Minutes
Minnetonka City Council
Monday, May 18, 2015

1. Call to Order
Schneider called the meeting to order at 6:33 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 Terry Schneider were present.

4. Approval of Agenda
Wiersum moved, Acomb seconded a motion to accept the agenda, with an addendum to 14A. All voted “yes.” Motion carried.

5. Approval of Minutes: May 4, 2015 minutes
Wagner moved, Wiersum seconded a motion to approve the May 4, 2015 Local Board of Appeal and Equalization minutes. Ellingson, Acomb, Wiersum, Bergstedt, Wagner, and Schneider voted “yes.” Allendorf abstained. Motion carried.

Wagner moved, Wiersum seconded a motion to approve the May 4, 2015 regular meeting minutes. Ellingson, Acomb, Wiersum, Bergstedt, Wagner, and Schneider voted “yes.” Allendorf abstained. Motion carried.

6. Special Matters:

A. Recognition of Senior Advisory Board Members Donna Bloom, David Carroll, Ann Dreier and Wanda Griepp
Schneider read the recognition and presented plaques to Bloom, Carroll, Dreier and Griepp.

B. Recognition of Park Maintenance Worker Arlin McArthur
Schneider read the recognition and presented a plaque to McArthur.
C. Recognition of Recycling Coordinator and Parks and Trails Inspector Dean Elstad

Schneider read the recognition and presented a plaque to Elstad.

D. Recognition of Legal Administrative Coordinator Juli Haviland Fick

Schneider read the recognition and presented a plaque to Fick.

E. Recognition of Human Resources Manager Sue Poulos

Schneider read the recognition and presented a plaque to Poulos.

F. Recognition of Director of Engineering Lee Gustafson

Schneider read the recognition and presented a plaque to Gustafson.

7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on the schedule for upcoming council meetings.

Schneider gave an update on the Southwest Light Rail.

Bergstedt said over the weekend he was out biking. He reminded residents that the overflow parking lot for the Williston Center can be used to park vehicles for those who wish to use the regional trail. The city is in the process of finishing a path from the parking lot to the trail.

8. Citizens Wishing to Discuss Matters not on the Agenda

No one appeared.

9. Bids and Purchases

A. Bids for Trunk Foremain Lining – Phase II

Barone gave the staff report.

Acomb moved, Bergstedt seconded a motion to award the contract to Visu-Sewer in the amount of $931,325.00. All voted “yes.” Motion carried.

10. Consent Agenda – Items Requiring a Majority Vote:
A. Agreement for Public Works maintenance services

Allendorf moved, Wagner seconded a motion to approve a two-year State of Minnesota Income Contract for two ICW Crews for the public works department from June 1, 2015 until May 31, 2017. All voted “yes.” Motion carried.

B. Orders for liquor license stipulations

Allendorf moved, Wagner seconded a motion to adopt a motion issuing the Findings of Fact, Conclusion, and Orders for Hurricane Grill and Scoreboard Bar. All voted “yes.” Motion carried.

C. Resolution approving a conditional use permit, with lot area variance, for a twelve-resident licensed residential care facility at 12401 Minnetonka Boulevard

Wiersum asked for the item to be pulled from the consent agenda. He indicated the council had many past discussions about group home facilities in the city. He supports group homes and he supports the state law that the city does not have a say about group homes with six or fewer residents. Proposals for group homes with more than six residents have at times been controversial and the council has rejected some of those proposals. A concern has been setting a precedent by approving those facilities. He said the location for this proposal was proper but he wanted the council to discuss whether the city wanted to allow group homes with more than six residents.

Schneider said the city established the CUP process for facilities with more than six residents. This gives the council the opportunity to decide if the proposed facility was a proper fit for its location. The city has the right to establish conditions to prevent issues like parking and traffic. There were facilities throughout the city that had more than six residents. In general there had been no problems with those facilities. He didn’t think this proposal was any different than the other facilities and it would provide valuable services for the residents. The CUP process also provides the opportunity to add conditions if something was not working.

Wiersum moved, Bergstedt seconded a motion to adopt resolution 2015-037 approving a conditional use permit, with a side lot area variance, for a twelve-resident licensed residential care facility at 12401 Minnetonka Boulevard. All voted “yes.” Motion carried.
D. Appointment of hearing officers for administrative citation hearing program

Allendorf moved, Wagner seconded a motion to approve the list of hearing officers. All voted "yes." Motion carried.

E. Resolution approving a conditional use permit for an accessory structure at 1721 Oakland Road

Allendorf moved, Wagner seconded a motion to adopt resolution 2015-038 approving the request. All voted "yes." Motion carried.

F. Twelve month extension of preliminary and final plat approval for a two-lot subdivision at 11806 Cedar Lake Road

Allendorf moved, Wagner seconded a motion to approve the twelve-month time extension. All voted "yes." Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances: None

13. Public Hearings:

A. Items related to the granting of a cable communications franchise

Assistant City Manager Perry Vetter gave the staff report.

Brian Grogan, legal counsel for the Southwest Suburban Cable Commission, provided information about CenturyLink’s legal, technical, and financial qualifications and the process for approving a franchise.

Wiersum asked if there was any way a lawsuit could be avoided when the council made its decision given the difference in opinions between CenturyLink and Comcast about the relationship between federal and state law. Grogan said one of the reasons the commission decided not to be the first of the municipalities in the state to consider the franchise was to get some guidance on how other cities were addressing the issue. The commission can see how the situation in Minneapolis plays out. Other cities will make decisions before Minnetonka is asked to consider the issue. Attorneys from the cities have been working with the League of Minnesota Cities to make sure all the proper steps are followed and put the council in the position where its decision could be upheld.
Wagner asked what would happen if the cities in the Southwest Suburban Cable Commission did not agree on the decision to grant the franchise. Grogan said the commission has typically issued one recommendation and it's likely to happen in this case. The city was not bound by decisions made by the other four cities.

Schneider said the greatest risk for a lawsuit was if the city did not follow proper procedures and did something arbitrarily and without factual basis. If the city did its best in following the rules in making its decision then if the matter ended up in court, the court would likely rule on the validity of the council's decision but not award damages. Grogan agreed. He noted CenturyLink had in the initial negotiations put on the table an indemnification agreement. If the city were to grant a franchise and was challenged, CenturyLink would defend potential litigation. He said this would be considered and looked at but would not impact the determination of whether a franchise could be legally issued.

Schneider asked if other states had dealt with a similar situation with Comcast and CenturyLink. Grogan said the situation had occurred in many other states and noted he represented the city of Omaha in negotiations with CenturyLink where an incumbent operator out of Colorado was located. He said each state was different because of the different state statutes. Minnesota has unique statutes in regards to build up and this truly was a case of first impression in terms of if the state law becomes preempted by the FCC order.

Schneider opened the public hearing at 7:21 p.m.

Tyler Middleton, the vice president of operations for CenturyLink in Minnesota, said Comcast and its subsidiaries had a monopoly on cable television service in the area for well over 35 years. CenturyLink was excited to bring competition into the market and choice to the residents of the city. He provided information about the company's product, Prism TV. He said CenturyLink is trying to leverage its existing assets as much as possible for both its fiber and copper assets. Typically fiber goes from the central office out to a neighborhood to a metal box in the neighborhood. From there it travels over the copper network. It's the same network voice and internet services are provided on today. In addition the Twin Cities have been designated as a one gigabyte city. Investments have been made to bring gigabyte speeds to various areas. CenturyLink is the third largest telecommunications company in the country with about $18 billion in revenue. Internet and voice services are provided to residential customers in 37 states. Data services are provided to businesses here and abroad and that represents about 50 percent of the company's revenues. He said around 3,000 people are employed in Minnesota. The
city of Minneapolis recently became the first city in the Twin Cities area to approve the franchise. Service could begin in June if the franchise were approved.

Patrick Haggerty said he oversees government affairs in the Midwest region for CenturyLink. He said cable franchising in Minnesota is procedurally statutory. CenturyLink has no concerns in its efforts to holistically comply with most of the state statutes. The two areas of the current statute the company believes are unreasonable and are preempted by the 621 order are the level playing field and build out mandates. The Minnesota Cable Act was originally codified in the 1970s and has changed very little. In 1992 Congress passed the 1992 Cable Act and one of the intents of the act was to compel competition in the video marketplace. Exclusive franchising was prohibited under the act. Local franchising authorities were put in the position of being able to consider second entrants into the market. In 2005 the FCC issued proposed rulemaking and in 2007 issued the 621 order. Two of the things included in the findings to the prohibition of flourishing competition were level playing field mandates and build mandates. These were explicitly prohibited in the order indicating those were truly unreasonable reasons to not approve a franchise for a second entrant into the marketplace.

Schneider asked for a staff recommendation about re-opening the public hearing when the item comes back as opposed to leaving the public hearing open and collecting feedback between now and when a recommendation comes forward. Vetter said the staff recommendation was to leave the public hearing open to collect feedback. Grogan said the purpose of this public hearing was for the legal, technical, and financial qualification review. Ultimately there had to be another public hearing for the granting of a franchise. Schneider said that even if the issue of whether the state statute trumped the federal order was decided likely by a court, the city could still apply the state statute to determine what was a reasonable level playing field and a reasonable build out provision. He asked if that occurred, could the city’s decision still be challenged. Grogan said anything the city did could be challenged. The council had the ability to decide if it wanted every house to be built within a certain time period, or if it wanted a staggered build out, or if it would permit a partial area build. The council had that discretion. The FCC said the city had to act within a reasonable manner and provided some guidance how that could be accomplished. In terms of if the city could find a way to stay within the guidance of the state statute and still develop a build out schedule that would fit the policy directives of the council, he said the answer was yes and there was no limit to how creative the parties could be to try to accomplish this.
Barone said the staff recommendation was based on not wanting to publish a notice twice for the public hearings. She asked Grogan if he was recommending closing this public hearing because the next public hearing was different and a notice would have to be published anyway. Grogan said the statute states action cannot be taken on the franchise until a minimum of seven days from the close of the initial public hearing has passed. Ultimately the council would have to close this public hearing and then reopen the process for granting the franchise. He said most of the cities he represents have closed the public hearing at this phase.

Schneider said because the city had a website capable of accepting public comments, he was inclined to leave the public hearing open and accept those comments into the record. He did not see any downside to leaving the public hearing open.

B. **On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for LTF Minnetonka Restaurant Company, LLC dba Life Cafe, 3310 Co Rd 101**

Barone said the recommendation was to close the public hearing. The applicant indicated they would prefer to wait until changes to the ordinances were completed.

Wiersum moved, Bergstedt seconded a motion to close the public hearing. All voted "yes." Motion carried.

C. **Off-sale liquor license for Target Corporation, 4848 Co Rd 101**

Wischnack gave the staff report.

Schneider noted there had been a couple of changes since the policy was adopted. First was the makeup of the council. The bigger change however were the changes in the industry and the makeup of what is offered to the general public. The standard free standing liquor store was no longer the only option. Now there are microbreweries, tap rooms, stores that sell only spirits, distilleries, and other things coming up that are changing the landscape.

Wagner said he re-read the minutes from the 2010 meetings where the policy was discussed. There were firm views from different council members. Council members with some of the firm views no longer are on the council. He said his views had not changed much from 2010. Going
forward what was important was the right expectations are clear for potential and existing retailers.

Wiersum said the premise he operated from was asking what kind of city the council wanted to have. His view was the city was adequately served by the number of liquor stores in the city at the time. He felt the state law for first class cities stipulating one liquor store per every 5,000 residents, made sense for those cities and that ratio for Minnetonka seemed reasonable. This would mean 10 liquor stores were sufficient. But the city had some opportunities to look at some alternatives. The council compromised and agreed unanimously to potentially allow more stores as long as they were new and unique. If a unique opportunity was proposed the policy was flexible enough to allow council consideration. He said the current policy was pretty good because there were roughly 10 traditional liquor stores in the city along with Lucid Brewing, which was a concept that did not exist when the policy was adopted. He voted to approve Lucid Brewing because it was something distinctive. Back when the policy was adopted there was also Pairings that was also a distinctive concept. If somebody comes along and proposes a liquor store that didn’t offer anything new, he would likely vote against issuing a license. He generally supported the current policy.

Allendorf said as he looked at the policy he questioned if it did what the council wanted it to do. People can disagree on whether a city was well served and how that was gauged. He gauged it from a market perspective that said if the market could support a new liquor store but not another one that probably was the criteria for the number of liquor stores in the city. The number of stores was not the criteria he would use to judge an application. He would judge an application by looking at if it could serve a special market. This might apply to a small part of a large building like the Target proposal. He wasn’t clear what “specialty” meant in the context of the discussions. He said the policy could probably remain as is and the council could interpret it in different ways.

Acomb said she read all the previous discussion. From her perspective the current policy had done a good job over the past few years. She thought the number of stores mattered. There was a lot of evidence showing the more liquor outlets a city has, the more underage drinking occurs. This had a negative impact on a community. She didn’t think Minnetonka was an underserved community. The number of stores was adequate to serve residents. The policy offered the flexibility to allow things that were not anticipated like tap rooms. She didn’t think the policy needed to be changed or updated.
Ellingson said the policy served the city well because it established a numerical guideline but gave the council the discretion to follow the number or to not follow the number. The fact that the number of liquor stores in the city has been pretty stable indicates the number is close to meeting the needs of the market.

Bergstedt said he wasn’t on the council when the policy was discussed but he read the previous minutes. It was a difficult discussion for the council and he commended the council members for eventually reaching a unanimous agreement. He noted the liquor market is changing dramatically. If the decision was about traditional stand-alone full service liquor stores a specific number might make sense. He believed at some point liquor sales in grocery stores will be allowed. The state was an outlier for not allowing that. Businesses like Target and Sam’s Club have liquor sales. Discussing a community being adequately served had not included things like convenience and time savings and things like that. He was concerned that if the city held fast to a specific number of stores it could be putting itself at a competitive disadvantage with surrounding communities. He saw a clear distinction between the full service, off sale, standard liquor store and the boutique specialty stores. If the council wanted to have a specific number for the standard stores, it could come up with a two tiered system to adequately consider some of the new specialty stores that will continually come in.

Schneider said in re-reading the minutes from 2010 his comments now would be the same as they were back then. He was a free market supporter and that was before the market was so diverse and broad. He was inclined to provide a little more clarity in the policy to get to the council’s real intent. For him adequately served included the ability to find the right product, the right diversity, the right service, and the customer experience. He said the public was much more sophisticated with wine and craft beer. What gave him some pause with the Target proposal was it was by de facto integrating liquor sales with groceries. He was inclined to look at if the policy should have an appropriate middle tier between 3-2 license and full liquor store based primarily on convenience. Certain criteria would have to be met so liquor sales were a true accessory use. He said his reasoning for this was if Target was approved it would be as if the city was saying it got in first and if somebody like Whole Foods or Cub wanted to do the same, it couldn’t because of the number limit. If convenience was an important element to provide customer service for a major retailer, the city shouldn’t allow one business to have the license and an unfair advantage simply because it applied first. Instead a separate tier should be established that included specific criteria for like businesses. He thought something should be done with the policy rather than just keep the status quo. He said assuming there was no urgency to approve
Target’s application, he would suggest continuing the item to give staff some time to look at a middle tier to bring back information for the council.

Allendorf said Schneider’s suggestion assumes the policy would still include a number. He said the logic of that escaped him. Absent a number, if Target were approved he would assume the other Target location and other retailers with a small space to sell liquor would be approved as well. But if the policy continues to have a number, approving Target’s license would mean the other retailers would not be approved and he thought that was unfair.

Schneider said the city could adopt a more tiered system, with some tiers having no cap, and others having a number, perhaps also taking into account regional centers. This could be discussed and applied to a potential update to the policy.

Allendorf said he didn’t have a problem having a study session devoted to this issue. He didn’t want the construction of the new Target to be delayed however.

Wagner said a lot of his comments in 2010 were about creating a false market for liquor store licenses. He thought it was worth a discussion given there were two different council members. He knew there were other businesses interested in getting a liquor license. It would be beneficial for the council to have a robust discussion on the policy rather than having the first one in be the last to get a license.

Wiersum agreed that a study session was a good idea. His preference was to deny Target’s application at this point because it was a liquor store that added nothing unique other than convenience. He didn’t like being painted as being against a free market because he supported a free market but when the council discussed limiting the number of liquor licenses, the mayor mentioned a time when there were only two or three liquor licenses in the city that were very valuable. Having a cap added value to the 10-12 licenses in the city. If the cap were removed and Target got its license, other businesses, like Total Wine and Whole Foods, would get licenses. This would negatively impact the mom and pop stores in the city. This was the way the free market worked. If the city had a cap, then if somebody wanted to come into the city, they could buy out one of the existing license holders. This would give the smaller stores some value rather than being forced out of business because a low cost operator came into the city. He believed in time the bigger operators would come into the city and the city would not have 10-12 stores but rather would have 6 to 8 big stores. Although he has supported fewer liquor stores in the city this would not truly make life better for residents and businesses.
Ellingson said it was his understanding that even though Target had two stores in the city, it was only entitled to one license because of state law. City Attorney Corrine Heine said that was true but only for exclusive liquor stores. An exclusive liquor store under state law was the only type of entity that could hold an off sale intoxicating liquor license and one person could not hold more than one off sale liquor license. She wasn’t clear on how this would impact Target however since it was common for corporate entities to have multiple subsidiaries.

Wiersum said his recommendation was to vote on the Target application at this meeting because Target applied knowing what the current policy was. If they did not like the decision made they could come back when the policy was updated.

Gerard Ouedraogo, general store manager for the Target Superstore, said the two stores in the city employed 528 members, with around $11.5 million in payroll, and almost $1.3 million in property taxes. He said over 500 members from headquarters and the stores lived in the city. The Ridgedale store was the first Target with an extended fresh food layout.

Brittany Kasson, executive team leader at the Target Superstore, said the superstore was getting a full store remodel and it would be one of a kind. It was a test for what future Targets would look like. The company was investing over $10 million for the remodel.

Mike Lucas, representing the headquarter’s buying organization for liquors, said Target had been selling liquor since 1996. Liquor is sold in over 1,300 stores in 37 states. Being responsible with liquor sales was very important and there were a lot of processes in place to make sure that happens. The Minnetonka store has been selling 3-2 beer since 2001 and there had been no violations largely due to the extensive team member training and the processes in place. Technology is used to walk team members through the process. He said Target began pursuing liquor sales last October starting with the store in Otsego. The Knollwood store became the second store to sell liquor. There has been a lot of positive feedback related to convenience, differentiation, and being a local play. Comments have been received about the clean, safe and family friendly environment. The remodel was about elevating the guest service.

Lucas said strong emphasis was put on helping support the local breweries. The liquor section was not massive and really was an accessory to the main store. The size was a tenth of the size of Total Wine and other big box stores. The stores carry a very curated assortment tailored specifically to the location.
Ellingson asked Lucas if Target would be allowed to have a liquor license in the two stores in Minnetonka. Lucas said it was his understanding that it depended on the city if the company would be allowed to hold multiple licenses. He noted St. Paul has a city ordinance limiting Target to one liquor license. He said the strategy for the liquor sales was a very selective strategy. There would be a few stores that would be emphasized and highlighted where liquor sales made sense.

Allendorf asked for information about the construction schedule for the remodel. Lucas said the remodel for the total store would start at the beginning of June for an opening in October. The hope was the construction for the liquor area would coincide with the rest of the construction. Given the investment amount the hope was to open the entire remodeled store at once. Ouedraogo said the store was looking to begin the liquor area construction in the next few weeks.

Schneider asked if there would be an assigned manager primarily responsible for the liquor area working the entire time the store was open. Ouedraogo said a manager would be on duty the entire time. Currently he has 12 assistant store managers. Schneider said the city had a long standing focus on training and education with its own best practices program. He asked if the staff were rotating team members or if there were staff specifically trained to handle the liquor sales. Ouedraogo said his store had around 230 team members. The plan was to specially train 6-10 team members on the point of sale system that walks the team member through the process. He said he is also looking at partnering with the police department to get extra training to make sure the store is compliant at all times.

Acomb asked the age limit that a team member has to be in order to work in the store. Ouedraogo said in the overall store a person has to be at least 16 years old. For the liquor store the team member has to be at least 18 years old.

Heine said she had more information to answer Ellingson’s question. State law provides that a city cannot issue more than one off sale intoxicating liquor license to any one person or any one place. In addition a city cannot allow the same business name to be used by more than one of its off sale intoxicating liquor licenses. The statutory definition of “person” includes not only the holder of the license but also any officer, director, agent or employee of the license holder and also any affiliate of the holder.

Chris Erickson from the Wine Shop, said when he first applied for a liquor license, it was denied. It was later approved when he showed that the Wine Shop was a specialty store. The city currently has 11 off sale liquor
stores. Pairings was the twelfth store and it went out of business. He said there was not enough business in the city to support another store. Bringing in Target would have a negative impact on the other businesses. When he started the Wine Shop and Spasso the property taxes were $21,000 per year. Eight years later they have increased to nearly $59,000. The square footage of the land is 39,126 square feet and that equates to $1.50 per square foot in property tax. Tonka Bottle Shop is paying $1.09 per square foot. MGM located across the street from the proposed Target is paying $1.24 per square foot. Target is paying .46 cents per square foot. He said his building has a value of $85.80 per square foot. It was built in 1955. The Target building has a value of $32.94 per square foot and was built in 2001. He said Target was getting a huge tax break on its building. If the Wine Shop and Spasso were paying the same property taxes per square footage for the land and building as Target was paying, their property taxes would be $24,500 lower. If Target were paying the same as the Wine Shop and Spasso, their property taxes would be $920,000 more. He was happy to compete with Target but only on a level playing field. He asked if the city preferred to have a bunch of Targets, Costco’s, and Sam’s Clubs, or strong independently owned businesses.

Schneider closed the public hearing at 8:45 p.m.

Wagner said he preferred waiting until a study session discussion could occur before making a decision on this item but having the study session sooner rather than later. He didn't think it was fair to Target to delay a decision but the council had to reaffirm the policy.

Wiersum agreed with Wagner. He said it was great there were companies like Target interested in Minnetonka and the city owed them an answer. He suggested finding out what Target’s preference was about having the council vote on the item at this meeting under the existing policy. He thought the policy needed a good hard look and he preferred making a decision until after the policy had been looked at.

Allendorf said Target indicated the goal was to open the remodeled store in October. They didn’t have to start the construction in the side of the building with the liquor store. He didn’t think construction would be slowed down if the city could have the policy in place in the next 45-60 days. He thought the council should make an informed decision meaning a study session should be held on the policy.

Schneider said although he didn't oppose the Target concept, he would have a difficult time approving it under the current policy. He supported having a study session as soon as possible.
Barone staff would look at schedules and would schedule a study session as soon as possible. It was important to have all seven council members present.

Ellingson said it seemed somewhat hypothetical to say that granting Target the 12th license in the city, with a limit of 12 stores, would make it difficult to grant another license after that unless there was an indication that another grocery store was actually interested in adding a liquor store. Schneider said he did not have an indication another grocery store was interested. His concern was about the fairness about setting a limit when there were similar operations that would qualify under the same convenience option for customers. Ellingson said the difficulty he had was that sounded more hypothetical rather than actual. Nobody was aware of any interest on the part of any other grocery store and Target had applied for a license. He didn't know if the license would be approved if voted on but under the policy more than 12 off sale licenses could be approved. The council was not bound by that number or by the policy. He questioned why thing were being dragged out. Schneider said everyone had their own perspective. His perspective was about getting more clarity so the businesses looking to locate in the city had a better idea of what might get approved.

Barone noted comments about the changing market place and the policy that was approved in 2010 didn't necessarily envision some of the changes.

Wagner said there had been enough change to the makeup of the council that there was not the same level of consensus to the policy to guide this vote and future votes.

Wiersum said there was a unanimous vote to approve the policy but it was a compromise that no one liked. It was a policy agreed to because the council could not agree to something else. He said it was likely that a revised policy would also be one that council members did not like.

Lydia Bjorge, the state and local government affairs manager for Target, said it seemed the will of the council was to move the discussion forward. Given the council seemed willing to hold the study session as soon as possible she said Target could support delaying the decision.

Ellingson said since it was unknown of any other grocery store interested in applying for a liquor store, the only applicant that the city was aware of was Total Wine. If Target were approved tonight the city would have 12 liquor stores and there would be an argument for not approving Total Wine based on the number. He questioned if this was what was really being
discussed. Schneider said that was not what he was talking about. His concern was the fairness issue. If the policy were applied consistently, there could be no differentiation between Target, Cub, and Whole Foods.

Wiersum said a lot of what was being talked about was speculative. There was some indication Total Wine might apply but that was not known for sure. He said it was logical to say that if Target got a liquor store, and Cub who sells liquor in other locations and was located across the street from this Target location, and the two companies were vociferous competitors, that Cub might want to apply for a liquor license. This was pure speculation however. The city was dealing in the realm of speculation. The market was going to change and someday the state legislature might allow liquor sales in grocery stores. The city had to deal with the current market realities. There was an application before the council. Some of the council members wanted to revisit the policy. Some council members were happy with the current policy. He thought the issue was big enough that a policy discussion was warranted.

Bergstedt said he felt bad for Target but Target indicated they were willing to wait for the council to have the policy discussion. He asked staff to make sure the discussion would happen at the earliest time possible.

Wiersum moved, Bergstedt seconded a motion to continue the item pending a study session within 45 days to discuss the policy. All voted "yes." Motion carried.

Schneider called a recess at 8:57 p.m.

He called the meeting back to order at 9:07 p.m.

14. Other Business:

A. Items concerning the Music Barn Apartments, at 5740 and 5750 Shady Oak Road:
   1) Ordinance rezoning properties from R-1 to PUD;
   2) Master development plan; and
   3) Site and building plan review.

Gordon gave the staff report.

Jay Jensen with Shelter Corporation, 1600 Hopkins Crossroad, said about a year ago the concept plan was discussed with the council. Staff and the council provided helpful comments. All the staff recommendations were incorporated. He credited Gordon for a suggestion about the exterior design. The neighbors, planning commission and EDAC's comments were
also very helpful. There was a lot of work done to make the apartment building and the barn fit together. The building placement was challenging with the hillside and some people were concerned about the proximity of the building to the street and possible noise issues for residents. He said building materials and design can eliminate noise issues. Two parking spaces per unit were incorporated and the garage access moved at the request of the neighbors. There were concerns with the slope of the garage but engineers indicated it wasn't an issue. One neighbor questioned who benefitted from the project. He said the people who would benefit would be the residents. There was not a lot of housing like this in the metro area particularly in the suburbs.

Wiersum asked who would handle the snow removal from the sidewalk along Shady Oak Road. He noted recent issues on Minnetonka Boulevard where walkability was lost due to the people responsible for getting the shoveling done having difficulty doing so. Gordon said the city would take care of plowing the trail. Connections to the trail from the site would be the property owner's responsibility.

David Kirscht, 5664 Sanibel Drive, said he was concerned about the project. He said he was a retired landscape architect with over 40 years of experience. He has a masters of landscape architecture and was registered in 10 states. He was appointed by two governors to the State Board of Registration for Architects, Engineers, Land Surveyors, and Landscape Architects. He served two terms as the chair of the board. He appreciated the city's interest and concern in having affordable housing. This was not his issue. His issue was the building structure itself and how it abuses the site. Generally, it was a massive, physical, aesthetic intrusion with some safety concerns. He said the changes to the project left the developer with jamming whatever they could onto a very limited piece of the property. The site constraints were severe.

Kirscht showed a picture taken from across the street that he said showed the immensity of the proposal. The grades of the front of the property rise approximately 13.18 feet from the south to the north. He showed a picture of the north driveway entrance. The grade is four and a half percent. There are 10 parking spaces on the slide slope. Any inclement weather would cause a pile up if the vehicles try to move. The highest point of the retaining wall would be 14 feet. Garbage truck maneuvering on to Shady Oak would be an issue. He said the traffic situation needed to be fully analyzed. He thought the configuration was an accident ready to happen. Snow removal would be an issue and open space was negligible on the property. There would be safety issues related to pedestrian and vehicle traffic. He said it would be a major negative, precedent setting project for the city.
Larry Rose, 5651 Sanibel Drive, said he had been in property management and construction for nearly 50 years. The visual design focused on the aesthetics of the site. The design shouldn’t take away from the neighborhood but should enhance it. He said this proposal would change neighborhood home ownership to a dominant architectural structure. The structure would overwhelm the established neighborhood. The proposal did not fit into the neighborhood. He wanted everyone to understand the danger with the entry and exit to the site. Safety issues had to be addressed. The proposal would not be acceptable in the industry he worked in. Space utilization had to be addressed.

Kris Soleta, 5656 Sanibel Drive, said the proposal was a monster building on a very slim lot. She understood the city needed to hit its affordable housing numbers but this should not be done on the neighborhood’s back. She said the proposal had been improved from a year ago but it remained too massive for the lot.

Paul Hines, 11112 Abbott Lane, said his neighborhood had changed substantially over the past 25 years. On the south side there was a warehouse office building converted into a special school. This meant there was the noise of children playing during the day. On the northwest side a restaurant beverage serving business was granted an outdoor serving license that also added noise. On the northwest side a warehouse office building was converted into another school about ten years ago. He questioned staff comments that the proposed building reflected the character of the neighborhood. He didn't see other buildings like it in the neighborhood. He was looking for some assurance that the process that was used for the interim school district building at 11140 Bren Road, was not repeated in this situation. In 2003 the district came before the city and was granted the right to rent the building. Less than a year later the school district purchased the building. Subsequently the building has been tax exempt. He questioned how this was good for the city or residents. The city has spent a large amount of time sending police squads to the school in response to frequent assaults. As a homeowner he has had students in his backyard. He has frequent visitors cutting through his property. This proposal had a building jammed into the space. This was good for the developer and property owner but not good for the city unless it prevented the Met Council from pressuring the city on affordable housing numbers. He said Jensen had told him the median income of the residents would be between $50,000 and $70,000 but he read in the staff report that 20 percent would be Section 8. He said this would suggest there would be more police activity.
Allendorf said the developer did a good job working with the neighbors and staff in pairing down the initial proposal and fitting it into the site in a way that was respectful to the site itself. The developer also did a good job with making the look of the building work with the barn as well as the property to the east. He thought it was a good project that had been improved.

Acomb said the development would be a big change from the existing buildings. The development was a little bit closer to Shady Oak Road then she would prefer but she appreciated that was done in order to protect some of the natural environment of the site. She liked that the development was on a road that had mass transit and was near a park.

Wagner said the development fit with the guide plan. The updated proposal met a lot of what was discussed during the concept plan review and he applauded the developer for reducing the scale and addressing concerns. The development had great connectivity both with walkability and a future transit connection. He agreed it would be better to be setback further from Shady Oak road but he would not trade that for further enclosing it into the steep slope.

Bergstedt said watching the planning commission hearing and listening to comments made during this meeting, whenever people discuss affordable housing they use it as a pejorative term. He said sometimes terms get thrown around with low income and affordable housing. He noted the staff report stated the affordable housing in this development included people whose income could be in the $50,000 range. These are teachers, police officers, and administrative people who work for nearby businesses. This is not a negative for the city and was not being done because the city was being forced to do it, but was being done because these were the types of people the city was trying to, and needed to, attract and retain. He said it was disturbing to hear people say that because a project contained an affordable housing piece that it was somehow diminishing the project.

Bergstedt said the safety concerns for any development are looked at by staff and in no way have any of the concerns that were raised been ignored or disregarded. He said looking at what was currently on the site with what was proposed, it would be a dramatic change. The site was very sensitive but looking at the proposal it was sited properly, meets the guide plan, and helps with affordable housing goals, and was located by transit systems. The developer went from 38 units down to 27 units and reduced the height from four stories down to three. The exterior design appears less massive and doesn't look like a standard block apartment building. It was not a perfect project but he supported it.
Wiersum agreed it was not a perfect project but it achieved a number of objectives effectively. Scaling it down improved the project both in terms of the site and the look. In regard to fitting into the neighborhood, it does not look exactly like the properties across the street but that did not mean it does not fit into the neighborhood. The parcel was going to have multi-unit housing. The twenty seven unit building was well designed for the parcel and was a positive. He said affordable housing was important and he agreed with Bergstedt’s comments that the teachers and police officers and young people who will live in the building are needed in the community. There will be occasional police calls to the building just like there are police calls to every other neighborhood in the city.

Schneider said “perfect” was not included in the city’s ordinances and during his 25 years on the council he had only seen one perfect project: Nordstroms. He said the several iterations of the proposal before this one destroyed the site. He was amazed at how the developer was able to make the proposal work as well as it does given the topography of the challenging site. He commended the architect for the innovative approach with the elevations and the look of the building. Given all the circumstances and the benefits of affordable housing he thought it was a great project for the city.

Allendorf moved, Acomb seconded a motion to:
1) Adopt Ordinance 2015-12 rezoning the existing properties from R-1, low-density residential, to PUD, planned unit development, and adopting a master development plan for Music Barn Apartments.)
2) Adopt Resolution 2015-039 approving final site and building plans for the Music Barn Apartments. All voted “yes.” Motion carried.

B. 2016–2020 Capital Improvements Program (CIP)

Barone gave the staff report.

Wagner said he was contacted by a few residents who live on Amy Lane who would like the trail that stops at Hilloway on the east side of Plymouth Road extended. He said he asked staff to look at a possible extension for a future CIP.

Wiersum moved, Wagner seconded a motion to adopt Resolution 2015-040 approving the 2016-2020 Capital Improvements Program. All voted “yes.” Motion carried.

C. 2016–2020 Economic Improvements Program (EIP)

Barone gave the staff report.
Wiersum suggested clarifying the acronyms that were used in the document when it’s posted online. Barone noted the individual pages have much more detail and do define the acronyms.

Schneider said having all the information in one document was very useful.

Wagner moved, Wiersum seconded a motion to adopt Resolution 2015-041 approving the 2016-2020 Economic Improvements Program. All voted “yes.” Motion carried.

15. **Appointments and Reappointments:**

   A. Appointments to the senior citizen advisory board

Schneider moved, Wiersum seconded a motion to appoint:
(1) Ron Parker, to the senior citizen advisory board, to serve a two-year term, effective June 1, 2015 and expiring on May 31, 2017.
(2) Judith Hansen, to the senior citizen advisory board, to serve a two-year term, effective June 1, 2015 and expiring on May 31, 2017.
All voted “yes.” Motion carried.

16. **Adjournment**

Wiersum moved, Acomb seconded a motion to adjourn the meeting at 10:12 p.m.
All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk