

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MAY 16, 2011**

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

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

4. APPROVAL OF AGENDA

Greves moved, Wiersum seconded a motion to accept the agenda with an addendum to item 13A. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES: May 2, 2011 local board of appeal and equalization meeting

Wiersum moved, Wagner seconded a motion to approve the minutes of the May 2, 2011 LBAE meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Retirement recognition of William Breeggemann and Phil Pesheck

Schneider read the recognition and presented Breeggemann with a plaque.

Schneider read the recognition and presented Pesheck with a plaque.

B. TCALMC Earl Willford Labor Management Cooperation and Partnership Award

Schneider recognized receipt of the award and congratulated the participants.

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

Alvin Riley, 15020 Peteler Lane, asked the status of the Hillside Memory Care project. Schneider indicated the council voted to conditionally approve the project. He said the city is negotiating a development agreement with the developer. The agreement would include affordable housing provisions. He said the item would come back to the council at a later date. City Attorney Desyl Peterson clarified the vote was to table the item with direction to staff to negotiate the agreement. Riley asked if the neighbors would be notified when the item would be discussed by the council. Community Development Director Julie Wischnack said staff could send an additional notice out prior to the council meeting. Riley said he strongly disapproved of the project.

9. BIDS AND PURCHASES:**A. Bids for TH 169/Bren Road interchange landscaping**

Gunyou gave the staff report.

Wiersum moved, Greves seconded a motion to award the contract for the TH 169/Bren Road Landscaping to Fairs Nursery in the amount of \$221,900, which includes bid alternate 1. All voted "yes." Motion carried.

B. Contract for the purchase of a one hundred foot aerial fire truck

Gunyou gave the staff report.

Wagner moved, Wiersum seconded a motion to award the contract to the low bidder, Pierce Manufacturing, Inc., in the amount of \$786,000.00. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Amended and restated line of credit agreement with WHAHLT**

Greves moved, Wagner seconded a motion to approve the amended and restated line of credit agreement with WHAHLT. All voted "yes." Motion carried.

B. Resolution approving grant agreement for the I & I Program

Greves moved, Wagner seconded a motion to adopt Resolution No. 2011-043 approving grant agreement for the I & I Program All voted "yes." Motion carried.

C. Agreement for public works maintenance services

Greves moved, Wagner seconded a motion to approve a two-year "State of Minnesota Income Contract" for two ICWC for the Public Works Department from June 1, 2011 until May 31, 2013. All voted "yes." Motion carried.

D. Resolution approving a conditional use permit to operate an adult day care center at 1712 Hopkins Crossroad

Greves moved, Wagner seconded a motion to adopt Resolution No. 2011-038 approving the conditional use permit. All voted "yes." Motion carried.

E. Resolution to adopt council policy on Tax Increment Financing pooling

Wagner asked for the item to be pulled from the consent agenda. He said during the study session discussion one suggestion was to broaden the provision about transit to include more than light rail and focus on the village center areas. He indicated he would like it noted that the council could consider location or balance across the city's centers when applying the policy. Schneider agreed that approach would be appropriate. He said he was reluctant to have a requirement for equal balance formally written into the policy, because there could be unintended consequences.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2011-039 adopting a council policy on tax increment financing pooling. All voted "yes." Motion carried.

11. Items requiring Five Votes: None**12. INTRODUCTION OF ORDINANCES:****A. Ordinance regarding animal waste**

Peterson gave the staff report.

Ellingson noted there already was a park rule so the ordinance would be in addition to that rule. Peterson confirmed that was correct. Ellingson indicated the proposed ordinance would prohibit animal owners from disposing of the waste at park facilities. He said at his neighborhood park plastic bags were available and located right next to the garbage can. He asked if residents were not supposed to dispose of the waste filled plastic bags in the garbage can. Peterson said the intent is to dispose of the waste filled plastic bags in the garbage can but agreed with Ellingson that maybe the park rule should be changed as well.

Ellingson said the park rule requires the pet to be on a six foot leash but there was no length limitation in the proposed ordinance. Peterson clarified there was a length limitation in the ordinance that was located in a different section. Ellingson asked what the penalty would be for violating the proposed ordinance. Peterson said the penalty was a misdemeanor that could include up to a \$900 fine and 90 days in jail. She said jail time would not be imposed. Ellingson suggested the penalty be reduced to a petty misdemeanor which would include a fine of up to \$300 and no possibility of imposing jail time.

Wiersum said he attended the police advisory committee review of the proposed ordinance and the intent was to make the proposed ordinance as consistent with the park rules as possible and encourage common courtesy. The likelihood of people being required to pay a fine was low. The ordinance would put some teeth into the ability to get people to comply. He said Ellingson had made a good point and that a petty misdemeanor might be more appropriate.

Wagner said he would support a reasonable approach to the penalty involved.

Peterson corrected herself after reviewing the city code. She said the way the code was written, the violation would automatically be a petty misdemeanor. Police Chief Mark Raquet said the department was OK with a petty misdemeanor penalty. He said the intent was not to collect fines but get compliance. He noted that the ordinance would be similar to other nuisance related ordinances in that it would be complaint based. There was no intent to form a special unit to look for violators. The department would use the ordinance as an educational tool, first warning the violator. A second offense might lead to some enforcement action.

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

B. Ordinance regarding zoning variances

Peterson gave the staff report.

Hiller said the proposed ordinance would put the city back to where it was before the Supreme Court decision with one exception. A provision allows the city to impose conditions on granting a variance. The conditions must be directly related and bear rough proportionality to the impact created. He asked for elaboration on the provision. Peterson said the provision was compromise language worked out between business, city and county groups in order to get agreement on the new law. The intent was to not

allow a city to impose conditions unrelated to the variance. There also has to be proportionality to the impact. She noted the language came from court decisions. Hiller gave an example of a person wanting to build something on his house encroaching ten feet into the neighbor's yard. He asked if the city could grant the variance with a condition of requiring the person to lower his roof in order to dampen the impact. Peterson said that was a fair example because in the example the person's house was getting closer to the neighbor's, so the city might require a lower roof to minimize the impact by reducing the mass. Hiller said he was raising the point because in some ways the language expanded the council's authority.

Schneider said he viewed the provision as putting some mild constraints on cities' conditions. The tricky part was the term "rough proportionality." He said at some point a city decision would be brought to court for overreaching. Common sense judgment would need to be used to make sure a condition wasn't overreaching.

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

13. PUBLIC HEARINGS:

A. Resolution vacating drainage easements and approving a floodplain alteration permit to construct a pool in the backyard at 5414 Byscane Lane

Wischnack gave the staff report.

Wiersum noted the report identified two issues. The pool would address the lost water storage with the drainage patterns remaining the same.

Schneider opened the public hearing at 7:07 p.m. No one spoke. He closed the public hearing at 7:07 p.m.

Greves moved, Wiersum seconded a motion to adopt Resolution No. 2011-040 approving the requested floodplain alteration and Resolution No. 2011-044 approving a vacation of easement. All voted "yes." Motion carried.

B. Resolution vacating public drainage and utility easements at 14629 and 14611 Lake Street Extension

Wischnack gave the staff report.

Schneider opened the public hearing at 7:09 p.m. No one spoke. He closed the public hearing at 7:09 p.m.

Hiller moved, Wagner seconded a motion to adopt Resolution No. 2011-041 which vacates the public drainage and utility easements. Approval is subject to completing the following conditions:

- 1) This vacation of an existing easement is effective only upon proper combination of Lot 1 and Lot 3, Block 1, Oak Haven.
- 2) Record this resolution with Hennepin County. Provide the city with a recorded copy.

All voted "yes." Motion carried.

C. Temporary on-sale liquor license for Immaculate Heart of Mary Church, 13505 Excelsior Boulevard

Wischnack gave the staff report.

Schneider opened the public hearing at 7:11 p.m. No one spoke. He closed the public hearing at 7:11 p.m.

Hiller moved, Wiersum seconded a motion to grant the temporary liquor license in connection with an outdoor event. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Review of park renewal master plan for Mayflower Park

Assistant Public Works Director Perry Vetter gave the staff report.

Hiller said he has heard comments from residents wanting pairs of benches kept together to make conversations easier. He asked that consideration be given to pairing a set of benches on the deck area.

Wagner noted there was no parking other than on street parking for the park. He asked if there were concerns raised about the parking and if it made sense to highlight one side of the road for parking. Vetter said currently the west side of the road is signed for no parking. He said the area would be monitored because there have been indications that some of the neighbors are parking there during the day. Because of the park being designated as a mini-park, the hope is to draw people from the neighborhood rather than being a destination for other residents. The park has been popular in part because it was the first one done as part of the park renewal process. Now that other parks have been renewed, it may reduce the number of people who use Mayflower Park.

Schneider asked if there was a provision that would allow posting of signs that indicate the parking is only for those using the park. Vetter said the first step is to determine who is parking at the park.

Wiersum moved, Wagner seconded a motion to direct staff to proceed with Phase II (design and construction) of the park renewal project. All voted "yes." Motion carried.

B. Review of park renewal master plan for Oberlin Park

Vetter gave the staff report.

Wiersum asked if there was a fence between the basketball and tennis courts. Vetter said there was a fence dividing the courts.

Wagner said the addition of the swings was a nice touch. He said when he lived by the park he rarely saw the tennis court being used but the basketball court was often used. He asked if consideration was given to adding a basketball court. Vetter indicated there was discussion on the topic and the general consensus was all the groups were happy with the existing facilities.

Wagner moved, Hiller seconded a motion to direct staff to proceed with Phase II (design and construction) of the park renewal project. All voted "yes." Motion carried.

C. Items regarding an automotive service and tire center at 15320 Wayzata Blvd for Youngstedt's Goodyear:

- 1) **Ordinance adopting a master development plan and final site and building plans; and**
- 2) **Resolution approving a conditional use permit**

Wischnack gave the staff report.

Wagner said he understood the planning commission's recommendation for a condition prohibiting gas pumps on the site. He asked if there was a city zoning policy related to the condition. Wischnack said if the plan was for gas use on the site the site plan review likely would have been different. One example was the trip generation would be much higher if gas were sold on the site.

Wiersum said he understood the reason for requiring cars being worked on to be stored inside overnight. He noted that Youngstedt's Goodyear has a drop box and as a customer he has chosen to leave his car overnight to be worked on the next day. He asked if a customer chose to

do that if they would be in violation of the provision prohibiting outdoor storage. Wischnack said Wiersum raised a good point and said there was a grey area in requiring cars being repaired to be stored indoors. The intention of the provision was to prevent outdoor storage of parts and items being that are being sold. She said the occasional parked car issue was not the focus.

Schneider agreed that parts should not be stored outside but an occasional car parked outside should be dealt with reasonably.

Wiersum moved, Greves seconded a motion to:

- 1) Adopt Ordinance No. 2011-07 adopting a master development plan and final site and building plans
- 2) Adopt Resolution No. 2011-042 approving a conditional use permit

All voted "yes." Motion carried.

D. Strategic profile

Gunyou gave the staff report.

Wiersum said the work that was done developing the profile was good and provided clarity. He said there was a much truer focus on customer service.

Schneider noted the profile was a living document. He invited public comment, no one spoke, and he noted that public comments were welcome at any time.

Wiersum moved, Greves seconded a motion to approve strategic profile.
All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None

16. ADJOURNMENT

Greves moved, Wiersum seconded a motion to adjourn the meeting at 7:37 p.m.
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk