

**City of Minnetonka Beach**  
**REGULAR CITY COUNCIL MEETING**  
**Monday, August 9, 2010**  
**MINUTES**

**Roll Call**

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

**1. Call to Order**

Mayor Joann Anderson called the meeting to order at 7:08 p.m.

**2. Approve Agenda**

**2.1 Council Meeting Action Notes**

Mayor Anderson reported she is going to meet with Spring Park Mayor Sarah Reinhardt next week regarding their hiring of an Ehlers financial company affiliate for managing their city investments. She hopes to report back to Council in September regarding that meeting.

Administrator Susanne Griffin said the request for placing two trash cans on the trail has been researched, and will be moving ahead and requesting them from TRPD. She checked and found nothing that prohibits trash cans from the agreements which were signed with TRPD.

Council Member Bartel and Public Works Director Ben Young attended a meeting regarding traffic on Crystal Bay Rd. The neighbors along Crystal Bay Rd. are looking at speed bumps now instead of requesting road closure with a cul-de-sac; they found out there isn't enough space for a cul-de-sac. They will look at installing permanent speed bumps, not the temporary speed bumps that Minnetonka Beach installs seasonally. The temporary speed bumps are noisier when vehicles travel over them. Sgt. Tony Wittke said there is still needs to be discussion because 75% of the neighborhood would need to petition for speed bumps, plus location for the speed bumps and signage still needs to be decided.

Council Member Ferguson said he brought along health insurance information options to the meeting. The information will be discussed under item 9.4.2 Health Insurance Options.

**Agenda Approval**

Mayor Anderson noted the Appeal to Code Violation Notice for 2643 Arcola Lane (Hacker/Mathews) was scheduled to be on the agenda but will be on the September agenda when all parties may be able to attend.

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

### **3. Approve Minutes**

#### **3.1. Regular Meeting of July 14, 2010**

Three corrections were called out within the minutes; the word “to” added on page 2, Consent Agenda, second line of motion: *to* remove the stamping requirement for the Club tennis court parking lot. The word “of” added on page 4, first line: that public works vehicles receive a lot *of* wear and tear. On page 7, within the Mayors Report: the picnic was set for Sunday, *July 18<sup>th</sup>*, not August which was listed.

**(Ferguson motion, Kroll second to approve the minutes as corrected; all ayes).**

### **4. Open Forum**

No one chose to speak.

### **5. Police Report**

#### **5.1 Police Report – July**

Sergeant Tony Wittke reported:

- The police hosted an alcohol compliance course and the Lafayette Club sent attendees.
- There have been complaints from people receiving parking citations for parking at the swimming beach without parking permits. The area is marked “Parking by Permit Only”.
- Traffic citations were issued for not stopping at stop signs on Lake Rd. and Northview Rd.
- He hasn’t heard any complaints regarding the trail.
- They are still waiting to hear on Long Lake’s decision regarding policing. Implications are there is a potential loss of two officers and one administrative position should Long Lake decide not to contract with Orono. If they change, it shouldn’t affect the policing as Minnetonka Beach would have the same coverage we are currently getting because of policing districts. Mayor Anderson noted regarding costs, the contract we have is a progressive contract with costs to increase in the future.
- The patrol officers have settled contracts regarding their health insurance benefits.

### **6. City Attorney Briefing on Recent Supreme Court Land Use Decision**

Attorney Karla Vehrs, Lindquist & Vennum, briefed Council on the June, 2010 ruling by the Minnesota Supreme Court regarding interpreting variance authority. The ruling came from a court case *Krummenacher vs. the City of Minnetonka* regarding the interpretation of the statute that applies to zoning variances. *Krummenacher* is a Minnetonka resident who took that city to court regarding a neighbor’s variance request the city had granted. Cities have the power to grant variances, but “undue hardship” must be shown. From 1989 until this year, a property owner’s request for a variance to zoning ordinances required showing undue hardship because the property cannot be put to use in a reasonable manner. Since the ruling, however, it now requires whether the property can’t be put to any reasonable use without granting a zoning variance. The case is having an impact on cities; the ruling establishes a higher threshold for both the city and the property owner when considering variance requests. Attorney Vehrs said a law professor

has stated variances are not a matter of convenience for property owners with the new interpretation by the Supreme Court.

Attorney Vehrs recommended the City of Minnetonka Beach be careful to work from the new rule and make detailed findings of why or why not the variance meets the strict standard. She also suggested the city consider the number and the nature of zoning applications it receives and revisit the ordinance and consider amending it if there are a number of the same types of requests. The League of MN Cities may be advocating for a number of legislative changes as a result of the case. They might want to change the definition of “undue hardship” and replace with some other language.

Planning and Zoning Administrator Dick Krier said he doesn't see the new ruling affecting Minnetonka Beach in the short term nor long term because we have shown hardship when granting variances. Council has granted side setbacks previously on small lots. The Planning Commission is doing research on all the side setbacks granted and will look be working on an ordinance amendment. He said given the variety of sizes of lots here, a 20 foot side setback requirement doesn't fit well for all lots; the current ordinance was taken from another community and applied here.

## **7. Consent Agenda**

**7.1. Fire Report – July**

**7.2. Resolution 2010-32 Parks Commission Re-appointment – Robb Ball**

**7.3. Resolution 2010-33 Parks Commission Re-appointment – Amy Johnson**

**7.4. Resolution 2010-34 Set Truth in Taxation Hearing – December 6, 2010**

**7.5. Resolution 2010-35 Consider Approval of Contract for Law Enforcement Services with the City of Orono**

**7.6. Resolution 2010-36 Planning Commission Re-appointment - Bill Norman**

(Taylor motion, Kroll second to approve the consent agenda items 7.1 – 7.6; all ayes). Council requested the Beachcomber publicize the need for one Park Commissioner and two Planning Commissioners to fill vacancies.

## **8. Planning and Zoning**

**8.1. Resolution 2010-31 Consider Side Yard Setback Variances for 2903 Westwood Rd. - Ziebarth**

Planning and Zoning Administrator Dick Krier read from his letter/report dated August 9, 2010 and went over the items Council received in their packet including; a site plan, grading plan, building elevations, a letter from the applicant Jeff Ziebarth, a letter from the adjacent neighbors, a diagram from the adjacent neighbors, and miscellaneous items including a resolution recommended by the Planning Commission. A final staff recommended Resolution 2010-31 was given to Council via email and put before them at the meeting. City Planner Krier asked the Council to replace the Planning Commission recommended resolution with the final one dated August 9, 2010. The final resolution had been reviewed, discussed, and approved by the city attorney. Council also received at the meeting, and by email, a letter from Attorney Ryan Kuhlmann, the Chamberlain

Law Firm, who is representing the adjacent neighbors, Kent and Janet Dahlen, 2909 Westwood Rd.

City Planner Krier said property owner Jeff Ziebarth, would like to demolish his existing home and build a new one. The lot is 60 feet wide and 483 feet long and Resolution 2010-31 would grant an east side setback variance of not more than 12 feet and a west side setback variance of not more than 12 feet to allow the construction of the new single family home to the same width as the existing single family home. A shadow study was completed and it is City Planner Krier's opinion that the adjacent home at 2909 Westwood Rd. would not be shadowed. He feels that the Comprehensive Plan has been satisfied as far as character. Views and solar access are not affected. The proposed home would be a one and one-half story structure.

City Planner Krier said the recent Supreme Court ruling requires a literal interpretation, providing the Council only has authority to grant variances where the property cannot otherwise be put to a reasonable use. He said it is his belief the lot cannot be put to reasonable use without a side setback variance being granted because of the narrowness (60 feet) of the lot. Applying the current 20 foot setback requirement, it would make a buildable area of 20 feet wide. The existing home is 41.3 feet wide and the proposed home is 43.53 feet wide measured from the outside of the eaves, for an 8.22 foot setback on the west side and an 8.24 foot setback on the east side. The drainage is being changed from currently directed around both sides of the existing home to being directed to the east side of the home where there is more room on that side. The hardcover on the property will not exceed 30%. The plans submitted meet all the other requirements of the ordinance except the side setbacks.

City Planner Krier noted the existing home is a non-conforming structure because it doesn't meet the current side setbacks; it is 6 feet from the property line on one side and 12.6 feet on the other. The height of the proposed home would be 40 feet to the top of the peak of the roof and the garage height would be 20 feet. The proposed home will be 2 feet back behind the average minimum building setback from the existing home. The standard the city attorney and City Planner Krier came up with is in the Final Staff Recommended Resolution dated August 9, 2010 and it would grant side setback variances of 12 feet and allow the proposed home to be built to the same width as the existing home. Building to the same width of the existing home would be a slight reduction in width from what Mr. Ziebarth was requesting, but the city attorney reasoned increasing the width of the proposed home beyond the existing home's width would be contrary to what the Supreme Court has ruled. So it is being recommended that the city provide variances to build the proposed home to the existing width of the current home. City Planner Krier read aloud the entire Resolution 2010-31 Final Staff Recommended Resolution of August 9, 2010.

Krier said at the Planning Commission meeting, the Commissioners considered the neighbor's objection of the boxing effect with the home being 112 feet in length and the approved the variance request with a reduction of the garage length of 10 feet, making the new home's length 102 feet.

Jeff Ziebarth presented drawings of current situation showing the house offset on the site, and another drawing showing what a 20 foot wide house would be like if it had to be built within the buildable area with 20 foot side setbacks. He then showed the proposed home centered within the property and updated floor plans showing the home smaller meeting the width of the existing home. The proposed house is moved back a few feet from the existing dwelling. He said he lost close to 1,000 sq. feet of living space in trying to compromise by scaling back the volume of the dwelling by making it a story and one half and lost volume in the bonus room. The existing home is 2,061 square feet; the new home would have a foot print of 3,701 square feet, although Mr. Ziebarth questioned the 3,701 square feet number because of the scaling back.

Ryan Kuhlmann, attorney for Kent and Janet Dahlen (neighbors to the west of the Ziebarth property), said the Dahlen's are not opposed to Mr. Ziebarth building within the existing width of the current home, but they feel it is illegal to add more space by adding beyond the existing dimensions of the current home, including volume. They are opposed to the proposed home's higher height and longer length within the setback and would like the new home built within the existing home's footprint. They would like to see the height measurement made from the existing grade. Mr. Kuhlmann requested Council deny the variance request as it is requested at this meeting.

Attorney Vehrs said a reasonable use cannot be made of the property if the side setbacks were 20 feet. The fact that the existing structure had to go outside the buildable area is evidence of it, although there may not have been zoning ordinances when the original home was built. She feels it would be within the Council's authority to grant the variance as modified that the width to the eaves not exceed the width of the existing structure.

Jan Dahlen questioned the numbers in the resolution; she was not getting the numbers to add up to 60 feet wide. City Planner Krier said the resolution is set up so that the new home should be made the same width, but it is not known if the existing survey measures the current home from outside of the eaves. Jan Dahlen also said the proposed home will be closer to their house by 4 feet and they are concerned it will be a massive wall affect being 102 feet long and 8 feet from the property line. If the fence on her property were not already there, head lights from the Ziebarth driveway would be glaring into her home.

Bill Norman, adjacent property owner to the east, said the Ziebarth house has had numerous owners and renters and the house has continued to decay. He also said, "Jeff has proposed to build a beautiful new home. Certainly hardship is proven. We are 100% behind Jeff building his new home and how he wants to build it as long as he is within the variances granted". He recommended Council grant the variances.

Bartel noted at the Planning Commission meeting Jeff Ziebarth shortened his garage by 10 feet for the Dahlen's; she was surprised the Dahlen's were still upset about it. Kroll said she can whole heartedly understand the Dahlen's concern about the tunneling effect, but she doesn't think it is the city's job to design people's homes. She does think Council needs to look at the ordinance regarding setbacks because of the new Supreme Court

ruling. Ferguson said he knows of multiple circumstances on the east side of the city where he lives where 8 foot setbacks have been granted and landscaping has been done when there is a tunneling affect. Kroll said the city has a history of granting variances to the side setbacks because of smaller lots.

Taylor said he felt it was good to stay within the existing home's width and the 10 foot reduction in length which was made, but he doesn't feel it should be built to the same footprint of the existing house. He also said it would be good if there were further discussion between the parties even after the decision Council would be making at this meeting.

Mayor Anderson said it would be unreasonable for Mr. Ziebarth to build a 20 foot wide home (the buildable area within 20 foot side setbacks on this property). Ferguson also said the new home will improve home values in the neighborhood as opposed to leaving it as it is.

**(Ferguson motion, Taylor second to making the findings and approval of the final August 9, 2010 staff recommended Resolution 2010-31 Granting East and West Side Setback Variances of not more than 12 feet to Allow Construction of a New Single Family Home to the same Width as the Existing Single Family Home at 2903 Westwood Rd. (Ziebarth); all ayes).**

## **9. Treasurer's Report**

Treasurer Dennis Fischer asked for Council to approve the checks.

### **9.1 Approve Checks**

**(Bartel motion, Taylor second to approve 38 checks, numbers 12349-12386, in the total amount of \$ 55,192.86; all ayes).** The 4M Fund balance as of July 31<sup>st</sup> was \$717,799.46.

### **9.2. Year to Date Budget Report**

Administrator Griffin noted the latest budget to actual report Council received on 8/9/10 is more current except for a few deposits. Council discussed the water revenues. The budget showed 67.69% of the 2010 budget being spent. Legal fees are over budget, planning and zoning fees are under budget, and income from building permits is shown at 12.07% of forecasted income for the year.

### **9.3. Refunding of 2002 Bonds – Northland Securities**

Steve Mattson, Northland Securities, was in attendance and presented a refunding summary on the current G.O. bonds the city has which financed the public works facility and water main improvements on the west side of the city. Mayor Anderson said we will not be taking any action tonight and explained that the city is looking at possibly doing a water project. If the city does decide to proceed with the water project, they could work the refunding of the current bonds with any new bonds at a lower rate.

Mr. Mattson discussed how Northland operates as underwriters with bond issues. He said the current bonds the city has have a call date of 2012. The city has a AAA bond rating

with Standard and Poor's. He said Northland would buy our bonds at 98 cents on the dollar and sell them, making 1 cent or so on each dollar. The risk would be assuming interest rates would go up. He thinks his company could resell the bonds and by refinancing the bonds the city could net after all the expenses approximately \$38,000. His company provided documents for G.O. Refunding of Bonds, including a debt service comparison, debt service schedule, a debt service to maturity and to call schedule, crossover escrow fund cash flow and a refunding summary.

Treasurer Fischer said we need to educate ourselves further by doing additional research on refinancing. Administrator Griffin will ask a representative from Ehlers to come back next month for further discussion on bonds and also ask Ehlers for a fund account manager proposal.

#### **9.4. 2011 Preliminary Budget Discussion**

Mayor Anderson noted that the preliminary budget currently shows a 19% increase in property taxes. This includes the full approved Capital Improvement Program items, a Park Commission requested increase, and outstanding legal bills. She gave ideas where there may be some flexibility by reducing the park budget request by \$4,000, and the \$40,000 that the city will still owe Lindquist & Vennum (thinking the Lindquist & Vennum amount could come from reserves). She also mentioned removing the cost of a new truck, \$29,060, from Capital Improvements for 2011. The preliminary budget numbers will be set at the September Council meeting. Mayor Anderson asked Council Member Bartel and Administrator Griffin to meet with her to work on reducing the budget before the September meeting.

Administrator Griffin talked about needing a financial strategy within a long range funding plan. Council talked about fees vs. property taxes for funding. Mayor Anderson said in the past interest earned helped increase the budget reserves, but because of current very low interest rates, it no longer holds true. A potential Council work session on the budget after September was mentioned, but no date was set.

##### **9.4.1. 2011 Fee Schedule**

Council received a copy of the current fee schedule which will be discussed further at the September meeting before setting the 2011 preliminary budget.

##### **9.4.2 . Health Insurance Options**

Ferguson presented several health savings account plans for employee health insurance coverage and went over some of the plans. The plans could save money for both the city and the employees. Staff will meet with Council Member Ferguson and our insurance provider to research health savings account plans further.

##### **9.4.3. Minimum Reserve Fund Balance**

Bartel had previously asked about fund balance history and Administrator Griffin provided a comparison chart of general fund balances in relation to budget from 2000 to 2009. Over the last 9 years, the percent of reserve fund balance to budget was from a low

of 74.4% (in 2009) to a high of 106.7% (in 2007). No recommendations were made regarding what a minimum reserve fund balance should be.

## **10. Old Business**

### **10.1. Set Public Hearing Date for Eastside Water Improvements**

The date of September 27<sup>th</sup> was set for a public hearing on the East Side Water Improvements. Council Member Kroll will be the point person for the hearing. Utilities Committee Chair Leonard MacKinnon and Administrator Griffin will meeting with Council Member Kroll and others to establish the agenda and presentation for the public hearing. Staff will publicize the public hearing date.

## **11. New Business**

No new business items.

## **12. Staff Reports**

### **12.1. Director of Public Works**

Director of Public Works Ben Young reported:

- He found out truck leasing would not be a good option for public works vehicles because of too much wear and tear.
- Damage happened by a hit and run driver to the walkway to the docks by the Arcola Bridge on July 21<sup>st</sup>. Cost to the city for repair \$323 plus Ben's time to make the repairs.
- A \$600 fluoride pump went out at the water plant and had to be replaced.

### **12.2. Clerk's Report**

City Clerk Marilyn Regnier reported:

One candidate had filed so far for office; Joann Anderson filed for Mayor.

There were six absentee voters in the State Primary. Absentee ballots will be handled at Hennepin and central counting sites. We won't know the vote totals until our results are sent via modem to Hennepin County and they add the absentee vote totals. This may affect when we can canvass the election results in November. We will need to see how fast the vote results are added at Hennepin County Elections.

We are seeing requests for use of the Parks by residents for events. Because the special event documents and policies Council approved earlier this year deals with events at private homes for the most part, and there seems to be more issues when people want to use our parks, it is recommended Council refer a policy review for the use of parks for events to the Park Commission for their discussion and recommendations. **(Bartel motion, Kroll second to refer to the Park Commission special events in parks for policy review and recommendations and to be brought back to Council; all ayes).**

### **12.3. Administrator's Report**

City Administrator Susanne Griffin reported:

**12.3.1. Labor Day Fireworks at Lafayette Club on 9/5/10 (rain date 9/6/10)**

**12.3.2. Winter Use on Dakota Regional Trail**



She assumed the city would do the same as last year with no winter activities on the Dakota Regional Trail unless Council directed a change, which they didn't. She plans to schedule a meeting with Boe Carlson, from TRPD, and the Trail Safety Task Force to discuss the task force recommendations. The Orono Police Dept. Citizen's Academy will take place this fall and she will also advertise it in the Beachcomber.

### **13. Council Reports**

#### **13.1. Mayor's Report**

The LMCD, in anticipation of a legislative move to see the organization abolished, held meetings for the 14 member cities about what they do and how well they do it. Mayor Anderson recommended they get more information out regarding what all they do because people may not know. Two LMCD Board members complimented Dennis Klohs, Minnetonka Beach LMCD Board Representative and said he does a really good job on the board.

Administrator Griffin said Dennis Klohs had called to say there are going to be a couple of meetings regarding zebra mussels that are now in Lake Minnetonka and more information will be forthcoming. The DNR will be the clearing house for information regarding the zebra mussels.

#### **13.2. Council Liaison Reports**

##### **13.3.1. Kröll – Water table for pedestrian tunnel**

Kröll requested an emailed letter dated 8/3/2010 from Jason Warne, Wenck Associates, Inc., regarding subsurface water levels be included in the minutes. She stated before any more numbers go out to residents about construction of a pedestrian tunnel, the city needs to look at what type of soils we have where the tunnel would be located. The following is a verbatim transcript of the letter.

Michelle,

As you requested, please see the discussion below regarding the use of piezometers to determine the elevation of the local groundwater table for a proposed pedestrian tunnel construction beneath CR15.

One of the most common ways to define the elevation of the local groundwater table is to install a piezometer. Piezometers are typically constructed of 2-inch diameter PVC pipe with a perforated screen on the end. The screen and pipe are most often installed in the ground using a small truck-mounted drill rig. The drill rig is used to drill an approximately 4-inch diameter hole to a depth below the water table. Sand is used to backfill the hole around the screened section of the pipe, and the remainder of the hole is backfilled with an impermeable grout material. A 2-3 foot section of the PVC pipe is left exposed above the ground and capped to prevent rainwater inflow. After installation, the piezometer is left to equilibrate for a period time, which varies depending on the type of soils it is installed in. During this time groundwater enters to the piezometer through the screen and fills the pipe to an elevation approximately equal to the elevation of the existing groundwater table. After the equilibration period, the depth of the groundwater table below the ground surface may be determined by measuring the depth to water in the piezometer from the top of the PVC pipe and subtracting the length of the PVC pipe exposed above ground.

Knowing the elevation of the water table will tell you whether or not the proposed tunnel construction will intersect it. If the proposed tunnel intersects the water table, it is likely that water will infiltrate the tunnel unless additional design measures are taken to prevent infiltration. The location of the water table is also used by the design engineer to help design the tunnel structure so that the soil beneath it can support the static load of the tunnel structure itself and the road above it, as well as the dynamic loads of vehicle traffic.

Other useful information may be collected during piezometer installation. A qualified geologist or engineer can examine the soils that are brought to the surface by the drill rig and qualitatively determine whether the soils are suitable for the proposed construction or may need to be excavated and replaced. In addition, the soil strength properties may be quantified using a standard penetration test during drilling. This gives the design engineer site specific soil strength information to use during tunnel design. This is all good information to know prior to construction to ensure a proper design and reduce the likelihood of construction cost increases.

I hope this information is helpful. Please contact me with any further questions or requests.  
Jason Warne, P.E.

Administrator Griffin reported on the Fire Commission meeting. They looked at budget and equipment issues and they are looking for a small increase in their budget for 2011

## **14. Adjournment**

**(Mike motion, Bartel second to adjourn the meeting at 11:40 p.m.; all ayes).**

Public Present:

Jan & Kent Dahlen, Attorney Ryan Kuhlmann, Bill & Katie Norman, and Jeff Ziebarth.

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

Staff Present:

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