess funds and not a property tax levy. The council has a choice on what to do with the funds. The mechanism controlling the character of the funds would need to be later defined by the council. This would have to be done by majority or a supermajority vote to achieve the goal of economic development. Lacking guidance on how the ordinance should be framed, it would come down to what the control mechanism would be to disburse the funds out of the EIF once it was established.

Hiller questioned how the \$5 million would be used to cash flow the project or if it should be left in the SACF. After trip fees have been paid, the city would be able to begin making decisions on the cash flow. The alternative would be to change the charter to allow the council to use the CIF money for economic development. He questioned if decisions should be made on funds that the city did not even have. Until enough trip generations fees were paid, he felt the council could hold off on this decision until a future date.

Peterson commented it was highly unlikely that the charter commission would agree to add economic development as a spending category to the CIF. This would have the potential of draining funds away from the primary goal of the CIF.

Schneider concurred with this statement. He indicated the original endowment placed into the CIF was from the major sewer and water work completed in the early 70's and 80's. This amount has now grown to \$19.7 million. There was no expectation that the CIF would continue to get the special assessment funds. Those involved when the CIF was originally established, and who reviewed the proposed charter amendment felt the charter should be amended to strength the language regarding the fund.

Gunyou agreed with Schneider that the CIF should be protected for what it was intended, and that was what the charter amendment would do, while retaining the council's discretion of adding more to the fund. However, the amendment does not allow funds from the CIF to be used for other purposes. He said to address some of the concerns raised by Hiller, the key may be to clarify how disbursement of funds would be managed. In August the council discussed the concepts of available and unavailable portions of the fund. Provisions could be created similar to public accounting rules governing reserves with restricted reserves and unrestricted reserves. This would be a way to legally and procedurally define how much was restricted until certain conditions were met.

Hiller stated the CIF and SACF had explicit uses, as defined within the city's charter. He didn't see why the charter commission would object to separating out funds for economic development.

Schneider did not expect the charter commission would allow CIF funds to be allocated for economic development. He did foresee the charter commission allowing excess or unanticipated funds being set aside for an economic investment fund.

Hiller expressed concern that the future use of these funds was still not defined. He felt funds should not be set aside growing interest until a plan was in place. In addition, the city should reconsider large economic redevelopment plans until funds were actually available. The city would be assuming excess funds would continue to come in over the next 20 years to cover the proposed development expansions. He didn't see why the council was creating rules and guidelines on monies the city did not yet have. If the city did not receive the 78 percent as projected, the city would not get the development it wanted and it wasn't prudent to make plans for that.

Wagner noted one of Hiller's statements was to wait for the funds to build up before using them. The charter states that the CIF funds could not be used for economic development and he would not support using the CIF for economic development. But, if the city is looking at long term planning, he agreed that money could only be spent out of the proposed economic investment fund if the funds were available. He said Gunyou's suggestion of the restricted and unrestricted balances had a lot of merit to address Hiller's concerns. He would support identifying flexibility through internal loans if the right project came forward.

Wagner said he felt the council was trying to achieve the broader goals of the comprehensive plan by taking a proactive approach by creating a fund to leverage economic development. The idea was to leverage other funding to help spur the development of the eight village areas. The goals of the council would never be met if the funds remained in the special assessment fund. The alternative was to maintain the status quo and remain reactive in terms of economic development.

Ellingson said a supermajority for the use of future funds was a good suggestion. He expressed concern about the city getting into land banking. There would be a lot of risk and guidelines would need to be established to minimize the city's risk. He felt private developers should carry the risk without subsidies.

Schneider agreed the city should not be a developer within the community. He indicated the small parcels surrounding potential light rail stations would need to be purchased as the opportunity arises. These parcels would lead to positive economic development and would need to be a decision made by the entire council based on staff's recommendation.

Allendorf said the disbursement decisions of the EIF funds were the concerns being expressed. He indicated he would like to see the ordinance move ahead with the further definitions on how the funds would be disbursed, possibly with the restricted or unrestricted concept.

Wiersum thanked Allendorf for his comments stating the disbursement of funds should be the primary focus at this time. He felt if this was done well, the endowment within the CIF would be protected, which is what the charter commission and the council want. The council also wants a mechanism for greater proactivity to allow the city to move forward with economic development in the future.

Hiller indicated the council wants the CIF protected and the charter commission would not support allowing the funds to be used for economic development. He questioned why then the SACF funds or excess could

then be used for economic development. He did not feel there was a benefit to creating an EIF rather than just using the excess in SACF for economic development. Schneider indicated the council was trying to create flexibility through the charter amendment. The council would still be able to discuss the EIF details and fund guidelines further.

Wiersum noted the excess funds in the street assessment fund were not needed for street assessments so the only other place the funds could go was in the CIF, but the CIF was well funded and already had enough resources to sustain itself. The EIF had a completely different purpose that would take a portion of the excess funds to meet different goals.

Hiller questioned why the council needed \$5 million and interest set aside for future economic development. He didn't feel it was this council's decision because the city had no specific plans for those funds. Instead, future councils could decide what to do with trip charges and excess SACF funds. He felt the charter should be amended to allow the council to take action in the future if needed and otherwise to leave the funds as is.

Schneider asked if Hiller would be willing to approve an amendment as such.

Hiller said he was in favor of such an amendment as this would be more logical. The rules and definitions could then be defined in the future as development needs arise.

Ellingson was not in favor of this suggestion, because he wanted the information in writing before approving the charter amendment.

Hiller indicated the definition of the EIF should include how the excess funds and trip generation fees over time could be placed and how it would accumulate.

Schneider said the funds could not be spent out of a future fund until it was created and designed. At this time, if the charter amendment was passed, the money would sit until further decisions are made. At this time, there were too many variables and redevelopment options to create specific guidelines for this fund.

Ellingson requested the EIF fund guidelines be discussed further.

Greves indicated if the charter amendment were voted on this evening, the council would still have the flexibility to get to the next point when future discussions were held about guidelines.

Schneider said staff could, without the adoption of an ordinance, better define the needs of the Bren Road interchange and how the \$5 million would flow through, what would be restricted, and what might be available over the next three years to ensure there was no risk involved in the council getting ahead of itself. This way, the council would know what kind of dollars were available. The council couldn't determine what could be done until an opportunity existed. That way, when the EDAC approached the council with a plan, the amendment would be in place with the fund established.

Hiller asked if SACF funds were used, what would be the procedure to shift funds from the account to the EIF. Peterson explained the charter amendment would have to be approved and then the funds would become part of the city's budget. Hiller said he wanted that process better defined.

Schneider requested further information from staff on the restricted and unrestricted components and a mechanism related to a majority or supermajority vote for releasing funds for a specific project. This would allow the council to discuss the issue further before voting on the charter amendment and ordinance. The council was in agreement with these suggestions.

B. Resolution authorizing use of additional funds from the Community Investment Fund to finance renovation of the Williston Center

Gunyou presented the staff report.

Schneider opened the hearing at 8:19 p.m.

Schneider closed the hearing at 8:19 p.m.

Hiller asked when the pool would be open. Recreation Services Director Dave Johnson noted the locker room renovations would be completed by November 8. The pool would be operational by November 15. The kiddie pool was anticipated by mid-December with the new indoor play area open in mid-March.

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-108 approving use of the Community Investment Fund to finance a \$945,000 interest-free loan for Williston Center renovations to be paid back over a 10-year period beginning in 2011. All voted "yes." Motion carried.

C. Renewal of Minnesota Currency Exchange License for 2011 for Action Check Cashing, 11503 Excelsior Boulevard

Gunyou gave the staff report.

Schneider opened the hearing at 8:22 p.m.

Schneider closed the hearing at 8:22 p.m.

Wagner moved, Wiersum seconded a motion to approve the issuance of a renewed Minnesota Currency Exchange License for Action Check Cashing, located at 11503 Excelsior Boulevard. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Resolution authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor

Finance Director Merrill King presented the staff report.

Martin Hauge, 1900 Oakland Road, indicated his sump pump was inspected. He was informed his pump had to be hard-plumbed and once this was completed it would be re-inspected by the city. In the meantime, \$900 has accumulated in surcharges. He requested this amount be forgiven based on being in compliance with the intent of not pumping water into the sewer at any point in time.

Schneider said he was trying to determine when something was an I&I violation from an inspection standpoint versus a plumbing code violation. He also asked if it made sense to fine a person if there wasn't a practical or feasible way for that person's system to pump water into the sanitary sewer system. Public Works Director Brian Wagstrom explained the rules for the I&I program from the Met Council are that interior sump pumps had to be hard-piped to the outside. This would ensure that they were not redirected into a floor drain or laundry tub. Until a sump pump was hard-piped outside, sump pumps would not be approved by the city.

Schneider questioned since no water was put into the sanitary system from a sump pump, if the \$900 surcharge was necessary. Wagstrom indicated the city had the flexibility to work with the homeowners to reach a common sense solution. He had not been approached by Hauge, but was willing to work with him on the issue.

Schneider indicated there likely was some negligence on Hauge's part, but water was not being put into the sanitary sewer system. He requested staff work with the resident on the issue to reduce the \$900 charge. Wagstrom explained there were numerous letters sent to ensure the

resident would come into compliance. The date to respond had passed and this led to the fines.

Hiller agreed with relaxing the fine given the circumstances.

Allendorf concurred with a common sense approach while acknowledging the city had given proper notice.

Wiersum indicated the I&I issue was quite important. The city makes every effort to contact and work with residents to bring sump pumps into compliance. He thanked Hauge for being present but wanted to stress the importance of the I&I program but felt a modest but not a significant reduction in the fine was fair.

Wagner agreed with Wiersum because others have paid the fines and it was important to treat everyone in the same manner.

Greves also agreed and suggested the fine be reduced to \$500.

Ellingson agreed with Schneider and was willing to give Hauge a larger reduction on the fine.

Schneider stated he was suggesting a larger reduction in the fine because the system was not pumping into the sanitary sewer system. There was no impact which led him to believe a further break in the fine was necessary, subject to proper inspection by city staff.

Allendorf indicated staff time had value and the number of hours spent on this case should be charged back to the homeowner.

Wagner suggested the Council proceed with a \$500 fine.

Hiller agreed.

Wagner moved, Greves seconded a motion to reduce the sanitary sewer charges for 1900 Oakland Road by \$450 pending city inspection. All voted "yes." Motion carried.

Donald Lindholm, 13810 Knollway Drive, explained he had a similar situation with his sump pump had been corrected since January. He explained all water bills have been paid to the city, but the hard-plumbing bill was not paid in a timely manner. He requested the council reduce the expenses against his property as the matter has been resolved.

Schneider indicated if the criteria matched the previous case, the council could follow the same guidelines and charge a \$500 fine.

Allendorf moved, Wiersum seconded a motion to reduce the sanitary sewer charges for 13810 Knollway Drive by \$480 pending city inspection. All voted "yes." Motion carried.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2010-109 authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor as amended. Allendorf, Greves, Hiller, Wagner, Wiersum and Schneider voted "yes." Ellingson "abstained". Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None

16. ADJOURNMENT

Greves moved, Wagner seconded a motion to adjourn the meeting at 8:46 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk