

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, DECEMBER 19, 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 Bob Ellingson, Dick Allendorf, Brad Wiersum, James Hiller, Tony Wagner, and Terry Schneider were present.

4. APPROVAL OF AGENDA

Wiersum moved, Ellingson seconded a motion to accept the agenda with an addendum to item 10D. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES:

A. November 14, 2011 regular meeting

Wagner moved, Allendorf seconded a motion to approve the minutes of the November 14, 2011 regular meeting. All voted "yes." Motion carried.

B. November 21, 2011 special meeting

Wagner moved, Allendorf seconded a motion to approve the minutes of the November 21, 2011 special meeting. All voted "yes." Motion carried.

C. December 5, 2011 regular meeting

Hiller moved, Wiersum seconded a motion to approve the minutes of the December 5, 2011 regular meeting. Ellingson, Allendorf, Wiersum, Hiller, and Schneider voted "yes." Wagner abstained. Motion carried.

6. SPECIAL MATTERS:

A. Recognition of planning commissioner Steven Adams

Schneider read the recognition and congratulated Adams for being elected to the Hopkins School Board.

Adams said he enjoyed his time on the planning commission and urged others to consider serving on the planning commission.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS

Gunyou reported on the schedule for upcoming council meetings. He also provided information about the February 14, 2012 special election. Wiersum encouraged residents to vote in the election.

8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA

No one appeared.

9. BIDS AND PURCHASES:

A. Agreement for 169/Bren Road easement acquisition

Gunyou gave the staff report.

Wagner moved, Hiller seconded a motion to approve the agreement for 169/Bren Road easement acquisition. All voted "yes." Motion carried.

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

A. Resolution accepting donation of property adjacent to Purgatory Park from LeRoy and Sylvia Pannkuk

Schneider pulled the item from the consent agenda.

LeRoy Pannkuk said he was happy to donate the property to the city.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2011-112 accepting the donation. All voted "yes." Motion carried.

B. 2012 general liability insurance and workers' compensation renewals

Allendorf moved, Wiersum seconded a motion to renew the city's insurance policies through LMCIT for package policies with the following options:

- \$25,000/\$150,000 deductible for the package policies
- 100% Open Meeting law coverage
- No waiver of statutory limits

And authorize renewal of the LMCIT workers' compensation policy with a \$10,000 deductible. All voted "yes." Motion carried.

C. Resolution changing street names within Opus

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2011-112 changing the name of existing Data Park Drive to Health Care Lane, and establish the name of the southerly private road on United Health Group's property as Data Park Drive. All voted "yes." Motion carried.

D. Ordinance amending massage regulations

Wagner asked for the item to be pulled from the consent agenda. He said he raised some concerns with staff earlier in the day and two of the concerns were addressed in the addendum. Another concern related to the city telling a business what form of payment was acceptable. He said that was an overreach.

Allendorf asked for more information about why the cash restriction would be beneficial. Police Chief Mark Raquet said the provision was included because in some instances massage businesses had the propensity to generate illegal activity. There were two instances in the past two years of a massage business in the city being closed down because of illegal activity. He said the biggest reason the restriction was being proposed was the city did not want those involved in illegal activity to be able to remain anonymous. If there was an investigation the police department wanted to have a paper trail. He indicated the proposed language would allow the businesses to accept cash but restrict the ability to post a sign stating the only acceptable form of payment was cash. Wagner said his concern was that to allow the business to take cash payment would mean the other issue Raquet raised about needing a paper trail would not be addressed. Other small business owners have told him they do not take credit cards but only accept cash and. He said the police department would follow up on any complaints and investigate possible illegal activity. The other changes should assist the city and if a problem still existed and allowing cash payments came up as an issue, he would rather see the issue addressed at that point rather than proactively adopting the restriction.

Hiller said he too had heard from small businesses that indicated not allowing cash payments would be a hardship. He said would support Wagner if he wanted to remove the provision.

Schneider noted that because people could still pay with cash, the people that wanted to hide something would pay with cash and so the benefit sought would not be achieved. He agreed it was better to error on the side of business rights. If there was a problem in the future, the ordinance could be changed.

Wiersum said he wasn't as concerned about the provision as Wagner but he was sensitive about the issue of overreach. It costs money for a business to accept credit cards. Without an absolute restriction on cash payments, the provision seemed to be a bit of a gratuitous regulation that may not derive the desired benefit. He agreed the issue could be addressed in the future if a problem was found to exist.

Hiller said several residents had questions about enforcing against the licensure of the specific massage therapist versus enforcing it against the business itself. He asked for more information about the change. Community Development Director Julie Wischnack said years back the city used to license individuals. Every time the business hired someone the licensee had to come in to city hall. She said the current ordinance went away from that practice. The new ordinance requires the licensee to sign a document stating they understand the rules and regulations. The licensee doesn't need to come in every time someone new is hired but only when there is an issue or when the license needs to be renewed. She said this requirement was designed to ensure all the licensees have employees who were appropriately accredited.

Wagner moved, Hiller seconded a motion to adopt Ordinance No. 2011-25 incorporating the addendum and striking section 9, 810.055 number 11. All voted "yes." Motion carried.

E. Ordinance regarding animal noise

Allendorf moved, Wiersum seconded a motion to adopt Ordinance No. 2011-26. All voted "yes." Motion carried.

F. Ordinance amending the existing master development plan, and site and building plan review with variances, for the Hampton Inn and Suites at 10600 Wayzata Boulevard

Wagner asked for the item to be pulled from the consent agenda. He asked for an update related to an issue with the materials used on the outside complying with the I394 ordinance. City Planner Loren Gordon said staff received confirmation the previous week from Hilton that they would accept the local architect's design and materials selection.

Wagner moved, Allendorf seconded a motion to adopt Ordinance No. 2011-27 which amends the existing master development plan for the site, allowing for construction of the proposed Hampton Inn and Suites. All voted "yes." Motion carried.

G. Extension to file the final plat of HELEN L. COOLEY ADDITION, a two-lot subdivision at 2202 Meeting Street

Hiller asked for the item to be pulled from the consent agenda. He said he did not have any problems with the extension but indicated there was a clause stating the reason for the extension was it was the city council's policy to allow up to five year long extensions. He said the council has had general discussions but he didn't think there was a formal policy. Gunyai indicated Hiller was correct and there was not a council policy but the up to five year long extension was a general practice that had been followed. He noted Wiersum had offered a good suggestion earlier in the day.

Wiersum said the council sees final plats coming back many times, increasingly given the current economy. Every extension requires staff time and council review and approval. He suggested that when a final plat was applied for, the city informed the applicant the fee covered the final plat and one extension. Further extensions would be charged additional fees to cover the costs. This may prompt applicants to think twice about applying for the final plat if there was a situation where an extension might be needed.

Schneider agreed that made sense. He noted that during his time on the planning commission and council that the process had been managed so staff time was limited. But he said currently there was a depression in the real estate market. Any lender that had a plat that needed approval was having difficulty and they had no recourse. They do not want to let the plat expire and have to go through the entire process again. He said the city needed to continue to be liberal in granting extensions until the market improved. Wiersum agreed. Hiller said the concern he raised was the same as Schneider's.

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

H. Labor agreement between the city of Minnetonka and International Union of Operating Engineers Local 49

Allendorf moved, Wiersum seconded a motion to approve the 2012-113 2014 labor agreement between the city of Minnetonka and the International Union of Operating Engineers (IUOE) Local 49. All voted "yes." Motion carried.

I. Resolution to adjust 2012 nonunion employee salaries and benefits

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2011-114 authorizing the 2012 nonunion employee salary and benefit adjustments. All voted "yes." Motion carried.

J. Gifts, donations and sponsorships given to the city during 2011

Allendorf moved, Wiersum seconded a motion to approve acceptance of the attached list of gifts, donation and sponsorships for 2011, which have a total estimated value of \$99,083.94. All voted "yes." Motion carried.

11. Items requiring Five Votes: None**12. INTRODUCTION OF ORDINANCES:****A. Ordinance amending home occupations**

Gunyou said the purpose of bringing the ordinance to the council was not an indication that staff saw home occupations as an issue in the city. Rather the current ordinance was lacking in giving staff the ability to address in a timely manner businesses that really do not belong in residential neighborhoods.

Gordon gave the staff report.

Wagner asked how the ordinance would affect existing conditional use permits (CUPs). Gordon said existing CUPs would be grandfathered in. Schneider noted that if the person quit the business the CUP would terminate. Wagner asked if staff had thought through some of the more borderline issues like a resident who plows out neighbors' driveways and may own more than one snowplow. Gordon indicated 95 percent of the issues could be dealt with. If there was a borderline situation then staff would need to spend time observing the situation to get an understanding of what was really happening. Wischnack added that staff usually does not find out about the businesses unless somebody calls to complain. When the situation is bothersome to the neighbors, then the situation was likely beyond what a normal home occupation might be. Wagner agreed there had to be something in place to make it easier for staff to respond to complaints. He asked if there was an ordinance to address a situation where a person brought a work vehicle home. Gordon noted that situation occurs frequently and that would not violate the current ordinance.

Allendorf noted his initial reaction to the ordinance was the analogy of people now have to take their shoes off at the airport because one person tried to set his shoes on fire. He said he did not want the ordinance to be similar where the city established a huge enforcement mechanism because there have been one or two problems over the past couple of years. He noted the staff report indicated small retailers like Mary Kay or Tupperware salespeople would not be affected because the presentations are done offsite. He said that is not always the case because there are people who have parties inside their homes to sell items. He did not want

the ordinance to impede on that type of business. Gordon noted there already was another ordinance to deal with a situation where there was a large amount of product being sold out of a house. Wischnack said staff would look at strengthening the language in the proposed ordinance to address Allendorf's concern.

Wiersum suggested including information about the ordinance in the Minnetonka Memo because it could be a big deal to some residents who run businesses out of their homes.

Schneider noted that a couple of years back the council dealt with an issue where a resident was running a retail business out of their home and holding weekly parties to sell inventory. The decision was made that was no different than a resident having a weekly bridge party. He did not want to go through that process again to address a business that was having little impact on the neighborhood. He said the trend was for more and more people to work out of their homes. He did not want to over regulate because of a few abuses. He suggested a change to the provision related to vehicle repair. The concern he had was the language included "small engine repair." He said there are homes in the city where the resident repairs lawn mowers for neighbors and this activity was not an abuse of home occupation and should be allowed.

Wiersum said the language defining the maximum square footage of home use went a long way to minimizing the impact of the issue Allendorf raised. If a retail business took up a certain amount of a person's home, it no longer was a casual retail business.

Wagner agreed with Schneider's small engine example. He said the ordinance's provision about an outside employee was a good dividing line. He also thought defining the maximum square footage was a good starting point for the ordinance although he suggested the percentage should be based on the entire property and not just the home.

Hiller said most of his concerns had been already discussed. He thought Wiersum's suggestion of publicizing the ordinance was a good idea.

Wiersum said the provision establishing a maximum square footage as a percentage was a good one but suggested looking at establishing an absolute square footage to avoid having an unintended consequence of discriminating against residents with small homes.

Schneider said he had a concern about the interim use permit approach because the state land use and zoning statutes definition of interim use had to do more with transitioning from one use to another. An alternative

might be to use a business permit approach establishing a license for home occupation.

Allendorf said if a license approach was used then it might mean that everybody who had a small business in their home would have to come in for a license. Schneider said the home occupations that now require a CUP would be the ones that would require a business license. Wischnack noted that the interim use permit process would include a public hearing but a business license approach would be more administrative.

Gunyou said there was no timing issue with the ordinance so information could be included in the Minnetonka Memo.

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

13. PUBLIC HEARINGS:

A. Establishment of housing program and issuance of revenue bonds for Wayzata Bay Senior Housing project (City of Wayzata)

Gunyou gave the staff report.

Wiersum said what was involved was bond capacity that exists and would expire if not used. The city had no use for the capacity so it was an opportunity for the city of Wayzata. Gunyou confirmed that was correct.

Schneider opened the public hearing at 7:37 p.m. No one spoke.

Schneider closed the public hearing at 7:38 p.m.

Wiersum moved, Allendorf seconded a motion to adopt Resolution No. 2011-115 approving the housing program and authorizing issuance of the note. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Ordinances amending various environmental sections

Gunyou gave the staff report.

Allendorf moved, Wiersum seconded a motion to adopt the following ordinances:

- 1) Ordinance No. 2011-28 regarding Floodplain
- 2) Ordinance No. 2011-29 regarding Grading and Erosion Control

3) Ordinance No. 2011-30 regarding Wetland Protection, Shoreland District, Landscaping Maintenance, and Public Nuisance

All voted "yes." Motion carried.

Wagner asked the approximate timing of the more subsequent changes to the environmental sections. Gunyou said those would come to the council in the spring.

B. Items relating to the 2012 operating budget and levy:

Gunyou gave the staff report.

Allendorf said when staff and elected officials from other governmental entities talk about keeping taxes down it comes with the reminder that response times for services will be longer, and the quality of services will not be as good. He praised staff for not making those types of statements and credited Gunyou, Assistant City Manager Geralyn Barone, and Finance Director Merrill King for leading the reorganization effort that maintained a high level of service even though the city had to lay off staff a couple of years ago. He thanked all city staff for the tremendous job it continues to do.

Schneider noted that Hennepin County interpreted differently how they presented their tax statement related to the change in the homestead market credit. The county took whatever the exemption was and deducted it from the house value. This made it appear that the home value decreased when in reality the market value remained the same and the exemption value decreased. He said other counties did not use this approach and the misinformation created problems.

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

- 1) Resolution No. 2011-116 adopting a budget for the year 2012, a revised budget for 2011, and setting a tax levy for the year 2011, collectible in 2012.
- 2) Resolution No. 2011-117 setting a tax levy for the Bassett Creek Watershed Management Tax District for the year 2011, collectible in 2012.
- 3) Resolution No. 2011-118 amending City Council Policy 2.13 Determining Adequate Fund Balances.

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None

16. ADJOURNMENT

Wiersum moved, Allendorf seconded a motion to adjourn the meeting at 7:48 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk