

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, DECEMBER 20, 2010**

1. CALL TO ORDER.

Schneider called the meeting to order at 6:35 p.m.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL

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

4. APPROVAL OF AGENDA

Wiersum moved, Hiller seconded a motion to accept the agenda amending Item 13B. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES: November 8, 2010 regular meeting

Wagner moved, Greves seconded a motion to approve the minutes of the November 8, 2010 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS: None

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS

Gunyou reported on the schedule for upcoming council meetings.

Schneider announced that he had been approached by Governor Mark Dayton's transition team to see if he'd be willing to submit a letter of interest for chair of the Metropolitan Council. He indicated he submitted the letter.

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 – December 13, 2010

Allendorf moved, Greves seconded a motion to approve the December 13, 2010 claims which includes electronic fund transfers (EFTs) numbered 1391 through 1411 and checks numbered 231272 through 231694 totaling \$2,802,879.62. All voted "yes." Motion carried.

B. Resolutions certifying deferred special assessments for 4625 Highland Road and 15205 Excelsior Boulevard

Allendorf moved, Greves seconded a motion to adopt the following:

- 1) Resolution No. 2010-133 certifying deferred special assessments for 4625 Highland Road
- 2) Resolution No. 2010-134 certifying deferred special assessments for 15205 Excelsior Boulevard

All voted "yes." Motion carried.

C. Resolution to adjust 2011 nonunion employee salaries and benefits

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010- authorizing the 2011 nonunion employee salary and benefit adjustments. All voted "yes." Motion carried.

D. City manager compensation

Allendorf moved, Greves seconded a motion to approve city manager 2011 compensation of \$142,715.04. All voted "yes." Motion carried.

E. Gifts, donations and sponsorships given to the city during 2010

Allendorf moved, Greves seconded a motion to approve acceptance of the attached list of gifts, donation and sponsorships for 2010, which has a total estimated value of \$12,708.90. All voted "yes." Motion carried.

F. Agreement with the Metropolitan Consortium of Community Developers to participate in the Minnetonka Open to Business program

Allendorf asked for the item to be pulled from the consent agenda. He indicated this would be a fine program to assist the business community and asked staff to provide more information. Community Development Director Julie Wischnack reviewed the purposes of the consortium in detail. She then reviewed staff's plan of action to market the program.

Wiersum moved, Allendorf seconded a motion to approve the agreement contracting with the MCCD to provide the Minnetonka Open to Business program for the year 2011. All voted "yes." Motion carried.

G. Hennepin County contract supporting curbside residential recycling programs amendment

Allendorf moved, Greves seconded a motion to amend the contract to extend the term and reporting requirements by one year for Contract No. A081241 between the city of Minnetonka and Hennepin County. All voted "yes." Motion carried.

H. 2011 general liability insurance and workers' compensation renewals

Allendorf moved, Greves seconded a motion to:

- 1) Renew the city's insurance policies through LMCIT for package policies with the following options:
 - \$25,000/\$150,000 deductible for the package policies
 - 100% Open Meeting law coverage
 - No waiver of statutory limits
- 2) Authorize renewal of the LMCIT workers' compensation policy with a \$10,000 deductible.

All voted "yes." Motion carried.

I. Agreements with the cities of Excelsior, Greenwood, and Spring Park to provide city code violation administrative services

Allendorf moved, Greves seconded a motion to execute the agreement with the cities of Excelsior, Greenwood and Spring Park. All voted "yes." Motion carried.

J. Resolution approving a grant agreement with Hennepin County for organics collection

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-136 allowing the city manager to enter into the grant agreement to receive \$4,550 in funding from Hennepin County through the Waste Abatement Incentive Program. All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Ordinance and resolution concerning amendments to the city code regarding subdivision requirements

City Attorney Desyl Peterson presented the staff report.

Hiller noted that the variance code had gotten a lot of scrutiny since May and asked if the revisions proposed would meet the new variance criteria. Peterson indicated the changes made would align with the recent Supreme Court decision.

Hiller asked how staff developed the proposed changes in the city code. Peterson explained the recent court case provided guidance and language for the revisions.

Hiller moved, Wiersum seconded a motion to:

- 1) Adopt Ordinance No. 2010-18 amending city code
- 2) Adopt Resolution No. 2010-137 authorizing the ordinance summary publication

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES: None

13. PUBLIC HEARINGS:

A. Items concerning The International Spanish Language Academy at 5959 Shady Oak Road

- 1) Issuance of revenue bonds for the acquisition of facilities**
- 2) Conditional use permit for educational facility to occupy the existing building at 5959 Shady Oak Road and parcel 36-117-22-32-0056**

Wischnack presented the staff report..

Julie Eddington, Kennedy & Graven, reported on the issuance of revenue bonds to the International Spanish Language Academy for acquiring a new building. She explained the bonds would be an obligation of the school and not the city. The city's bond rating would not be affected by this issuance.

Wiersum asked if the city assumed any risk through this bond issuance. Eddington explained the city had no obligation to the bonds and the city's AAA bond rating would not be affected. She indicated the school would be responsible for the bonds.

Greves asked what grade levels were projected for this site. Karen Terhaar, 4017 France Avenue, Robbinsdale, said she was the director of the school. She indicated the school would remain K-6. The expansion would not bring in additional grades, but additional classes within these grades. The maximum capacity for the building would be 350 students.

Allendorf asked how many students would be in each grade. Ms. Terhar indicated there would be 50 students per grade, or 25 per section.

Schneider opened the hearing at 7:00 p.m. No one spoke.

Schneider closed the hearing at 7:00 p.m.

Greves moved, Wiersum seconded a motion to:

- 1) Adopt Resolution No. 2010-138 approving the issuance of revenue bonds.
- 2) Adopt Resolution No. 2010-139 approving a conditional use permit for educational facility to occupy the existing building at 5959 Shady Oak Road and parcel 36-117-22-32-0056. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:
 - a. Prior to issuance of a building permit:
 - Submit a plan for any outdoor recreation space for staff review and approval.
 - Submit a bus access/turning plan for staff review and approval. The plan must have an auto turn or equivalent analysis of the proposed bus route from Red Circle Drive into the site, along the internal route, and back onto Red Circle Drive. The plan may require removal of some parking spaces.
 - Record this resolution with the county. A copy of the recorded resolution must be returned to the city.
 - b. Student enrollment is limited to 350 students and 41 staff. City staff may approve an increase to these limits if supported by corresponding parking and traffic studies.
 - c. An automatic fire sprinkler system must be installed in the building as required by the fire marshal.
 - d. The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - e. 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.
 - f. The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

B. Utility fee increases:

- 1) **Municipal water and sanitary sewer**
- 2) **Stormwater**

Gunyou reviewed the staff report noting council had discussed this previously in a work session meeting.

Wagner questioned when the projected rate structure change was anticipated. Gunyou explained this was projected to take place in December of 2011. Finance Director Merrill King stated the new billing system would be in place in the spring of 2011 and system testing would occur in the meantime. Education of the public would occur over the next year as well. Monthly billing is scheduled to begin in January 2012.

Wiersum thanked staff for the communication plan

Schneider opened the hearing at 7:06 p.m. No one spoke.

Schneider closed the hearing at 7:06 p.m.

Wagner moved, Wiersum seconded a motion to:

- 1) Adopt Resolution No. 2010-140 increasing municipal water and sanitary sewer fees
- 2) Adopt Resolution No. 2010-141 increasing stormwater fees

All voted "yes." Motion carried.

C. Amendment to an off-sale liquor license to MGM Wine & Spirits, Inc. for both a temporary and final location

Wischnack reviewed the staff report.

Allendorf asked what the size of the new MGM location would be. Mike Maglich, 16700 Grays Bay Boulevard, said he was one of the owners of the store and noted the existing store was just under 10,000 square feet and the new location was approximately the same size. He thanked staff for working with MGM through the transitional period allowing his employees to remain employed. He explained the new location would provide better access.

Wiersum asked for the proposed timeline for MGM. Maglich indicated he hoped to be open in the temporary location in January of 2011 with the new site ready by the Fourth of July.

Schneider opened the hearing at 7:14 p.m. No one spoke.

Schneider closed the hearing at 7:14 p.m.

Greves moved, Wagner seconded a motion to grant an amendment to the off-sale intoxicating liquor license to MGM Wine & Spirits, Inc. for both a temporary and final location. All voted "yes." Motion carried.

D. Development District No. 1 and Tax Increment Financing District No. 2 modifications

Gunyou presented the staff report.

Schneider opened the hearing at 7:15 p.m. No one spoke.

Schneider closed the hearing at 7:15 p.m.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2010-142 adopting the TIF Plan modifications. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Resolution amending the existing conditional use permit for cemetery use of the existing properties at 3300 and 3228 Woodlawn Avenue

Wischnack reviewed the staff report.

Hiller noted the prior agreement had been negotiated in consultation with the neighbors. He asked if there had been further communication with the neighbors regarding the new proposal. Wischnack said she was unaware if any neighbors had contacted the cemetery association.

Allendorf asked if the neighborhood had filed any complaints. Wischnack explained there had been a complaint as to how the plots were being sold, which led to the request from the cemetery association for an amendment to the CUP.

Bill Hendrickson, neighbor of cemetery, felt the city omitted the neighboring properties points of view on this issue. He indicated this was somewhat disturbing considering the close proximity of his property to the cemetery. Hendrickson stated the trees planted for the buffer were not yet mature and did not provide a full screen from the cemetery. He felt the city should take action against the cemetery for their violations to the original agreement. Hendrickson suggested the cemetery provide a fence along the property line. He indicated the cemetery has negatively affected the property value of the surrounding properties.

Lucy Starr, neighbor of cemetery, submitted the original complaint to the city regarding the cemetery. She reviewed her letter with the council regarding lack of proper buffer or screening. Starr said she was disturbed by the fact she had witnessed seven burials over the past two years from her home. An encroachment onto neighboring property was evident at

this time as there was not a proper buffer and the cemetery board had violated the plot sales as contained within the original agreement. Starr said she felt the residents did not have enough time to speak with staff regarding this issue. She requested additional screening be added.

Bob Nash, president of the Groveland Cemetery Association, said the council had determined this property could be used as a cemetery. He explained trees were planted to provide a buffer along the property line as approved by council. Additional trees would continue to be planted over time. He did not feel a fence was a practical solution.

Wiersum asked Nash to comment if the cemetery abided by the original intent of the agreement. Nash said one or two gravesites were sold outside of the original agreement guidelines. He indicated the salesperson responsible for these actions had been talked to. He noted additional plots have been since sold that complied with the agreement.

Allendorf asked for further clarification on the plots that were sold out of order. Wischnack reviewed the plot locations that were sold to date stating plots should have been sold sequentially from south to north.

Wiersum noted the cemetery was located within his ward and he had discussed this issue in detail with the neighbors. He indicated that he was the only dissenting vote when the item was first approved. He said the cemetery has breached the rules of the original approval and was now asking to further encroach upon the neighboring property owners. He said the request of the neighbors was reasonable and he would vote to support them.

Hiller said it had been known that it would take time for the buffer to take shape. He said he was concerned that there had not been attempts to work out the issues with the neighbors. He felt there was a reasonable compromise that could be reached between the cemetery and the neighboring properties and suggested the cemetery association attempt to resolve the issues further.

Allendorf noted the neighbors do not like the cemetery. He agreed with Wiersum that the board was now asking to go against what the council had approved. He said the buffer was what he thought it would be when he originally voted for it. The trees planted were not 40 feet at this time, but would be over time. He did not feel a six to eight foot fence would solve the problem. He recommended the council not alter the original agreement.

Schneider agreed that the neighbors never wanted the cemetery in their backyard. He indicated the buffer would screen the cemetery in the

future. The staging of plots and the buffer were arrived upon as a compromise. He did not recall any discussion by the association or the council that every single plot along the first row had to be sold first. He said the provision now seemed an unreasonable requirement that could hinder the ability of the cemetery association to function. Schneider suggested that some type of flexibility be developed such as if 75 percent of a row was sold, then plots in the next row could be sold. Perhaps a compromise could be reached and a new row could be used with the planting of additional trees.

Wagner said he reviewed the past minutes and dialogue. Most of the focus was maintaining the buffer and existing trees. He agreed it was unreasonable to think an entire row had to be sold prior to new rows being available. He suggested looking into staging the plots to coincide with the tree growth. He was in favor of staff discussing with the cemetery association a provision based on the percentage of sales in a row, before proceeding to the next row.

Wiersum did not feel it was reasonable for the cemetery association to have an unworkable business model. He preferred that a less restrictive formula be designed with staff and council at a future meeting. He encouraged the cemetery association to speak with the neighboring properties as well to reach a reasonable compromise while creating a workable business model.

Allendorf was in favor of discussing the issue in more detail so long as the neighbors were not under the impression they could veto a proposed formula or compromise.

Wiersum agreed with this comment, but wanted to assure that the neighbors had the opportunity to provide more input on the issue.

Nash explained the cemetery association was willing to work with the city to resolve this issue.

Wiersum moved, Hiller seconded a motion to table action on this item until the end of January.

Wagner requested the cemetery association abide by the current conditional use permit in the interim. Schneider agreed.

All voted "yes." Motion carried.

B. Items relating to the 2011 operating budget and tax levies:

- 1) **Resolution adopting a budget for the year 2011, a revised budget for 2010, and setting a tax levy for the year 2010, collectible in 2011**
- 2) **Resolution setting a tax levy for the Bassett Creek Watershed Management Tax District for the year 2010, collectible in 2011**

Gunyou provided an overview of the 2011 operating budget and tax levy. He indicated the increase in the proposed levy was 2.9 percent.

Allendorf asked if the 2.9 percent included the HRA levy. Gunyou indicated the 2.9 percent assumed the HRA levy would be approved. If the HRA levy was not approved the 2.9 percent would be reduced to 2.7 percent.

Wagner complimented staff for its work and for presenting the council with an outstanding budget for 2011.

Wiersum agreed stating the city was being fiscally prudent for the long term.

Wagner moved, Wiersum seconded a motion to:

- 1) Adopt Resolution No. 2010-143 adopting a budget for the year 2011, a revised budget for 2010, and setting a tax levy for the year 2010, collectible in 2011
- 2) Adopt Resolution No. 2010-144 setting a tax levy for the Bassett Creek Watershed Management Tax District for the year 2010, collectible in 2011

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None

16. ADJOURNMENT

Greves moved, Wiersum seconded a motion to adjourn the meeting at 8:11 p.m.
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk