Minutes
Minnetonka City Council
Monday, September 11, 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

Council Members Tim Bergstedt, Tony Wagner, 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 10F, 13A, and 14A. All voted “yes.” Motion carried.

5. Approval of Minutes: July 24, 2017 regular council meeting

Wagner moved, Bergstedt seconded a motion to approve the minutes of the July 24, 2017 regular council meeting, as presented. All voted “yes.” Motion carried.

6. Special Matters:

Wiersum noted it was the anniversary of the terrorist attack in 2001. He said we should never forget the people who died in the attack as well as the heroism of the first responders who risked and gave their lives to help others. He thanked the public safety professionals who have risked their lives helping those impacted by Hurricane Harvey and Hurricane Irma. He honored Wayzata Police Officer Bill Mathews who was recently killed in the line of duty. He asked residents to thank a firefighter or a police officer and to help public safety professionals by being prepared through programs like Ready Minnetonka.

Council Member Bob Ellingson was present at 6:35 p.m.

7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming council meetings and city events.

Schneider gave an update on the Southwest Light Rail project.
8. Citizens Wishing to Discuss Matters not on the Agenda

Robert Ashmun, 3529 Orchard Lane, said he was present to provide an update on an issues involving interest owed from a hookup fee. Schneider noted Ashmun had appeared numerous times before the council and had been told the council was not going to address the issue without him working through an agreeable solution with staff.

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

   A. Ordinance regarding recreational fires

   Allendorf moved, Acomb seconded a motion to adopt ordinance 2017-12. All voted “yes.” Motion carried.

   B. Resolution authorizing just compensation for easements of parcels for the Ridgehaven Lane/Ridgedale Drive improvements

   Allendorf moved, Acomb seconded a motion to adopt resolution 2017-095 authorizing just compensation for the easements for the project. All voted “yes.” Motion carried.

   C. Resolution approving a conditional use permit for a microdistillery at 6020 Culligan Way

   Allendorf moved, Acomb seconded a motion to adopt resolution 2017-096 approving a conditional use permit for a microdistillery at 6020 Culligan Way. All voted “yes.” Motion carried.

   D. Resolution approving a conditional use permit for a restaurant serving liquor at 17420 Minnetonka Blvd.

   Allendorf moved, Acomb seconded a motion to adopt resolution 2017-097 approving the conditional use permit for a restaurant serving liquor at 17420 Minnetonka Blvd. All voted “yes.” Motion carried.

   E. Twelve month extension of the OAKHAVEN ACRES 2nd ADDITION preliminary plat at 13929 Spring Lake Road

   Allendorf moved, Acomb seconded a motion to approve the twelve-month time extension. All voted “yes.” Motion carried.
F. Resolution approving a floodplain alteration permit and horizontal floodplain setback variance from 20 feet to 7.5 feet and waiving the McMansion policy; and ordinance to remove area from floodplain overlay district at 3136 County Road 101

Allendorf moved, seconded a motion to adopt resolution 2017-098 approving a floodplain alteration permit and horizontal floodplain setback variance from 20 feet to 7.5 feet and waiving the McMansion policy; and ordinance 2017-13 removing area from floodplain overlay district. All voted “yes.” Motion carried.

G. Resolution approving floodplain alteration and conditional use permits, ordinance removing areas from the floodplain overlay zoning district, and a resolution approving preliminary and final plat, at 11806 Cedar Lake Road

Allendorf moved, Acomb seconded a motion to adopt resolution 2017-099 approving a floodplain alteration and conditional use permits; ordinance 2017-14 removing areas from the floodplain overlay zoning district; and resolution 2017-100 approving preliminary and final plat. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances: None

13. Public Hearings:

A. Resolutions for special assessment of 2016-2017 projects

Barone gave the staff report.

Schneider opened the public hearing at 6:47 p.m. No one spoke. He closed the public hearing at 6:47 p.m.

Wiersum moved, Allendorf seconded a motion to adopt:

Resolution 2017-101 adopting special assessments for 2017 Nuisance Abatement Project No. 4894, one-year assessment term;

Resolution 2017-102 adopting special assessments for 2017 Nuisance Abatement Project No. 4894, three-year assessment term.
Resolution 2017-103 adopting special assessments for 2017 Nuisance Abatement Project No. 4894, five-year assessment term.

Resolution 2017-104 adopting special assessments for 2017 Nuisance Abatement Project No. 4894, ten-year assessment term. All voted “yes.” Motion carried.

Resolution 2017-105 adopting 2017 Diseased Trees Project No. 4902, one-year assessment term as amended by the addendum.

Resolution 2017-106 adopting 2017 Diseased Trees Project No. 4902, three-year assessment term. All voted “yes.” Motion carried.

Resolution 2017-107 adopting 2017 Diseased Trees Project No. 4902, five-year assessment term.

All voted “yes.” Motion carried.

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

Barone gave the staff report.

Schneider opened the public hearing at 6:48 p.m.

Bill Jacobs, 4771 Hamilton Road, provided information about the event.

Schneider closed the public hearing at 6:50 p.m.

Acomb moved, Bergstedt seconded a motion to grant the temporary liquor license for the annual gala at St. David’s. All voted “yes.” Motion carried.

C. Off-sale liquor license for Fernriver Enterprises, LLC (dba Strong Liquor) at 11048 Cedar Lake Rd

Barone gave the staff report.

Schneider opened the public hearing at 6:51 p.m. No one spoke.

Wagner moved, Wiersum seconded a motion to continue the public hearing to October 9, 2017. All voted “yes.” Motion carried.

D. Resolution approving vacation of a drainage and utility easement at 1580 Oakways
City Planner Loren Gordon gave the staff report.

Schneider opened the public hearing at 6:54 p.m. No one spoke. He closed the public hearing at 6:54 p.m.

Allendorf moved, Wiersum seconded a motion to adopt resolution 2017-108 approving the vacation of the easement. All voted “yes.” Motion carried.

E. Resolution vacating drainage and utility easements at 2800 Jordan Avenue and an adjacent unaddressed parcel

Gordon gave the staff report.

Schneider opened the public hearing at 6:56 p.m. No one spoke. He closed the public hearing at 6:57 p.m.

Wagner moved, Wiersum seconded a motion to adopt resolution 2017-109 approving the vacation of the easement. All voted “yes.” Motion carried.

14. Other Business:

A. Administrative hearing regarding the tobacco license of Boulevard Sinclair

City Attorney Corrine Heine gave the staff report.

Schneider asked the licensee, David Goldman, 9800 Minnetonka Boulevard, if he admitted one of his employees sold tobacco to an underage person on June 26, 2016. He said if Goldman admitted the violation occurred, there was no reason to continue with the hearing.

Goldman said he admitted his employee sold to an undercover person.

Heine said the only purpose of holding a hearing was to determine if a violation occurred. If the violation was admitted there was no need to have a contested hearing. She said if Goldman admitted the violation occurred, there was no reason to continue with the hearing. He advised the council that the ordinance does not say a penalty “up to” but specifies what the fine must be. It was her opinion the council did not have the ability to change the amount of the penalty.

Schneider said in past instances the council allowed the licensee to explain extenuating circumstances without going through the formal
hearing process. He asked what process Goldman wanted to go through. Goldman said it was his understanding that either process meant he had to pay the fine. He said he wanted his side of the story to be heard. He admitted to the violation.

Goldman said he has been in business for 26 years and there have not been very many violations during that time. He said his girlfriend who does the office work and doesn’t usually work at the counter made the mistake. The register is programmed to indicate the date to look at before the sale is completed. He said she was not wearing her glasses and the person presented a license that was off by less than two months. He did not want to pay $500 and the fine was too much for him to afford. He was at the point where he would turn in his license and stop selling tobacco. He already paid a fine 20 months ago that was $250 and he paid his employees penalty of $150 as well. He paid his girlfriend’s penalty of $150 and paid $235 for the license. He estimated he sold between three to eight packs of cigarettes a day. It would not shut him down if he stopped selling cigarettes but it was one more thing he had to deal with. He did not want to lose a good employee because a mistake was made. He thought it was wrong for an underage person to smoke.

Schneider said from the city’s perspective, there had to be some protocol and penalty that was meaningful. If the penalty did not hurt, there was no value to it.

Goldman asked if he turned his license in if that meant he did not have to pay the fine. He said that was his preference. Heine said if the penalty was imposed it was a legal obligation. If instead of imposing the penalty the council accepted the offer from Goldman to turn in his license than that could be done as a settlement.

Schneider suggested allowing Goldman a couple of weeks to think about turning in his license. Wiersum said that made sense because if Goldman turned in his license immediately he loses the chance to sell down his inventory. He thought there was a path to a reasonable solution. Barone said if the council approved that type of settlement, it would probably want to address what happened in future years as well. Goldman said if he turned in his license he didn’t plan on applying for one again. Schneider said there needed to be some certainty to it. The intention would be if Goldman turned in his license there would be an extended period of time before he was allowed to apply for a new one.

Bergstedt said he gets a little bit nervous about accepting the excuse that someone was not wearing their glasses and made the mistake of selling to an underage person. The penalties were in place for a reason. He said he
was uncomfortable sending a message that if a violator turned over the license then the penalty was waived.

Wagner moved, Allendorf seconded a motion to continue the item to a date no later than October 23, 2017. All voted “yes.” Motion carried.

B. Discussion of possible coal tar sealant litigation (this discussion may be closed pursuant to Minn. Stat. § 13D.05, subd. 3(b))

Heine said there were three outside attorneys that would discuss possible litigation with the council to recover damages the city was likely to incur in connection with required dredging and disposal of hazardous materials from city stormwater ponds. The claims would be against companies that supplied sealants containing hazardous substances that found their way into city stormwater ponds. The city was being asked to join in litigation with other cities. She said the discussion would involve the merits, weaknesses and potential strategies of litigation. It was important for the council to be able to have candid and confidential conversations with legal counsel in order to assess the city’s position and decide whether to move ahead with the claims. If the city decided to pursue litigation any conversation of those issues in public would be detrimental to any potential case and the city’s interests. She recommended a motion to go into closed session.

Wagner moved, Allendorf seconded a motion to convene in closed session under the attorney-client privilege for the discussion of proposed litigation regarding coal tar sealant contamination. All voted “yes.” Motion carried.

The council recessed to go into closed session at 7:20 p.m.

15. Appointments and Reappointments: None

16. Adjournment

The council came back from closed session at 8:58 p.m.

Bergstedt moved, Acomb seconded a motion to adjourn the meeting at 8:58 p.m. All voted “yes.” Motion carried.

Respectfully submitted,