Minutes
Minnetonka City Council
Regular Meeting, Monday, January 5, 2015

1. Call to Order

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

4. Approval of Agenda

Wiersum moved, Allendorf seconded a motion to accept the agenda with an addendum to item 14A. All voted “yes.” Motion carried.

5. Approval of Minutes:

A. September 29, 2014 special meeting

Allendorf moved, Wiersum seconded a motion to approve the September 29, 2014 special meeting minutes. Allendorf, Acomb, Wiersum, and Wagner voted “yes.” Bergstedt abstained. Motion carried.

B. November 10, 2014 regular meeting

Allendorf moved, Wiersum seconded a motion to approve the November 10, 2014 regular meeting minutes. All voted “yes.” Motion carried.

C. November 24, 2014 special meeting

Allendorf moved, Wiersum seconded a motion to approve the November 24, 2014 special meeting minutes. All voted “yes.” Motion carried.

D. December 1, 2014 regular meeting

Allendorf moved, Wiersum seconded a motion to approve the December 1, 2014 regular meeting minutes. All voted “yes.” Motion carried.
6. Special Matters:

A. Retirement recognition of Wendy Turgeon

Wagner read the recognition and presented Turgeon with a plaque.

Turgeon said it had been great to work for and live in the city. She thanked her co-workers.

7. Reports from City Manager & Council Members

Barone welcomed acting city attorney Mary Tietjen of Kennedy & Graven and reported on the schedule for upcoming council meetings.

8. Citizens Wishing to Discuss Matters not on the Agenda

Alex Bakkum, one of the co-owners of the Play & Learn Cafe, said he was appearing before the council to ask that Resolution No. 2014-124 approving the conditional use permit for cafe be clarified. The resolution contained a provision that the parking agreement, which was a condition in the 1988 conditional use permit for the former Lone Spur restaurant, be recorded with Hennepin County before the building permit could be issued. Bakkum asked that either the council clarify that the Play and Learn Cafe had substantially complied so the permit could be issued or the resolution be amended to still require the recording of the parking agreement but separate the conditional use and building permits from the requirement. He said the hope was to open up the restaurant that would be an asset to the city. He agreed the recording of the agreement had to happen for the landlord, but he was concerned the burden was falling on his business.

Wagner said that at a previous meeting the conditional use permit for the Play & Learn Cafe was reviewed and approved by the council. There were concerns raised about the 1988 cross parking agreement. He asked staff to provide an update. Community Development Director Julie Wischnack said the condition in the resolution was clearly stated and city staff could not issue the building permit unless given different direction by the council. Wagner noted he was the one who included the condition in his motion. His intent was the condition from 1988 indicated that if the sale of the properties occurred, the city did not want to run into a situation similar to what occurred with Jimmy’s. Wischnack said there was a parking agreement drafted that was circulated and in a form acceptable to staff. The western property owner had not signed the agreement. She said the property owner indicated he would not sign the form unless one of two things occurred- a parking study was completed or 50 spaces were built on the south and north proof of parking areas that had been discussed. There was a six month deadline for the condition to be met.
Allendorf noted that under the “citizens wishing to discuss matters not on the agenda” portion of the meeting agenda, the council does not take action on any item brought before it but refers those matters to staff.

Barone said the options were for the council to do nothing and leave the conditions as approved and wait for the agreement to get signed; refer the matter to staff to come back with a recommended amendment to the condition allowing the building permit to be issued; or wait until the traffic study was completed. This was expected to be sometime in February. Separate from that was the issue of the cross easement. Wagner said the only other option to gain compliance with the 1988 approval was for the council to review Lone Spur’s conditional use permit.

Acomb said the intent of the condition was not to penalize a business owner from starting the business. She asked if there were any options to encourage Lone Spur to comply with the condition. Barone said the option would be to review Lone Spur’s conditional use permit.

Allendorf said he supported waiting for the traffic study to see if there was or wasn’t a problem. He said the issue seemed to be more a competitor tenant/landlord issue than an issue for the council. The traffic study would allow the council to make a reasoned judgment about whether or not parking would be an issue.

Bakkum said there was a proof of parking plan in place so if parking became an issue there was a plan to address the issue.

Wischnack said the intention of the parking study was to remove any question about if parking was an issue and how parking was used on both sites.

Acomb asked if the parking study could be completed sooner. Wischnack said staff asked for the study to be completed over the holidays but that was not done. She indicated the study might be available by the council’s first meeting in February.

Wiersum said the circumstances were unfortunate. There was an expectation the agreement would be reached but there was a competition issue between the two businesses and one property owner was using the six months provided to delay the agreement. This was unanticipated. He asked if there were any other way to expedite the matter. Wagner said as he reflected on his reason for pushing for the condition, he didn’t want get into a situation where regardless of the tenant in the future, there was a landlocked parcel and have customers of the businesses of either mall not being able to park where they wanted to park because no one knows about the property line. He didn’t think the condition would be something
that would hold up the process. As the one who made the motion to include the condition he would like to give staff the guidance to have some specific conversations with the property owners and with Lone Spur to set an expectation the issue would be resolved by the January 26 council meeting. He viewed parking and the cross parking easement as two separate issues. The city set an expectation back in the 1980’s that should be dealt with by the property owners and the business. Wiersum said that made good sense because there was an unanticipated wrinkle causing the Play & Learn Café some difficulty. The reasons for the condition were appropriate. He said he wanted to see an expedited parking study to be included in the January 26 decision. Wischnack said the traffic observations needed for the study would occur through January 18. This would cause issues in including the study in the January 26 council packet.

Allendorf said he supported the process being discussed but would also like a recommendation about how the city could encourage the business owner to be amenable to sign the agreement for the good of both parties. Wischnack indicated that the incentive for the business owner to sign the agreement was he would have to appear before the council if he did not sign. Revocation of a conditional use permit was serious but this could be discussed so that the property owner understood this was being considered.

Wiersum said he would be open to consider reducing the six month period that was included in the conditional use permit to provide an incentive to the property owner to take action on a timelier basis.

Bergstedt said he was glad Bakkum brought the matter to the council’s attention. He would not be comfortable with taking no action and letting the landowners continue to disagree. He said he was comfortable with the options being looked at.

Chris Grote said he represented the owner of the eastern portion of the shopping center. He said when he first read the condition being discussed he thought it would be something simple to complete. Now it turned out things weren’t so simple. He said after the item was approved by the council, his firm immediately drafted the proposed cross parking easement. This was given to the city and got the approval of staff. The owner of Lone Spur has not signed off instead he asked that certain demands be met. Grote said he was thrilled to hear the council indicate the delay was not meant to happen and the perceived unfairness was not meant to fall on Play & Learn. Play & Learn really can’t do anything to push the two landlords into getting the cross parking easement done. He said he hoped the council would separate the two issues and allow Play & Learn to get the building permit needed to open the business. The cross parking easement was unambiguously an element of the 1988 conditional use permit for Lone Spur.

9. **Bids and Purchases:** None
10. Consent Agenda - Items Requiring a Majority Vote:

A. Resolution designating the Acting Mayor and Alternate Acting Mayor

Wiersum moved, Acomb seconded a motion to adopt Resolution No. 2015-001 designating Council Member Bergstedt as the Acting Mayor and Council Member Allendorf as the Alternate Acting Mayor. All voted “yes.” Motion carried.

B. Resolution and agreements with the Minnetonka School District for the CSAH 101 project, TH 62 to Hutchins Drive

Allendorf moved, Bergstedt seconded a motion to adopt Resolution No. 2015-002 and approve agreements with the Minnetonka School District for the CSAH 101 Project from TH 62 to Hutchins Drive, County Project No. 9917. All voted “yes.” Motion carried.

C. Proposed orders for tobacco license violations for Boulevard Sinclair and Walgreens

Allendorf moved, Bergstedt seconded a motion to approve issuing the enclosed Finding of Fact, Conclusion, and Orders. All voted “yes.” Motion carried.

11. Consent Agenda - Items requiring Five Votes: None

12. Introduction of Ordinances:

A. Major amendment to the master development plan for Villas at Groveland, located at 17113 Minnetonka Boulevard

City Planner Loren Gordon gave the staff report.

Wiersum said he was excited about the plan. He thought the previous plan had a lot of merit but the amended plan had even more merit.

Wiersum moved, Allendorf seconded a motion to introduce the ordinance and refer it to the planning commission. All voted “yes.” Motion carried.

Allendorf noted it was the first time he could recall a proposal going from a higher density to a lower density.

13. Public Hearings:
A. Application for the transfer of the cable franchise system

Brian Grogan, the attorney for the Southwest Cable Commission, gave the report.

Wiersum asked why the current subscribers did not simply become Charter customers. Grogan said the analysts seem to believe that if Charter was financially capable of taking all 4 million customers it would have done so. There did not seem to be the financial wherewithal to do this immediately. The idea is over a three or four year period Charter will be in a position to acquire the remaining subscribers.

Acomb said when the franchise agreement was approved by the council two years ago there was a lot of discussion about customer service. She said she appreciated the provisions in the agreement that target customer service given the issues over the years. Grogan credited the commissioners on the commission for those provisions.

Allendorf asked what would happen if the council voted to not approve the transfer. Grogan noted the transfer was dependent on FCC approval. He said the $50 billion nationwide deal was a game changing transaction. There had already been consensus approval from enough cities needed under the purchase agreement to close. He said what would likely occur if the council did not approve the transfer would be to operate under Comcast on paper until the issues were resolved and a side agreement would occur with Greatland and Charter. Once the deal was closed Comcast would not have any employees in Minnesota.

Bergstedt noted Grogan had said although nothing was definitive yet the email changes could occur during the first year. Bergstedt said that information had been provided indicating there may be a sunset provision where current email addresses would be valid during the changeover. Grogan said that was correct. The described transition was not precise but the change would occur during the first year because Comcast’s transition agreement with Greatland was for one year. Multiple notices in a variety of forms would be sent to customers in advance letting them know how to accomplish the transition. Once the transition was accomplished there would be an undefined period of time, likely months, where emails sent to the old address would automatically be forwarded to the new address. He said it was important to note that two thirds of Greatland would be owned by Comcast shareholders. Comcast would have every motivation to protect its shareholders invested in Greatland by ensuring a smooth and easy transition. Charter and Greatland would have an equal motivation to maintain customer loyalty because they won’t want to lose customers.
Wagner said there were some performance measures in the existing franchise agreement that will transfer. He asked what remedies the cable commission or the city would have if there was a degradation of service. Grogan said one of the ways the city was in a beneficial position was that two years ago the council adopted the new franchise agreement. Many cities in the metro area were in the middle of franchise renewals or coming up on renewal. He said the existing franchise agreement was very strong and included specific customer service standards. If the metrics are not met by the company there are liquidated damages that the city could enforce. Wagner said the ability to enforce damages would be helpful for the city's residents.

Wiersum said it would be helpful to know what the new email suffix would be as soon as possible. It would be helpful if the suffix was "charter.net" rather than "greatland.net". If the future transfer occurs this would prevent a situation of people having to change their email addresses twice. Grogan said the nonbinding domain name being floated was "charter.com." In terms of timing of the transition it was vague because it is not known when the FCC might approve the acquisition. Most expectations are the approval might be in March or April. There would be a further lag as the subsequent transactions occur. Wiersum said the commission was doing a great job but his frustration was the impact to residents and the city had so little real authority. Grogan noted there was another company, CenturyLink looking for a cable franchise in the metro area. The competition would be beneficial for city residents.

Wagner continued the public hearing from December 15, 2014 at 7:44 p.m. No one spoke.

Wagner closed the public hearing at 7:45 p.m.

Acomb moved, Allendorf seconded a motion to adopt Resolution No. 2015-003 approving the transfer of the cable franchise and change of control of the grantee and exhibit "A." Allendorf, Acomb, Bergstedt, and Wagner voted "yes." Wiersum voted "no." Motion carried.

B. Resolution approving vacation of drainage and utility easements at 9900 Bren Road East

Gordon gave the staff report.

Wagner opened the public hearing at 7:48 p.m. No one spoke.

Wagner closed the public hearing at 7:48 p.m.
Bergstedt moved, Wiersum seconded a motion to adopt Resolution No. 2015-004 which vacates the drainage and utility easements. All voted "yes." Motion carried.

14. Other Business:

A. Resolution approving a conditional use permit to operate a dog daycare and boarding facility at 14901 Minnetonka Industrial Road

Gordon gave the staff report.

Kristin Myhre, the manager of Williston Ridge, the owner of six of the 13 buildings in the industrial park, said St. Jude Medical occupied 315,000 square feet of the space with Cargill occupying the remainder. She introduced Patrick Lensing, from Steiner Development. Lensing said Steiner Development had been integral to the industrial park for the past 40-50 years. During that time the park has primarily housed medical technology or research type of businesses. Any time there was a use that was less desirable from a noise standpoint, his company has worked with the city and the neighbors to be forthright about the activities. He encouraged the council to do the same with this conditional use permit.

John Scholz, part of the ownership group that purchased the six buildings in 2014, said the group was attracted to the building because of their great location. The focus was on the aesthetics despite the term “industrial” with the high tech use and talented workforce. The plan, which has already begun, is to update the landscaping, the signage, the aesthetics, and the exterior of the building. The concern was adding the dog kennel detracts from the park. There would be more traffic than from a typical office warehouse user. The noise was also a concern. He noted a deal in Chanhassen did not happen because of the proximity to a dog park. He said his group really wanted to focus on reinvigorating the industrial park and the dog kennel would slow down those efforts.

Myhre noted the application was for around 180 dogs. The type of building typically has about 82 employees coming and going per day. Information from the Adogo conditional use permit indicated on average there were about 100 trips on an average day and 170 trips during peak times. This meant there would be additional trips compared to another type of tenant. Another concern was the proposed location would be in the center of the park. There was only one path in and one path out to service the entire park. She disagreed with the staff finding that the 8,000 square foot outdoor area was equal to an enclosed area. She said the ordinance states commercial kennels were an approved use in a residential zoning.
When the application was contemplated it was cited that all the dogs were to be kept in an enclosed area except for the supervised walks.

Myhre said one way of keeping the use in compliance was to keep all the dogs inside the facility. To the extent dogs are in the outside area, the number and times should be limited. This has been done at other locations. Another way to keep the application in compliance would be to reduce the size of the outdoor area. The Adogo locations outdoor areas were limited to 30-35 percent of the indoor area. This location was looking to have an outdoor area around 45 percent of the indoor area. She disagreed with the staff's determination that the setbacks did not apply because it was in an I1 district. For the other locations there was an eight foot opaque fence with soundproofing. If this was the standard, she asked it be applied to this location as well. Trees were added to screen the fence and provide a more natural feel. She indicated the issue of noise violation was discussed at the planning commission. The applicant wanted the time period to be ten minutes before a violation occurred. It was agreed that a five minute time period was more appropriate because it was consistent with the city code. The applicant indicated that they would make efforts to control noise. Over time she hoped the complaint time period would be further reduced from five minutes.

Myhre said the only way to reduce the amount of traffic was to limit the number of dogs. Because it was unknown how much traffic would be added to the park, she suggested a traffic impact study be done to understand if there should be stop lights, modifications to signage, traffic patterns, turn lanes and how issues during drop off and pickup times could be mitigated.

Rob Stanek with CarVal, asked the council to reconsider the recommendation to approve the permit or consider the suggestions Myhre had listed. He said another scenario was for provisional use with a reduced scale. After a defined period of time the situation could be assessed.

Schneider arrived at 7:54 p.m.

Wagner asked staff to comment on the concerns that were raised. Gordon indicated at a meeting with the applicant the idea of looking at the fencing was discussed to determine if there was a better design that would address concerns. From a traffic standpoint he said staff did not have concerns about traffic because this particular use would generate a similar amount of trips as any other use in the park. There probably would not be associated peak hours like an office use. He said the number of dogs
wasn't considered to be an issue during the staff review primarily because of the lack of proximity to residential properties.

Wagner said he sensed the concerns that were raised were based on the feeling that workers and tenants were being treated differently than R1 residential would be treated. He said staff was indicating an industrial property was more appropriate for the use than an R1 district even though commercial kennels were allowed in R1 districts. He said he had some concern about the outdoor noise.

Schneider said he expected to see concern about the industrial park location but it was the coming thing for people who were looking for a different type of environment for their dogs. He did agree that a person working in an industrial park in a corporate office environment would be impacted by the unique noise from a dog park. He didn't see traffic as being an issue in this situation. He noted the shape and size of the proposal would limit parking on the south end. If the outdoor area was limited to the western part it would make overflow or staff parking available. Reducing the size of the outdoor space would also make it easier to screen. He suggested the applicant work with staff to determine the number of dogs to allow outside during a given period of time for exercise and other activity.

Wagner asked staff's opinion on provisionally doing some of the things in the outdoor area that were being done at the other locations. Over time the provisions could be removed based on performance. Gordon said that could be considered for the site. He was not sure what the proper number of dogs might be to start with. There was more square footage per dog at this location than for Adogo.

Allendorf said he agreed with Schneider that traffic was not an issue. The use was appropriate for the park. The issue was managing what times the dogs are allowed outside and how many are allowed out at one time. He said it might make sense to require the applicant to keep a log of how many dogs are out and what period of time they are out for. This would provide documentation if a problem arose as opposed to just having someone complain and not knowing the circumstances.

Wiersum said the outdoor aspect had the greatest potential for disruption to neighboring properties. The building was large but 180 dogs was a large number of dogs. The suggestions about managing the outdoor area made a lot of sense. He said part of him would like to start smaller rather than approve 180 dogs because of the size of the building. He also understood that limiting the number of dogs too much would be problematic for the business. During his time on the council the city did
better at allowing an expansion rather than granting something and later revoking it.

Ellingson arrived at 8:31 p.m.

Wagner asked how to provide flexibility in the CUP where something similar to a construction management plan would be developed for the outdoor use without prescribing the specific standards. Wischnack suggested amending the resolution to include language regarding opaque wood fencing. If issues arose there would be a process of putting sound material on the wood fence. The council could also approve a smaller outdoor area and require a report back in six months to get an update on how things were operating. She said staff would work with the city’s animal officers to monitor any noise issues. The CUP was written in a manner where the approval could be reduced based on unforeseen problems. She noted there had only been one complaint at the larger Adogo facility. Gordon said staff had discussed limiting the outdoor area to the south with parking along the western side of the building. The arrangement of interior space drove the western flank of the outdoor area.

Business partners Chad Miller, 3568 Bailey Ridge Alcove, Woodbury, and Darren Alick, 2441 Ponds Way, Shakopee provided information about their application. Miller said the 180 dogs was the maximum occupancy number. This equates to one dog per 100 square feet. For day to day business the number of dogs would be a third of the maximum. The only time there would be anywhere near 180 dogs was during holidays and spring breaks. He said those are the last times a business would want to turn a dog away because the owner would then find somewhere else to go and chances are they would not come back. The employee count would flex during these times as well. He provided information about the correlation between the indoor and outdoor areas. Alick said he understood the concerns about noise. The way the building space was planned was by giving dogs more room, the less noise there would be. The bigger space would also help alleviate behavioral issues amongst the dogs. He said there were several pages in the employee handbook about how to deal with barking dogs. He noted the fencing would not be chain link but would be six to eight foot privacy fencing. The fence would help bounce sound back into the building. Miller said privacy fencing would be installed between each of the four zones.

Schneider said the information about only receiving one complaint related to Adogo was useful. He would be cautious about how the outdoor space was managed. He agreed conceptually about not confining dogs in a tight space but managing how the dogs are allowed outside was important. He
liked Allendorf’s idea about staff working with the applicant to come up with a plan for documenting and managing the outdoor activities.

Wiersum said the applicant clearly had a lot of experience with dogs. He said having the applicant work with staff to develop a plan to ensure accountability helped make the proposal reasonable. He understood the industrial park included high tech, light industrial businesses but with good management this seemed to be a reasonable, legitimate use. He liked the idea of doing a check in after six months to see how things were working.

Acomb said she also liked the idea of checking back after six months to make sure things were working and there weren’t unintended consequences for the neighbors. She appreciated the neighboring businesses offering ideas to make it a workable situation. Many of the ideas were valid and sound.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2015-005 approving a conditional use permit for a dog daycare and boarding facility at 14901 Minnetonka Industrial Road and specifying a wood fence along with a management plan for the outside area and a six month review.

Wischnack clarified that the review would only be brought back to the council if issues were identified with the conditional use. Wagner indicated this was correct. He said it would be useful if staff would send the council a note about the progress on the use as well as how things were going with the Wayzata Boulevard facility.

All voted “yes.” Motion carried.

B. Ordinance amending the city charter regarding vacation of streets and easements

Barone gave the staff report.

Bergstedt moved, Wagner seconded a motion to adopt Ordinance No. 2015-01. All voted “yes.” Motion carried.

C. Third amendment to purchase agreement for 4312-4342B Shady Oak Rd and 4292 Oak Drive Lane

Barone gave the staff report.

Wiersum said earlier in the day he asked Barone if there was an opportunity to have the seller participate more in the environmental costs.
He asked if staff had since had a conversation with the seller. Barone said staff had not had the conversation with the seller.

Wagner noted the staff report indicated there were not major risk factors on the property. There were some risks as there are on other properties given the long term use. He said the city had the opportunity to get some compensation through the reduced purchase price. As the property is redeveloped there would be options on how to deal with any issues that arise.

Bergstedt said when the council initially approved the purchase it was not an easy decision but there was a definite benefit for the city and the surrounding area. It was well known there were likely going to be environmental issues. The staff report indicated what some of the issues were. For some, a future cost was reasonably able to be determined. For other issues, the costs would have to wait before they are determined when excavation and other activities begin. He said he was a little uneasy about what would be discovered. He would have liked to see more participation from the seller. The seller also benefits from a hold harmless agreement moving forward. He was concerned with the potential exposure to the city.

Schneider said the list of issues didn’t seem to be extraordinary. His concern was the potential that the future reuse or redevelopment might be limited depending on what was found. It might limit the ability to attract a high quality development. He was supportive but had some reservations about how the city managed the exposure moving forward.

Wiersum said he was satisfied that staff did what it could to get a price reduction. The rationale for the original decision was largely unchanged. The alternative to the purchase would be going through the condemnation process. That process would be more expensive and a less controllable route. The pollution situation bothered him but not enough to not approve the item.

Acomb noted the soil samples where Applewood Pointe was going in were similarly contaminated and the cleanup costs did not prevent that development from moving forward.

Wagner moved, Wiersum seconded a motion to approve the third amendment to purchase agreement. Wagner, Ellingson, Acomb, Wiersum, and Schneider voted “yes.” Allendorf and Bergstedt voted “no.” Motion carried.

D. Liquor licenses for Pairings Food & Wine Market, LLC
Barone gave the staff report.

Brandt Erwin, an attorney with Madigan, Dahl & Harlan, 222 South Ninth Street, Minneapolis, said the letter submitted on behalf of Pairings addressed what they considered procedural irregularities especially since the revocation was originally proposed and voted on and passed. As part of the revocation the item was supposed to go to the Office of Administrative Hearings. The revocation never occurred. The proper documentation was not submitted to the Office of Administrative Hearings. Rather than reschedule the hearing nothing was done. He said the key point to the city attorney's memorandum was that the actions of Holly Damiani had not been addressed. He noted Bernie Tompkins had addressed that issue at the December meeting and that Damiani was not involved at all with Pairings. The personal relationship between Damiani and Tompkins had no bearing on the matter. He said the request was for a conditional license to be issued.

Wiersum asked if Damiani ever went to the restaurant. Erwin said Damiani went to the restaurant with Tompkins. She frequently eats at the restaurant. He said he didn’t think it was uncommon for a former owner of a restaurant to return to eat there. Wiersum said the organization chart listed an individual with the last name Damiani. He asked who that individual was. Erwin said he believed it was Holly’s sister. Wiersum asked what her involvement with the restaurant was. Erwin said it was his understanding that she had been involved with the restaurant from when Holly first owned it. Wiersum asked if Damiani would ever speak to Tompkins or her sister about the operation of the restaurant. Erwin said it was possible. Spouses talk to each other about their days.

Schneider said at the December meeting Tompkins did not speak about how he would structure the business to ensure Damiani would not be involved. Schneider said he was caught off guard with Tompkins statement that his major contribution to the business was installing a restroom door lock. This made him question if Tompkins was seriously involved in running the day to day business. Combining that weak presentation with all the history that had been determined raised the question if someone that was not qualified to have a liquor license was helping or directing the business. The determination was the likelihood existed and was grounds enough not to renew the license.

Allendorf said he didn’t recall during Tompkins presentation any mention of Damiani. He said the letter that was submitted made a lot about the relationship between Tompkins and Damiani. This wasn’t something he weighed when he made his decision to support not renewing the license.
Instead what he looked at was Tompkins residence in South Carolina and his comments about stopping by the restaurant when he came to Minnesota to visit his other businesses. This did not speak to day to day issues at the restaurant. He said the only person to his knowledge who had a reason to be active day to day in the business was Damiani because of her financial investment remaining in the business. City staff had informed Damiani she could not have any day to day activity in the business and yet Tompkins and Damiani had come to city hall a number of times together to talk to staff about the business. He said it gave him pause that the business would be affected on an ongoing basis but he didn’t know how he could approve a license based on the history. He questioned how it would be proved that Damiani would not be involved in the business. He didn’t see anything in the letter or Erwin’s comments that would lead him to change his decision.

Bergstedt said everyone agreed Pairings had been a nice addition to the city. The city had never taken the revocation, or non-renewal of a liquor license lightly. It was a rare action that had been taken. He said the only thing since day one that had been a concern was Damiani’s role in the restaurant. She was told she could have absolutely no ongoing role. This issue had never been addressed. When a liquor license was so vital whether or not there were procedural irregularities, he couldn’t believe the owner or his attorney was not at city hall every single day starting last spring making sure what needed to be done was done to avoid any chance of things progressing this far. The main issue remained unaddressed. Even though he didn’t like the thought of not renewing the license, and the business potentially shutting down, he thought the city had done everything possible to settle the matter.

Acomb said she voted to not renew the license. In reading the information for this agenda item she was disappointed information had not been provided earlier about the settlement offer that was made which would remove Damiani from pursuing ownership in the future. This made a difference because it made it feel as though ties were truly being cut. She didn’t feel as if she was an expert at judging the validity of what was being presented. The original staff recommendation was to send the item to the Office of Administrative Hearings because they were trained to make that determination. She said Pairings had been a good business in the community and it would be unfortunate for it to close. She favored trying to do something to maintain the business if given assurances that Damiani was not involved in any way.

Wagner said he voted against not renewing the license. He agreed with the comments that the city had required proof that Damiani was not involved with the business and Tompkins comments did not include what
he was going to do to ensure Damiani was not going to be involved. He said he still believed after reading all the factual documentation there was enough reasonable doubt. He would support asking Tompkins to specifically respond before the decision to not renew would be reconsidered. He said he thought there had been some due process issues. He felt the city should specifically state its expectations, which was an operating plan that proved Damiani was not involved. He agreed with Bergstedt that the city took revocation or non-renewal of a liquor license seriously. Given the level of seriousness, the level of evidence that was provided was not strong enough for him to support that action.

Wiersum said there clearly had been a change in approach. Initially revocation was looked at because of concerns that Damiani was not forthcoming in her involvement with the business. The approach then changed in large part because timing was getting tight and there was no way revocation would be acted upon prior to when the renewal would have to be considered. The decision was made that the better approach was to not renew the license. He said Wagner had talked about reasonable doubt. Reasonable doubt was very relevant in terms of revocation because the burden of proof did not lie with the applicant but instead lies with the revoking party. However it now was non-renewal being looked at instead of revocation. A liquor license was a privilege. An issued license had a property right associated with it. The city’s attorney memo indicated that an applicant for a liquor license, even an applicant for a liquor license renewal, has no property right in renewal of its license. The city has broad discretion in reviewing liquor license applications so long as it has a rational basis for its decision. The court will grant deference to that decision. Because it was a non-renewal, the burden of proof was on the applicant to indicate that he/she was an honest and worthy applicant. He said Tompkins did not achieve that burden of proof and he hadn’t heard anything that would convince him that Damiani would not be involved in the restaurant. He would prefer she never visited the restaurant. He was very comfortable taking no action because the applicant had not demonstrated to any significant degree that he was a worthy applicant given the history.

Ellingson said his concern was for the employees of the restaurant. It was not fair for them to suffer because of the misbehavior of Damiani. The restaurant was fairly successful and a wonderful place to eat. He didn’t necessarily want to renew the license but wanted to provide an opportunity for the business to be sold to someone not connected to Damiani. He said another issue was Damiani being convicted of tax fraud, which was a crime of dishonesty. This meant no one believed anything she said. He suggested giving them a few months to sell the business.
Allendorf asked the city attorney if the city could require the business be sold. Tietjen said legally she was uncomfortable with the council imposing a condition requiring an owner to sell a business. She thought this was overreaching. She said it was important for the council to keep in mind that if the decision was to issue a limited license for a definite period of time, the burden was on the applicant to come back with a plan that would convince the council that Damiani would have no further involvement with the business. This could include selling the business. Allendorf asked what it would take for Tompkins to prove to staff that Damiani was not involved with business on an ongoing basis given her sister working at the restaurant and Damiani’s relationship with Tompkins. Wischnack said if she could have thought of how this could be proved she would have provided that recommendation prior to this meeting. She could not think of anything that could solve the issue and eliminate the concern about Damiani’s influence on the business. Wischnack said she was not previously aware of Damiani’s sister being involved and noted her sister listed the same address as Damiani. Having Tompkins also involved suggested to her there was too much togetherness for Damiani not to have influence.

Schneider said he too had thought about Ellingson and Allendorf’s idea of requiring the business to be sold. The challenge had been that it was very difficult to prove that a person was not influencing something when there was a relatively close relationship with key people in the business. He agreed the city should not be setting a condition that was an overreach. He said he would love to figure out a way to keep Pairings open and operating. In his mind the only way was for the business to ultimately be sold to someone outside the broad family. There was probable doubt in his mind that there would be some influence given how much Damiani had invested in the business. He said there was disconnect with the idea of allowing the applicant to develop a plan while not jeopardizing the city’s standards for issuing a liquor license. He recalled another situation in the past where a business contracted with an independent license holder for a period of time until a sale took place. Wischnack said that process is done on occasion. Schneider said he didn’t know if that was viable option in this situation. Allendorf noted that, or an outright sale, could happen even if the council took no action on the item. Schneider said the council would really like a viable liquor license holder so the business could remain open.

Wiersum said there was nothing wrong with the business. The issue was with the closeness of the actual ownership and the perceived ownership and the muddiness of the relationships. If someone else owned the business a liquor license would be a viable option.
Tietjen said taking no action on the item did not foreclose the ability to reconsider the item at a later date.

15. Appointments and Reappointments:

A. Appointment of representatives to various advisory boards, commissions and committees

Allendorf moved, Wiersum seconded a motion to approve the following appointments:
- Terry Schneider as the Minnetonka City Council Legislative Contact to Metro Cities.
- Terry Schneider as the Minnetonka City Council representative to the Municipal Legislative Commission Board of Directors.
- Dick Allendorf as the Minnetonka City Council representative to the I-494 Joint Powers Organization.
- Dick Allendorf as the Minnetonka City Council representative to the Southwest Suburban Cable Commission and Robert Ellingson as the alternate.
- Corrine Heine as the Minnetonka City Council's appointed representative to the Suburban Rate Authority and Perry Vetter as the alternate.
- Perry Vetter as the Minnetonka City Council's appointed representative to the Bennett Family Park Board.
- Sara Woeste as the Minnetonka City Council's appointed representative to the Minnetonka School District Community Education Advisory Council.
- Dave Johnson as the Minnetonka City Council's appointed representative to the Music Association of Minnetonka.
- Terry Schneider as the Minnetonka City Council representative to the West Hennepin Affordable Housing Land Trust (Homes Within Reach).
- Elise Durbin as the Minnetonka City Council's appointed representative to the Wayzata Schools Community Collaboration Council.

All voted "yes." Motion carried.

16. Adjournment

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 9:40 p.m.
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk