APPROVED

City of Minnetonka Beach
REGULAR CITY COUNCIL MEETING
Tuesday, October 11, 2011
MINUTES

Roll Call
Mayor Joann Anderson, Council Members: Jill Bartel, Michelle Kroll, Linn Ferguson, and Mike Taylor. Absent: Treasurer Rick Skalla.

City Council Agenda
1. Call to Order
Mayor Joann Anderson called the meeting to order at 7:07 p.m.

2. Approve Agenda
2.1 Council Meeting Action Notes
No questions or comments were made regarding the action notes.
The agenda was approved as written **(Bartel motion, Ferguson second; all ayes).**

3. Approve Minutes
3.1. Regular Meeting of September 12, 2011
No changes or corrections were made to the minutes.
(Ferguson motion, Bartel second to approve the minutes of September 12, 2011 as written; all ayes).

4. Open Forum
No one spoke during Open Forum.

5. Police Report
5.1. Police Report – August
Officer Steve Sturm reported there have been a couple of thefts of tailgates off of trucks; one on Maxwell Bay area and the other Crystal Bay Rd. Neither theft was in Minnetonka Beach. Ray Peters Park has been very quiet. There haven't been any calls or problems on the Dakota Trail, and there haven't been any parking issues. No changes have occurred in personnel at the police department.

Mayor Anderson said she called Planning and Zoning Administrator Dick Krier recently after having received a complaint regarding working past construction hours. The police were called and Krier also went to the location of the violation. He complimented the police officer who handled the enforcement saying the officer was well-versed in our ordinance regarding construction hours.

5.2. Three Rivers Park District (TRPD) Police Report
Chief McPhee reported since last month there have been five enforcement contacts regarding the trail. All total there were several hundred contacts made this year, including about 70 written citations or warnings. There have been very few issues. Tour de Tonka organizers have been contacted regarding some of their participants that were rude on the trail during the event this year.

Boe Carlson, TRPD, said they could do a recap at a later date regarding enforcements for the year, what they are seeing on the trail, and also make comparisons to what is happening on their other trails. The trail is officially closed November 15th, but can be used on an at-your-own-risk-basis because the trail is not maintained in winter.

TRPD will be hosting a meeting on Friday on Regional Way Finding and Signage at the City of Minnetonka. They will talk about a universal sign program. Mr. Carlson said he will see that our City receives an invitation.

Now that the Dakota Regional Trail has been in operation three years, Mr. Carlson has spoken with Mayor Anderson about meeting periodically with the City on how the trail is working, signage, tree plantings, and what can be done for improvement, etc. A meeting could include neighbors adjacent to the trail in order to get their input. He said TRPD is very open to feedback for ways to improve and suggested ideas might be able to be implemented prior to the 2012 biking season. Mayor Anderson reported the speed bumps requested for the trail by driveways in the Arcola Lane area will not be installed; TRPD said they would be a liability.

Taylor asked whether there could be tree replacement for the trees that have died or are dying that were planted by TRPD. He said there are a couple trees along the trail by his house that should be watched. Mr. Carlson said there was information in the contract with the City about a warranty period for the trees; the warranty was for two years and we have passed that time.

6. Consent Agenda

6.1. Fire Report – September
6.2. Resolution 2011-51 Naming Unnamed Street Palm Lane
6.3. Resolution 2011-52 Supporting the City of Tonka Bay's Hennepin County Youth Sports Grant Application for Basketball Improvements
(Taylor motion, Bartel second to approve the consent agenda items as presented; all ayes).

7. Treasurer's Report

Bartel asked if the Lindquist & Vennum legal expenses, $3,104.50, were related to the Lafayette Club. Most of the expenses are related to the vacation of streets and property for the Lafayette Club and those expenses will be billed to the Club. A Bonestroo payment of $5,272.12 was relating to engineering costs for private property that will also

be billed to the two property owners; Lafayette Club and the McEvoy's regarding their storm water system.

7.1 Approve Checks
(Ferguson motion, Taylor second to approve 46 checks, numbers 13013-13058 in the total amount of $52,554.22; all ayes).

7.2. Year to Date Budget Report
Mayor Anderson said the total expenditures for this time of year shows the City is pretty much on track.

8. Public Hearing

8.1. Cottage Place (aka Northview Rd.) Street Vacation
Mayor Anderson opened public hearing at 7:36 p.m.
No one spoke and she closed the public hearing at 7:37 p.m.

9. Planning and Zoning

9.1. Resolution 2011-49 Authorizing Vacation of a Portion of Cottage Place
Planning and Zoning Administrator Dick Krier reported the vacation of this portion of Cottage Place (aka part of Northview Rd.) is clearing up title on the last portion of road, which is actually under the existing Lafayette Club parking lot. A search of records found the part of Cottage Place to be vacated has only provided access to the Club or to the Lafayette Hotel, and has not provided access to any other property since it's platting in 1888 as part of the original plat of Minnetonka Beach. City Attorney Wally Hilke wanted the City to vacate the road to clear the title which had not been done in the past, even though the intent of the City was to do so. **(Kroll motion, Taylor second to adopt Resolution 2011-49 Authorizing Vacation of a Portion of Cottage Place; all ayes).**

9.2. Resolution 2011-29 Adopting Ordinance No. 76, 2nd Series, Side Setbacks and Authorizing Summary Publication of Ordinance No. 76, 2nd Series
Planning and Zoning Administrator Krier presented a summary of a study which was prepared for the the Planning Commission to use when studying side setbacks. The study included researching all the property files for the 239 properties in the community. Of the 239 files, there were 169 files containing a full data base of information for the study. Those 169 properties have a total of 157 different lot widths. The study found the City has granted 54 side yard variances; 41% involved property with widths less than 80 feet, and 67% involved property less than 101 feet in width. There were eight variances that involved properties with widths between 101 feet – 160 feet, and nine variances for properties over 160 feet in width.

Building types for the community include nineteen - 1-story homes, thirty-two -1.5-story homes, fourteen - 2.5-story homes and one – 3-story home. Predominate building height is two stories (104 homes). Minnetonka Beach has a 40-foot maximum height limitation, the highest of the Lake cities.

City Planner Krier said the City Council's policy direction from the Comprehensive Plan is to have an ordinance which would be fair, non-arbitrary, and have predictable doctrine. He said amending the zoning ordinance to use performance standards that use a percentage of lot width for side setbacks would be a better fit for the community because within neighborhoods there can be numerous sizes of lots. The Planning Commission is recommending two side setback categories for single family lots; Lots having a width of 0 – 113 feet would have a setback of 15% of the lot width but not to exceed 20 feet (applied to each side of the lot); and lots having a width greater than 133 feet would be at 20 feet for the side setback. Council discussed changing the categories from Lots 0 – 102 feet wide being at 15% of lot width and Lots having a width great than 102 feet being at 20 feet (which is what the Planning Commission had originally recommended).

The Planning Commission also studied encroachment planes which address the bulk of a house as it appears from the neighbor, street or lake. The massiveness of a home would be proportionate to the size of the lot. A side setback encroachment plane is an inclined vertical plane sloping inward toward the center of the lot and extending along the side lot line. The encroachment plane is a sloping 30 degree plane with its axis located on the property line 6 feet above the base elevation. Encroachment planes are not used by a lot of other cities, but percentages are.

Kroll said she thinks the ordinance fits the smaller lots, but not the larger lots. She asked for clarification: if someone had a lot over 102 feet in width and they wanted a side yard variance of less than 20 feet, what would Krier's recommendation be to Council. He said his recommendation would be "No" because the need for the variance would have to have a practical difficulty and be characterized as unique according to the June, 2010 State Supreme Court ruling. Also, the need for the variance can't be caused by the owner. Kroll was concerned about changing the process because the City has set precedence for so long with granting variances. Krier noted that 41% of those residents that had to come in for variances in the past would not have had to apply for a variance under the new proposed ordinance. He said the ordinance would make it a matter of right rather than having to go through the variance process.

Ferguson said there is nothing curtailing larger lot owners for coming in with a variance request. He thinks it will eliminate a large number of people having to come in for variances and the ordinance will fit the community. Bartel said she thinks it makes sense, too. Taylor said he has been on both sides of this issue, but sees that Council still has the ability to grant variance requests as long as they meet the criteria and that with the proposed ordinance we've met the objective of reducing the amount of variance requests. He liked idea of the encroachment plane. Mayor Anderson said the more she has read through the ordinance she finds it is consistent and easy to understand. The encroachment piece makes sense to her, too.

Resident Mike Bloom, 3138 Northview Rd., said the 20 foot side setback has been our standard for about 50 years; a benchmark he doesn't think should be changed. He said he has issues with the proposed recommendation where the side setback is measured to the wall instead of the eaves because it would allow the structure to be closer to the lot line

by about two feet. He would like it to remain measured to the eaves in order to have less impact on the house next door. He thinks 15% of lot width for the smaller lots brings the houses too close. He said while he doesn't understand the encroachment piece, but he thinks it solves the mass issue.

Property owner Mike Fasching said he has a 60-foot wide lot at 1928 Cottage Lane. He said he thinks the bigger lots are more problematic when moving the numbers up. He thinks measuring to the wall instead of the eaves will allow a lot more architectural variations.

Ferguson said when he went to get a variance in Minnetonka Beach, he found out we were about the only city which measured to the eaves.

(Taylor motion, Ferguson second to amend Ordinance 76, page, reducing the width category for single family lot 133 feet to 102 feet, and a single family lot having a width greater than 102 feet would have a side setback of 20 feet; all ayes).

(Taylor motion, Ferguson second to approve Resolution 2011-29 adopting the amended Ordinance 76, Second Series, Side Setback Amendments; all ayes).
(Ferguson motion, Bartel second to authorize summary publication of the amended Ordinance 76, Second Series, Side Setback Amendments; all ayes).

9.3. Resolution 2011-50 Adopting Ordinance No. 79, 2nd Series, amending Section 205 Definitions, 207 Minimum lot size and Building Density, Section 231 Subdivision and Platting

Council received Planning and Zoning Administrator Krier's letter report regarding Lot Sizes dated October 11, 2011. Krier reported that the recent Minnesota Statue 462.357 requires the City to amend its zoning ordinance by repealing part of Section 207 dealing with lot standards for nonconforming existing platted lots known as "lots of record". Most of the lots in the community are currently nonconforming and our ordinance requires new lots created by subdivision must meet the minimum criteria of 100-feet of frontage, be one acre in size, must be located on a public or private street, and provided with municipal services. We have a 30% hardcover limit requirement.

The new State Statute requires that a single lot of record located within a Shoreland Area (all of Minnetonka Beach is in a Shoreland area) may be allowed as a building site without variances from lot size requirements provided that: all setback requirements can be met; the lot is connected to a public sewer; and the impervious surface coverage does not exceed 25% of the lot area.

The Planning Commission determined that the State's provision reducing hardcover from 30% to 25% would not be acceptable. To resolve the issue, their recommendation is to make all existing "lots of record" (nonconforming lots) conforming which would keep the hardcover allowable at 30%.

In addition, City Planner Krier said right now our ordinance states if a property wasn't assessed for sewer in 1979, a property wouldn't have the right to have city sewer. Krier noted this would not be defendable in court. If there is a buildable lot, then it would have to be allowed to have sewer. There is a provision in which the City could establish a city sewer availability charge (SAC), in addition to the Metropolitan Council's SAC fees paid when homes on new lots are hooking up to sewer. Council directed staff to research having a city SAC fee and add to the action notes to develop a city sewer availability charge policy. They requested the policy come back to Council in January. The amount of the fee would need to be on the City fee schedule.

(Kroll motion, Taylor second to adopt Resolution 2011-50 Ordinance 79 Amending Section 205 Definitions, Sections 207 Minimum Lot Size and Building Density, Section 231 Subdivision and Platting; all ayes).

10. Old Business

There were no Old Business items.

11. New Business

11.1. Proposed Special Assessment of Unpaid Utility Bills – 3130 Brooks Lane and 3028 Westwood Rd.

Council received a memo and a copy of a letter from City Clerk Regnier regarding delinquent utility accounts for 3130 Brooks Lane and 3028 Westwood Rd. Both of these properties have vacant homes owned by the same property owner. The water has been shut off to each of the properties. In addition to receiving quarterly utility bills, the property owner has been notified via letter of the delinquent amounts, totaling $1,104.17, which would be on this meeting's agenda. She was also notified if any amounts remained unpaid, at the November 14th City Council meeting those delinquent amounts would be certified to Hennepin County for collection with the owner's property taxes.
(Taylor motion, Bartel second to certify by resolution at the November City Council meeting any unpaid delinquent utility bill amounts for 3130 Brooks Lane and 3028 Westwood Rd.; all ayes).

Taylor was concerned about the condition of the vacant properties at 3028 Westwood Rd. and 3130 Brooks Lane. City Planner Krier said the building inspector will inspect the properties, and as part of the process he will make a determination and a report, and request the homeowner make any corrections necessary. Mayor Anderson requested inspection of the two properties be added to the Council action notes.

12. Staff Reports

12.1. Director of Public Works

Ben Young reported:
-All the water service lines are in for the Westwood Rd water main hook up. There are two more curb stops to hook up, after that the homeowners will need to have a plumber hook up inside their homes. He has blacktopped three of the holes in the street where the

hook ups were completed. The City should send letters to the residents so they can have their plumbers finish the inside work and the City can abandon the old water main.
-Monday, at 7:30 a.m., the paving of Lafayette Ridge Rd. will begin. It is expected to be a three day project.
-Leaf pick up has started and will end November 14th, depending upon the weather.

12.2. Clerk's Report
City Clerk Marilyn Regnier reported:
Council received in their packets her letter of resignation as she is retiring after 20 years with the City. Her last day will be December 15, 2011. The retirement party held on October 5th at Mike and Betsy Taylors' was discussed and she thanked everyone involved for making it a very special occasion.

12.2.1. City Hall Lighting Bid
Council received an amended bid from Touchstone Accent Lighting for outdoor lighting on City Hall grounds. The bid amount of $1,515 is for lighting the accessible walkway and includes two down-facing small flood lights stationed in one of the trees and three in-ground pathway lights. Mayor Anderson noted there is unspent money in the budget in accounts 2090, 2140, 2141 and 2170 that would cover the lighting installation. **(Taylor motion, Ferguson second to approve the bid from Touchstone Accent Lighting for installation of lighting for the accessible walkway in the amount of $1,515.00; all ayes).**

Council received a Water Comparison of Pumped verses Sold for the third quarter. It showed 7% more water pumped than sold which is within the acceptable level of 10%. There is always unmetered water usage when water lines break, hydrants are flushed, the skating rink is flooded, and backwash is performed at the water plant so there is an expectation of 10% or less of more water pumped than sold.

12.3. Administrator's Report
City Administrator Susanne Griffin reported:
12.3.1. City Clerk Hiring Update
There were forty-two applications received and reviewed by herself, Mayor Anderson and Councilor Taylor. They plan to interview twelve candidates next Monday and Tuesday. She hopes the job will be offered to one of the candidates on Oct. 28th. She recommended City Council make a motion for Mayor Anderson to make a conditional job offer and Council would approve the hiring at their November 14th meeting. **(Bartel motion, Taylor second to authorize Mayor Anderson to make a conditional job offer to a candidate for city clerk pending Council approval at their November meeting; all ayes).**

12.3.2. City Attorney Memo on Charter Amendments
Council received a memo, dated September 19, 2011, from Attorney Karla Vehrs, City Attorney's office, regarding the process for amending the City Charter. There had been a question earlier about how to change the Charter because of the referendum requirement whenever bonding was needed for city projects. There would be no action required at

this time; it was for the future should the City want to amend its Charter. Council thought it was an unnecessary expense at this time.

13. Council Reports

13.1. Mayor's Report

Mayor Anderson reported she had attended with Administrator Griffin a meeting regarding the homestead tax credit. There is no longer a homestead tax credit. Instead, the State excludes part of the value of a house. It is shifting the tax from properties receiving an exclusion onto the rest of the residential properties. She figured on average it would be at $37.00/year increase to our properties valued over $413,000.

Mayor Anderson also spoke about Boe Carlson's discussion regarding meeting with people in the Beach for input regarding the trail. A meeting could include just those who live along the trail or all the residents. She asked for Council's thoughts about holding a meeting. The consensus was to start a town meeting on the trail at 6:30 or 6:45 p.m. before a Council meeting and include all residents. It was also suggested to get input from the trail safety task force. Council members voiced they didn't have any issues with the trail at this time. It was directed to add to the action notes to hold a town meeting regarding the trail before a future Council meeting, preferably after April of 2012.

Mayor Anderson said she was asked by TRPD to request that some of the homeowners along Arcola Lane prune their vegetation that is starting to cover up signs along the trail. She will either call them or send a note in November.

Lastly, she asked for input from Council regarding saying the Pledge of Allegiance before Council meetings. She said she feels it is a good thing to do because we are a public entity, Council members take an oath of office, and a number of other cities do say the Pledge of Allegiance. Bartel said she didn't feel the need for saying it, but if everyone else wanted to, it would be fine with her. Ferguson said it didn't make a difference one way or another to him. Kroll said she could go either way about saying it. Taylor said he was recently at a city council meeting in Florida and their council stood for the Pledge of Alliance. One suggestion was if they were to say the Pledge, have a Boy Scout troop here the first time to lead them through it. Administrator Griffin had been asked to research the other lake cities on whether or not they say the Pledge; out of eight lake cities, five do and three don't.

13.2. Council Liaison Reports

Ferguson had no report.

The Utilities Committee will meet Thursday at 5:30 p.m. and will look at the Illicit Discharge Ordinance. Mayor Anderson said she could attend as a Council Member if Kroll won't be able to. Darren Amundsen, Stantec (formerly Bonestroo) will not be able to attend the meeting, but he has supplied new specifications for the East Side Water Project that the Utility Committee will review. Council will see the new specifications at their Nov. meeting, and give authorization in December for going out for bids in January.

The Finance Committee is meeting on Oct. 19th.

Planning and Zoning Administrator Dick Krier reported he has sent an enforcement letter to the Andersons at 1905 Beach Lane for building within the 75 foot lake setback. They have until December 20th to correct the violation, and then the enforcement action would come to Council. St. Martin's Church is making changes to their plans for the labyrinth/garden and will come back in the spring. The Melameds, 2115 Huntington Pt. Rd. E., have a carriage house in the rear yard setback of their property which they want to add three feet of height to the building to make it usable for storage. The Planning Commission has it on their agenda this month.

Mayor Anderson thanked the Council for working so hard on the side setback ordinance. She also gave kudos to the Planning Commission for all of the effort and time spent on the ordinance saying they did such a good job.

14. Adjournment

(Bartel motion, Ferguson second to adjourn the meeting at 10:24 p.m.; all ayes).

Public Present:
Mike Fasching and Mike Bloom.
Note: The above list is not a complete list as not everyone signed in.

Staff Present:
City Administrator Susanne Griffin, City Clerk Marilyn Regnier, Ben Young and Planning & Zoning Administrator Dick Krier. Minutes recorded by City Clerk Regnier.