

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JULY 11, 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 James Hiller, Tony Wagner, Bob Ellingson, Dick Allendorf, Amber Greves, and Terry Schneider were present. Brad Wiersum was excused.

4. APPROVAL OF AGENDA

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

5. APPROVAL OF MINUTES: June 20, 2011 regular meeting

Greves moved, Allendorf seconded a motion to approve the minutes of the June 20, 2011 regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. 2011 Wellness by Design Platinum Award

Schneider acknowledged receipt of the award.

Human Resources Manager Sue Poulos noted 99 percent of the city's employees participate in the wellness program. She thanked the city's management for supporting the program.

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

Darren McGann, a resident in ward 4, asked the council to review the policy related to fire alarm fees. On June 21, the fire department responded to a false

alarm at the McGann's residence due to a probable malfunction in the alarm system. The McGann's were billed \$250 for the response. He noted the ordinance related to the fee was adopted by the council when the city had an on call fire department rather than the current duty crew system. He contacted neighboring communities and discovered that Minnetonka was the only city that does not allow for one free false alarm response.

Wagner said if the council later in the meeting approved the changes to the ordinances related to the fire alarm fees (agenda item 12A) he would be inclined to look favorably upon McGann's request.

9. BIDS AND PURCHASES: None

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

A. Agreement with Naegele Family Limited Partnership

Allendorf moved, Greves seconded a motion to approve the agreement with the Naegele Family Partnership. All voted "yes." Motion carried.

B. Resolution approving the final plat for COYOTE SONG at 2714 Oakland Road

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2011-051 which grants approval to the COYOTE SONG final plat date-stamped May 24, 2011. Approval is subject to the following conditions:

1) Submit a revised final plat drawing for staff review and approval.

The revised plat must:

a. Show 10-foot wide drainage and utility easements adjacent to the Coyote Court right-of-way.

b. Show at least 20-foot wide utility easement over an existing power line in the southeast corner of Lot 5. The easement must be a minimum of 10-foot wide on each side of the existing line.

2) Prior to release of the final plat:

a. Comply with all "release of final plat" conditions as outlined in the preliminary plat approval of July 14, 2008.

b. Pay a park dedication fee of \$20,000.

3) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

C. Resolution concerning Ranchview Court roadway and utility improvements Project No. 4990

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2011-052 receiving the feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the Ranchview Court Roadway & Utility Improvement Project No. 4990. All voted "yes." Motion carried.

11. Items requiring Five Votes: None

12. INTRODUCTION OF ORDINANCES:

A. Fire department ordinances:

- 1) Burning permits
- 2) Fire alarm fees

City Attorney Desyl Peterson gave the staff report.

Hiller asked why the city differed from neighboring cities on fees. Fire Chief Joe Wallin indicated about a decade ago the city took a different approach with fire alarms. At that time the city chose to take an educational approach. The idea was to look at the actual cost of responding to false alarm calls and help residents learn how avoid them. A process was developed to register alarms in the city. Alarms need to be registered on an annual basis with the police department. This provides the opportunity for the city to remind people what they can do to prevent false alarms from occurring. He said the fire code was clear on commercial and industrial applications and there has been great success in that area. Statute requires that the alarms be installed and maintained properly and gives the city the ability to inspect the alarms. The same requirement does not exist for residential properties so the department works with residents on how to maintain their systems and determining what systems are good systems. He said most of the other communities took the approach of establishing fines that were punitive rather than focusing on education and the true cost of responding to false alarms.

Peterson noted that previously the city had police and fire alarms covered together in a false alarm ordinance. That ordinance still exists for police related false alarms but not fire related false alarms. The ordinance allows for two free false alarms before the fee is imposed. She said the state statute allows the city to charge for the actual cost of responding to a fire department related false alarm.

Gunyou said that when the existing ordinance was adopted great care was taken that the fee reflected the true cost of a response and was not a fine. He said private companies are selling systems to homeowners that automatically page the fire department out without any cost to the company that sold the alarm. When the council first looked at adopting the ordinance, part of the discussion was that when people call 911 the cost was covered but the installation of these type fire alarms was an extra service provided and thus a service charge was warranted.

Allendorf noted the fee was determined in 2003 when the city used an all on call fire department. He asked if the fee would be different now given the change to the duty crew system. Wallin said the actual current cost was looked at. Sending out the duty crew is cheaper than the old system of paging everyone out to respond to the alarm but what was not incorporated in the original fee was the cost of administering the program. He said the existing fee is reflective of the actual cost.

Allendorf indicated the proposed ordinance would give the fire chief a lot of discretion in waving or reducing the fee. He asked what criteria might be applied to a false alarm that would lead to the reduction or waiving of the fee. Wallin said that first he would look at what the homeowner had done with the alarm system. Was it registered with the city? Were reasonable steps taken to ensure there was not a false alarm? What was the true cause of the alarm? He said a call from someone who was cooking and burned food was different than a daughter stopping over to see her elderly father and accidentally tripping the alarm. Schneider asked how Wallin would deal with those two situations. Wallin said it would depend on the other circumstances such as if the alarm was registered because when the alarm is registered, information is provided about ways to reduce the chance of a false alarm. Was the alarm installed properly? He said a properly installed alarm likely would not go off in a burning food situation. The department regularly goes out to look at a residential alarm if that is requested.

Wagner said he understood the rationale for the fees but he has always had concerns by the lack of discretion. He said that the way the proposed ordinance was written provided too much discretion to the fire chief. He would prefer that clear criteria about what rationale would be used to waive or reduce the fee be included in the ordinance.

Schneider said in the example of a new homeowner who hasn't had the time to learn from the educational component, the \$250 fee seemed onerous. Waiving the fee just because it is a first time false alarm also might be inappropriate. He said a policy such as Plymouth's where the first time violator is charged \$100 and education is provided made sense.

Subsequent false alarms would then be charged the higher fee. He agreed there should be more specificity about what criteria would be used to waive the fee.

Hiller said he wasn't sure he wanted the specific criteria in the ordinance but suggested it be added as a fire department policy. Adding that amount of specificity to the ordinance would make it more difficult to change if needed in the future. Schneider agreed that was a good idea.

Schneider suggested McGann talk to Wallin about his situation.

Hiller moved, Greves seconded a motion to introduce the two ordinances. All voted "yes." Motion carried.

B. Ordinance options for the Southwest Light Rail Transit station areas

City Planner Loren Gordon gave the staff report.

Wagner noted that for the Shady Oak station, the city shares the border with Hopkins and the plan has been to coordinate the area together. He asked if staff has had discussions with Hopkins staff. He also asked staff to comment on the fifty percent provision in the Southwest Rail overlay ordinance related to significant property improvements.

Community Development Julie Wischnack said the Hopkins city council is in the process of adopting an ordinance regarding mixed use not specific to this area because the buildings in the Shady Oak area are not in need of redevelopment. She said the Hopkins city staff is aware what Minnetonka is considering. Meetings will continue to keep Hopkins aware of what Minnetonka is planning for the area.

Gordon said the ordinance would allow for fifty percent of the property value for property improvement or revisions to a building that would not require a variance, a conditional use permit, or site plan review.

Greves noted the staff report indicated the council could look at adopting a combination of the ordinances. She asked for more specifics on how ordinances two and three would work together. Gordon said that ordinance two was the Southwest Transit overlay district and ordinance three was the interim use. The overlay district would be similar to the Opus overlay district with multiple provisions about what was to happen specifically relating to development. The interim ordinance could add additional criteria to specific uses within the district for something that the council could approve for a certain amount of time possibly without land use approvals. Peterson said an example was a small building that does

not have a lot of value but someone proposes putting in a storage facility that would allow them to amortize and get their money back in five years. The investment on the property would be greater than 50 percent. In that type of situation, the council could authorize the storage facility for five years.

Allendorf asked the last time the city applied a moratorium and what the circumstances were in that situation. Peterson said the last moratorium the city did was on dynamic signs. Another moratorium, related to an area was on I394, when staff was in the process of studying the new zoning district. In that situation, development was allowed to proceed if the development went under a PUD ordinance. Generally, the city has allowed some type of escape valve when a moratorium is put into place. She said in this instance staff was not proposing something similar since a PUD might allow for premature development that may not fit. The council would have the option to add that type of provision. Allendorf noted the overlay district would do the same thing as a moratorium with some type of out.

Ellingson indicated other cities have imposed moratoriums in response to a particular development that the city did not want. He asked if there was a particular development that the one year moratorium was meant to prevent. Wischnack said staff had been contacted by multiple developers for multiple properties in the area so there was not one specific development being targeted. The proposal was meant to address interim development before the light rail was in place. Staff was trying to look at the long view, in case light rail takes a number of years to get up and running. Peterson added the moratorium was not staff's first preference. There was a preference for the overlay district but staff felt they should give the council the moratorium option to look at. The moratorium is not to prevent a project the city does not want but rather to maintain the status quo for a year to allow studies to be done to figure out what should be allowed in the area.

Schneider indicated he asked that the moratorium option be included not because he necessarily supported it, but he thought it was a part of the overall tools the council should be looking at. He said any moratorium had to have an escape clause and could not be absolute. He questioned if the plan could be developed within a year for the Shady Oak area with so many things up in the air. Wischnack said she serves on a light rail technical implementation committee that is responsible for preparing for and getting ready for the project to happen. The committee was going to meet in the next week to discuss a transitional station area planning process. Given the scope of the project, the project would likely take two to three years to get through the planning process. Pieces will be complete within the next year but the whole picture likely will not be

completed. Schneider added the current plan was OK but no one was going to endorse it as what should be done.

Wagner said he would like the planning commission to discuss whether or not there should be a master developer for the area given the number of parcels involved. Wischnack said originally, when the area was discussed with the Hopkins city council, there was discussion about phasing or a breakdown of certain segments. She said at this point it was unlikely a master developer would come in given the economy and redevelopment time frame. There likely would be interest in blocking off certain segments for improvement. Wagner said his concern was having a couple of pieces of property that fell under the definition for limited use that would block use of the properties. He said going through the basic plan would be beneficial and he would be interested in having staff look at extending the area identified for the overlay district to the south. Overall he would not be in favor of the moratorium.

Allendorf said it was his understanding that the moratorium would not have an escape and the overlay district would be ongoing and would not have the issue of expiring before there was a more definitive plan available. Gordon said the idea was the station area overlay would be on the books until the new plan was prepared with new zoning controls ready for adoption. Allendorf said that was more reason to have the overlay district and the interim ordinance looked at together by the planning commission.

Schneider said the city had good luck in the past with master developers when the city was contributing with the use of eminent domain to help assemble challenging parcels. Because of the current statute, it is now difficult to require someone to assemble all the property because they have no tools to do so. Wagner suggested that there be a minimum size to a development. His concern was that there were 17 properties in the area and there needed to be a master plan for the area.

Schneider agreed that a combination of the overlay district and the interim ordinance made the most sense. He suggested the city determine what characteristics should be incorporated in the area. One example was connectivity and the ability to walk to the station. The location of the station is known. Whatever is done needs to incorporate a thought process in looking at how residents and the general public could access and connect to the station. Tying a request to what the city envisions might happen would be a valuable tool. Peterson said the way the interim ordinance was drafted was intended to deal with some of the existing uses in the code as conditional use permits that were more seasonal or temporary. These uses should probably be interim use permits rather than

conditional use permits. In the future if an outside storage facility came in the city would amend the ordinance to list that use as a permitted interim use. Requests would be reviewed on a case by case basis.

Lowell Zitzloff, owner of the property on Shady Oak Road and Excelsior Boulevard, said the building was empty but the costs still go on. He agreed that it will be years before there is a definite plan for the area and a one year moratorium would not accomplish anything. He said the existing building was dated and needed a lot of work. He said if the city wanted a CVS in the building there was an opportunity to make that happen. He would like the building to fit into the general plan but the plan was not yet developed.

Wagner moved, Greves seconded a motion to introduce the overlay district and the interim use ordinances and refer them to the planning commission. All voted "yes." Motion carried.

13. PUBLIC HEARINGS:

A. Issuance of revenue bonds for the renovation and improvement project at 3395 Plymouth Road (St. David's)

Wischnack gave the staff report.

Schneider opened the public hearing at 7:29 p.m. No one spoke.

Schneider closed the public hearing at 7:29 p.m.

Greves moved, Hiller seconded a motion to adopt Resolution No. 2011-053 approving the issuance of revenue bonds. Hiller, Wagner, Allendorf, Greves, Wiersum, and Schneider voted "yes." Ellingson was absent. Motion carried.

B. Resolution vacating public drainage and utility easements at 3236 and 3254 Eldorado Trail West

Gordon gave the staff report.

Schneider opened the public hearing at 7:32 p.m. No one spoke.

Schneider closed the public hearing at 7:32 p.m.

Wagner noted the property had been a challenge for the land owner and the proposal was a good solution.

Wagner moved, Allendorf seconded a motion to adopt Resolution No. 2011-054 which vacates existing drainage and utility easement along the common property line of 3236 and 3254 Eldorado Trail West. Approval is subject to completing the following conditions:

- 1) This vacation of the existing easement is effective only upon:
 - a. The proper recording of an administrative lot line adjustment which relocates the property line to which this easement is adjacent; and
 - b. The proper deeding of a new easement acceptable to the city.

Hiller, Wagner, Allendorf, Greves, Wiersum, and Schneider voted "yes." Ellingson was absent. Motion carried.

C. On-sale liquor licenses for Applebee's Neighborhood Grill and Bar, 12653 Wayzata Boulevard

Wischnack gave the staff report.

Schneider opened the public hearing at 7:34 p.m. No one spoke.

Schneider closed the public hearing at 7:34 p.m.

Allendorf moved, Hiller seconded a motion to continue the hearing to August 22, 2011. Hiller, Wagner, Allendorf, Greves, Wiersum, and Schneider voted "yes." Ellingson was absent. Motion carried.

14. OTHER BUSINESS:

A. CVS concept plan for remodeling and reuse of the existing building at 11525 Excelsior Boulevard

Gordon gave the staff report.

Zitzloff said CVS developed the plan that was before the council. The idea was to downsize the existing building by 33 percent. The project was approved a few years back by the council but the project did not go forward. He said getting tenants for the building was difficult and something he had never faced before. Banks and lenders need to be paid as do the taxes. He said the nearby businesses he has talked to have been very positive about the possibility of a drug store on the corner. Normally CVS builds a new building but in this case Zitzloff said he was trying to interest them in the existing building. A condition could be that once the larger plan for the area was complete the building could be torn down and rebuilt to fit in with the rest of the area.

Schneider asked for information about the arrangement for ingress and egress from the curb cut to the east. Zitzloff said when he bought the property there was an easement for the corner property. That easement remains. He noted he owns the neighboring building. He has upgraded some of the other buildings he owns. He said he could not afford to keep this building empty for six or seven years as the plan for the area was developed.

Allendorf said CVS indicated at the planning commission meeting that the term they were looking at was 25 years. Tearing down the building after seven years didn't make sense given that context. He asked if the overlay district was put in place before the CVS application came in would the building still be allowed to be built. Gordon said looking at the plan what could be done with the building without specific approval would be taking down the westerly face of the building, downsizing the size of the existing building, and leaving the parking lot in its current configuration. The drive through would not be allowed. He said he did not know what the value of those improvements would be. Allendorf said he had not seen a CVS built without a drive through. He noted the planning commission struggled with the concept review. It occurred to him that what was being discussed was not a concept review but rather was a decision about what to build now or if it was better to wait until a plan for the area was devised. He said looking at the property and the 2007 plan that looked at the entire area, it seemed to him that the piece of property was isolated from the rest of the planning area. Allowing the CVS to proceed right now may not interfere with the plan for the area given the property's location and that the use was not a bad use. He said the existing building was not doing the city any good and needed improvement.

Wagner asked the distance between the corner property and the projected location for the light rail station. Gordon said it was a little over a quarter mile. Wagner said he strongly supported the overlay district. He agreed with Allendorf's comments about the property being at the edge of the development and potentially not doing anything for five to six years. He also agreed what was being discussed wasn't a concept review but rather whether or not to put a moratorium on the property. He said he wasn't concerned enough to not support the plan but he was still struggling with how it would fit with the broader development. Even with a light rail station there still would be much traffic with this being a major intersection. One question was how far is significantly higher density from the overlay district

Greves said she agreed with Allendorf and Wagner's comments. Although CVS was a great concept her preference would be to look at something

that would not require a conditional use permit, a variance or an expansion permit. With the ordinances that were discussed her preference would be to have a mechanism that would put in more of a safeguard in terms of the timing. When light rail becomes closer to reality, the city could be looking at the parcel as part of the master development/vision for the area. She still was thinking the area would be higher density/mixed use. While she was not saying no to the proposal her preference would be to look at something that would require fewer modifications.

Ellingson noted the morning edition of the Star Tribune had an article about how several suburban communities had big ideas for redevelopment but because of the recession that redevelopment did not happen. He said the city had to pay attention to the economic realities. He questioned how the city could tell the property owner that the property could not be developed because something might occur in six or seven years. The corner was located in a retail area and the proposal was an appropriate use.

Greves was excused at 8:00 p.m.

Schneider said it was likely the future high density multi-family activity would take place to the east and would not stretch all the way to Shady Oak Road. There would be more retail uses in the area and to have a retail use that would be a high traffic generator would not be a bad thing to have in trying to attract ma and pa type retail to the area. Having an anchor on the site would be appropriate. He agreed that CVS's general policy was that it needed a drive through. He said the major shortcoming of the property was that it was too much and too small of a site with difficult circulation. That was somewhat alleviated because the auto parts store was under the same ownership and there was cross parking. He understood that to renovate the building of this age to meet CVS's criteria would be difficult to do given the economics. He said it was likely CVS preferred to tear down the building and build a prototype site that would have the proper parking setbacks. He said if this could be done with some plan that included the auto parts property so that it looked like the properties were planned together made some sense.

Wischnack said the way the overlay ordinance was written did not include the drive through. Schneider said he was suggesting that the drive through should be included but only if there was an integrated site plan that solved some of the constraints of the current site including parking, paving and sidewalks.

Wagner asked if CVS preferred to tear down the building if it would consider a building that would be ready for a second story for increased

density. Schneider indicated that was doubtful. Wagner noted that the site was just a quarter mile from the light rail station in a busy intersection. Schneider said he was more favorably inclined to allowing the drive through if some of the constraints and connectivity issues were solved. Allendorf said he agreed with Schneider.

Zitzloff said tearing the building down and building a new one could take place. The existing building was 22,350 square feet and the new building would be around 13,000 square feet. He said he thought CVS would look favorably upon the suggestions made by Schneider and Allendorf.

15. APPOINTMENTS and REAPPOINTMENTS: None

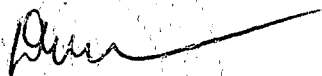
16. CLOSED SESSION AND ADJOURNMENT

Wagner moved, Allendorf seconded, a motion to (a) hold a closed session to consult with the city attorney regarding potential litigation against the Minnesota Department of Transportation regarding the 169 and Bren Road project and (b) adjourn the meeting after completing the closed session. All voted "yes." Motion carried.

Present at the closed session were Mayor Schneider, Council Members Allendorf, Ellingson, Hiller, and Wagner, City Manager Gunyou, Assistant City Manager Barone, City Engineer Gustafson, Assistant City Engineer Manchester, Community Development Director Wischnack, City Clerk Maeda, and City Attorney Peterson. Peterson discussed with the council options regarding potential litigation against the Minnesota Department of Transportation regarding the 169 and Bren Road project. The council gave her directions on how to proceed.

The meeting adjourned at 8:45.

Respectfully submitted,



David E. Maeda
City Clerk

