Minutes
Minnetonka City Council
Monday, October 26, 2015

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, Patty Acomb, Brad Wiersum, Tim Bergstedt, Tony Wagner, and Mayor Terry Schneider were present.

4. Approval of Agenda

Wiersum moved, Bergstedt seconded a motion to accept the agenda as presented. All voted “yes.” Motion carried.

5. Approval of Minutes: None

6. Special Matters

   A. Retirement recognition of Bob Manor

      Schneider read the recognition. He noted he was an architect and dealt with other architects from all over the metro area. Each had horror stories but Minnetonka’s inspection division always gets rated highly for doing the right thing for the right reason.

      Manor thanked the council for the support it has given the inspections division over the years.

   B. Recognition of 2015 photo contest winners

      Schneider recognized the winners and handed out the certificates.

      Wiersum said the photographs were amazing and thanked the entrants.

   C. Proclamation for Extra Mile Day

      Schneider read the proclamation.

7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming meetings and 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 regarding appeals from fire marshal decisions
   Allendorf moved, Acomb seconded a motion to adopt Ord. 2015-15 amending sections 910.031, 910.032 and 910.033 of the Minnetonka City Code: relating to appeals from decisions of the fire marshal and variances from the fire code. All voted “yes.” Motion carried.

B. Ratification of solar garden contract with New Energy Equity LLC
   Allendorf moved, Acomb seconded a motion to ratify the contract with New Energy Equity LLC. All voted “yes.” Motion carried.

11. Consent Agenda - Items Requiring Five Votes

A. Resolution approving a conditional use permit, with locational variance, for an accessory apartment at 11816 Karen Lane
   Allendorf moved, Wiersum seconded a motion to adopt Res. 2015-108 approving the permit, with variance. All voted “yes.” Motion carried.

12. Introduction of Ordinances

A. Ordinance amending Section 710 of the city code regarding increases/changes in fees
   Community Development Director Julie Wischnack gave the staff report.
   Wiersum moved, Bergstedt seconded a motion to introduce the ordinance. All voted “yes.” Motion carried.

B. Items regarding land exchange agreement for property on Crosby Road
   City Attorney Corrine Heine gave the staff report.
   Acomb asked for clarification of the portion being exchanged. Heine said there had been an issue over the years with encroachment on to the city owned property. Under state law the encroachment does not grant any rights. The 35 foot strip was determined based on the historic area of encroachment and preserving for the city a sizeable parcel allowing some flexibility in determining a future path. All encroachments would be removed.
   Wiersum moved, Allendorf seconded a motion to approve the land exchange agreement and introduce the ordinance. All voted “yes.” Motion carried.
13. Public Hearings

A. On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for People’s Organic Coffee and Wine Shop, 12934 Minnetonka Boulevard

Barone gave the staff report.

Schneider opened the public hearing at 6:57 p.m.

Diane Alexander, 1800 Commerce Boulevard, Mound, said she was the previous owner and opened the café several years ago before selling to Anderson Franchise. Now she is buying the café back. She hopes to increase the energy and provide a great healthy eating option for Minnetonka residents.

Acomb moved, Wagner seconded a motion to continue the public hearing to November 23, 2015. All voted “yes.” Motion carried.

B. Secondhand Dealer license for Best Buy Stores, LP at 12411 Wayzata Blvd

Wagner recused himself because his wife works for Best Buy.

Barone gave the staff report.

Schneider opened the public hearing at 7:01 p.m. No one spoke. He closed the public hearing at 7:01 p.m.

Bergstedt moved, Acomb seconded a motion to grant the license. Ellingson, Allendorf, Acomb, Wiersum, Bergstedt, and Schneider voted “yes.” Wagner abstained. Motion carried.

14. Other Business

A. Resolution authorizing the city of Minnetonka to serve as the Local Government Unit representing Eagle Ridge Academy in their application for a Hennepin County Youth Sports Program grant request

Barone gave the staff report.

Wagner asked if the application was competing with any other application the city was submitting. Barone indicted it did not.

Allendorf moved, Wagner seconded a motion to adopt Res. 2015-110 authorizing the city to serve as the local government unit representing Eagle Ridge Academy in their application for a Hennepin County Youth Sports Program grant request. All voted “yes. Motion carried.
B. Resolution authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor

Finance Director Merrill King gave the staff report. She read a letter on behalf of Kathy Landen, 2720 Mayflower Avenue, asking the council to waive her $50 administrative penalty. The letter was dropped off at city hall at 6 p.m. Others who paid their bill before the close of business day did not have to pay the administrative penalty.

Wiersum said often when the city charges a fee the amount covers the actual cost. He said state law limits what can be done with these particular fees. The amount has to be significant enough to provide an incentive to pay on time. He said it sounded like there was significant staff time involved in getting the delinquent accountholders to pay. He asked if there was any correlation between the increased fee and the actual collection cost. King said staff time includes mailing letters to the 800 accounts but more significantly the time it takes to call and explain things to the accountholders. She had not done an analysis to determine the actual cost but the staff time could be used to do other work instead.

Wagner moved, Wiersum seconded a motion to adopt Res. 2015-109 authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor and waiving the administrative penalty for 2720 Mayflower Avenue. Allendorf, Acomb, Wiersum, Bergstedt, Wagner, and Schneider voted “yes.” Ellingson abstained. **Motion carried.**

C. Items concerning Cherrywood Pointe of Minnetonka at 2004 Plymouth Road

1) Ordinance rezoning the property from R-1 to PUD;
2) Master development plan; and
3) Site and building plan review.

Acting City Planner Susan Thomas and Heine gave the staff report.

Wiersum said there was a provision stating if there were some affordability in a project it released it from the requirement to be PID. Thomas confirmed there was a provision of the PID ordinance that allows the council to grant flexibility to PID standards when affordability is provided. Wiersum asked if the affordability in this project was sufficient to meet that provision. Wischnack said there was no parameter by which the ordinance outlines the affordability and that it was up to the council to decide.

Wagner asked staff to provide more information about tree preservation and the impacts on woodland preservation areas and the protections the city truly had around the zoning district question. Thomas said during the review of the tree ordinance it became clear to staff that the city wanted to provide a higher degree of protection for the remnant forests particularly when subdivision was occurring. During the redevelopment of an existing property the same
protections were not provided. The ordinance said there was no limit to the removal that was allowed. There was a mitigation requirement but not a specific limit. Wischnack said it was very methodical on the council's part on how the ordinance was set up. The council understood that redevelopment would cause some tension in balancing with natural resources. This was the intention staff uses in recommending a PUD instead of some other classification because it allowed for more ability to negotiate the placement of the building and properly propose development that works for the site.

Acomb asked if this proposal was not for an assisted living facility but was for a cooperative or some type of ownership product, would it be considered subdivision and looked at differently in terms of the woodland preservation issue. Thomas said no, that a cooperative subdivision would not be considered subdivision for the purposes of the woodland preservation ordinance.

Mark Nelson, from United Properties, said the project was being proposed to provide the opportunity for residents to remain in the city. He went over some of the changes to the proposal from the last time the council reviewed it. The footprint had been reduced by about 30 percent from the concept plan. This meant the loss of about one fourth of the proposed units. The current plan has 99 units. Parking has been shifted and removed from part of the property. He said he felt it was a good plan that met the balance between the site's constraints and development constraints.

Annette Bertelsen, 13513 Larkin Drive, said she was speaking on behalf of a group of residents in the Essex Hills neighborhood to the west of the project and for some property owners further west. She thanked United Properties for their interest in building senior housing in the city and the group supports building senior housing in this neighborhood. She said Minnetonka has a lot of great guidelines that reflect the city's values and the unique character of the community. The developer was asking to depart from quite a few of the guidelines. Following more of the guidelines would improve the project for the city. She said one such guideline was the outdoor recreation area standard. The proposal was for a two percent outdoor recreation area instead the standard 10 percent. This meant the only walking area for residents was from the building along the parking lot out to the road and a small patio. She showed pictures of the larger outdoor area of the Roseville building.

Bertelsen said the maximum floor area ratio for this property was .75. The proposal would exceed this by 24 percent. This would result in a more sprawling footprint. She said the city's natural resource staff indicated a non-sprawling proposal would impact the woodland preservation area 15-20 percent while this proposal would have a 35 percent impact on the woodland preservation area. The floor area ratio would be determined by the decision on the zoning. She said the council was being asked to allow the developer to ignore the city code because the ordinance was old. The proper process would be for the council to update the ordinance. The development would set a precedent for all the other huge development in the Ridgedale area not just
the properties in the I394 district. She said the developer should be required to follow the city code for protection of natural resources and financial resources.

Bertelsen said the developer was asking for a north setback of 22 feet which equates to a 60 percent variance under planned I394 or a 73 percent variance under R-5 or PUD guidelines. It's a good use of a variance because it moves the building out of the steep slope, is further away from neighbors, and may provide an opportunity for low income housing. She said the south setback could use improvement. The request was for a 60 percent variance, 22 feet versus 50 feet. On that end of the property the building would go over the woodland preservation area and steep slope area. The natural resources staff indicated if the entire southern wing was removed from the proposal, the impact to the woodland preservation would decrease from 35 percent to 20 percent. A significant number of trees would be saved and the floor area ratio would be closer to what is allowed under the I394 district.

Derek Diesen, 13525 Larkin Drive, agreed with Bertelsen. He thanked the developer for working with the neighborhoods and thought the project was moving in the right direction. He said the issue remains the PUD ordinance. In order to ignore the ordinance there should be a reason stated in the comprehensive guide plan because the plan reflects the community's values. The comprehensive guide plan specifically states that adherence to the I394 traffic study, corridor study and ordinance was important. He said the PID ordinance said the height of the building and the setback should be equal. The maximum is 100 feet and minimum is 50 feet. It didn't make sense to him that the city picks the most restrictive zoning, R-5, and then ignores it. The exact same building could be built under the PID ordinance, which has more restrictions that protect the neighborhood and community.

Wagner said he received four emails late in the day that all echoed what Bertelsen had presented about the desire for PID and tree protection.

Wiersum said the council was granted broad authority to choose the most appropriate zoning for a particular property. PID was one that could be used but the council would not be ignoring the ordinance if it approved a different zoning designation. The property was in the PID traffic control area but was not in the PID zoning district.

Wagner said Diesen was correct that the council could approve the project under the PID zoning and remove the variance. The developer could come back with a footprint that impacts more of the steep slopes and still meets the ordinances. He said the neighbors were seeking consistency from the council in how it makes decisions. The ordinances for R-5 and PID zoning clearly apply and PUD was less clear. Protecting the natural resources and locking in a conservation easement which couldn't necessarily be required in the other zoning districts was important to him.
Schneider said it was his understanding that minimizing the impact on the wooded area could be done by making the footprint smaller and this could be done under either the PID or PUD zoning. He asked the developer to address the feasibility of a four story building versus a five story building and what the footprint might look like. Nelson said there was a direct correlation between building footprint and height. The building height was discussed at an early neighborhood meeting and the feeling was four stories was probably enough because it stayed mostly within the tree canopy. The operation of the building also was a factor because the 21 memory care units have to be secure and on the first floor. It also allows for the centralization of the common areas. Economics also play a part and he thought the right balance was struck between height, footprint, preservation, and the reality of how the site would function. The point was to be residential in a somewhat institutional setting.

Schneider asked Nelson to address the feasibility of a walking trail that likely would have to be on the west side. Nelson said he thought a walking trail was likely feasible within the limits shown. The idea had not been developed. Wagner said technically the passive spaces could not be counted under the ordinance. The tradeoff would be figuring out a way to make the area more vibrant for the residents to enjoy the amenities. He thought that was something that should be addressed.

Allendorf said he looked for the zoning classification that best controlled the building within the site area. If somebody was looking to force the 1394 PID zoning it was likely because they wanted something different done with the building rather than what was being proposed. He said he believed a four story building was less obtrusive on this site than a taller building. The only reason for more height would be to shrink the footprint. There would be a tradeoff with the functioning of the building and the proposed floor plan. He said the neighbors had not discussed wanting a five story building in the past. He thought the proposal had come a long way with the reduction of units and the footprint compared to the steep slopes and the woodland preservation area. He would hate to force this into a zoning classification that would require a variance to fit the building on to the site. He thought the building fit in nicely with the site, respected the neighborhood, and was unobtrusive from the sightlines.

Wiersum said the council’s job was to deal with the imperfect because there were no perfect projects or perfect sites. While he never felt compelled to make a decision that would make numbers work for the developer, he understood the developer had to make the numbers work or there would be no development in the city. He thought this was a good project and the scope had come down meaningfully and significantly. The city had no perfect redevelopment sites or perfect buildings and the council had to clearly assess what the community values are and what a proposal brought to the community. He said in recent years he had spent quite a bit of time in senior living facilities and he recognized the community aspect to what these types of buildings need to be. Maybe the city could expect the developer to jerry-rig
the buildings and make it work with more restrictive zoning, but it probably wouldn’t be nearly as good a place for people to live.

Acomb said there was no question there would be big impacts to the site and a big change that would be difficult for people. She thought the developer had made some real efforts around trying to decrease the building and following the city’s lead in trying not to have too tall of a building. If the proposal was changed to make the building taller, there would be another set of people who would be opposed. She appreciated the conservation easement and the stormwater reuse. She encouraged the developer to take Bertelsen’s suggestion for some active outdoor space in the area around the building. She said the benefits of the housing type were needed in the community.

Bergstedt said he was less hung up on what was done with the zoning and what he looked at was that the parcel was guided for high density. Even though it was a sensitive parcel with the mature trees, the woodland preservation area, and the steep slopes the parcel would be redeveloped. As long as it was redeveloped at high density there were going to be impacts no matter what zoning was approved. He said there was a huge, dramatic improvement since the council saw the concept plan. The building fit on the site much better and the four story height worked. It was a great location for this type of facility and the inclusion of affordable units was huge. Even though the city could not require a conservation easement, it was important going forward.

Wagner said this concept plan process worked. The council provided a lot of feedback during the review and he thanked the developer for incorporating that feedback into the changes. He didn’t take the idea of expectations in zoning lightly. He wanted the right project. Regardless of what zoning was approved there was substantial public purpose for the project. If approved under a PID, the affordable units and the trail and conservation easements would not occur. Given the costs of memory care and assisted living units, it was not an insignificant move by the developer. He took that as a public purpose. He also took as a public purpose the idea of re-using rain water given the amount of hard surface. He said the dilemma for him was the issue of height versus impact. He thought given the adjacent areas, a four story building was more appropriate than a five story building. He was willing to make the tradeoff under either a PID with variances or a PUD. The city would have more control under a PUD. He thought it was a good idea to direct staff to work with the developer to come up with some type of outside circulation plan to be considered.

Ellingson said the council was entitled to rezone to a PUD. One of the findings under a PUD was there had to be affordable housing. Another finding states that the rezoning would provide public benefit with a greater preservation of a site’s wooded slope than otherwise would be provided under a non-PUD development. He said there had not been any demonstration there would be any difference under any of the zonings. It had
more to do with the placement of the footprint of the building. Under the R-5 the buildable area extended quite a bit into the western slope but this didn’t mean that’s where the building had to go. He thought there should be more sensitivity to what was being done to the slopes and the trees. Even though the tree ordinance did not apply because it was not a subdivision, under the ordinance 25 percent of the woodland preservation area could be removed. The proposal would remove a higher amount and he thought that was inconsistent with the finding for greater preservation of a site’s wooded slope. Under the tree ordinance 35 percent of the high priority trees could be removed. The proposal would remove 15 out of the 16 high priority trees including all of the significant trees. He did not see that as a public benefit. He was also was concerned that there was no room to walk around the building the way it was designed and with the slopes. Adding the walking area would require even more trees to be removed. He said he would like to see some changes to the design to accommodate the concerns that were raised.

Schneider was pleased that the concept review process worked as well as it did. He said absent having a little more outdoor area, the location and configuration of the building was as ideal as possible. The setback from Plymouth Road and the appearance fits better with the surrounding developments. He thought it was reasonable to add a stipulation to require additional outdoor active area subject to staff working with the developer to figure out exactly how that would work. He thought the proposal would fit well into the area. It was much better than having a six to eight story rental apartment building or a corporate office building that would cause traffic issues. The findings in the PUD ordinance were important but it was really the council’s discretion to decide if a PUD was the right type of mechanism to give the city what it wanted from a control and flexibility standpoint.

Wiersum said there was agreement that the council wanted to see a little more outdoor activity area but Ellingson had made a good point. It was important not to be overly prescriptive with a building that didn’t have room to walk around without compromising some values that were important. The developer probably thought long and hard about the idea because this was a market based product. If people can’t get outside, the facility would not be as successful as those in other cities. The developer should be encouraged to come up with options but the council should not be too prescriptive.

Wiersum moved, Bergstedt seconded a motion to adopt Ord. 2015-16 rezoning the property from R-1 to PUD and adopting a master development plan; and Res. 2015-111 approving final site and building plans for Cherrywood Pointe of Minnetonka at 2004 Plymouth Road.

Schneider asked Nelson to address what could be done to get more outdoor activity area on the west side. Nelson said there was some area on the western side where the plan included a fairly substantial outdoor patio area. It would be similar to what existed at the Roseville facility. He committed to adding some activity area and more outdoor space.
Wischnack proposed a condition for additional open recreational space generally to the north and west without further damage to trees, slope, etc. This condition would remain until issuing the building permit.

Wiersum said he was willing to add to his motion a condition that the developer further work in coordination with staff to address the enhanced outdoor recreation area prior to the building permit being issued.

Bergstedt said what the council was asking for was a win for the developer as well. He didn’t want to be too prescriptive in requiring a trail that meant losing more trees. The views and the vistas were important to the population who would live in the facility. The more the natural beauty could be maintained would be important for the residents. He seconded the amended motion.

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

Schneider suggested taking a more in depth look at the 1394 district from an applicability standpoint and the given time that had passed since the ordinance was adopted. As the ordinance was drafted 90 percent of the focus was on trip generation and Plymouth Road capacity. The city attorney felt uncomfortable just doing an ordinance for that due to concerns about tying traffic to zoning and costs. It evolved into a more full-fledged ordinance with all the other things that were included. Schneider said things weren’t flushed out as well as they could have been. Much has changed over the years. He said the PID ordinance should be kept intact but it could be refreshed to be more applicable to today’s environment.

15. Appointments and Reappointment: None

16. Adjournment

Wiersum moved, Acomb seconded a motion to adjourn the meeting at 8:50 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk