

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JUNE 20, 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 Brad Wiersum, James Hiller, Tony Wagner, Bob Ellingson, Dick Allendorf, Amber Greves, and Terry Schneider were present.

4. APPROVAL OF AGENDA

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

5. APPROVAL OF MINUTES: June 6, 2011 regular meeting

Wagner moved, Allendorf seconded a motion to approve the minutes of the June 6, 2011 regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. CenterPoint Energy Grant Presentation for Minnetonka Fire Department

Cherie Monson, a new market sales consultant with CenterPoint Energy, presented the check to Fire Chief Joe Wallin. Wallin thanked Monson. He said the grant money would be used to purchase electric fans to blow gas and smoke out of buildings.

B. Recognition of Burwell House school program guides

Schneider presented certificates to JoAnn Ambrose, Gail Andrs, Dave Carroll, Chuck Donley, Sally Enstrom, Lorena Hooyman, Betty Johnson, and Dorothy Welch.

He indicated certificates would be mailed to Juli Englander, Joan George, Judy Hill, Terry Mulhern, Darlene Nelson, Donna Ranallo, and Sandee Smith who were unable to attend the meeting.

C. Review of the 2010 Financial Report with the city's audit firm of Kern, DeWenter, Viere, LTD.

Steve Wischmann from Kern, Dewenter, Viere, LTD., presented the report.

Allendorf said he thought there were a maximum number of years that an auditing firm could work with a city. He indicated there was a confusing sentence in the staff report that read that this was the eighth consecutive year Kern, DeWenter, Viere, LTD. had conducted the city's audit and was in the fourth year of a five-year service contract. He asked for clarification. Finance Director Merrill King said that last year the city extended its second, three-year contract with Kern, DeWenter, Viere, LTD. Because GFOA recommends a minimum of five years with the same auditing firm, the council had amended the city's policy previously from a maximum of three years to a maximum of five years before going out to bid.

Wagner noted the city does not have the actuarial numbers for the firefighters' pension, and the city was required to contribute some funds to shore up the pension's unfunded liability. He asked if the city was relieved of the obligation going forward or if further action from a budgeting standpoint was still needed. King said the previous action relieves the city to a certain extent. The unfunded liability is amortized over ten years per state statute. The city is only required to have an actuarial estimation done every other year but has asked for the estimation to be done every year because changes to investment values are occurring so drastically. When a new actuarial report is completed, the unfunded liability will be re-amortized. She said the city's liability will likely decrease but would not be eliminated completely because an unfunded liability will still exist. She noted it is a problem to have so much fluctuation in terms of funding that varies at the whim of the market. Therefore, a task force has been established to look at how best to fund and structure our paid-on-call firefighters' pension to ensure it is sustainable for the long-term.

Wiersum noted the audit was unqualified this year as well as last year. Getting an unqualified audit in the private sector is a big deal. He asked how often a city receives an unqualified audit. Wischmann said a majority of cities receive an unqualified opinion but very few have zero reported items, material weaknesses, or significant deficiencies. He estimated less than five percent of the cities receive both an unqualified audit with zero reported items.

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

Tim Litfin, the community education director from the Minnetonka School District, gave a report on the upcoming Tour de Tonka.

9. BIDS AND PURCHASES:**A. Bids for Woodland Road retaining wall project**

Gunyou gave the staff report.

Greves asked for an update on the realignment of the intersection. City Project Engineer Nate Stanley said there was no new information from MNDOT. Greves said she drives through the intersection multiple times each day and it seems like a dangerous intersection. Stanley said there were not a large number of accidents in the intersection but residents have reported a number of close calls.

Hiller asked what the project would look like in a year. Stanley said looking out toward a profile of the hill, the hill would be reduced significantly with an even grade from the top of the new wall to the top of the slope. A number of trees had been saved at the top of the hill. The wall would be a single wall which will be pushed back from the road 15-20 feet. This will open up the corner and provide an area for snow storage and safety for pedestrians. Trees will be restored at the top of the hill and down from the top but will be kept off the back of the wall.

Wiersum moved, Greves seconded a motion to award the contract for the Woodland Road Retaining Wall Project No. 09407 to Sunram Construction, Inc. in the amount of \$182,298.25, and amend the CIP. All voted "yes." Motion carried.

B. Bids for 2011 Minnetonka Street Rehabilitation Contractor Overlay project

Gunyou gave the staff report.

Greves moved, Wiersum seconded a motion to award the contract for the 2011 Minnetonka Street Rehabilitation Contractor Overlay Project No.

011409 to Midwes Asphalt Corporation in the amount of \$696,870.75. All voted "yes." Motion carried.

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

A. Resolution amending the 2009 CDBG Action Plan

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2011-047 amending the 2009 CDBG action plan. All voted "yes." Motion carried.

B. Resolution approving an application to the Metropolitan Council for LCDA funds

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2011-048 approving an application to the Metropolitan Council for LCDA funds. All voted "yes." Motion carried.

C. Resolution approving an expansion permit and floodplain alteration permit for the construction of a new home at 20 Westwood Circle

Wagner noted he discussed some concerns earlier in the day with staff. Visiting the site he found the ground of the property was very saturated. He said staff assured him that whatever is done will have to pass the city's building permit process.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2011-049 approving the request. All voted "yes." Motion carried.

D. Ordinance regarding zoning variances

Hiller asked for the item to be pulled from the consent agenda. He indicated he had questions about the solar energy provision. He said he was a strong supporter of solar energy. Most of the variance provisions relate to practical difficulties with the general requirement being the property was to be used in a reasonable manner. The solar power provision stated that "inadequate access to direct sunlight for a solar energy system" by itself was a hardship and didn't include the issue of reasonableness. He indicated he was working with a person with a wetland at the back of his property. The person could claim he did not have optimal access to sunlight elsewhere on his property and request a variance to put the solar energy system in the wetland area. Discussing this earlier in the day with the city attorney, she suggested defining "inadequate access" to mean failure to achieve reasonable access to direct sunlight rather than the maximum or optimal access to sunlight.

City Attorney Desyl Peterson said there was nothing wrong with attempting to define what the state statute says. The city did that with the provision in state statute that says the city could grant a permit for the expansion of a nonconforming use. The council adopted an ordinance that defined specifically what expansion meant. This was beneficial for the city when the lawsuit went to the Minnesota Supreme Court. The court cited the ordinance indicating the expansion involved in the lawsuit was indeed an expansion under the definition in the city ordinance. She said the same thing could be done to address the issue Hiller had raised. If the council chose to include a definition of inadequate access she suggested adding a sentence to the state statute language about what was included for practical difficulties that would read, "inadequate access means the failure to achieve reasonable access direct sunlight not optimal or maximum access." She said if the council chose not to add language the standard could be applied when the variance was requested. Including the language would give direction to the planning commission and could give the city greater authority because it was in an ordinance.

Schneider said including the language was reasonable and would add credibility to the ordinance. He asked from a process standpoint if adding the language was a substantive change that would require another public hearing. Peterson said she did not think it was a significant change that would require another public hearing. Schneider agreed.

Wiersum said he thought it was a good addition to the ordinance. He said when getting into the area of solar energy there was a lot of opinions that could put the city in the situation of feeling compelled to approve something that was not in the best interest of the city but was not prohibited by the ordinance.

Hiller moved, Greves seconded a motion to adopt Ordinance No. 2011-10 including the additional language recommended by the city attorney regarding zoning variances. All voted "yes." Motion carried.

E. Ordinance amending the telecommunication ordinance

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2011-11 amending the telecommunication ordinance. All voted "yes." Motion carried.

11. **Items requiring Five Votes: None**
12. **INTRODUCTION OF ORDINANCES:**

A. Ordinance to rezone certain portions of the property at 12918, 12910, and an unaddressed property on Rutledge Circle

City Planner Loren Gordon gave the staff report.

Greves said she found the information in the staff report about flood plain alterations and the staff approach to drafting a future amendment to be interesting. She asked staff to provide more information. Gordon said there was history to the project with past attempts to subdivide the property. Staff saw that although the ordinance addresses lots that are held in common when they are adjacent to each other, that was not a good reason to approve the ability to build. What is being addressed by the ordinance was to provide some further definition as to how to look at the standards by which the city would evaluate the filling of a property. Was the fill there for another buildable lot or for other reasons? Greves said the ordinance therefore was honing in on the scenario of creating buildable lots. Gordon confirmed that was correct. Greves said that seemed reasonable.

Allendorf asked Gordon to elaborate on the history of the project. Gordon said there were a couple study sessions in 2003-2004. During the discussion about whether or not to allow flood plain for creation of new lots or cleaning up edges of a property. There were differing sides and no clear guidance was established going forward. He said other issues discussed were the things that would impact the environment if flood plain fill was being created. The ordinance already prohibited the removal of significant trees. Staff has consistently taken the position of not allowing a flood plain to be filled for a new lot.

Wagner said it gave him pause that there was still an attempt to build a house on the three properties. He said the planning commission would have to identify significant differences from what staff was saying in order for the council to approve the proposal. He did not see why the proposal would be approved given there was no benefit to the city outside of creating another buildable lot.

Wiersum said he would like a better understanding of where in the process the project was at. The project was outside the realm of past staff recommendations. Gordon said the subdivision ordinance was pretty specific about having buildable area for a lot. A buildable area cannot be created with the subdivision process. What is happening with this project is the flood plain application is coming in before the subdivision comes in. He indicated this was a loophole to the real intent of what is happening with the property. Allendorf said that was why he asked his previous question. Past councils have determined they did not want another lot to

be created on the property. He questioned if the current process was appropriate.

Schneider agreed past proposals generally did not have council support. He questioned if there was buildable area if it would require a variance and what discretion the council would have. He said he has always had a concern about establishing an ongoing policy for someone who is trying to do something that might be inappropriate or writing an ordinance to preclude an isolated case. He noted what to do with the project was debated at length in 2003-2004. A compromise was reached to adopt the current ordinance language. He said he was not opposed to revisiting the issue but wanted to do so in a more thoughtful manner such as having a study session to discuss the pros and cons. For this particular application he saw a defect in that there was not a clearly defined mitigation area. The approach was if a mitigation area was needed it would be dug. He said this was inadequate to meet the test of what needed to be done from a mitigation standpoint. He recommended the planning commission look at the issue. He said rather than the ordinance just prohibiting the fill of a flood plain to increase buildable area another approach would be to review a concept similar to wetland mitigation. For wetland mitigation the city allows changes if improvements are made as well. A reasonable approach would be to see if there was a way to improve the overall condition of the property while still allowing the property owner to use the property for what it was purchased for.

Peterson noted the application before the council had to be evaluated based on the current ordinance.

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

13. PUBLIC HEARINGS: None

14. OTHER BUSINESS:

A. Concept plan for redevelopment of the YMCA site at 12301 Ridgedale Drive

Gordon gave an overview of the plan.

Tom LaSalle, 2001 Killebrew Drive in Bloomington, said he represented the YMCA. In 2009 a market study was done to look at what could be done with the location. The study indicated a new updated facility would lead to an increase in membership and would allow the organization to do a better job in providing the services people are looking for today. The

existing facility was constructed over 30 years ago. A new 50,000 to 55,000 square foot facility would allow the YMCA to better provide services for the current market than the current 70,000 square foot building. He said one option would be to remodel the existing facility and fundraising has been done for this. However other uses for the site have been looked at to see if there was a better use for the site. One of the problems with the current site is that the facility is setback from the road and is not highly visible making it a marketing detriment. The building has hydrostatic pressure that is pushing ground water through the slab. The heat pump system is inefficient. There are temperature problems on very hot and very cold days as well as humidity problems in the pool area.

LaSalle said the YMCA has worked with city staff to look at the economics to see how financing would work. The YMCA would like to attract partners to come in to build on the site generating enough revenue for the YMCA to build a new facility on the site. Senior housing has been looked at because it would provide a nice mix with the YMCA.

Wagner said that when the EDAC looked at the plan there was a large gap in the funding requiring a combination of TIF and potentially other funding sources. He asked if any progress had been made on closing the gap. LaSalle indicated the funding being looked at was TIF and a Livable Communities grant to assist in making up the funding gap. Land sales could also be used to make up the gap. Community Development Director Julie Wischnack confirmed what was being looked at was TIF, TIF pooling, LCDA grant and a LAAND grant. Wagner said the dilemma the council will have to address is that this was the one area and one piece of property where there was the expectation for higher density of use in the comprehensive plan. He said the level of subsidy presented at the EDAC meeting was not a level he has ever seen the city do during his years on the council. This would require higher scrutiny in terms of public benefit. The proposal was intriguing and meets what was in the comprehensive plan but the question was how much the city would participate to make it happen. He suggested it would be wise to remind the neighbors that the city has expectations for higher density for the area.

Allendorf asked if there was enough detail in the concept plan to determine if setbacks would be met by the three separate buildings without a lot of variances needed. Wischnack said the plan was preliminary and perhaps a planned unit development would be the route taken or perhaps a master planning process used. The development would happen in phases. She said she expected some leeway on setbacks perhaps on parking. A parking analysis and traffic analysis will be developed to see how the pieces would work together. Allendorf said the larger question was if the buildings fit on the site or was there an

attempt to shoehorn too much on to the site. He asked if it was the neighbors to the south that raised concerns about traffic and how the traffic on the site would affect those neighbors. Gordon indicated the neighbors to the south discussed a view shed issue and also traffic as being a concern. He said there are no streets that interact with the neighborhood to the south so it was likely more a concern about the activity that would be added. Allendorf said he could see the hotel, the apartment residents and Hennepin County objecting to additional traffic but he did not see how it would affect the neighbors to the south. Wischnack indicated staff has asked for some photo interpretations to be done to show the neighborhood how the proposal might interact or look from the southern perspective.

LaSalle said the approach was not to look at maximizing what could be put on the site. What was looked at was a mix that worked well in terms of parking and traffic patterns. The YMCA's heaviest traffic would be from 6-8 a.m. and in the evening. The senior housing traffic would be intermittent throughout the day. The medical office building traffic would be during 8 a.m. to 5 p.m. The four story height of the senior housing was a function of staying with wood frame, concrete deck parking and what would make good senior housing. The 150 unit size was something two senior housing developers interested in the site were comfortable with. The study was driven by how to make the proposal affordable.

Wiersum said he too was concerned about the financing but the concept of tying a new up-to-date YMCA with senior housing had a lot of merit. He did have concerns about getting the right amount of development on the site and not having too much. He said he was disappointed to hear the existing YMCA was out of date because he preferred renovation to tearing a building down and building a new one.

LaSalle said there was a good chance the existing building would be remodeled. When the YMCA is completed there would be an additional 20,000 square feet to accomplish the same things in. The cost of redoing pools almost requires tearing down the building.

Schneider asked the status of the relationship between the Redstone Grill and the YMCA in terms of parking. LaSalle said there is a lease arrangement. Redstone has approached the YMCA to renegotiate the lease. The plan envisions keeping parking in the plan for Redstone. Schneider said when he first heard about getting the amount of senior housing on the site he questioned it because the site was challenging. When he saw the drawings he agreed it made some sense because it was almost like starting over with a more level site with additional land. He said he thought it would be appropriate to have a council discussion about the

different guide plan goals for the Ridgedale area. The majority of the goals deal with higher density housing to provide opportunities for new families to move into the city. There is some emphasis on affordable housing. He suggested the discussion should be if a site like this one should let the market determine what is built without affordable housing versus pushing the envelope and providing a lot of subsidies for affordable housing.

Wagner said before the developer, the YMCA, and staff spent a lot more time on the proposal the council needed to give them direction. There is a significant gap in financing and before the EDAC meeting the developer had not even contemplated affordability. He said the gap requires a lot of policy discussion. Nothing he has seen about the plan concerns him outside of making sure the numbers work but the financing piece was a pretty big change from where the council has ever been before.

Wischnack summarized the discussion. There was agreement for the need for a study session to go through the financing options and possibly get more finite numbers to discuss. A formal process would start after the study session. Schneider clarified in terms of financing the discussion should be about the public purpose and broader look at using the funds and identifying the real priorities to meet the guide plan goals.

Greves said she was pleased the council had approved the application for the LCDA funds and to hear about the land grant as well. She asked the timeframe on when the city would hear back. Wischnack said the application for the land grant was due June 30. The application has been drafted but not submitted. She said the Met Council has already approved the pre-application. Greves asked if it was possible the study session would occur before the city heard back about the grant. Wischnack confirmed that was correct.

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

Peterson gave the staff report.

Wagner asked if it was an option to approve both options in the staff report giving the business the option of implementing its preference. He noted at the previous meeting it was stated many businesses prefer option one requiring either a photograph or a video recording but some of the council expressed discomfort with going that far. He said he was concerned with requiring something not required in neighboring cities and creating the possibility the Minnetonka Best Buy would not be as popular as the Eden Prairie Best Buy. Police Chief Mark Raquet said it was his preference not to let the businesses choose a preferred option because in most cases the

business would choose the path of least resistance. He noted in the case of Best Buy there would not be a significant change required and that the company had contacted the city about adopting the ordinance.

Greves said after the last council discussion on the item she did not feel that the requirement of taking a photograph was overreaching but decided to think about it further and take the other councilmembers' comments into consideration. She said she still did not feel the requirement was overreaching because people are getting used to tighter security in many different areas. She liked the idea of letting businesses select the option of either a photo or video. It was important to have the evidence when needed for prosecution purposes and this would best serve residents who have an item stolen.

Allendorf asked for more information about how option one would work. Peterson said it would be up to the business to decide which method they wanted to use. They could use either a video tape or they could take the person's photo. Either a video or a photo would provide enough evidence for a prosecution. She said she would guess many businesses would choose the video option. Allendorf agreed and said he was OK with that option.

Wiersum said he was fine with option one. He gets concerned with government overreaching. When the council has a discussion about potential government overreach like the shoreland buffer, the council chamber is full of people telling the council why they think the idea is bad. For this discussion there was no one in the audience to express concern. If the item was a big deal, the council would be hearing from residents. The companies liked the idea. He said it was clear that secondhand sale of goods provides an opportunity to get rid of stolen goods. The city therefore had to put some defenses in place.

Hiller said his concern was placing a demand on a secondhand business to take a video or take a picture. His preference would be to allow the option of making a copy of the person's photo ID. The larger businesses would likely go with the video option but there were other businesses that may not want to be put in the spot of having to take a picture.

Wagner asked for clarification if the video being discussed was a security video or individual video taken by the business. Peterson said the requirement was to have one camera focused on the sales area that could capture the frontal face view of the seller. Wagner said he misunderstood this when he stated his initial concern and now was OK with option one. The running video was unobtrusive to those selling. Peterson noted some neighboring cities have chosen not to regulate secondhand dealers.

Schneider asked if it was possible to sufficiently link the running video with a specific purchase. Raquet said it was possible to link the two by date and time. He noted a lot of his detectives use stills from the videos for evidentiary purposes.

Wiersum said it was likely when Best Buy takes in items the process was not handled at the regular checkout area. He added current video technology is very unobtrusive. Video cameras are part of most computers that are purchased today.

Schneider agreed providing the option for either a video or a photograph took away lot of the concern that was expressed at the previous meeting. He said he agreed with Hiller that a company like Best Buy has the resources to use the current video technology but a medium sized or ma and pop sized company might be forced to implement the more sophisticated system in order to compete. He said he supported allowing all three options because they resulted in the same thing.

Raquet said the cost of the current technology was relatively inexpensive compared to what it was 10-15 years ago and likely would not create a burden for anybody.

Allendorf moved, Hiller seconded a motion to adopt Ordinance No. 2011-12 allowing secondhand dealers to select either option one or option two as outlined in the staff report.

Wiersum said he did not support allowing the secondhand dealers to choose the photocopy of an ID option. He was compelled by information in the staff report that talked about a savvy defense counsel asking a jury how often they had witnessed a clerk never checking an ID even though it was required. Allowing the business to choose the option of making a photocopy of an ID would make the prosecution of criminals more difficult. It made sense to require the business to use low cost technology that was not intrusive. He said in this day and age it was very common to have your picture taken for security purposes.

Schneider noted the requirement would be for the business to make a colored photocopy of the ID and not just to check the ID. He agreed the challenge would be that someone could argue the copy of the ID was not of the defendant.

Greves said she agreed with Wiersum. She noted that someone could use a fake ID and even with the photocopy requirement, the ID would not necessarily be of the person trying to sell the goods.

Raquet noted that people do use other people's IDs and allowing that option would create a larger margin for error. Also people's appearance does change over time.

Wagner said he re-read the definition of "secondhand dealer" and questioned if it might apply to a person who buys and resells items on Craig's List. Peterson noted the city only regulates people who are in Minnetonka and the ordinance would only apply to consumer electronics and jewelry and only if there were at least 25 transactions a year.

Ellingson said both the prosecuting attorney and the defense attorney want the best evidence possible. He noted when he goes to the bank he is videotaped and has had a teller make a mistake that gets corrected by looking at the videotape. Videotapes are used in many businesses for security purposes.

Allendorf and Hiller voted "yes." Ellingson, Greves, Wagner, Wiersum, and Schneider voted "no." Motion failed.

Wiersum moved, Wagner seconded a motion to adopt Ordinance No. 2011-12 (with option one as outlined in the staff report) amending the regulation of pawnbrokers, precious metal dealers, and secondhand dealers. Allendorf, Ellingson, Greves, Wagner, Wiersum, and Schneider voted "yes." Hiller voted "no." Motion carried.

C. Ordinance regarding noise permit

Peterson gave the staff report.

Allendorf moved, Greves seconded a motion to adopt Ordinance No. 2011-13 regarding noise permit. All voted "yes." Motion carried.

D. Strategic profile work plan

Assistant City Manager Geralyn Barone gave the staff report.

Allendorf noted that the leadership team was listed as being in charge of several items and that he has learned that when a committee is in charge, no one is in charge. He said he would be more comfortable if a person was listed as being in charge of the leadership team to make sure individual items were completed. Barone suggested adding the city manager's name to the items.

Greves noted the first strategy and measurement under the "protecting and enhancing the natural environment" item was to publish guidelines and approach two developers about implementation. She asked for more information about what that meant. Barone said staff would follow up to clarify what that meant.

Wiersum suggested that in the annual survey a subset of different questions be added on relevant issues each year to the group of questions that are asked every year. This would keep the survey fresh. Barone said that was a good idea. She noted each year the survey is looked at and questions are added and dropped. For example this year questions were asked about transit in connection with the transit study. Wiersum said he would like to see a section with more focus on current issues. Gunyou noted that typically questions are asked prospectively to provide information that shows if follow up is needed. Adding questions to follow up on things the city has done might be useful. Wiersum said he strongly supported the survey and thought it was a valuable tool.

Hiller thought the work plan looked good. He asked if the council would get a summary back on what happened with the strategies and measurements. Barone said the intent was to report back to the council on an annual basis on the progress made on the action steps. At that point in time the council would be asked to provide feedback about if staff was going in the right direction. Gunyou added the report back would be integrated with the budget cycle.

Wagner suggested for the natural environment section staff consider if there were changes to ordinances that would help in taking an active role in promoting energy conservation.

Gunyou indicated interdepartmental teams were formed to develop the work plan. He said that process proved to be very valuable and would be continued on an annual basis.

E. Resolution ordering the abatement of nuisance conditions associated with an illegal home occupation at 11806 Cedar Lake Road

Wischnack gave the staff report.

Allendorf noted an arrest warrant had been issued and asked why the owner had not been arrested. Peterson said arresting someone for a zoning violation had caused public backlash in the past. Staff felt rather than go through the criminal process a better approach would be to try to resolve the problem.

Allendorf asked if staff felt the nuisances could be abated noting the age and condition of the fence. He asked if the fence would be destroyed during the removal of the equipment. Wischnack said there is no intention of removing the fence. Taking out the equipment and anything business related to bring the property in compliance with the zoning code is the main intention. She indicated if a section of the fence needs to be removed to remove the equipment, it would be replaced. Gunyou said as always, the objective is to get compliance. Typically situations do not reach this point. The hope still is to get the conversation going to negotiate an appropriate and reasonable time for compliance.

Wiersum noted the staff report indicated there was a brief interaction with the property owner. He asked what occurred during that exchange. He also asked if abatement is necessary, what would occur after the abatement happened. Wischnack said two staff members were on site that interacted with the property owner about appearing to be in violation with the original CUP. She said there was little reaction from the property owner. No conversations occurred after that even after multiple letters had been sent. Peterson said nuisance abatement was used in the past where significant numbers of farm machinery and vehicles were removed from a property. The machinery and vehicles were stored and notice was given to the property owner explaining he could reclaim the property but not bring it back to the site. A similar procedure would be used here.

Wagner asked what would happen if the equipment was removed and the owner brought it back to the property after a period of time. Would the nuisance abatement process have to begin all over or could steps be skipped? Peterson said the language in the proposed resolution says the "authorization would continue throughout the growing season." That was because the resolution incorporated language used in the abatement of tall grass. She suggested modifying the language to say that the authorization would continue until a specific time the council thought was reasonable such as through the remainder of the calendar year. Wagner said he would appreciate the change given the calls he has received on the item.

Wagner said given the business likely has operated since the CUP was approved and since the city never enforced the conditions if there was a possibility the use had become a legal and conforming use of the property. Peterson said no.

Schneider said there were two major issues. The first was the storage of equipment that was used for business on the site. The equipment was easy to see and could be easily removed. The other issue was that the

business could continue without being as visible. He asked how the problem would be solved if the business still operated. Peterson acknowledged using the nuisance abatement for an operating business was a difficult thing to do. The focus was on the actual storage and external evidence. If the property owner wanted to arrange jobs using his telephone, that would be allowed by the zoning ordinance. As long as there was no external evidence or employees coming to the site, then the property owner would be in compliance with the home occupation ordinance.

Wiersum noted there was an unusual set of circumstances when the CUP was approved. There was concern that with such a large building there was the potential for a business to operate there. He said he was not in favor of changing the typical way ordinances are enforced, relying on a complaint to be received before action is taken. He noted that many people do not like turning in their neighbor. In this circumstance he asked if something could have been done that would have prevented the property owner from impinging on the rights of his neighbors for so long. Wischnack cited the council's action on an issue with the Minnetonka School District where a process was established where the property is monitored twice a year. She also cited the approval of the Goodwill location where quarterly monitoring is occurring.

Wagner moved, Allendorf seconded a motion to adopt Resolution No. 2011-050 ordering the abatement of the nuisance conditions.

Hiller asked what time frame would be incorporated. Wagner suggested the end of the calendar year.

Peterson said if the problem persists the next step would be for staff to come back and ask the council to revoke the CUP and tear down the building.

Schneider agreed the problem had been an ongoing problem for a long time and the property owner has chosen to totally ignore the process so no meaningful progress had been possible. He said if the property owner now responded and was willing to work with staff to phase out the storage and business he would encourage staff to take that route. Wagner disagreed. He said with the absolute disregard for previous attempts over the past year to work to find a solution he would have a difficult time agreeing Schneider's suggested approach was an acceptable course of action. He said the neighbors who complained to him have had the utmost patience with the city in trying to deal with the issue and allowing the property owner to phase out the business would be unacceptable. Schneider said he appreciated that perspective and shared it to some

degree. He said there have been other contentious issues over the years where if the city did not have the latitude or flexibility to work with a cooperating property owner, it made the city look bad. The goal was to solve the problem and a semi-cooperative individual was better than having to drag a person into court. Allendorf said he agreed with Wagner that the neighborhood had put up with the problem long enough and if the property owner was allowed to phase out the business it would make it look like the city was not listening to the neighbors. Wiersum agreed the neighborhood had lived with a problem a long time and the property owner had not demonstrated any regard for the neighbors or the city. Getting the problem resolved in a reasonable time frame was what was needed.

All voted "yes." Motion carried.

15. **APPOINTMENTS and REAPPOINTMENTS:** None

16. **ADJOURNMENT**

Wagner moved, Wiersum seconded a motion to adjourn the meeting at 9:05 p.m.
All voted "yes." Motion carried.

Respectfully submitted,


David E. Maeda
City Clerk