Minutes
Minnetonka City Council
Monday, December 18, 2017

1. **Call to Order**

   Mayor Terry 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**

   Councilmembers Tim Bergstedt, Tony Wagner, Bob Ellingson, Dick Allendorf, Patty Acomb, Brad Wiersum and Terry Schneider were present.

4. **Approval of Agenda**

   Wiersum moved, Acomb seconded a motion to accept the agenda with addenda to items 10D, 10G, and 14B.. All voted “yes.” Motion carried.

5. **Approval of Minutes: None**

6. **Special Matters:**

   A. **Recognition of Mayor Terry Schneider**

   Wiersum read the recognition and presented Schneider with a plaque. He said Schneider had been a mentor and a friend and that he learned a great deal from him.

   Schneider said he thought his contributions over the years had made a difference. He said he believed after 24 years on the city council that it was time to turn things over to a new generation and new voices.

   Acomb said Schneider’s tenure of public service was more than just the years, it was a way of life. She said this was commendable. She praised his ability to be a creative problem solver and his wisdom and knowledge of the city’s history helped her with her decision making on so many issues.

   Wagner said Schneider and Allendorf’s historical perspective would be greatly missed by the council. He praised Schneider for his ability to make courageous decisions.
B. Recognition of Councilmember Dick Allendorf

Wiersum read the recognition and presented Allendorf with a plaque. He said he learned a lot from Allendorf especially Allendorf’s ability to be visionary about the community and fiscally conservative at the same time.

Allendorf said during the past 24 years, the staff had changed but the dedication and professionalism had not. The council had asked staff for a culture of openness and professionalism and that had been established. For this to happen it required leadership. He praised City Manager Geralyn Barone and her predecessors for providing this leadership. In his day job he gets to see how a number of city councils work. In comparison the Minnetonka city council has worked well together to the betterment of the community. He thanked the staff, the council, and the residents of the city who allowed him to serve over the past 24 years.

Schneider said he and Allendorf were both first elected in 1991. Back then, change was needed and he didn’t think the city manager and staff had expected quite the level of change the two new councilmembers brought forward. This included taking a more long range approach with the budget process. The shift in council dynamics has continued the past 24 years to a point where the entire council believed this fiscal prudence and long term planning had always been there even though it had not. He said Allendorf led that effort and he complimented Allendorf for his steadfast diligence over the years.

Acomb said she valued Allendorf’s perspective and even though it was often different from her own, the difference had taught her how to be a good councilmember. He had shown her the real value of local government, which was about compromise, collaboration and getting things done. She appreciated his years in public service not only for the city but also his time as a school board member.

Wagner said Allendorf had a record of service that touched so many areas including the city council, the school district and the planning commission. He praised Allendorf for looking at issues with a citywide perspective. As one of the first speakers on many items, he set the tone for the council discussion and he appreciated Allendorf’s courage in doing this.

Wiersum said the council was losing two giants and that their shoes would not be immediately filled. He said he appreciated Allendorf’s knowledge of what made good planning and his sense for scale and mass. He had learned a lot from him.
Barone thanked Schneider and Allendorf on behalf of the staff for all their support over the years.

C. 2018 budget and levies – public information

Barone presented the information.

Wiersum noted the federal tax legislation will limit the ability to write off local taxes. He questioned if it was feasible for residents to pay their 2018 property taxes early still allowing them to deduct them.

7. Reports from City Manager & Council Members

Barone reported on upcoming council meetings and city events.

8. Citizens Wishing to Discuss Matters not on the Agenda

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

A. Ordinance authorizing sale of land for boundary line adjustment 17125 and 17001 Excelsior Blvd.

Allendorf moved, Bergstedt seconded a motion to adopt ordinance 2017-19. All voted “yes.” Motion carried.

B. Resolution Establishing Polling Places for the 2018 State Primary and General Election

Allendorf moved, Bergstedt seconded a motion to adopt resolution 2017-136 designating the city’s polling places in 2018. All voted “yes.” Motion carried.

C. Resolution ordering the abatement of nuisance conditions existing at 11505 Lakeview Lane West

Allendorf moved, Bergstedt seconded a motion to adopt resolution 2017-137 ordering the abatement of the nuisance condition. All voted “yes.” Motion carried.

D. Resolution approving agreement for donation to the city of vacant land on Martha Lane
Per the addendum, the item was moved to agenda item 11C because five votes were required for approval.

E. Resolution approving preliminary and final plat of WILLISTON ACRES 3rd ADDITION, a two-lot subdivision at 14819 Margaret Place

Allendorf moved, Bergstedt seconded a motion to adopt resolution 2017-138 approving the preliminary and final plat of WILLISTON ACRES 3RD ADDITION, a two-lot subdivision at 14819 Margaret Place. All voted “yes.” Motion carried.

F. City manager performance pay

Allendorf moved, Bergstedt seconded a motion to approve a lump sum merit payment amount of $1,445.74. All voted “yes.” Motion carried.

G. Labor agreement between the city of Minnetonka and International Union of Operating Engineers, Local No. 49

Allendorf moved, Bergstedt seconded a motion to approve the 2018-2020 labor agreement between the city of Minnetonka and the International Union of Operating Engineers, Local No. 49, AFL-CIO. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes:

A. Applications for renewed precious metal and secondhand dealer licenses for 2018

Allendorf moved, Wiersum seconded a motion to approve the precious metal and secondhand dealer licenses for the following establishments for license year January 1, 2018 through December 31, 2018: Evergreene Jewelers; Ideal Diamond, Inc.; Best Buy #4; Best Buy Mobile #2975; and Shane Co. All voted “yes.” Motion carried.

B. Resolution accepting gifts, donations and sponsorships given to the city during 2017

Allendorf moved, Wiersum seconded a motion to adopt resolution 2017-139 accepting the list of gifts, donations and sponsorships for 2017, which have a total estimated value of $163,298. All voted “yes.” Motion carried.

C. Resolution approving agreement for donation to the city of vacant land on Martha Lane
Allendorf moved, Wiersum seconded a motion to adopt resolution 2017-140 approving agreement for donation to the city of vacant land on Martha Lane. All voted “yes.” Motion carried.

12. Introduction of Ordinances: None

13. Public Hearings:

A. Resolutions regarding utility related items:

1) Municipal water and sanitary sewer rates;
2) Municipal water and sanitary sewer connection fees;
3) Recycling fee; and
4) Stormwater rates.

Finance Director Merrill King gave the staff report.

Schneider opened the public hearing at 7:28 p.m. No one spoke. He closed the public hearing at 7:28 p.m.

Wagner moved, Bergstedt seconded a motion to adopt resolution 2017-141 approving municipal water and sanitary sewer rates; resolution 2017-142 approving municipal water and sanitary sewer connection fees; resolution 2017-143 approving recycling fee; and resolution 2017-144 approving stormwater rates. All voted “yes.” Motion carried.

14. Other Business:

A. Resolution calling a public hearing on the issuance of multifamily revenue bonds for Dominium, 11001 Bren Rd E

Community Development Director Julie Wischnack gave the staff report.

Wiersum moved, Wagner seconded a motion to adopt resolution 2017-145, calling a public hearing on the issuance of multifamily housing revenue bonds for Dominium. All voted “yes.” Motion carried.

B. Resolution approving a conditional use permit for an 8-resident licensed residential care facility at 5022 Baker Road

City Planner Loren Gordon gave the staff report.

Stephen Ling, an attorney with the Dougherty, Molenda, Solfest, Hills & Bauer law firm, said he was speaking on behalf of Counter Point
Recovery. He said the applicant had some concerns with the resolution. As with any application for a conditional use permit (CUP) if the applicant met the standards of the city’s zoning ordinance, the council must grant the CUP. In this case, the applicant had satisfied all the conditions. The proposed resolution contained some limitations that were inappropriate. He said the first of those was the limitation on the number of residents to eight rather than the 12 for which the applicant had applied. The city’s zoning ordinance allowed a limitation on the total number of residents but the limitation only applied to the size of the property itself or the size of the house specifically 3,000 square feet for each resident and 300 square feet for each overnight resident. This meant the property had to contain at least 36,000 square feet and the house had to contain at least 3,600 square feet. The applicant satisfied both conditions.

Ling said the second concern raised by the council and neighbors related to parking. He said the concern was somewhat misplaced because the only portion of the CUP that addressed parking states, “there shall be no on street parking.” The applicant had not proposed any on street parking. The residents would not have vehicles. The ordinance allowed for additional parking for occasional visitors. The applicant would comply with the parking requirements in the ordinance. He said any concern about the increase in the number of residents in connection with parking was misplaced. The resolution also required the applicant to monitor outdoor parking at least once a month. This too was outside of the zoning ordinance. He requested that condition be removed as well.

Ling said the applicant also opposed another proposal that the applicant install a security system on all doors and windows because it was outside of the zoning ordinance requirements. He said the applicant planned to install a security system but was opposed to the imposition of the requirement as a condition. There were also concerns with the landscaping plans. The landscaping proposed in the backyard was inappropriate because it did not provide additional screening for the neighboring properties to the north and south. The 5022 Baker Road property was setback further from the road from both the properties to the north and south. The backyard already was screened by the applicant’s house. Additional privacy fencing in the backyard would not add any more buffering or screening for the adjacent properties. He said the proposed fence on the north side of the property might be located on a power line easement. The applicant was willing to put the fence directly on the lot line if need be. Requiring it as a condition to be placed where it might not be allowed was problematic.

Allendorf said for a six person facility there was a limit of four vehicles to be parked on the driveway. Increasing the number of residents would also
increase the number of medical related and attorney and professional visits. He was concerned that the parking for this additional traffic would be a burden on the site and neighborhood. He asked the city attorney to comment on his concerns. City Attorney Corrine Heine said the ordinance contained a condition related to traffic and parking. She said she disagreed with the applicant’s counsel because he was reading the condition very narrowly. The ordinance provides that in general, no more than four vehicles can be parked on the driveway unless otherwise agreed to by the council. The ordinance anticipates that the council could allow parking of more than four vehicles where it was necessary for the proposed use. Twelve residents, additional staff, and more visitors might require more parking than simply four residents. The applicant had proposed only four spaces and the council, through the resolution, had determined that was not adequate for 12 residents and all the guests. The applicant had not met the burden of proving there was adequate parking.

Schneider said the offer to have offsite visits might be a mitigating factor but the CUP was issued generically for a 12 person facility that may or may not have the ability to do offsite visits. This was something the council had to weigh in determining the adequacy of meeting the conditions. Heine agreed that was correct. The applicant had underscored the necessity of looking at the application for 12 person facility because her attorney’s letter indicated that she can’t be held to the representations she made about the operational program in the application she submitted. The thing the council specifically identified was the security for the property but that was a representation that was made by the applicant to show that the application would not have offsite impacts and that she would install a security system. Even though the applicant said she going to install a security system, she now was saying she couldn’t be held to that even though that was meant to show she had met all the general and specific standards in the ordinance.

Wagner asked Heine to comment on Ling’s comments about buffering. He said buffering was something clearly in the mind of the council and specific concerns were outlined. Heine said the purpose of the buffering was to screen the use from adjacent sites. This had to be a reasonable condition justified by the physical characteristics of the property. The applicant was asserting that some of the landscaping requested won’t serve a buffering purpose and therefore was not necessary. She said the council had to determine for itself based on the record, if they agreed with that assertion. She said in respect to the easement, it was her understanding the applicant was not contesting the condition that a fence be located along the north property line, but wanted enough flexibility to locate the fence somewhere north of the driveway between the property line and the driveway.
Wagner said his understanding was the request was that the fence not be extended all the way to the west property line. Heine said her understanding was the applicant was saying the fence did not need to extend to the west property line because the additional amount of fencing would not serve a buffering purpose. Wagner said the easiest condition for him was the buffering. Current conditions could always be changed by the northern property line. If the neighbor to the north wanted to take down some trees and there was less buffering as a result, they still were entitled to buffering. In his mind the south property line clearly was inadequate from a buffering standpoint although there were trees. He didn’t see a burden the council was placing on the application by requiring buffering. It clearly was in the ordinance and the applicant had agreed to it before.

Schneider said he suggested the fenced in backyard from an overall staffing/security comfort level of the residents, guests, and the neighbors. This was combined with the idea of running the fence to the north. He didn’t intend that to be a condition for approval. He made the suggestion as a better way to operate the facility. He said it probably was overreach to have it as a formal condition. Before he made the suggestion the idea had been raised to run the fence all the way to the west. He was ok removing the condition for a backyard fence as long as it did not remove a condition for a fence along the north to run continuously to the west.

Wagner said what was discussed was the north and south property lines should have screening whether it be fencing or through an acceptable landscaping plan.

Wiersum said looking at the diagram with proposed screening on the south property line, and reading some of the correspondence that was highly prescriptive in the type of screening, the goal was having screening that was adequate. He would be fine with having staff work with the applicant to come up with appropriate screening at the time it was installed rather than having a formal landscaping plan. Wagner said his concern with that was he didn’t want staff to have to figure everything out. He sensed a contentious situation existed and he didn’t want to place staff in a situation between the neighbors and the applicant. Wiersum said there needed to be a sustainable approach that wasn’t overly burdensome on the applicant such as requiring trees that constantly needed to be replaced. There had to be something that was going to work from day one.

Barone said if council wanted specific things included, they should be part of the resolution. The more clarity given to staff, the easier it would be for staff to gain compliance.
Wischnack noted the landscaping plan included in the resolution included the species and height of the trees. She said the council could add a condition requiring the applicant to get final approval of the planting plan by natural resources staff. This has been done with other developments. Wiersum said that sounded like a good idea. Wagner agreed. Wagner said one thing missing was an ongoing maintenance plan.

Allendorf said the facility might require more in terms of governmental services than other residences. He originally supported approving seven residents before he compromised on eight. Historically the city has seen more police calls at group homes with six residents than for other residential homes. He noted the applicant did not say anything related to this. He thought this was a reason to limit the number of residents. He asked the city attorney if this was a valid reason to limit the approval to eight residents rather than allow 12. Heine said section three, paragraph six of the proposed resolution addressed Allendorf’s concern. The determination in that paragraph was it was appropriate to limit the number of residents to eight people in order to mitigate undue adverse impacts described in the paragraph. She noted the police officer who spoke at the public hearing indicated that on average for this type of use, the number of police calls was greater than for an average single family home. Allendorf said he was not referring to a six person facility but rather going above that number which would stretch a government service. Heine said that was what the language in the resolution was meant to address.

Wagner said in evaluating a CUP, the council always looked at the characteristics of the site. That was why he shared his concerns with the parking and the possibility of increased nuisance related violations. He asked if the provision included public services for other things like parking violations that might have a significant impact on other governmental services or if the provision strictly related to public safety. Heine said the paragraph in the resolution was specific to police calls and what she heard Wagner suggesting was broadening it to other calls for public service like nuisance enforcement. Wagner said historically the city dealt with those types of violations on a complaint basis rather than having staff go out looking for potential violations. Schneider said public safety indicated someone felt in danger and that was more relevant to the number of residents in the home rather than a situation involving a neighbor who frequently complained about another neighbor’s property. The latter could happen anywhere in the city. He preferred not watering down the language in the resolution.

Schneider said that even before receiving the letter from the applicant’s attorney he had a concern about requiring her to monitor parking on a monthly basis and annually report back to the city. The whole purpose
was if the applicant came back asking to increase the number of residents, there would be some independent monitoring of the facility to determine if it was working properly or not. The idea of self-monitoring one day a month was meaningless. He suggested eliminating the condition for the self-reporting and putting the burden back on the city. Staff would periodically monitor the site at random times. This information would be shared with the applicant.

Wiersum said he agreed with Schneider’s suggestion. He wanted to be fair in terms of this being a residential family neighborhood and the impact on the neighborhood. He was comfortable approving eight residents even though his preference was limiting it to six. Once a CUP was granted, it wasn’t un-granted. If the city got it wrong at the beginning, there was no path back. He was willing to take the risk of being conservative because there were a number of concerns involved. The city needed to protect the character of its neighborhoods. At the same time he was a supporter of group homes and the need for them in the city. He said there was a sacred trust with having the facilities be well run and having them have a good relationship with the neighbors and the city’s ability to have even more facilities in the city. He wanted to be cautious because if a good relationship was maintained between the facilities and the neighborhoods, it would make it easier if the opportunity came to expand this facility or add others in the city. From his perspective the situation would be totally different if this application was in a commercial area.

Schneider said the condition the council still needed to discuss was making the electronic monitoring required rather than an option. He said in evaluating the probability of undue city services and undue impact on the general health and well-being on the community and neighborhood, it came down to looking at how to minimize the potential of a situation like when a resident was off his medication and left the facility without permission impacting the neighbors. That was his main concern in suggesting that if someone wandered off, staff would be notified. It was difficult to prove there was adequate staffing until there was a period of trouble. His preference was electronic monitoring as a condition, so if there was a problem, it could be identified and addressed quickly.

Wiersum asked if a condition requiring a security system could be required for a specific use or if it needed to be more generic in terms of applying to all group homes. He said he had a personal reason for asking the question. His mother lived in a senior living facility and walked outside during the winter. The door locked behind her and she immediately tried to get back inside but ended up freezing to death. If the door had an alarm this would not have happened. He said an alarm system did not have to do with the type of facility but rather was about protection and safety not
only for the neighborhood but also for the residents of the facility. Heine said state law contains a provision that allow cities to impose conditions that are intended to address safety and health aspects. Court decisions have declared such conditions should be related to site characteristics. She said the proposed condition was a prime example of something related to health and safety and was an aspect of the site. The building did not have built in security and Wiersum’s example showed why an alarm system would be appropriate in some circumstances.

Schneider said the council discussed at length the appropriate number of residents at the last meeting. He asked if the council was still comfortable with eight residents or if someone wanted the number adjusted. No one indicated they wanted the number changed. He said the council discussion indicated two changes to the proposed resolution: eliminating the parking monitoring and changing some of the landscape requirements.

Heine and Wischnack shared suggested changes to the proposed resolution that incorporated the changes based on the council discussion.

Wagner moved, Allendorf seconded a motion to adopt resolution 2017-146, as amended, approving the conditional use permit for an 8-resident licensed residential care facility at 5022 Baker Road.

Bergstedt said he, like Wiersum, would rather error on being too conservative at the front end. He thought eight residents was a good number. If a year from now everything was working well, the applicant could come back asking for council approval for more residents.

Bergstedt, Wagner, Allendorf, Acomb, Wiersum and Schneider voted “yes.” Ellingson voted “no.” Motion carried.

15. Appointments and Reappointments: None

16. Adjournment

Wagner moved, Wiersum seconded a motion to adjourn the meeting at 8:29 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk