Minutes
Minnetonka City Council
Regular Meeting, Monday, February 9, 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 Dick Allendorf, Patty Acomb, Brad Wiersum, Tim Bergstedt, Bob Ellingson, and Terry Schneider were present. Tony Wagner was excused.

4. Approval of Agenda

Wiersum moved, Bergstedt seconded a motion to accept the agenda with addenda to items 14D and 15. All voted “yes.” Motion carried.

5. Approval of Minutes: January 5, 2015 regular meeting

Acomb moved, Allendorf seconded a motion to approve the January 5, 2015 regular meeting minutes. All voted “yes.” Motion carried.

6. Special Matters:

A. Recognition of Laurie McKendry

Schneider read the recognition and presented McKendry with a plaque.

7. Reports from City Manager & Council Members

Barone reported on the schedule for upcoming council meetings.

Schneider reported that he appointed Brian Kirk, Kevin Hanson, and Shirajoy Abry to the Southwest Light Rail Citizens Advisory Committee. He gave an update from the last Southwest Light Rail Corridor Management Committee meeting.

8. Citizens Wishing to Discuss Matters not on the Agenda

No one appeared.
9. **Bids and Purchases:** None

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

A. **Resolution prioritizing a bridge replacement program**

   Allendorf moved, Acomb seconded a motion to adopt Resolution No. 2015-011 prioritizing bridge replacement in Minnetonka, and requesting financial assistance from MnDOT. All voted "yes." Motion carried.

B. **Agreement with Intermediate School District #287 for police liaison services for 2015**

   Allendorf moved, Acomb seconded a motion to approve the agreement. All voted "yes." Motion carried.

C. **Items regarding snow and ice control**

   Allendorf moved, Acomb seconded a motion to adopt the following:
   1) Ordinance No. 2015-02 amending sections 1130.05 and 1130.10 of the Minnetonka Code, regarding snow removal restrictions
   2) Resolution No. 2015-012 adopting council policy 11.17 regarding snow and ice control of streets, trails and sidewalks

   All voted "yes." Motion carried.

11. **Consent Agenda - Items requiring Five Votes:** None

12. **Introduction of Ordinances:**

A. **Ordinance rezoning portions of properties generally located at the southeast corner of the County Road 101/Excelsior Boulevard intersection from R-1 to R-1A**

   City Planner Loren Gordon and Community Development Director Julie Wischnack gave the staff report.

   Allendorf said the two step process wasn't as straightforward as he would like. He asked if the zoning change was approved, if that meant the council had pre-approved the application that was submitted. Under what circumstances would the developer be able to understand a denial of a development even though the rezoning had been approved? Gordon said the two step process was deliberately adopted so that a plat and a rezoning didn't occur all at once. The two step process allows the city to
evaluate the context for a development without having a development proposal that needed to be acted upon. The plat would have to meet all the conditions of the code during the second phase. It would be possible to approve a rezoning but if the plat didn’t meet all the code it could be denied. Allendorf noted the staff report included a very specific drawing. He asked if the applicant submitted an application that was identical to the drawing, would the council be required to approve it. Gordon said if the plat met all the codes, it would have to be approved. Allendorf said he wanted to avoid a situation where the applicant thought something was approved with the zoning change only later to have it denied during the second part of the process.

Wiersum said he had a similar concern. If the council was presented with an R1 proposal that needed no variances, it would have to be approved. The item before the council was a concept tied to a zoning ordinance. If the ordinance was approved and a developer submitted an application identical to the drawing being shown, it would be the same situation as an R1 with no variances that has to be approved.

Schneider said developing the RIA zoning district was a challenging process. He was reluctant to have a two-step process because of the bureaucratic process it creates. What was being done with this item was to identify the area as one that qualifies for smaller lots. Another process option would be to have the developer come to the council to determine if the area qualified for smaller lots and then come back later with a proposal and request to approve the rezoning along with the proposal.

Barone said because this was the first use of the R1A process it might be useful to an after review how the process worked once the process was complete.

Schneider said the biggest unknown at this point was what the proposed homes would actually look like. One thing he wanted the planning commission to discuss was the applicant wasn’t required to show formal house plans as part of the platting. This happened later as part of the building permit process. He encouraged the developer to provide the information earlier.

Acomb asked what would happen if the rezoning were approved and the development did not get built. If another developer proposed something that met the code would the council be obligated to approve it? Gordon said if the rezoning were approved and a plat filed, then the plat and the standards would be in place for another developer to follow. Other things like a development agreement might complicate the process for another developer. City Attorney Corrine Heine said there was a provision in the
R1A ordinance that requires the plat to be filed by December 31 of the year following the approval. If it is not filed by that date the ordinance allows the council to rezone the property.

Wiersum moved, Acomb seconded a motion to introduce the rezoning ordinance and refer it to the planning commission. All voted "yes." Motion carried.

13. Public Hearings:

A. Resolution vacating portions of public right-of-way adjacent to 18521 and 18540 Beaverwood Road

Gordon gave the staff report.

Schneider asked if the highlighted cul-de-sac was now part of the dedicated right of way. Gordon confirmed that was correct.

Wiersum said the staff report indicated there was an exchange of easements for the vacation and the recommendation was to do this at no cost to the applicants. He asked if this was correct. Gordon said that was his understanding.

Schneider opened the public hearing at 7:08 p.m. No one spoke. He closed the public hearing at 7:08 p.m.

Acomb moved, Allendorf seconded a motion to adopt Resolution No. 2015-013 vacating the right-of-way. All voted "yes." Motion carried.

14. Other Business:

A. Items concerning Villas at Groveland at 17113 Minnetonka Boulevard

Gordon gave the staff report.

Allendorf asked for information about the parking for guests. Gordon said the parking would be at the front of the property as well as on the street.

Schneider said he has heard from people his age who are looking for new single level living in the city.

Ellingson said a sign on the property indicated the price would start at $750,000. One of the reasons the city was looking to go to smaller lots was to reduce the size and cost of the homes. He questioned how this development fit into that approach. Schneider noted the zoning for this
development was R3. The homes would have an upper level room and a full basement. The floor area ratio was not governing the total amount of square footage which was usually related to the price.

Acomb said one of the reasons the project was approved was because it was targeting a diversity of housing stock the city felt was important—moderately priced housing. Although she thought the number of units was better than before, her concern was the price was not meeting the diversity that was targeted when the development was originally approved.

Wiersum said he liked the design better than the previous design. He was disappointed that the pricing appeared to be significantly higher than what was previously proposed. The council had discussed different areas in the city where new mid-range housing, in the $400,000 to $500,000 range, would attract new residents to the city. He understood that the previous project did not happen for whatever reason and now a new proposal was before the council. He would like the price to be lower but this was not something the city could dictate. He agreed that the single level living market was significant in the city. He thought this was a credible proposal on an important piece of property.

Schneider said as a proposal goes through the process each council member looks at certain elements that are important to them. Getting modestly priced housing on a tight site that had an office use and could have had much more density wasn’t a real priority for him. Rather he was looking for something that fit into the neighborhood. This property didn’t have the restrictions that the city was trying to put on R1A properties. He thought the proposal achieved diversity of housing even though it may not achieve the price point that was desired. He said the price point may be difficult to achieve. A 2,500 square foot home that was done really nice could cost $750,000.

Allendorf moved, Wiersum seconded a motion to adopt:
1) Ordinance No. 2015-03 amending the master development plan
2) Resolution No. 2015-014 approving preliminary and final plat

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

B. Appeal of the planning commission’s denial of a front yard setback variance at 1503 Linner Road

Gordon gave the staff report.
Rob Shainess, an attorney representing the builder and the owner, said his client was not seeking a variance for permission to build a house that would be bigger than could otherwise be built on the property. He said this was where the planning commission looked at some of the wrong issues. There was no dispute that a 10,000 square foot home could be built on the property. The issue was where on the property the house should be built. There were several reasons the house should be built closer to the street but most of all to benefit the neighbor to the east. There were only two homes abutting the cul-de-sac section of the street. One of the homes is being torn down. All the other homes are so setback from the street that they cannot be seen from the street. When discussing neighborhood character it was important to keep in mind there was not a uniform character of homes in a nice neat row on the street. He said the practical difficulties that would support a variance related to topography and the location of the other home. The proximity of the neighbor at 1509 Linner Road was a problem because the home was built not conforming to the current setback requirement. Typically there had to be a 40 foot setback for lots behind lots. In this situation the home was 16.4 feet from the lot line. This would present issues of privacy and shadows with a very tall home built in close proximity. This would occur if the variance was not approved. He said at the planning commission hearing the neighbor spoke in favor of the variance.

Shainess said the topography issue was the downhill sloping lot. If the house was built where proposed, the grades were modest. There was a more aggressive slope toward the back of the lot. This meant substantially more fill would be required. This would result in a much steeper grade in terms of water drainage. The water would drain down toward the neighbor and create a less than ideal situation for the neighbor. The practical difficulty was caused by where the neighbor’s home was built. He said this was not something his client had any control over. His client would build the house where it could be built but it made more sense to build the house a little bit closer to the street. He said another thing to note was the sight line from the street would be considerably improved. Only a tiny bit of the garage needed a variance and all of it would be further back from the road than the existing garage. The net effect would be approval of a home that was overall further back from the street than what currently exists. He said another thing to keep in mind was the setback requirement was measured not from the road but from the right of way. There was an unusually wide right of way, 25 feet, in this location. This would be in addition to the 35 foot setback. No portion of the house would be closer than 40 feet from the street.

Shainess said on the other side of Linner Road there were properties where the right of way only extended seven feet from the road. This meant
other homes in the area were 42 feet from the road which was similar to what his client was asking to do. He didn't agree with staff that the McMansion policy applied in this situation. A variance was not being sought to build a larger home than otherwise could be built. A 10,000 square foot house would be built on the lot no matter if the variance request was approved or denied. The question was where was the best place for the house to be built on the lot.

Ellingson noted the drawings showed a four car garage. He asked if a three car garage could be built instead so the garage would not be as close to the road. Shainess said in theory that was probably true, but that was not what would be built. The applicant wanted a four car garage. Ellingson said he was just looking for a compromise. Shainess said he appreciated that but this was a situation where the applicant could build the proposed house as a matter of right. The only question was where the house should be built.

Wiersum said he didn't find the argument made to be at all persuasive. The applicant wants a variance and a variance would trigger the McMansion policy. The only two options would be to move the house further back on the lot or get a variance, triggering the McMansion policy, and building a smaller house. He said the reason he did not find the argument compelling was the applicant wasn't willing to compromise but had said he would build the 10,000 foot house no matter what. Wiersum said strong arming did not work with him.

Schneider said one issue being weighed relating to the wider boulevard in the way the lots were platted. He said he did not consider this a hardship because there was a buildable lot beyond that. The council had to use the standard criteria for approving a variance. To qualify for a variance practical difficulties were required to be involved. The grades could be dealt without any difficulty. Being closer to the neighboring home was an inconvenience but was not a practical difficulty. He said the variance did not meet the city's typical standards. If a variance was approved because it might make sense, it would set a precedent for other developments.

Allendorf asked if a variance would be needed if the garage was a three car garage rather than a four car garage. Gordon said staff looked at the idea. It appeared part of two stalls would need to be reduced. It might be possible to replace portions of the stalls elsewhere. Schneider said realistically if one stall was removed the building could be shifted back ten feet and a variance would not be needed. Allendorf said this seemed to be a practical solution if the neighbor wanted to be a good neighbor.
Ellingson said the attorney made a good point that the two houses would be too close together if the proposed house was moved back 15 feet. When the council was discussing the North Memorial Medical Clinic, one of the neighbors indicated his house was built on a lot behind a lot and his front yard was his neighbor’s back yard and it looked terrible. Ellingson said it was a legitimate point that the two homes shouldn’t be too close together. Yet if a three car garage were built, a variance would not be needed. It was important for the applicant to convince the council a variance should be approved and it was not persuasive that they were unwilling to change the proposal even if valid points were made.

Wiersum moved, Allendorf seconded a motion to adopt Resolution No. 2015-015 upholding the planning commission’s denial of the request. All voted “yes.” Motion carried.

Alain Thiry, 1423 Linner Road, the neighbor to the east, said he supported the request for the variance because it would look better than what currently existed.

Allendorf asked what the process would be if the applicant agreed to build a three car garage. Gordon said staff would work with the applicant and it would be an administrative process.

C. Agreements related to the Green Line Extension (Southwest LRT)

Wischnack gave the staff report.

Schneider said the approach was to do retaining wall work and grading work where a station could go but not do the subgrade and all the other things to make the area station ready. The cost would be much less. The timeframe for the council to approve either project was 2016. Wischnack said staff was preparing in the CIP to see where the projects might fit in. She said the 17th Avenue project was likely something the council would want to proceed with but the infill station was more up in the air due to the final costs not being known.

Acomb asked because the council did not have to vote on the infill station until 2016 if it could change its decision later. Wischnack said the project could not be done after the design was approved. Acomb asked what would happen if the council approved the area to be station ready. Wischnack said the estimated cost would be in the $15 million neighborhood as opposed to $2 million for what was being recommended. She noted there were future opportunities for grants and staff was taking this into consideration.
Allendorf asked how it would work if the line was up and running and the council decided it wanted the Smetana station to be built. Would the line have to shut down during construction? Wischnack said that was one of the reasons staff’s estimate and the project office’s estimate were quite a ways a part in the dollar amount. The difference was the Met Council wanted to put in direct fixation tracks. This meant the tracks would already be aligned for a station to be put in. The tracks would be in concrete. This differed from ballasted design which would make it viable for a station to be built on either side of the tracks and not have to shut down the line. She said the easiest way to describe the difference was to picture railroad tracks that were on top of the road as opposed to being inset. Tracks that are inset usually have more foundation and cement around the area.

Allendorf said the council was being asked to approve $115,000 for a design to something that may or may not happen. The people who requested the stop would not forget the request for the stop nor that the design was had been completed. He wanted each council member and future council members to think about what the dollar amount was that they’d be comfortable spending on the new station. If approved the $115,000 would be gone. If in 2016 it was determined the station would cost $2 million to build, or $20 million, or $50 million, what was the amount people would say to themselves the cost didn’t make sense? The counter argument would be the city had already spent $115,000 for the design. Was this to be looked at as a sunk cost? He said the issue was being kicked down the road rather than making a decision about the appropriate dollar amount to build the station.

Schneider said the difficulty was the future station could not be bid in with the current project. The logistics of getting the new station authorized would depend on a lot of factors. Funding might come from the federal government or the state and county and it likely would not be the city’s obligation to do the whole thing. If the feds were to approve an additional station it would be because the ridership was high, the speeds were fine and another station could be supported. This meant there would be more people than just the city making the decision that the station made sense. A future council would decide the proper portion of the cost the city would pay. It wasn’t even being considered that the city would pay the entire cost. What was being considered was what it would take to get to the point where things had risen to the state where an additional station made sense and there was funding sources available to make that happen. This would likely be ten or more years before this would happen. He said approving $115,000 now could mean the cost would be much cheaper to build the station in the future. Allendorf said his point was that the city should decide what amount it would be willing to pay and if the cost was over that amount then the benefit would not be worth the cost.
Wiersum said he appreciated Allendorf’s point. The question was what the $115,000 was really for. For him it was an investment in keeping options more open than they would be without approving the cost. He agreed it was a sunk cost. One of the things he feared was incrementally getting to a decision that may not have been made if the whole picture was looked at during the time the decision was made. He said if approved, the $115,000 should never be looked at as a reason to feel obligated to build the station. The $115,000 was to keep options open and whoever makes the decision down the road will have to make a good decision.

Schneider said it was like option money on a piece of property. A potential project was being bought and the option money was good for 10 to 20 years.

Allendorf agreed it was a good idea if the money spent now saved a lot of money in the future. However he didn’t want somebody to feel obligated to approve building a station because money had already been spent.

Bergstedt said he was glad Allendorf raised the issue. Part of him wanted to be a fiscal hawk and vote against approving the $115,000 so he could tell people how he voted to save a lot of money. He said so much more would be known in a few years as to the success of the line. A group of city residents brought the request forward. He hated to think that a future council would decide because $115,000 had been spent in the past, the station had to be approved. He thought it would be shortsighted to not spend the $115,000 to keep the option open.

Wischnack noted this was the first of many agreements that would be brought to the council.

Lisa Moe, with StuartCo, asked the council to approve the agreement. She said it had been repeatedly demonstrated that the potential station met all locally requested capital investment criteria, met the overall goal of the 16 mile track promoting future transit oriented development, and improved overall connectivity in the Smetana Road area.

Acomb moved, Ellingson seconded a motion to approve the agreements and amend the CIP. All voted "yes." Motion carried.

**D. Professional Services Agreement for the Shady Oak Station Area Development Strategy**

Wischnack gave the staff report.
Allendorf asked if the agreement was between three parties. Wischnack said the contract was between the cities of Minnetonka and Hopkins and the consultant. There was also an agreement with the Met Council. Allendorf asked why the agreement’s termination provision was only between Hopkins and the consultant. Wischnack said Hopkins was responsible for the financial payment.

Wiersum moved, Bergstedt seconded a motion to approve the agreement. All voted “yes.” Motion carried.

15. Appointments and Reappointments:

Schneider moved, Wiersum seconded a motion to approve the appointment of Kevin Maas to the economic development advisory commission, to serve a two-year term, effective February 10, 2015 and expiring on January 31, 2017. All voted “yes.” Motion carried.

16. Adjournment

Bergstedt moved, Wiersum seconded a motion to adjourn the meeting at 8:18 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

[Signature]

David E. Maeda
City Clerk