Minutes
Minnetonka City Council
Monday, Sept. 17, 2018

1. **Call to Order**

   Wiersum 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 Rebecca Schack, Patty Acomb, Mike Happe, Tim Bergstedt, Bob Ellingson, and Brad Wiersum were present. Deb Calvert was excused.

4. **Approval of Agenda**

   Happe moved, Acomb seconded a motion to accept the agenda with addenda to items 13A, 14A, 14B, and 14D. All voted “yes.” Motion carried.

5. **Approval of Minutes:** None

6. **Special Matters:** None

7. **Reports from City Manager & Council Members**

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

   Wiersum had attended the League of Minnesota Cities Board retreat. He shared that it was good interaction among board members, who are elected officials, and staff. He learned a lot about mining and the issues that greater Minnesota faced.

8. **Citizens Wishing to Discuss Matters not on the Agenda**

9. **Bids and Purchases:** None

10. **Consent Agenda – Items Requiring a Majority Vote:**

    A. Resolution concerning a multi-family residential development by Dominium, at 11001 Bren Road East
Ellingson moved, Schack seconded a motion to adopt resolution 2018-115 authorizing the issuance of tax-exempt multifamily housing revenue notes and bonds for the benefit of Minnetonka Leased Housing Associates II, LLLP; and authorizing city officials to approve non-substantive changes to the related documents. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes:

A. Conditional use permit, with variances, for a restaurant with on-sale liquor at 14725 Excelsior Blvd.

Ellingson moved, Happe seconded a motion to adopt resolution 2018-116 approving the conditional use permit, with variances for DelSur, a restaurant with on-sale liquor, at 14725 Excelsior Blvd. All voted “yes.” Motion carried.

12. Introduction of Ordinances: None

13. Public Hearings:

A. Resolutions for special assessment of 2017-2018 projects

Barone gave the staff report.

Wiersum opened the public hearing at 6:40 p.m. No one spoke. Wiersum closed the public hearing at 6:41 p.m.

Happe moved, Bergstedt seconded a motion to adopt

Resolution 2018-117 adopting special assessments for 2018 Nuisance Abatement Project No. 4894, one-year assessment term.

Resolution 2018-118 adopting special assessments for 2018 Nuisance Abatement Project No. 4894, three-year assessment term.

Resolution 2018-119 adopting special assessments for 2018 Nuisance Abatement Project No. 4894, five-year assessment term.

Resolution 2018-120 adopting special assessments for 2018 Nuisance Abatement Project No. 4894, ten-year assessment term.

Resolution 2018-121 adopting special assessments for 2018 Diseased Trees Project No. 4902, one-year assessment term.
Resolution 2018-122 adopting special assessments for 2018 Diseased Trees Project No. 4902, three-year assessment term.

Resolution 2018-123 adopting special assessments for 2018 Diseased Trees Project No. 4902, five-year assessment term.


Resolution 2018-125 adopting special assessments for 2018 City Court Fines Project No. 1020, one-year assessment term.

Resolution 2018-126 adopting special assessments for Connection Charge, 3535 Orchard Lane Project No. 5110, ten-year assessment term.

Resolution 2018-127 adopting special assessments for the “Copper Cow” Fire Sprinkler Project, 5445 Eden Prairie Road, Project No. 4874, ten-year assessment term.

Resolution 2018-128 canceling and reassessing special assessment of Housing Improvement Area Fee for 10211 Cedar Lake Road, Unit 205, Project No. 4318, 9-year assessment term.

All voted “yes.” Motion carried.

14. Other Business:

A. Ordinances related to tobacco-related products

Community Development Director Julie Wischnack gave the staff report.

Tom Madden, owner E-Cig POD, thanked the council for the changes made to the sampling. He invited everyone to come visit the store and see how it could help.

Kerri Gordon, 12031 Arbor Circle, talked about seeing the issue from three perspectives: as a mother of two boys, as a leader from Allina Health, and as a sister who had watched her brother struggle for decades trying to break the habit. She had also learned that local governments made a difference and supported the ordinances.

Rachel Mirviss, 2324 Vernon Circle, Hopkins, shared that she was a Senior at Breck School and was involved in sports and theater. She supported the T21 ordinance.
Bryan Rause, 5850 Red Cherry Lane, talked about being a cancer survivor and a volunteer for the American Cancer Society Action Network. He started chewing tobacco when he played hockey in high school. He shared that one third of cancers were caused by tobacco.

Trudy Schnorr, 3727 Larchwood Drive, was a teacher for 32 years and a volunteer for the American Cancer Society Action Network. She shared that she was in support of the ordinance and that it was very important to her as a teacher because the tobacco industry spends millions of dollars marketing to young people.

Marcella Reese, Hopkins High School, was in support of the ordinance. She shared that the tobacco industry targets young people and spent $9.5 billion to promote tobacco in the United States.

Katelyn Ziegler, 146 15th Avenue N, Hopkins, attended Hopkins High School and was in support of the ordinance to raise the tobacco sales age to 21. She shared that she was a member of the student wellness community and one of its big projects was to raise awareness of the prevalence of vaping.

Jen Dohse, 13100 April Lane, Hopkins, was a sophomore at Hopkins High School and shared that vaping was affecting even kids in Junior High.

Steve Rush, on behalf of Holiday Stationstores, stated that Holiday had an exemplary record of preventing underage sales in the 40 plus years that it had been doing business in the city. He discussed how this should be done at the state level in order to level the playing field for all businesses. Rush asked the city to push the ban to February 1, 2019.

Acomb thanked everyone who came out to support T21 and shared that she supported the ordinance.

Happe stated that he was in support of T21. He said that originally, he was unsure about e-cigarettes, but had since learned more and was supportive of including them. He discussed the flavor ban and how it would be banning flavors for people over 21.

Wischnack clarified that if an establishment post signs that only persons over 21 could enter then it could continue selling those flavors.

Bergstedt talked about being a dentist in Minnetonka for four decades and dealing with oral cancer from oral tobacco. He shared that this would be the easiest yes vote of his entire career on the council.
Schack was completely in favor of T21 and was thankful that the dialogue from both sides had been so respectful. She shared concerns about the flavor ban and its lack of parity.

Ellingson asked a question about some wording in ordinance section 625.040 that still said 18 years old. Wischnack answered that it would be changed depending on how the council voted. Ellingson said that the ordinance was important and that he would like to see it adopted state wide.

Barone shared feedback from Calvert, who was absent, stating that while she was still conflicted over a few issues she supported the ordinance.

Wiersum said that the council was considering one of the most important ordinance changes in terms of the health of our youth and the city. He was proud to be identified with making this change.

Acomb was hopeful that it would have an impact on a state-wide change in the near future. She discussed the flavor ban and shared that she would prefer it to be in shops where young people have no access.

Wiersum talked about the flavor ban and was concerned about reaching too far as a city council. He felt that T21 solved the problem and that the flavor ban added complexity for businesses.

Bergstedt clarified that the T21 ordinance would ban all tobacco products until age 21. He agreed that adding an additional flavor ban for persons over 21 was an overreach.

Acomb noted that the flavors would still be available in tobacco shops.

Acomb moved, Bergstedt seconded a motion to adopt ordinance 2018-13 amending sections 625.040 and 625.045 of the Minnetonka City Code, relating to the minimum age for sales of tobacco-related products and ordinance 2018-14 amending sections 625.010, 625.015, 625.025, and 625.040 of the Minnetonka City Code, relating to tobacco-related products – general changes. All voted “yes.” Motion carried.

Acomb moved, Ellingson seconded a motion to adopt an ordinance amending sections 625.005 and 625.040 of the Minnetonka City Code, relating to flavored tobacco-related products. Acomb and Ellingson voted “yes.” Happe, Bergstedt, Schack, and Wiersum voted “no.” Motion failed.
B. Concept plan review for redevelopment of the property at 1809 Plymouth Road

City Planner Loren Gordon gave the staff report.

Drew Johnson, Vice President of Development for Oppidan Investment Company, read a letter from Wells Fargo, a client of Oppidan. Oppidan planned to update the current office building and build a smaller onsite building for the bank. Johnson talked about incremental improvements and the consolidation of parcel owners to give more flexibility for future meaningful redevelopment. In the mean time it would add storm water best management practices, trails, landscaping, and improved circulation of the site.

Ellingson asked about tearing down the entire building like TCF Bank had done. Johnson answered that it was not feasible.

Acomb asked a question concerning the easement on Ring Road. Johnson answered that consent was needed from three different parties, but there had been conversations.

Schack said that this concept plan was inconsistent with the Ridgedale plan and seemed like a missed opportunity.

Acomb said that the proposal doesn’t really fit long term vision for this parcel or regional area. She added that she understood that it was privately held.

Bergstedt noted that banks were consolidating and downsizing. He also said that this didn’t seem to be a long-term plan.

Happe agreed with Bergstedt’s comments.

Barone shared that Calvert had some concerns and echoed the planning commission chair’s comments.

Wiersum said that it was not consistent with the council’s vision for that area, but offices were a challenge. Vision Minnetonka said that one of the cities challenges would be what to do with under utilized offices. He asked the developer to think bigger and work harder.

C. Concept plan review for Hennepin County Medical Examiner’s Office at 14300 Co. Rd. 62

Gordon gave the staff report.
Wiersum asked about the total acres and buildable acres. Gordon confirmed that the buildable area was around half of the total acreage.

John Rode, Hennepin County facility services, showed a map and discussed the history of the site. He discussed the 100-year flood plain, bog, and wetlands of the area. There was not a master plan, but it was being zoned according to how the site would be used over time. Rode explained that a lot of the maintenance was being deferred because of a joint program with Ramsey County. He discussed the five different possible sites and the one that had been settled on. He also talked about access and parking.

Acomb asked about the wetland bank. Rode answered that Hennepin County was working on it, but it was on hold until a decision was made as to where the building was going.

Ellingson asked about access to the remaining buildable site highlighted in yellow. Rode talked about the different options.

Wiersum asked what types of trees were in the pine grove. Rode answered scots and red pines planted in strict rows.

Schack asked the distance of the access road. The civil engineer, answered that it was about 800 feet from the connection near the wetland to staff parking. Schack asked if there was concern about disrupting the wetland. He answered that there was a retainer wall that would help protect it.

Bergstedt said that this was a 161-acre site and this would take 10 acres. He had some concerns about building without a master development plan and the proposed access road.

Acomb shared that she was glad the wetland bank was still on the agenda and thought the concept plan was a fine use of the area. She did share the concern about the access road.

Ellingson said that area was guided in the comprehensive guide plan as institutional so continued use by the county was consistent. He wanted to know if he and his wife would be able to continue cross-country skiing there.

Wiersum thought this was a good use of the county owned property. He noted that the biggest challenge was the access road.
D. Ordinances related to franchise fees

Barone gave the staff report.

Acomb asked staff to correlate a 9.5% levy increase to a dollar amount for a median income household. Barone answered $113.

Luann Tolliver, 14801 Wychewood Road, shared that she had lived in Minnetonka for over 38 years. She was against the ordinance to increase franchise fees to fund the construction of new trails. She believed the franchise fee was a regressive tax that would adversely affect senior citizens on fixed budgets and low-income individuals. She asked the council to honor their campaign vows.

Craig Eiler, Sussex Drive, said that utility franchise fees was just another way of disguising a tax whether it was legal or illegal. He asked what trails and sidewalks have to do with utilities. He noted that utilities were very high and this would only increase the tax burden especially for senior citizens.

Maureen Hackett, 4919 Arlington Drive, Hopkins, talked about the sudden need for $70 million dollars because of Imagine Minnetonka. She said that she was concerned with the speed at which this was happening and thought the council should take projects one at a time.

Nancy Bresnahan, 14319 Stewart Lane, marveled at the work the council did and thank them. She said she wished there was another option, but that there was not so she supported the franchise fees,

Jim Zamastil, 13103 Melody Lane, said that he had never paid attention to fees on his utility bills. He accused governments of chickening out and asked the council to put it on the tax levy and face the consequences of voters.

Cliff Giese, 12017 Fairview Lane, Hopkins, agreed 100% with trails and sidewalks, but disagreed with putting it on utility bills. He preferred it to be on his taxes so that he could deduct it on his federal return.

Luke Vansanten, 2148 Sheridan Hills Road, Wayzata, talked about the numerous benefits from improving Minnetonka’s bike and walking trail network. He acknowledged concern of the regressive nature of franchise fees, but demographic data indicated that approximately 12% of households were persons older than 65 and living alone. Data also showed that the median income for households over 65 was just under $70,000. The total fees of $66 per year was less than one-tenth of one
percent of median income. The staff presentation clearly demonstrated it had done significant work determining the best way forward. He asked the council to not let perfect be the enemy of good and to support the ordinances.

David Haeg, 17045 Chilton Hills Road, agreed with the previous commenter and supported the ordinances.

Mary McKee, 3842 Baker Road, Hopkins, shared that she was confused because of the mountain bike trail that was possible going in at Lone Lake Park. She asked the council to take a breath and make a long-term plan for the funding.

Harlen Jacobs, 3412 Oak Ridge Road, had lived in Minneapolis for 25 years where the property owner was assessed for sidewalks. He asked why property owners were exempted from paying for sidewalks in Minnetonka and how much of the fees was for sidewalks and how much for trails. Wiersum said the proposal was $1.8 billion and was for walkability. The city was seeking connections particularly north to south. The city used trails and sidewalks interchangeably because it was all about pedestrian connections. Jacobs urged the council to do it through property taxes or ask businesses to pay for the trails through naming rights.

Barone answered a question about the relationship of trails to utilities explaining that the utility companies use the cities public rights-of-way and that was where the trails would be. With regard to past history use of franchise fees, the council had been very dedicated to specific uses such as burying power lines. She discussed the question concerning the sudden need for $60 million dollars. The trail list had been around for 20-years and the city had slowly chipped away at it. She clarified that the state did not allow the city to charge income tax and that Minnetonka had a long-standing policy of not assessing the property owner for street improvements.

Wiersum said that the council had a challenging conversation, but the issue was fairly clear. There seemed to be broad support on the council for finding a funding stream to improve walkability.

Bergstedt asked if the council approved the franchise fees for trails and sidewalks would it have to option to change the use later or eliminate the fees. Barone answered that the council would have the opportunity to reconsider the fees once every 12 months.
City Attorney Corrine Heine clarified that there was a provision in the electric franchise that stated that the fees must be equivalent to all utilities in order to be able to change the use.

Acomb asked if there was a way to fix the regressive nature of the fees. Heiner answered that the franchise agreements require that it be a flat fee per count.

Acomb said that she was one of the loudest advocated for the expansion of the trail system and the increased pace. Imagine Minnetonka was affirmation that the community wanted it too. Council had asked staff to find a dedicated funding stream, but she did have a little bit of heartburn about the regressive nature of the fee.

Happe said that by his count 70% of people in the room and 90-95% of the feedback was against the franchise fees. He supported trails, but could not support the franchise fees.

Bergstedt took offense to the speakers that had inferred that this was a hurried decision without public input and that had called it a hidden tax.

Schack agreed about the demand for trails and the deliberate nature which the council, staff and public have had input. She was sensitive to the cost, but felt differently when something was being demanded by the community. Her only issue was the regressive nature of the fees, but the trails would be such a benefit for everyone. She mentioned that a lot of the feedback was negative, but that was normal when an increase in fees or taxes was being proposed.

Ellingson talked about living on a park and being able to walk to a commercial area. He said that making trails convenient increased public health.

Barone read Calvert’s email supporting the franchise fee, but noted that it was a hard decision.

Wiersum said that the city wanted walkability and connection. So, the question was how to pay for it. The council had asked staff for a consistent, reliable funding stream and staff had worked really hard to pay for it. He said that the franchise fee was a tax that was collected by the utility company on behalf of the city. He stated that he would vote for the franchise fee even if there was a political price because he believed it was the right thing to do.
Bergstedt shared that he was always proud of his mayor, but tonight he was especially proud of him. He agreed that it was not a hidden fee, but a tax. He said that it was important to him to know that the council would have the option to change the use, decrease, or even eliminate the fees in the future. He noted that this was a challenging vote, but he was supporting the franchise fees.

Acomb said that it was a hard decision, but that she liked it because it offered flexibility for future councils to change. She noted that it was a defined funding stream which provided a known amount of stable revenue. She didn't like the regressive nature, but would be supporting the franchise fees.

Bergstedt moved, Schack seconded a motion to adopt ordinance 2018-15 increasing the electric franchise fee on Northern States Power Company for providing electric energy service within the City of Minnetonka. And ordinance 2018-16 implementing a gas franchise fee on CenterPoint Energy Minnesota Gas for providing gas energy service within the City of Minnetonka. Schack, Acomb, Bergstedt, Ellingson, and Wiersum voted “yes.” Happe voted “no.” Motion carried.

E. Items related to the 2019 preliminary tax levy

1) Resolution setting a preliminary 2018 tax levy and preliminary 2018 HRA levy, collectible in 2019, and a preliminary 2019 budget, and consenting to a special benefit tax levy of the Minnetonka Economic Development Authority
2) Resolution setting a preliminary 2018 tax levy, collectible in 2019, for the Bassett Creek Watershed Management Tax District

Barone gave the staff report.

Wiersum asked staff to clarify the difference between the General Fund and the tax levy. Barone talked about the differences and the different uses for the General Fund and the tax levy.

Acomb moved, Schack seconded a motion to adopt resolution 2018-129 setting a preliminary 2018 tax levy and preliminary 2018 HRA levy, collectible in 2019, and a preliminary 2019 budget, and consenting to a special benefit tax levy of the Minnesota Economic Development Authority and resolution 2018-130 setting 2018 tax levy, collectible in 2019, for the Bassett Creek Watershed Management Tax District. Schack, Acomb, Happe, Bergstedt, and Wiersum voted “yes.” Ellingson was absent. Motion carried.
Wiersum called a recess at 9:53 p.m. Happe was excused for the rest of the meeting. Wiersum called the meeting back to order at 9:58 p.m.

F. Items related to the Green Line Extension (Southwest LRT)

Wischnack gave the staff report.

Bergstedt moved, Acomb seconded a motion to adopt resolution 2018-131 reaffirming previous approvals for Southwest LRT; to approve Subordinate Funding Agreement (SFA) 6 – Change Orders for Locally Requested Capital Improvements (LRCI’s); to approve Funding Agreement (SFA) Amendments – SFA 4 and SFA 5; and to adopt resolution 2018-132 approving real estate conveyances. All voted “yes.” Motion carried.

15. Appointments and Reappointments: None

16. Adjournment

Acomb moved, Schack seconded a motion to adjourn the meeting at 9:59. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk