

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, SEPTEMBER 12, 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 Dick Allendorf, Amber Greves, Brad Wiersum, James Hiller, Tony Wagner, Bob Ellingson, and Terry Schneider were present.

4. APPROVAL OF AGENDA

Wiersum moved, Greves seconded a motion to accept the agenda with addenda to items 13A and 14A. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES: August 22, 2011 regular meeting

Allendorf moved, Wiersum seconded a motion to approve the minutes of the August 22, 2011 regular meeting. Allendorf, Wiersum, Hiller, Ellingson, and Schneider voted "yes." Greves and Wagner abstained. Motion carried.

6. SPECIAL MATTERS:

A. Retirement recognition of Valerie Northway

Schneider read the recognition.

Northway thanked the city for 16 enjoyable years and praised the emphasis on customer service.

B. Update from Hennepin County Commissioner Jan Callison

Callison gave an update on what was happening at the county. The county receives about 10 percent of its revenue from the state and 10 percent from the federal government. She said the county expected a net reduction of about \$5 million in aid and \$7.2 million in health and human services funding. Labor union negotiations will begin in the fall. There is a continued increase demand for county services. She said the board will consider a recommendation from the county administrator for a 1.4 percent property tax increase over the three county taxing jurisdictions.

She noted the county recently received approval for the preliminary engineering to begin on the Southwest Light Rail project. The Federal Transportation Administration has given permission to eleven projects nationwide to proceed to this next step. At this point the opening date for the line appears to be 2018 if the process continues. The other rail project in the county's budget is the interchange project by the Twins stadium where the various light rail lines would intersect.

She said the county is doing its first citizen's academy that is modeled after Minnetonka's citizen's academy.

Wiersum asked for more information about the funding sources for the light rail project. Callison said the state would contribute about 10 percent, the County Transit Improvement Board would contribute around 30 percent.

Schneider praised the county's outreach program to provide services throughout the county. He said the integration has been a phenomenal success. Callison said she the model the county used for many years was to use a central site that required people to come to downtown Minneapolis for services. The county has now embarked on a system of satellites and hubs in order to disperse the services throughout the county. This model is more effective in reaching people and partnering with nonprofits.

Greves noted that later in the meeting the council would discuss the residential recycling contract. She said she has read the county hoped to increase the amount of waste that is organically recycled. She asked if there were any plans to incentivize that activity. Callison noted the state is setting some goals. The county is above the near term composting goal but would need to stretch to meet the longer term goal. One issue is that people are reading fewer newspapers so there will be less recycling material but the goal does not reflect that. She said the board has had a number of conversations related to organics and has considered more mandatory measures. Ultimately the board moved away from that idea and the county is trying to work with cities in standardizing recycling programs as well as providing technical assistance. The county is also hoping to get the Minnesota Pollution Control Agency to provide the facilities where people can take their organics to be treated. Greves thanked the county for the grant that was provided to help the city compost in its municipal facilities.

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

No one appeared.

9. BIDS AND PURCHASES: None**10. CONSENT AGENDA (Items Requiring a Majority Vote):****A. Resolution authorizing the Minnetonka Police Department to enter into a Safe & Sober and Operation Night Cap grant agreement**

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2011-072 All voted "yes." Motion carried.

B. Resolution approving a conditional use permit for an accessory apartment at 3016 Groveland School Road

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2011-073 approving the request. All voted "yes." Motion carried.

C. Resolution approving a conditional use permit for an expansion to Bacio restaurant at Bonaventure Shopping Center, 1571 Plymouth Road

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2011-074 which approves an amendment to the conditional use permit for an 866 square foot expansion to the existing restaurant at 1571 Plymouth Road. All voted "yes." Motion carried.

D. Ordinance rezoning floodplain and wetland associated with construction of the Greenbrier Road sidewalk

Allendorf moved, Greves seconded a motion to adopt Ordinance No. 2011-21 approving the request. All voted "yes." Motion carried.

E. Time extension for filing of PREMIER PLACE, a reconfiguration of the existing properties at 16229 Temple Drive South and 16103 and 16115 Temple Lane

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

F. Resolutions approving agreements for environmental cleanup funds for 10600 Wayzata Boulevard

Allendorf moved, Greves seconded a motion to:

- 1) Adopt Resolution No. 2011-075 entering into an agreement with Hennepin county
- 2) Adopt Resolution No. 2011-076 entering into an agreement with the Metropolitan Council
- 3) Adopt Resolution No. 2011-090 entering into an agreement with DEED
- 4) Approve the subrecipient agreements between the city and Torgerson Properties

All voted "yes." Motion carried.

11. Items requiring Five Votes: None

12. INTRODUCTION OF ORDINANCES:

A. Ordinance deleting waste collector bond

Community Development Director Julie Wischnack gave the staff report.

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

13. PUBLIC HEARINGS:

A. Resolutions for special assessment of 2010-2011 projects

Gunyou gave the staff report.

Schneider opened the public hearing at 6:51 p.m.

Richard Deisher, 16817 W 62nd Street in Eden Prairie, said his daughter used to live at 16720 Excelsior Boulevard but has moved to Mexico for her job. The property was sold to an investor who made improvements to the property but when he went to sell the property he could not recoup his investment. The property had been sold on a contract for deed and reverted by to the Deisher's daughter in January 2011. Deisher said he and his wife have been getting their daughter's mail but did not receive the notice that the grass was overgrown.

Carol Deisher, 16817 W 62nd Street in Eden Prairie, said the \$100 charge for mowing the lawn was acceptable but the \$800 penalty for each time the lawn was mowed was absurd.

Wiersum asked for information about the \$4,843 amount that was owed. Wischnack said the lawn was mowed in 2010 in July, August and

September and May and June of 2011. There also were prior violations. She noted that in 2009 the council adopted a progressive fee schedule with abatement particularly in situations where there were recurring issues.

Schneider asked when the property reverted back to the contract for deed. Carol Deisher indicated that occurred in January 2011. Schneider noted that up until May 2011 the prior violations occurred before the Deisher's daughter owned and was in possession of the property. Wischnack said that was theoretically correct but said the notice goes to the property owner of record. Whatever is filed at Hennepin County as the official taxpayer is where the notice is sent. She said certified mail was returned and the city staff also sent notice through regular mail as well.

Richard Deisher said the first notice they received was a few weeks ago.

Hiller asked if other actions are taken if the city gets the notice returned back. Wischnack said if staff is informed there was a different address to send mail to, a notice would be sent to that address. The assumption is made that if tax statements are received at an address, it would also mean the notices should be received there as well.

Carol Deisher indicated that the bank was taking care of paying the taxes for the property.

Jennifer Johnson, 13510 Bellevue Drive, said she wanted to make certain her payment was received. Wischnack indicated Johnson's payment was received.

Schneider closed the public hearing at 7:02 p.m.

Wiersum said there were mitigating circumstances on the 16720 Excelsior Boulevard property but a property owner has responsibilities for the property. The realty is there were nuisance conditions that needed to be abated. The council made the decision to impose penalties to help avoid nuisance conditions. He said ignoring the penalties was inappropriate but a compromise seemed reasonable given the unusual set of circumstances.

Schneider agreed the property owner did have some responsibility but in today's environment, a person who wants to sell the home and does it through a contract for deed in essence becomes the financing entity to allow the sale to happen. If a bank was loaning money to a contract purchaser the bank wouldn't necessarily be responsible for the mowing but would be if the contract purchaser defaulted on the mortgage. He said the mowing charges were not an issue but rather the issue was when the

escalation of the penalty should begin. He agreed some compromise on the amount owed was warranted.

Hiller also agreed that a compromise was reasonable. He said one of the reasons the council decided upon the increasing fee was to address situations where there was intentional and willful decision not to clean up a property. In this case the contract for deed holder should have been paying because of his behavior but the daughter had not been willful in attempting to avoid mowing the lawn.

Richard Deisher said he had not been aware of the penalty and his assumption was the property was incurring \$100 for the mowing. He said he understood and appreciated the escalating fees but received no notice informing him about the fees. Schneider said in most cases where the property owner indicates they had not received notices, the council has decided to enforce the fees but in this case because there was a contract for deed, the circumstance was different.

Wiersum said the property owner was responsible for mowing and associated fees. The property returned to the former owner at the start of the year and the grass was mowed twice by the city. He suggested the abatement fees connected to 2011 mowing be charged. He also proposed charging one \$800 abatement fee for all the rest of the mowing. This would meaningfully reduce the amount owed but still reflect responsibility for taking care of the property. He said he wanted to show compassion given the difficult economic times but still provide education as well.

Wiersum moved, Wagner seconded a motion to that the special assessment for 16720 Excelsior Boulevard include two abatement fees accelerating from \$100 to \$200; a third abatement fee for all the rest of the mowing totaling \$800; and the actual labor and materials cost for mowing the tall grass and weeds plus the administrative fee for a total of \$1,943.52. The special assessment would be included with the 2011 Nuisance Abatement Projects, three-year assessment term.

All voted "yes." Motion carried.

Wagner said he fully supported the policy of escalating fees because it has helped keep the number of special assessments down compared to what the city historically has seen. He suggested staff do a little bit more due diligence in situations where the escalating fees accumulate over multiple years. At some point the city might look into doing something other than nuisance abatements in those situations.

Wiersum noted that \$160 to mow a half acre lot might seem like a lot to charge but people needed to understand that when the city takes care of

the nuisance the fee includes not only the mowing, but staff time to go out and look at property and administrative time as well. The city would prefer to mow no lawns on behalf of residents. The fee reflects the real costs. The city doesn't want to have onerous fees but really wants to keep up the community standards.

Schneider said that in the past the city has had properties that were abandoned and eventually the property tax was higher than the value. These probably ended up tax forfeited and went back to the state. He asked if the same thing could happen to the properties Wagner cited. Could special assessments qualify for tax forfeiture? Acting City Attorney Corrine Heine said the special assessments are certified to the taxes. If only the tax amount is paid, the special assessments continue with penalties and interest but that alone would not push the property into tax forfeiture.

Wagner moved, Wiersum seconded a motion to adopt the following resolutions:

- 1) Resolution No. 2011-077 adopting special assessments for the costs related to Hookup Fees.
- 2) Resolution No. 2011-078 adopting special assessments for 2011 Nuisance Abatement Projects, one-year assessment term.
- 3) Resolution No. 2011-079 adopting special assessments for 2011 Nuisance Abatement Projects, three-year assessment term.
- 4) Resolution No. 2011-080 adopting special assessments for 2011 Nuisance Abatement Projects, five-year assessment term.
- 5) Resolution No. 2011-081 adopting special assessments for 2011 Diseased Trees Project, one-year assessment term.
- 6) Resolution No. 2011-082 adopting special assessments for 2011 Diseased Trees Project, three-year assessment term.
- 7) Resolution No. 2011-083 adopting special assessments for 2011 Diseased Trees Project, five-year assessment term.

All voted "yes." Motion carried.

B. Resolution vacating a public drainage and utility easement at 6001 Culligan Way

City Planner Loren Gordon gave the staff report.

Schneider opened the public hearing at 7:23 p.m. No one spoke.

Schneider closed the public hearing at 7:23 p.m.

Greves moved, Wagner seconded a motion to adopt Resolution No. 2011-084 vacating the easement. All voted "yes." Motion carried.

C. Temporary on-sale liquor license for Episcopal Parish of St. David, 13000 St. David Road

Gunyou noted that this item and the next three agenda items were routine requests for temporary liquor licenses.

Schneider opened the public hearing at 7:24 p.m. No one spoke.

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

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

D. Temporary on-sale liquor license for Greater Minneapolis Crisis Nursery, 5801 Opus Parkway

Schneider opened the public hearing at 7:25 p.m. No one spoke.

Schneider closed the public hearing at 7:25 p.m.

Wiersum moved, Greves seconded a motion to grant the temporary liquor license. All voted "yes." Motion carried.

E. Temporary on-sale liquor license for The Rotary Club of Minnetonka Foundation, 14350 County Road 62

Schneider opened the public hearing at 7:25 p.m. No one spoke.

Schneider closed the public hearing at 7:25 p.m.

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

F. Temporary on-sale liquor license for We Can Ride, Inc., 14600 Minnetonka Boulevard

Schneider opened the public hearing at 7:26 p.m.

Brad Thorson from We Can Ride expressed thanks to city staff for all the help. Schneider said it was good to see someone come to the meeting and promote the event.

Schneider closed the public hearing at 7:26 p.m.

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

Wiersum noted coming to the meeting and speaking at the public hearing was a good way to get information out about the event.

14. OTHER BUSINESS:

A. Items concerning Hillside Memory Care at 5431 and 5439 Williston Road:

- Guide Plan Amendment
- Rezoning
- Preliminary Plat
- Master Development Plan
- Final site and building plans

Gordon and Wischnack gave the staff report.

Wagner noted information in the staff report indicated that Met Council, the city attorney and IRS legal representation validated the definition of affordability to include all services and not just rent. He said this was a big change from what was discussed in May.

Schneider said this proposal likely would not be the last to deal with the issue of service related businesses that included an affordable piece. When TIF is used there are guidelines for how affordability is structured. On a market rate unit the city may need a policy for affordability that includes a full service component where the definition of affordability may have to be a certain percentage of the anticipated annual cost for the service. This would give future applicants some guidance on what the council's expectations are. Wischnack said the May staff report included some ideas for affordability in these circumstances. The idea was for an escrow account where the total fee would be written down. She said staff did not have an issue with the affordability for this project and thought it was an admirable issue to include. Schneider said he was not suggesting a change to the criteria defining the voting requirement because that was in state statute. Wagner said the issue Schneider raised would be a good policy to have the EDAC study.

Dan Kelly, 220 South 6th Street, Minneapolis, said he was representing Hillside, LLC. Hillside was asking for an extension in time to submit a revised plan to comply with some of the issues brought forward by the city attorney. He wanted the council to understand that Hillside had been working on the project since May. He said the suggestion for affordable housing originated with city staff and was important to the project. It would also change the voting criteria. Back in May everyone was working under

the opinion that the state statute related to the voting criteria applied to the project. At the May 2 council meeting, the council voted 4-3 to table the issue in order for staff to prepare a resolution to approve the project and to send it to the EDAC.

He said a few hours before the EDAC meeting Hillside was contacted by city staff and told the affordable housing component of the project did not meet the criteria in state statute. That started a long process between himself, the project's architect and the city attorney. Kelly said the city attorney issued an opinion that was later revised twice after consulting with attorneys from the Met Council and other government officials engaged in looking at affordable housing coupled with services. He said the city attorney met twice with the architect and concluded her research last week. Kelly said he asked the city attorney what modifications could be made to allow the project to comply with the statute. Kelly said Hillside was taking the suggestions made by the city attorney and incorporating them into the project.

Kelly noted the council discussed the project's status during its August 1 meeting. He said representatives from Hillside did not attend the meeting and believed the item had been taken off the agenda. Had they been at the meeting he said he would have informed the council that Hillside was working with the city attorney to make sure the project complied with the statute. He asked the council to extend the hearing of the project until sometime in the future in order to allow Hillside to submit additional information that would demonstrate that the project as modified complied with the statute. He suggested that no later than the end of the following week that Hillside would submit documentation to the city attorney. As soon as the city attorney determined that the project complied with the statute, Hillside would attend the next EDAC meeting and the next council meeting.

Wagner said he had closely followed the progress, or lack of progress of the project since May. This included tracking response time and acknowledgement of the opinion drafted by the city attorney. His understanding was Hillside had disregarded staff time and response to requests to engage the EDAC. He said the council had been very clear when granting an extension that it would not approve another extension. He said he was not prepared to waste another minute of staff time on the proposal given the project was now over 90 days since the last extension was approved and no movement had occurred.

Kelly said Hillside was not in a position to go before the EDAC with a project where the affordable housing component was in flux. Hillside did not know until the previous week how to make sure the affordable housing component complied with the statute. He said he and the project's

architect had discussions, exchanged emails, and had meetings with the city attorney on the issue.

Allendorf noted the city attorney's analysis was completed on June 7. Kelly said the city attorney issued an opinion on May 26 and that was revised on the same day and another revision was issued on June 7. When Hillside questioned the city attorney about the opinion, the city attorney began her investigation by working with general counsel of the Met Council as well as others. He said he did not get a copy of the Met Council's general counsel's email to the city attorney until the previous Wednesday. Allendorf said in his mind not a lot had been done since June 7. He hadn't seen any formal communication from the applicant to the EDAC or the council with information about what was being done and the expected timeline of bringing the project back before the EDAC and the council. He asked why the applicant had not provided an update to the EDAC since the EDAC was the group the council asked the applicant to work with. Kelly said city staff sent an email prior to the August 1 council meeting indicating that if the applicant signed an extension the item would be taken off the August 1 council meeting. The extension was signed. He said the applicant had been directly working with the city attorney. He said the city attorney was the most integral person to work with to make sure the project complied with the state statute.

Allendorf asked Wischnack for clarification about the voting requirement and what the council had asked the EDAC to look at regarding the project because he did not see a connection between the two items. Wischnack agreed there was not a connection between the items. The council asked the EDAC to look at the affordable housing component. The EDAC was concerned about the voting requirement so Wischnack asked the city attorney to prepare information on the requirement. The city attorney issued the memo the day the EDAC was scheduled to meet on the Hillside project. Hillside asked for time to look at the memo but since had not told her they wanted to report back to the EDAC. She noted there were 12 attempts to contact the applicant, the attorney and the project architect since May.

Heine noted she had spoken with City Attorney Desyl Peterson regarding the matter. She said Kelly's comments suggested the project hinged in some way on the ability to do affordable housing. Peterson made it very clear to her and in her opinion that the definition of affordability only related to the issue of how many votes were required to approve the comp plan change. Peterson had indicated to Heine that the applicant understood that it could proceed with the application but would need five votes rather than four votes for the comprehensive plan amendment. Heine said Peterson also told her that when Peterson had been asked by the applicant what could be done to change the affordable housing

component to comply with the statute and therefore only need four votes for the amendment, Peterson had been more negative than what Kelly had implied. According to Peterson, she had told the applicant that would be a significant change in the proposal, because the applicant had never proposed a project where medical and other services would be optional rather than mandatory for residents.

Wiersum said the council was clear about the deadline. He said he did not buy into the argument that the applicant was dealing with the city attorney because she represented the city when the primary driver for approval was the EDAC and community development staff. It was made clear in the meeting minutes when the extension was discussed by the council that a further extension would not be approved.

Greves said she agreed with Wiersum's comments. She said she had been somewhat supportive of the project and looking at a comprehensive plan amendment. There were at least two criteria for changing the comprehensive plan that speak directly to housing/affordable housing. One was if the change would help meet the city's housing goals outlined in the comprehensive plan. The other was if there was community need identified in the comprehensive plan for the proposed use or service. When she voted on the item in May to table the item and directing the applicant to the EDAC to look at the affordable housing component, she felt it was very important to flush out the issues related to affordability. She said instead it seemed the applicant's focus was on the statutory requirements of how many votes were needed to change the comprehensive plan.

Kelly said whether or not the affordable housing component complied with the statute was integral not only for voting requirements but for determining if what would occur with the project would qualify as affordable housing. He said one of the most important aspects of the project from the city's perspective was to have the affordable housing component. Without an affordable housing component that complied with the statute and therefore the Met Council, the project would not have affordable housing. He said the city attorney was the only person in the city who could grant the opinion on whether or not the component qualified as affordable housing.

Schneider noted Kelly had emphasized that the city attorney issued the opinion and then later revised it. Schneider said at no time did he see that the revisions changed the direction of the original opinion. The revisions clarified or refined the opinion. The end result was the original opinion had not changed. The affordable housing component did not meet the state statute. He said if the applicant had an alternate scenario for how the project would be structured to meet the statute, that scenario should have

been presented months ago when the opinion was originally issued rather than debating the pros and cons of the opinion. He said if the proposal was to include a mixed use building with half the units as memory care and half the units as apartments with the option to have additional services, then it would be a whole different project. Even if the council granted an extension, it was likely the applicant would have to start over.

Wagner said he was appalled at the process that had been gone through in the last four months. He said the council could not have been any clearer instructing what additional information was being asked for. The council asked for more information about drainage and discussion about affordable housing. He was not prepared to waste any more of the council or staff's time on the project.

Allendorf said the project itself came as close as possible to a residential look and feel. He said he was concerned that if the council did not approve something as good as this flawed project, then the city could get significant creep around the corner with something worse for the neighbors and the community. He did not want to grant an extension because the council had done an adequate job discussing the item.

Schneider said he strongly agreed that the proposed use, a smaller sized memory care unit that had little traffic and impact with a residential style, would set a good transition between the future use of the hardware store's site and the residential properties to the north. He said it would be beneficial to the neighborhood to coalesce about what could be put in the location that would be a good transition. The affordable housing was nice but was not essential. He would rather get a viable use that was attractive and had less impact than a few more affordable memory care units.

Wiersum said he too had been troubled by the issue of creep around the corner. The area was guided as R1. He said it could not be presumed that something commercial would replace the hardware store but it could be something with a more residential feel that would serve as a transition. There was no question about the property being difficult. Even if this proposal was voted down, the property would not disappear and something else would be proposed. The city would have to continue to deal with the property until something was built. He said this proposal was dramatically better than previous proposals in terms of size, scale, and scope. He was not buying the argument that the property wasn't regular residential property because currently there were two old falling down houses on the property. He said there were solutions that would be more appealing to the neighborhood and would avoid a high density designation and would be more consistent with the guide plan. He agreed with Wagner that the process had been convoluted and had not put the project, which

had some merit, in the best light. He said he was not comfortable amending the guide plan for the proposed project.

Hiller said there were two adjacent properties before the Presbyterian Homes in addition to the properties being discussed. Once a commercial project was built the two adjacent properties would be ripe for development because on one side there was a big valley and on the other there was commercial property. He suggested the council had to address what to do with the chunk of property from Williston Road up to the rut because logically what would happen would eventually happen to all four properties.

Wagner moved, Hiller seconded a motion to adopt Resolution No. 2011-085 denying the requested rezoning, the comprehensive guide plan amendment, and the preliminary plat and site and building plans. All voted "yes." Motion carried.

B. Appeal of planning commission decision to deny variance and expansion permit a home addition at 15708 Wood Knoll Lane

Gordon gave the staff report.

Kathy Peterson, 15708 Wood Knoll Lane, noted the two planning commissioners who she knew visited the property did not see a problem with the variance request. She showed pictures of the flooding issues. The street was fixed last fall right before the first big snowstorm. Since then there has not had any flooding in the street. She noted the Petersons had never had flooding in their home or garage. She suggested this should hold more value than a flood plain model established in 1999. Information at the planning commission meeting indicated the flood plain model would be redone within a year.

Mick Stephens, 9617 Robin Oak Road, said he did a lot of building within the city. He said another option would be to replace the flood plain. There is an area toward the front of the lot that could be replaced to recoup the garage area. Peterson noted it was the very back of the garage space that was slightly over the limit.

Schneider said that the line being looked at was also an established rezoning line so it was likely the area did not qualify for a variance. He suggested looking at viable alternatives to achieve the Petersons goal without trying to qualify for a variance. Peterson said one option that was discussed was to change the width of the addition to make it a 12 foot by 26 foot bedroom. This didn't seem comparable to current standards for master bedrooms.

Allendorf noted most of the council had visited the property. He asked when the model would be looked at to see if there would be a change in the flood plain. City Engineer Lee Gustafson said it would be at least a year before there was good data available. Allendorf asked if there was any way to move up the side of the study area to help out the Petersons. Gustafson said unfortunately there was no way to do that.

Wiersum asked if staff had looked at any flood plain mitigation. Gordon indicated most of the focus has been on the variance aspect. An application would be needed to alter the flood plain. A rezoning would also be needed. Wiersum asked what the cost was for that process. Gordon said the necessary permits would be \$400 each. The current survey could be updated and used. The topography considerations for fill and compensation area would likely be minimal. The time involved would be about two and a half months from start to finish.

Stephens said the Petersons hoped to have the project done this year.

Peterson asked if the history of the property never having been flooded had any bearing. Schneider indicated it did not have any bearing because there was a flood plain and the city had an ordinance addressing flood plains.

Greves said she sympathized with what was being requested and the rationale, but in considering the variance there were no unique circumstances or hardships involved that would prevent the applicants from complying with the current flood plain setback.

Allendorf said he agreed with Greves' comments. If he were asked what hardship was involved he would not be able to answer the question. He understood what the chair of the planning commission said about approving the variance because only 300 feet were involved but to approve a variance a hardship was needed that wasn't created by the landowner.

Wiersum said he visited the location in the past because of the street flooding. He was compassionate to the concerns but the problem with flood plains was they do flood. Just because they have not flooded in the past does not mean flooding will not occur. It could be the city's responsibility if the council approved something that should not be approved. He agreed there was not a hardship involved and there were better solutions available. He said it was in the interest of the property owners and the city's taxpayers to protect the flood plains.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2011-086 denying the variance request and approving the expansion permit request. All voted "yes." Motion carried.

C. Approval of Allied Waste Services recycling contract

Public Works Director Brian Wagstrom gave the staff report.

Greves asked if the expansion to one through seven recyclables could potentially lead to a greater market. Wagstrom said there might be a potential increase in tonnage but Minnetonka has traditionally been more sensitive to recycling so there is a higher number of recyclables compared to other cities. He also noted newsprint is going down because of people getting their news online.

Allendorf asked for more information about the one through seven recycling numbers. Wiersum noted that now cottage cheese and yogurt cups could now be recycled. Under the previous contract plastic bottles and cans and aluminum were recyclable. Rich Hirstein, from Allied Waste, said recyclables numbers three through seven incorporate margarine cups, yogurt containers, cottage cheese containers and plastic bags. The company also hopes to open up the markets to different types of paper. Further education for residents will be provided by having the list printed right on the lid of the container.

Wagstrom said that around 200 families in the city are currently composting. Hennepin County has been mandated by the Minnesota Pollution Control Agency to increase the amount of composting in the solid waste stream so that less material is going into the landfills. He said Allied Waste is set up with a place to process compostable materials. The location is not being used yet because the volume is not there to be economically feasible, but the facility is poised to process the material once more residents are composting. Greves noted that for those already doing the organics recycling nothing would change. Wagstrom confirmed that was correct.

Wagner asked for more information about how recycling would work for multi-family housing. Wagstrom said that currently recycling services for multi-family units are provided for up to four unit apartment complexes. If those residents contact the city, the services can be set up in short order. Wagner said he would like further information how the process would work. Schneider noted that a lot of townhouses in the city are two to four units and that those units would be covered under the contract. Wagner said the previous contract had been in place for a long time and he was concerned if services for some residents are lost in the switchover.

Wagstrom said he did not want to exclude those residents because the city wants to keep them involved with the recycling.

Greves said she was excited about the contract and has received a number of comments from residents about wear and tear on the streets from trucks and the contract helps address those concerns with biweekly collection. She has also received requests from residents for wheeled carts and single sorting and the contract addresses that as well. She said the thing she was most excited about was the expanded plastic types that will be picked up.

Wiersum said he too was very pleased with the less frequent pickup and that the bigger bins won't be a problem for most of the residents. He added the price decrease over time was also a positive.

Wagner moved, Greves seconded a motion to approve a seven-year contract with Allied Waste Services, beginning January 2, 2012. All voted "yes." Motion carried.

Schneider called a recess at 8:50 p.m. He called the meeting back to order at 8:58 p.m.

D. Items for the 2012 Preliminary Tax Levy:

- 1) Resolution setting preliminary 2012 tax levy**
- 2) Resolution setting preliminary 2012 tax levy for the Bassett Creek Watershed Management Tax District**
- 3) Resolution appropriating funds to pay 2012 debt service on G.O. Street Reconstruction Note of 2010 and cancelling 2012 debt service levy related to such note**

Gunyou gave the staff report.

Schneider suggested using the actual dollar amount information in addition to percentage information.

Wiersum said the information often talks about the average valued home. He said he was interested in providing information about a home in the 25th percentile of home values, one in the 50th percentile of home values and one in the 75th percentile. This would allow residents better comparison information. Gunyou said that type of information is typically provided in November because that is when the data is available.

Greves moved, Wiersum seconded a motion to adopt the following resolutions:

- 1) Resolution No. 2011-087 setting preliminary 2012 tax levy

2) Resolution No. 2011-088 setting preliminary 2012 tax levy for the Bassett Creek Watershed Management Tax District

All voted "yes." Motion carried.

Finance Director Merrill King provided information about the third resolution that needed council action.

Wiersum moved, Wagner seconded a motion to adopt Resolution No.2011-089 appropriating funds to pay 2012 debt service on G.O. Street Reconstruction Note of 2010 and cancelling 2012 debt service levy related to such note. All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None

16. ADJOURNMENT

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 9:11 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk