

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JUNE 6, 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, Dick Allendorf, and Terry Schneider were present.

4. APPROVAL OF AGENDA

Greves moved, Wagner seconded a motion to accept the agenda with addenda to items 10B and 12B. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES:

A. May 2, 2011 regular meeting

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

B. May 16, 2011 regular meeting

Wiersum moved, Greves seconded a motion to approve the minutes of the May 16, 2011 regular meeting. Greves, Wiersum, Hiller, Wagner, Ellingson and Schneider voted "yes." Allendorf abstained. Motion carried.

6. SPECIAL MATTERS: None

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

Arthur Lai, 6187 Sunny Road, requested a noise barrier from Highway 62 for his property. He said he has made this request to the engineering department for several years and has been told that Highway 62 is a county road and therefore the barrier would have to be built by Hennepin County. City staff has helped him

find the appropriate staff to speak to at the county and provided him history about the current noise barrier along the corridor.

Schneider indicated it was a complicated issue and that it was not an easy process to get a sound barrier installed. He said his backyard was on the same road as Lai's property. There were a number of technical issues that were discussed when the barrier was built including the distance, sound ratings, contours as well as some political issues. Some people did not want the barrier because of concerns it might impact the view. He said there was a lot of give and take during the original approval process and the city likely did not have the authority to put in a sound wall on a county road. He indicated he did not know if there was the ability to go back to the county after all these years to look at if there was an error in the original process determining where the barrier would be. He said he has heard because of the age of the barrier that some of the fencing might be rebuilt in the relatively near future. He suggested Lai contact the county to see if there was the opportunity to get a barrier for his property when major sections are rebuilt.

City Engineer Lee Gustafson agreed with Schneider's comments about the original process. He said staff spoke with the county a number of years ago about adding to the barrier and received the same answer that MNDOT gives when a question is asked about installing a noise barrier along I494. The county has indicated the project is complete and the noise analysis was adhered to for the corridor. He indicated it was likely he would receive the same answer from the county if he were to ask them about the possibility of addressing Lai's request. He added the city does not have the financial resources to construct additional noise walls along I494 or other corridors. He said staff provided Lai all the information related to the environmental assessment and had a meeting scheduled with him to make sure he understood all the information. The resident had the right to petition the city council for the improvement.

Schneider indicated to Lai that he indeed had the right to petition the council but historically he didn't recall the council ever approving such a petition. He said the better option might be to talk to the county's engineering staff to see if and when major sections of the barrier might be rebuilt and appeal to them that by today's standards a barrier was needed for his property.

9. BIDS AND PURCHASES:

A. Bids for manhole rehabilitation phase III

Gunyou gave the staff report.

Greves moved, Allendorf seconded a motion to award the manhole rehabilitation contract to Kim Construction in the amount of \$119,390.00. All voted "yes." Motion carried.

B. Bids for pipe lining phase I

Gunyou gave the staff report.

Wagner moved, Wiersum seconded a motion to award the contract for prioritized pipe lining phase I to Insituform Technologies, Inc. All voted "yes." Motion carried.

C. Bids for Vine Hill Road Mill and Overlay Project No. 11405

Gunyou gave the staff report.

Wiersum noted the bid was good compared to the engineer's estimate.

Wagner asked if some of the optional projects like Cedar Lake Road discussed earlier in the year might now be worked on given the favorable bid. Gustafson said the city is moving forward quickly on Cedar Lake Road. The signals on that road are currently being analyzed.

Schneider noted that other cities have told him that their competitive bidding is not going as well as Minnetonka's.

Wiersum moved, Hiller seconded a motion to award the contract for the Vine Hill Road Mill and Overlay Project No. 11405 to Midwest Asphalt Corporation in the amount of \$180,250.55. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Ordinance regarding animal waste**

Allendorf moved, Greves seconded a motion to adopt Ordinance No. 2011-08 regarding animal waste. All voted "yes." Motion carried.

B. Ordinance regarding campaign signs

Allendorf moved, Greves seconded a motion to adopt Ordinance No. 2011-09 regarding campaign signs with the addendum. All voted "yes." Motion carried.

C. Twelve-month extension for the DALMATIAN RIDGE preliminary plat at 2700 Oakland Road

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

D. Resolution approving a conditional use permit for a brewery at 6020 Culligan Way

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2011-045 approving the request. All voted "yes." Motion carried.

E. Labor agreement between the city of Minnetonka and Law Enforcement Labor Services (public safety dispatchers)

Allendorf moved, Greves seconded a motion to approve the 2011 – 2013 labor agreement between the city of Minnetonka and LELS – public safety dispatchers. All voted "yes." Motion carried.

F. Twelve-month extension for GAGNERS 2ND ADDITION preliminary plat at 18724 Ridgewood Road

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

11. Items requiring Five Votes: None

12. INTRODUCTION OF ORDINANCES:

A. Ordinance regarding noise permit

City Attorney Desyl Peterson gave the staff report.

Greves said the staff report indicated there might be other entities with situations similar to the school district's that might be coming forward. She asked if staff had heard from any of these entities. Peterson cited Ridgedale as an example. The mall is open early for walkers and stays open until late at night for customers. She was not aware of anyone contacting the staff but noted the city responds on a complaint basis so there might be instances where someone is doing the parking lot sweeping and the residents are not complaining to the city.

Wiersum noted the city frequently gets critiqued by residents who feel sufficient notification is not provided on various issues. He asked if a provision might be included specifying a specific geographic area for notification. He also asked for a large area like Ridgedale if the permit holder did the notification or if the city did the notification on behalf of the permit holder. If it was the city doing the notification, he suggested that the cost be charged to the permit holder. Peterson said staff discussed using the 400 foot notification area typically used in a zoning ordinance but

determined that area size might not be large enough given the circumstances, the geography, and the topography of a site. The provision was left less specific in order to give the community development director some discretion to expand the area if needed. She said the notice was to be done by the applicant once the city provides the names and addresses of the residents.

Hiller said he was concerned about a potential permit holder asking for repeated requests on a regular basis. He did not have a problem if somebody needed the permit for a single event.

Wagner suggested staff consider setting a level of expectation in the policy concerning the frequency during a 30 day period. He said, for example, he would be concerned if the school district used a permit to do cleaning during a full week period related to construction.

Schneider noted that activities like street sweeping could only be heard from 100 feet away and the ordinance should not limit this activity to a point where the entity is allowing degradation to the city's overall wetlands because of a claim they could not do the cleaning given the circumstances. There needed to be a balance limiting the frequency while still allowing for the sweeping. He said the bigger concern was that a school district or business that wants to repave or resurface its parking lot typically does not do so during the middle of the business day. Repaving a parking lot truly was a onetime event and he said allowing staff some discretion would help address any complaints that might occur.

Wiersum said he expected a request for a permit to be less frequent than a monthly basis. He agreed that Schneider's example of a parking lot resurfacing to be a special circumstance. He suggested the ordinance might include guidelines on frequency.

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

B. Ordinance amending the regulation of pawnbrokers, precious metal dealers, and secondhand dealers

Peterson gave the staff report.

Allendorf asked how many items had to be brought before a seller is required to be photographed. Peterson said the photograph provision pertains to the dealer. Once the dealer takes in more than 25 items, they are subject to the provision. Allendorf noted that if he was the one bringing in the item his photograph is the one that would be taken. The dealer was required to maintain the photos for a period of time. He questioned if this

might be overkill for the problem that the proposed ordinance was trying to address. Peterson said Best Buy wants to participate in this process and does not believe the requirement would be too onerous. Allendorf said it would make him feel like a criminal if he brought an item in and then had to have his photograph taken, saved and potentially shared with the police. He questioned if Best Buy understood all the details of the proposed ordinance.

Police Chief Mark Raquet said it was standard for those dealers that already are under the current requirements to take the photographs and maintain the photographs for a period of time. He noted the photograph requirements served as a deterrent factor. People are less inclined to fence stolen items if they know they will have to have their photograph taken. He said having a photograph of the person also helps prosecuting those that bring in items that are later identified as being stolen. Allendorf said he didn't want it to sound like he was against something that would help stop the fencing of stolen goods. He said his point was to look at the details of the ordinance to make sure it made sense for both the residents selling and the businesses buying back the items and also for the police investigating a crime. Raquet said trying to play catch up after the fact made things very difficult. He noted an incident last year where a \$10,000 bicycle was stolen and showed up in a pawnshop. The police was able to identify the person through the driver's license and photograph.

Wagner noted that the Best Buy trade in program typically means the store doesn't resell the purchased used item in the store but rather sells the used items to another party for resale. He asked how the proposed process would work for items that would no longer be in the store. Raquet said Best Buy is required by state law to hold onto the items it buys for 30 days. Wagner said when the ordinance came back to the council he would like a discussion about what level of problems would be solved. He said he did not know how many of the electronic items were coming in that needed to be investigated. Raquet noted Best Buy takes in 30-40 items a week. There are plans to expand the service further. On average the police department recovers a stolen item a month through the process. He said this was not significant overall but was significant to the one person each month that gets an item returned.

Wiersum said the reason the proposed ordinance was before the council was because businesses like Best Buy were now conducting a business in a way that was more similar to pawn shops. He said Best Buy was in favor of the ordinance because it did not want to become a fencing operation but rather it wanted to become a company that takes products in trade. With the power of an ordinance behind it, the company would have an excuse to photograph sellers because of the need to comply with the ordinance. If the ordinance was not in place the company could become

known as a consumer unfriendly store because it would have to act like a pawnshop without wanting to be like a pawnshop. He agreed that the provisions might seem a little onerous but said that was because he had never been to a pawn shop. Raquet noted there was another large company in town who might establish a similar buy back program. He said when the ordinance relating to pawn shops was first enacted nobody could predict the current situation where people are buying and selling items outside of the pawnshops. It made sense to bring the processes up to date with the current economy.

Peterson noted the retention requirement for photographs was three months. Written records must be retained for a longer period of time.

Hiller said he too was concerned about expanding the requirement for a photograph too broadly. He said he would like information about how often a person showing just a photo ID was insufficient for the police tracking down stolen property. Raquet said it was unlikely that information could be compiled from the current system. Typically what happens currently is that if something is recovered from a pawnshop and there is a photograph on file, the police detective can take the photo and show it to the victim. Hiller noted the police had access to the photo ID information that could be shown to the victim as well.

Wagner said it would be helpful to know what other communities are doing. Raquet said there were 64-65 communities that currently have a similar process in place including Eden Prairie, St. Louis Park, Richfield, and Bloomington. Bloomington recently passed a requirement that all secondhand good sellers obtain photographs.

Ellingson said he was under the impression that currently big box stores have surveillance cameras that photograph customers for shoplifting cases. Raquet indicated the ordinance provision allowed either a photograph or surveillance video. Ellingson said his point was that people currently are being photographed every time they enter one of the big box stores.

Schneider noted that the item from a person selling an obsolete camera or electronic device is typically junked because of the lack of marketability of the used item. He said he would be reluctant to support an ordinance that made it too burdensome for these people because it would depress that market to some degree. He thought the idea of having a photograph taken for this type of transaction was overreaching. He did support the idea of getting a copy of the photo ID and connecting it to the transaction. This would be sufficient 95 percent of the time without the ordinance being overreaching. He said the city should be encouraging people to trade in old items.

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

13. PUBLIC HEARINGS:

A. Precious Metal Dealer License for Facets Fine Jewelry, LLC dba J. B. Hudson, 12637 Wayzata Boulevard

Gunyou gave the staff report.

Nick Pechman from Rosemount said he was in attendance representing J.B Hudson and was available to answer questions.

Schneider closed the public hearing at 7:24 p.m.

Allendorf moved, Wagner seconded a motion to grant the license. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Resolution outlining the public purpose and benefit of a joint city of Minnetonka/Minnehaha Creek Watershed District facility and approving schematic design cooperative agreement

Assistant City Manager Geralyn Barone gave the staff report.

Greves said the resolution accurately reflected the public purpose that was discussed at previous meetings. She said there was a lot of great benefit to looking further in to the proposed facility. The facility would encourage learning, provide some hands on interactive contact with the creek and surrounding areas, and would be a gathering spot and a way for residents to get more recreationally involved in the area. She indicated the cooperative agreement effectively described how the process would proceed but suggested when the initial RFPs come back to the joint development and design team she would like to see the detailed architectural background of the firm selected for providing a more detailed RFP. There had been a lot of discussion about the building potentially having a LEED certification, or a model for green design.

Allendorf said process wise if the council approved the resolution it was committing to sharing a \$40,000 expense with the district. He noted he was unable to attend the joint meeting but what he expected to come out of the process was a benefits statement that would be clear enough to go into the Minnetonka Memo as a headline. The statement would explain

that the city was moving forward because of a specified benefit to residents. He said he was having difficulty finding that type of statement in the report. The listed items seemed to be achievable with current buildings in the city rather than a new one.

Schneider agreed that the thematic conclusion part of the consultant's report was meaningless. He said the discussion at the joint meeting was substantive but wasn't captured in the report. He suggested a precursor to drafting the initial RFP proposal would be capturing what was seen as the public purpose and the major elements of the project. This would ensure that the firms looking at participating clearly understood what was trying to be accomplished.

Wagner agreed with Schneider. He said there was great work done in getting people aligned with the public purpose options. There was clarification on the priorities but a clear simple statement would be helpful. He said just building a building would be a disservice to residents.

Hiller said the report also did not show the potential of the area. He agreed with Allendorf's concerns. The benefits had been discussed but the question of how to achieve those benefits had not been answered. One question was how to identify entities that might be partnered with to proceed. Building a two story office building on nine acres of open land required demonstrating significant value of what the specific opportunities were. He said one of the things missing from the joint meeting was somebody with "boots on the ground" experience with running a nature center or learning center. This information would be helpful in identifying the things that were valuable to make the benefits occur. He said the \$20,000 city cost was appropriate because of the great potential of the project.

Wiersum noted the consultant report was inaccurate in indicating he attended the joint meeting. He agreed with the point Allendorf made. He was looking for what would make the building distinctive and how it would make the community better. An office building by the creek would not suffice. The programming and vision for the building had to be identified before money was spent.

Greves said she agreed with Wagner that the public purpose was captured in the proposed resolution but she agreed the report lacked a simple statement explaining the benefits. She said the information was in the various parts of the report but needed to be reworded and reframed so that residents could better understand the benefit. The programmatic aspect was a separate issue that would need to continue to be flushed out. She suggested having staff or an outside facilitator look at identifying the partners who would help in running the programs.

Wagner said one of the feedback items given to the steering committee was the key stakeholders identified in the report had to be engaged before the design phase. Barone said that was a point of debate at the steering committee meeting. There was discussion that there wasn't enough information to bring to potential partners. The schematic design phase was needed to develop more fleshed out information for potential partners to look at and respond to. Wagner said key partners had been identified in the document and he would like to see those partners engaged before money was spent on design because they would have ideas that might impact the design. Hiller said one of the things discussed was the need for more information to bring to the partners and he saw the schematic design process as a way to do that. Wagner said he was concerned about spending the money before having the input of stakeholders. Gunyou clarified the architect would be hired to do more than just design the building and would be involved in the whole process, including incorporating the stakeholders' input.

Schneider said there had been discussions with the chair of the board to flesh out some of the issues. He said the process was evolving. There were contributions the watershed district was planning on making other than the programming that could be applied by individual homes and businesses. He said defining what that commitment was had to be firmed up so that if the facility was built those types of things would be in place. The two primary partners were the city with the land and the watershed district using its bonding and tax authority to fund the building. He said other entities might become partners but only in developing the right thing to do on the site. He said the idea was to assemble a talented enough team that could assist in working through the process of determining how to get the right feedback from various groups and at what point in the process the feedback should be documented that would influence the building design.

Allendorf said he had a concern with the schematic design preceding the input process. The benefits of the facility should not be obtainable or obtainable to the same degree with an existing facility. He cited the benefit of "greater access to natural environment, water resources, and woodlands as well as a community cultural history" could happen at the civic center site. Similarly "broader community engagement and understanding of environmental and historical issues" could occur without building the new facility. He said the facility could be used for something like teaching people how to build a rain garden or issues like restoring a wetland. The benefits to residents could be shown if those types of things were identified and it was determined a new building was needed to obtain those benefits. A good benefit statement specific to the property was needed without having to get into the building design. Schneider noted the

building design was a small amount of what was being contracted for. The only reason building design input was being sought was to ensure the building fit into and was respectful of the site. There needed to be enough design information to determine the potential cost and how the building would integrate with the programming elements that were expected to occur on the site.

Wiersum said it was clear money had to be spent to get at what was being discussed. His understanding was that architectural drawings that were not final building drawings but were reasonably significant were needed. He asked if it would make sense to create a phased process approving the item tonight but before the second half of the design phase moves forward, the item would come back to the council for a second approval. This would ensure the upfront work was complete and satisfactory before the design phase proceeded. Gunyou said staff viewed the item as only the first phase of the overall design and development process, and did not include the detailed design of the building. After this first phase was complete there would be enough known about design concepts and costs to make a decision on whether the city and watershed district wanted to proceed further.

Schneider said the process would take months and there would come a point when it was determined there was enough information together to convene another joint meeting with the watershed district. Having an expert help out would ensure the process gets to that point. Gunyou added that to date the city and district had been dealing with general concepts and values. Hiring an expert would identify specifically what was being proposed in order for the council and watershed district to make a decision if it was worth pursuing. Schneider said at the end of this phase it was hoped there would be enough specificity to go to the public to get input.

Ellingson said he was supportive of moving ahead but suggested other councilmembers visit a building he recently visited at the North Mississippi Park. He said the park building met a lot of the objectives listed in the report but the building is strictly a park building. He said the issue the council was struggling with was trying to take a 20,000 square foot office building and come up with programming the city wanted to do and it might be helpful to have a discussion with the staff running the North Mississippi Park building. He noted that at the joint meeting with the watershed district it was mentioned that half of the people in the city want the area to remain as open space but what he has learned was that parks were a form of development. In order to bring people into the park something was needed like a building or trails. In order to get people to use the park you cannot just leave it as open space.

Wiersum said the problem being identified was not unique. There are many beautiful natural places throughout the country in need of facilities in order to draw people. He challenged the consultants to provide examples where other governmental bodies have grappled with the issue and come up with great solutions. This would help build the vision of what this project could be.

Greves moved, Hiller seconded a motion to adopt Resolution No. 2011-046 the resolution outlining the public purpose and benefit of a joint city of Minnetonka/Minnehaha Creek Watershed District facility and approving schematic design cooperative agreement. All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointments and reappointments to the senior citizen advisory board and the police advisory committee

Schneider moved, Allendorf seconded a motion to approve the following appointments/reappointments:

- Donna Bloom, to the senior citizen advisory board, to serve another two-year term, effective June 6, 2011 and expiring on May 31, 2013.
- David Carroll, to the senior citizen advisory board, to serve another two-year term, effective June 6, 2011 and expiring on May 31, 2013.
- Ann Dreier, to the senior citizen advisory board, to serve another two-year term, effective June 6, 2011 and expiring on May 31, 2013.
- Wanda Griep, to the senior citizen advisory board, to serve another two-year term, effective June 6, 2011 and expiring on May 31, 2013.
- Lois King, to the senior citizen advisory board, to serve another two-year term, effective June 6, 2011 and expiring on May 31, 2013.
- William Lurth, to the senior citizen advisory board, to serve another two-year term, effective June 6, 2011 and expiring on May 31, 2013.
- Stanley Rakieta, to the senior citizen advisory board, to serve a two-year term, effective June 6, 2011 and expiring on May 31, 2013.
- Bonnie Sussman, to the senior citizen advisory board, to serve a two-year term, effective June 6, 2011 and expiring on May 31, 2013.
- Wendy Steinmetz, to the police advisory committee, to serve another two-year term, expiring on October 1, 2012.

All voted "yes." Motion carried.

16. ADJOURNMENT

Wiersum moved, Greves seconded a motion to adjourn the meeting at 8:07p.m.
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk