

City of Minnetonka Beach
REGULAR CITY COUNCIL MEETING
Monday, June 14, 2010
MINUTES

Roll Call

Mayor Joann Anderson, Council Members: Jill Bartel, Michelle Kroll, Linn Ferguson, and Treasurer Dennis Fischer. Absent: Mike Taylor.

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

Mayor Anderson reported staff was to research whether there would be insurance coverage for repair of a storm damaged lift station circuit board. Staff found out it would be covered, but the repair of \$600 wouldn't meet the amount of the deductible of \$2,500, making it a moot point.

Kroll requested having Pedestrian Crossing Discussion be added to August agenda items.

Mayor Anderson added under Planning and Zoning; Item 10.3. Resolution 2010-27 Authorize Summary Publication of Ordinance 71.

Approval of Agenda

The agenda was approved as amended (**Bartel motion, Ferguson second; all present ayes**).

3. Approve Minutes

3.1. Regular Meeting Minutes of May 10, 2010

Bartel requested an amendment on Page 6; under 11.3 Administrator's Report, fourth paragraph, adding the words *for* and *of*. The sentence now reads; At this time the MCES isn't receiving enough funding due to the downturn in the economy and they are looking *for* other sources *of* revenue by increasing the monthly municipal wastewater fees each city pays. (**Ferguson motion, Bartel second to approve the minutes of May 10, 2010 as amended; all present aye**).

4. Open Forum

No one chose to speak.

5. Police Report

5.1 Police Report – May

Sergeant Tony Wittke reported:

- There were 25 violations in the City of Minnetonka Beach in the month of May, including 7 citations.
- Crystal Bay Rd. residents have complained that Minnetonka Beach residents using Crystal Bay Rd. are speeding as they go through their neighborhood. Council recommended the police also talk to the Lafayette Club about people/staff speeding through on Crystal Bay Rd. and Northview Rd.
- The police are hosting an alcohol compliance course and compliance checks will happen soon after course completion.
- There was one juvenile curfew citation listed at Ray Peters Park.
- One ticket was issued to a bicyclist for not stopping at a stop sign on the Dakota Regional Trail.
- The recent rash of illegal solicitors has moved on. With the new ordinances in place, police now pick up solicitors and take them to the police station where they check on whether the solicitors have a license. Including the paperwork, it ends up costing the solicitor about \$200 for soliciting without a license.

6. Storm Water Management Presentation-Julie Westerlund, Minnehaha Creek Watershed District (MCWD)

Julie Westerlund, MCWD Education & Communications Manager, presented a power point presentation regarding Nonpoint Education for Municipal Officials (NEMO). She talked about clean water regulatory programs, watershed and storm water basics and nonpoint source pollution. There is a federally mandated national pollution discharge elimination system which is implemented by the Minnesota Pollution Control Agency. Required minimum control measures for cities include: public education and outreach, public participation and involvement, illicit discharge detection and elimination, construction site runoff control, post construction runoff control, and pollution/prevention good housekeeping measures. Cities use plans, such as Comprehensive Plans and Storm Water Pollution Prevention Programs, to set policies and practices to meet requirements. The MCWD will host a Shorelines and Storm Water Workshop for local decision makers on July 14th and City Council is invited.

The Civic Committee had been mentioned for sponsoring seminars on rain gardens and lake side plantings for residents. Mayor Anderson will check with Civic about sponsoring a seminar. The MCWD would be glad to help partnership with the city for education.

Planning and Zoning Administrator Dick Krier said an Illicit Discharge Program and an ordinance to go with it will be on the Planning Commission agenda for their review in June. It will then go to City Council.

7. Public Hearing – Storm Water Pollution Prevention Program (SWPPP)

One requirement for cities is they must hold a Storm Water Pollution Prevention Program (SWPPP) Annual Meeting/Public Hearing and Council received and will file the 2010 SWPPP Implementation Schedule.

Mayor Anderson opened the public hearing at 8:10 p.m.

Kathie Doerr said she is excited about what she heard from Julie Westerlund and hopes the city will go forward with it.

Mayor Anderson closed the public hearing at 8:12 p.m.

Ferguson said he has heard of a possible grant program for ash tree replacement, but didn't have any more information at this time.

8. Consent Agenda

8.1. Fire Report – May

8.2. Dock Permits – Francis Frangipane and Warren Stanchfield

8.3. Notice of Violation Appeal – D. Boyd

8.4. Resolution 2010-23 – Allowing Exemption for Gambling – St. Therese Foundation

8.5. Resolution 2010-24 – Appointing Election Judges for 2010 Elections

8.6. Resolution 2010-25 – Comprehensive Plan Amendment

(Bartel motion, Kroll second to approve the consent agenda items; all present aye).

9. Treasurer's Report

Treasurer Fischer requested approval of the checks written.

9.1 Approve Checks

(Ferguson motion, Bartel second to approve 53 checks, numbers 12254-12306 in the total amount of \$75,759.63; all present aye).

9.2. Year to Date Budget Report

Mayor Anderson said the discounted attorney's bill for legal litigation in the Gillum/Goodman land dispute case has been received. The Lindquist & Vennum bill will be paid in two installments.

Treasurer Fischer said he talked to Ehlers & Assoc. regarding investing funds for better returns. They could provide a proactive management program. He will continue to look at what we can and can't do regarding investments through the LMC. We are currently getting a fraction of 1% on the 4M Fund. He still wants to check First National Bank of the Lakes regarding what they offer on investments. Mayor Anderson said a representative from Northland Securities will be coming to the July meeting to speak about refunding of the 2002 bonds.

10. Planning and Zoning

10.1. Ordinance No. 71 – Accessory Dwelling Units

Council received Planning and Zoning Administrator Dick Krier's June 14, 2010 letter report regarding the Ordinance 71 Accessory Units (Home Occupations and Accessory Dwelling Units). The Comprehensive Plan includes policies about life cycle housing and density, and the ordinance is the implementation of those policies. The Planning Commission has studied the accessory dwelling unit issue at length over several months and held a public hearing. Krier said most of the concerns Council brought forward regarding accessory dwelling units have been addressed they included; the existing ordinance requires continuous use of a non-conforming use such as an accessory office or dwelling unit. Previously if the use was discontinued for one year it could not be put

back into use. The revised ordinance makes all existing accessory dwelling units and home occupation uses and structures conforming, even if these existing uses and structures do not meet the setback area, etc. for new accessory units. They will be allowed to continued to be used, but cannot be enlarged unless they comply with the new standards.

Another expressed concern was regarding existing garages; can they be converted to accessory units? In the revised ordinance, it would only allow conversion of existing garages if the garage meets ordinance performance standards (setback area, etc).

Council had been concerned the definition of a caregiver should not be limited to state licensed caregivers and family members. The revised proposed ordinance is expanded to include providers of Activities for Daily Living and Instrumental Activities of Daily Living.

Another expressed concern was the ordinance would be opening up detached accessory units for home occupations. The revised ordinance limits home occupations to family members living in the principle dwelling unit and limits the types of home occupations, which is similar to what is already allowed in the existing home occupation ordinance, but is expanded to allow a home occupation in a detached structure. Deed restrictions were added; along with an inspector will have a right of entry. Accessory units would be sized to scale with the primary dwelling unit.

Council and the Planning Commission had expressed concerns that the ordinance will cause enforcement issues. The revised ordinance includes that before issuing a building permit for a new accessory unit, the owner occupant will record with Hennepin County, against the title of the property, a deed restriction limiting the occupancy of the accessory unit as provided for in the ordinance and would give the city reasonable rights of entry for the purpose of performing inspections of the accessory unit.

Another concern was by allowing detached units in a single family community it could change the character of the city. The revised ordinance includes performance standards that limit the location, limit the visibility from the neighbor's land, the street and the lake, and limit the size of the accessory unit.

City Planner Krier noted the City Attorney Hilke has reviewed the proposed ordinance and suggested some minor non-material changes that have been incorporated. The Planning Commission is recommending, with one descent, that Council adopt Ordinance 71 Accessory Dwelling Units and Accessory Home Occupation.

Ferguson asked about the performance standards setbacks where a travel trailer would be allowed in the lake lot. Krier said it was allowed as a temporary use in the lake setback in Table II. Kroll thought it had to do with contractors when they needed to leave a trailer on a construction site.

Ferguson didn't think there was a standard established for solar panels and/or wind generators. Krier said the Planning Commission is working on setting standards for these and would have something back to Council in July or August.

10.2. Resolution 2010 – 26 Adopting Ordinance 71 – Accessory Dwelling Units (Bartel motion, Ferguson second to approve Resolution 2010-26 adopting Ordinance 71, 2nd Series, Accessory Dwelling Units and Accessory Home Occupation; all ayes).

10.3. Resolution 2010-27 – Authorize Summary Publication of Ordinance 71 (Bartel motion, Kroll second to approve Resolution 2010-27 Authorizing Summary Publication of Ordinance 71 Accessory Dwelling Units and Accessory Home Occupation); all ayes).

11. Old Business

Council received a memorandum dated June 8, 2010 from the city attorney's office at Lindquist & Vennum regarding a referendum on a proposed pedestrian tunnel. Bartel requested the memo be added to the minutes in its entirety. It was discussed and the memo will be added to these minutes and also in the Beachcomber.

QUESTION PRESENTED

Can the City of the Village of Minnetonka Beach (the "City") present a ballot question related to the construction of a pedestrian tunnel underneath Highway 15?

SHORT ANSWER

No, the City may not present a ballot question concerning the construction of a pedestrian tunnel. The City lacks the statutory or charter authority to conduct an advisory election on this matter.

FACTS

The City is a home rule charter city. The City Council is contemplating the construction of a pedestrian tunnel beneath Highway 15 in order to address safety issues for pedestrians crossing the highway. The City Council is considering presenting the question to residents as a ballot referendum in order to gauge public support for the project.

ANALYSIS

I. A home rule charter city derives its limited powers specifically from the state legislature and its city charter.

A "home rule charter city" is any city which has "adopted a home rule charter pursuant to the Constitution and the law."¹ Such a city "derives its powers solely from state

¹ MINN. STAT. § 410.015 (2009)

constitution, statute or city charter.”² The City only has those powers that are expressly conferred on it or are necessarily implied, but does not have any inherent powers.³

II. A charter city may only present a ballot question if its charter or statutory law specifically allows it.

A city may hold an election “on a question on which the voters are authorized by law or charter to pass judgment.”⁴ A home rule charter may grant the voters the power of initiative and referendum,⁵ and may allow for advisory elections, but “the authority for such advisory votes must be express” and cannot be implied.⁶ It does not matter who pays the costs of the election.⁷ Further, a city council may not delegate any power requiring the exercise of judgment and discretion to voters absent specific language in the charter or applicable statutes allowing it to do so.⁸ Thus, an unauthorized ballot question would constitute an unconstitutional delegation of legislative authority.⁹

III. The City lacks the express statutory or charter authority to conduct an advisory election on the construction of a pedestrian tunnel.

The Home Rule Charter of the City allows ballot question elections, but only under limited circumstances.¹⁰ The charter explicitly mandates that certain types of issues be presented to the residents for a vote, such as the vacation of properties having a water front,¹¹ and the issuance of bonds.¹² The charter does not, however, provide for presentation of questions related to infrastructure construction.¹³ Because there is no express authority under the City’s charter or state statutes for presenting such issues to the electorate or for conducting advisory elections on unauthorized questions, the City does not have the authority to conduct the contemplated election.

Since the City lacks both the statutory and charter authority to conduct this type of special election, it may not do so unless it properly amends its city charter to provide for advisory elections in general or to specifically allow a ballot question related to this type of issue. Or, as it has done in the past, the City may also conduct a neutral survey in

² Minn. Op. Att’y Gen. 640, Sept. 27, 1972.

³ *Minnetonka Elec. Co. v. Village of Golden Valley*, 141 N.W.2d 138, 140 (Minn. 1966).

⁴ MINN. STAT. § 205.10 (2009).

⁵ MINN. STAT. § 410.20 (2009); see also *Hous. & Redev. Auth. v. City of Minneapolis*, 198 N.W.2d 531, 536 (Minn. 1972).

⁶ Minn. Op. Att’y Gen. 640, Sept. 27, 1972.

⁷ See Minn. Op. Att’y Gen. 185b-2, Aug. 22, 1961; Minn. Op. Att’y Gen. 185b-2, May 3, 1967.

⁸ See *Minneapolis Gas-Light Co. v. City of Minneapolis*, 30 N.W.2d 450, 452 (Minn. 1886).

⁹ Minn. Op. Att’y Gen. 640, Sept. 27, 1972.

¹⁰ HOME RULE CHARTER OF THE VILLAGE OF MINNETONKA BEACH art. III (permitting special elections involving “questions” upon the petition of thirty residents with sufficient notice).

¹¹ *Id.* art. IV, § 3(4).

¹² *Id.* at § 18.

¹³ *Id.* art. III, § 3 (discussing city powers related to streets, sidewalks, public grounds, and sewers).

order to obtain feedback from city residents regarding this matter, since such surveys are not considered to be special elections.¹⁴

CONCLUSION

Because there is no statutory or charter authority for it, the City is not authorized to present a ballot question to the City residents on issues of infrastructure construction.

12. New Business

There were no items.

31. Staff Reports

13.1. Director of Public Works

Director of Public Works Ben Young reported:

- The Lafayette alley storm sewer is in and working, he needs to finish leveling the ground and seeding the area.
- The Brooks Lane boring project is finishing up. The water is flowing well to the new catch basin at County Rd. 15 and draining the area between Brooks Lane and Westwood Rd. Final clean up will be when the mud dries up.
- A big basswood by the Koehler's on Westwood Rd. was lost during the winds earlier in the week and he will be removing it. Planning and Zoning Administrator Krier said he thinks we only own where the pavement is in this area and the city doesn't have an easement. Ben said he uses as a right of way rule of thumb of 10 feet off of road edge for deciding if it is on city easement or not.
- He flushed hydrants Wednesday night and about 12:30 a.m. he noticed two Three Rivers Park District (TRPD) vehicles were parked in front of the hydrant on Lafayette Rd. making it too difficult to flush the hydrant. He talked to the police and found out TRPD officers were patrolling the trail during the night.

13.2. Clerk's Report

City Clerk Marilyn Regnier reported:

Absentee voting for the State Primary Election will begin on June 25th -August 9th. Minnetonka Beach residents can vote absentee in person at city hall. Information will be in the Beachcomber regarding voting absentee. Absentee ballots now have to be processed at Hennepin County, so we will be sending all voted absentee ballots to Hennepin County Elections office. The State Primary Election will be held on August 10th.

Candidate filing for the November 2nd city election is August 3-August 17th. More information will be in the Beachcomber and at City Council meetings.

13.3. Administrator's Report

City Administrator Susanne Griffin was absent.

13.3.1. July 3 Fireworks – Wedding at Lafayette Club

14. Council Reports

14.1. Mayor's Report

Mayor Anderson reminded Council on June 29th at 7:00 p.m. they will hold their second study session on the East Side Water Improvements.

Council received several emails from TRPD regarding the use of electric bikes (e-bikes) on the Dakota Regional Trail. Mayor Anderson has prepared comments replying to a Star Tribune article on May 15th that stated Three Rivers Park District (TRPD) plans to add electric bikes to the "trail mix". The cities along the trail have been told for now TRPD will not be developing an ordinance allowing e-bikes or banning them. Boe Carlson from TRPD has said he will keep the cities informed if TRPD does choose to make a decision. Our city ordinance does not allow e-bikes on the trail in Minnetonka Beach. Mayor Anderson said for now she is taking a wait and see attitude regarding e-bikes on trail. Her reply to the Star Tribune article is on hold.

14.2. Liaison Reports

Ferguson asked if Council needs to request the Planning Commission to look at wind energy. City Planner Krier said they are looking at solar energy rather than wind energy. Wind energy is not allowed in the city with the current ordinances.

Bartel said the Planning Commission will look at historic preservation issues within the Comprehensive Plan. She asked for a volunteer to attend the June Planning Commission meeting in her place. Council members will need to look at their calendars and Bartel will follow up with an email to see who can fill in for her.

Ferguson and Administrator Griffin have met with insurance representatives regarding the city's liability insurance to see what they could offer, but the timing wouldn't allow enough time for them to perform an audit of our insurance before premiums are due. He noted our current insurance company, Gallagher, makes 10% on the premiums we pay. He said it is premature for changing insurance carriers and Council would have to vote to make any changes. He requested adding to the action notes that Gallagher be asked for an insurance audit between now and the end of year so we can look at coverage.

Ferguson also said he can get pricing on health insurance plans and offered to help look into health plans for the city.

15. Adjournment

(Bartel motion, Kröll second to adjourn the meeting at 9:37 p.m.; all ayes).

Public Present:

Kathie Doerr and Dustin Boyd.

Note: The above list is not a complete list as not everyone signs in.

Staff Present:

Public Works Director Ben Young, City Clerk Marilyn Regnier, and Planning & Zoning Administrator Dick Krier. Minutes recorded by City Clerk Regnier.