

Monday, January 08, 2024 6:00 PM
CITY OF MINNETONKA BEACH
AMENDED REGULAR CITY COUNCIL MEETING MINUTES

Roll Call: Mayor Joe Pagano; Council Members: Tracey Breazeale, Chris Dovolis, Jennifer Halverson, and Jason Mohr; Absent: Treasurer Chris Zinn

Staff Present: City Administrator Heidi Honey, City Clerk Jane Burgess, Public Works Superintendent Jason Hilgers, City Engineer Alan Offerman, City Zoning Administrator Phil Carlson

Guests: Bill Whitely Planning Commission

1. **Call to Order Mayor Pagano called the meeting to order at 6:00 pm.**
2. **Pledge of Allegiance** – Led by Clerk Burgess
3. **Approve Agenda**
Halverson requested that the agenda be amended to include item 8.4. Holistic View of the Swim Beach Update on page 56A.

Halverson motion, Mohr second to approve the January 08, 2024 agenda as amended. All ayes, the motion carried.

4. **Approve Minutes**
 - 4.1. **Meeting of December 4 and December 11, 2023 Truth in Taxation meeting and continued meeting**
Halverson stated that Councilman Mohr’s name was spelled wrong on roll call. Burgess will correct.

Breazeale motion Halverson second to approve the Truth in Taxation Amended Meeting Minutes from December 4 and December 11, 2023. All ayes, the motion carried.

4.2. Regular Meeting of December 11, 2023

Halverson motion, Breazeale second to approve the Regular Meeting Minutes of December 11, 2023. All ayes, motion carried.

5. Open Forum opened at 6:05 and closed at 6:09 pm.

Michelle Snow of 2312 Old Beach Rd. spoke about the coyote population she sees daily, and they have become a huge concern on Old Beach Rd. She stated that she talked to Oak Ridge Wildlife Control and other organizations about them. She suggested that the City communicate to residents Do’s and Don’ts if coyotes approach them, which will be included in the SPLASH! eblast, displayed at City Hall, and the Beachcomber. Breazeale asked Snow what residents should do and not do if they encounter a coyote. Snow stated that they should not turn around and place their back towards them. They should make loud noises to scare them away and also be careful with their dogs outside. It was decided to put this information in the Beachcomber, weekly SPLASH! eblast, and on the City’s website.

6. Old Business

- 6.1. Water Treatment Plant Engineering Proposal (Tabled from 12/11/2023) – Stantec p. 13-24
City Engineer Offerman provided a recap from the December meeting regarding the Stantec proposal that he presented. Treasurer Zinn was absent from the December meeting, so the council tabled the approval decision until the January 8th meeting. Offerman wanted the council to be aware that if the \$959,000 in Federal funding is awarded to the City, and City Council approves this proposal, the required work to

receive the funding award will not be completed until late April or early May and all parts are required. This could cause bidding delays which is a four-month process and lead to subsequent construction delays. Zinn questioned Offerman about what would happen if issues were uncovered at the site during the site review. He asked if remediation would be necessary, and could that cause delays or a determination that the plant cannot be built at that site. He also stated that if the City did not pursue funding, then there would not be review findings discovered that could disrupt the plan.

Offerman stated that in Chaska remnants of an historic building were found that delayed a building project. He added that it becomes an ethical question.

Brezeale asked Offerman for confirmation that if the City does not get funding, then would the project bidding still take place in April and May to which Offerman stated that it would. He also confirmed that it would take 4-5 months to complete the proposal review and bids cannot be obtained until that work is completed. He added that constructions costs can increase over time and costly problems could develop at the existing water treatment plant.

Zinn and Pagano recommended that a special meeting be held to decide how to proceed if the City is awarded the \$959,000 in Federal grant money.

Halverson motion, Dovolis second to table the approval Stantec's Proposal for Community Project Funding Grant Assistance & Environmental Review for the Minnetonka Beach Water Treatment Plant for \$47,155 pending the award of Federal funding from Congressman Dean Phillip's office. All ayes, motion passes.

6.2. 2107 Hill Road Encroachment on to City Property pg 25-28

Phil and Jessica Stoltenberg, owners of 2107 Hill Road attended this meeting. Administrator Honey explained that the City received a complaint about encroachment done by the previous homeowner of private property from 2107 Hill Road on to City property which abuts it. This complaint was received after the Stoltenbergs purchased the property. Honey sent them a letter alerting them that the previous owner installed various things on City property. She added that she would have the property line surveyed and staked, which was done by Gronberg on December 26 and 27, 2023, and they could discuss the findings.

Honey added that from this survey and photos taken at the property, they show how close the garage and house are to the lot line. The current owners were told by the seller that a small corner of the deck is on City property, and they were unaware that most of the deck is on City property. No building permit was issued for this deck to be built. There is a carport there, which the owner is removing, a garden and a fire pit which also will be removed, an irrigation system, and rock border along the woods. Stoltenberg's biggest concern is the deck as they would like to keep it if the City will work with them to do so.

City Attorney Batty recommended that an encroachment agreement be made with the property owner acknowledging that their deck is installed on City property. It would be allowed now, but if they decide to do something different, they will let the City know. He also stated that if the property owner wants City land abutting them to continue to look like it does today, they should maintain it as the previous owner mowed it.

Stoltenbergs stated that they understood that most of deck was on their property and the title company told them they did not know where the property line was so this was a surprise. They added that the previous owners were good stewards of the property watering the grass and treating Ash trees. Breazeale stated that she was sorry this happened to them and asked Honey if language could be added to an encroachment agreement that stated if the home was sold or other improvements done or a tear down could the home then become in line with the setbacks. Honey stated that she will work with Batty on that language. Perhaps they can be allowed to keep the deck with defined standards. Breazeale added that she is in favor of Stoltenbergs

keeping the deck, but bring it into compliance in the future or if the home was sold when it wouldn't be so disruptive. Honey stated that an agreement would be filed with Hennepin County so if there was a sale of this home it would be flagged. It was discussed that perhaps a Hold Harmless or Indemnification agreement should be done in case someone got hurt on deck so they cannot hold the City liable as the deck is on City property. They discussed reviewing Honey's work at a future council meeting and agreed that this issue does not need to go to the Planning Commission as it is a legal issue.

Breazeale motion, Mohr second to direct Administrator Honey to work with the City Attorney to draft encroachment agreement language for the current homeowners of 2107 Hill Road regarding the deck on City property noting this is not a permanent solution. All ayes, motion passes.

Planning and Zoning

7.1. Zoning Code Amendments – Planning Work Group member Bill Whitely

7.1.1. Section 3,4,4.J.CUP Amendments pg 30-33

Whitely thanked the Council for the opportunity to serve on the Planning Commission. The Commission is asking for approval to take two Zoning Code amendments to the next step which is public hearings. The first is an amendment to the language of the CUP to clarify when a CUP holder needs to ask for a CUP amendment, and the second is the continued reorganization of the zoning code to move the Shoreland Overlay District into the common code.

Carlson recommended the following language to address the question of when does a CUP holder need to ask for an amendment to their CUP:

“When there is a change to a physical feature, use, or other characteristic of a property on which there is a Conditional Use Permit shall require an amendment to the Conditional Use Permit if such feature, use or other characteristic is within the scope of this ordinance, elsewhere in the City Code or the City's Comprehensive Plan.”

Pagano asked if the Lafayette Club should apply for a CUP amendment if they need to repair a fence. Whitely said that would not need an amendment, but if the Club wanted permission to make a change, then there would need to be public hearing for the change.

They discussed the zoning administrator's role in reviewing a CUP request and making a recommendation, and the Board of Adjustment & Appeal, which is City Council, would have the final say on it.

Honey stated there will need to be two motions, but one public hearing will be held for both motions.

Breazeale motion, Halverson second to recommend that the Planning Commission take the amendment for the CUP process proposed to a public hearing. All ayes, motion carried.

7.1.2. Section 4.7.6. Shoreland District moved to various sections of zoning code pg 34-38

Whitely stated that the Planning Commission is requesting approval to have a Public Hearing to move the changes made in the Shoreland Overlay District to the common city code. This is less confusing than the old code and more logical as all of Minnetonka Beach is designated Shoreland because it is within 1000 feet of the lake. There were no language changes, they just moved it to logical locations. Whitely then stated that they made minor ordinance edits related to compliance and Statutory Authority for clarity and conformity consistent with the DNR's Model Shoreland Ordinance. They made other changes to code for compliance including Section 3.4.2 Zoning Ordinance Text and Zoning Map Changes which is removing the ability of map amendments to PUDs to be approved via PUD section and outside of Chapter 3.0 process. They also made a change in Section 4.3.1 Building

Within Public Easements Prohibited section where they removed the ability of the City Administrator to issue a license agreement to allow building within public easements. They will have a public hearing for these in case there is public comment.

Honey stated that part of the code has been published with reorganization and part of it has not. Once the Public Hearing process is complete and final approval reached, then this will go to the DNR and then published so the City will have a clean slate, all reorganized without red lines. This will be much easier for the DNR and the City to track. The Zoning Code will be very clean and make sense.

Halverson motion, Breazeale second to approve moving the Shoreland Overlay District section 4.7.6 to the Common Code, following the next step which is public Hearings at the Planning Commission meeting. All ayes, motion carried.

7.1.3. Next Steps pg. 39

Whitely stated that the items in red on page 38 are next steps to be completed. They will next work on the Floodplain Overlay Zone covering shoreland areas and certain height of the lake and the Wetland Overlay District which is along Old Beach Road.

Pagano praised Whitely and the Planning Commission's efforts for their work accomplished and all the time put forth that would have been very difficult to complete in council meetings. Council members thanked the Planning Commission as well with great appreciation.

7. New Business

8.1. HR 1525 Police Opposition to Fair Act pg. 43-45

Pagano stated that the Orono Police Department requested City Council's support for their opposition to H.R. 1525, the Fifth amendment integrity Restoration (FAIR) Act of 2023, as passed by the House Judiciary Committee in June. This issue is very important to them for the potential impact on law enforcement's ability to combat drug trafficking activities which contribute to the unacceptably high rate of fentanyl overdose deaths in Minnesota. Pagano stated that with the Council's approval, the City can send of letter of support for law enforcement not supporting FAIR Act H.R. 1525.

Mohr asked what it is that the other side wants and who sponsored the bill. He would like to see what the other side wants.

Halverson motion, Mohr second to table the response to H.R. 1525 FAIR Act of 2023 until more information is obtained. All ayes, motion carried.

8.2. City Response to Notice of Hennepin County Recovery Center (HERC) Closure pg. 46-56

Who stated that Hennepin County Recovery Center (HERC) process 365,000 tons of trash annually producing 200,000 megawatt hours of electricity every year. The City was notified that as part of the Hennepin County Climate Action Plan, Zero Waste Plan and state and federal statutes, they want to close the HERC plant between 2028 and 2040. There is no replacement technology plan in place so waste will go to landfills. Republic Services told the City that they will take the City's trash to their landfills, but will have to charge more for those services, which could be a 35% increase in cost.

Pagano added that Hennepin County asked for an opinion from the City by January 15, 2024, and they do not have a good replacement plan. As a City we are willing to listen to their ideas. Pagano drafted a letter and included his concerns for more trash items going into landfills.

Breazeale stated that she is uncomfortable saying we don't want it to close 2040 when is there is not a viable alternative for these waste products. She questioned why it would take 16 years to develop an

alternative solution. She said it seems premature to close it in 2028 but speed up the solution prior to 2040.

Halverson motion, Mohr second to approve Mayor Pagano's letter to Hennepin County regarding the HERC closure with Breazeale's additional comment about closing the facility before other solutions are determined, and also cc the additional communities identified by Administrator Honey. All ayes, motion passes.

8.3. Lafayette Club Direction Regarding Necessity for a conditional Use Permit Amendment to Repair 30' High Netting by Entrance (no materials)

Pagano stated that the Lafayette Club does not need a CUP amendment to repair the netting as long as the same fabric netting is used in exactly the same way as it was.

Breazeale motion, Halverson second to instruct the City Administrator to inform the Lafayette Club that they do not need a CUP amendment to repair the netting on the 30 foot high fence at the Club's entrance with the caveat that the repaired netting look and be of the same materials of the existing netting, and look exactly the same as it did. All ayes, motion carried.

8.4. Holistic view of the Swim Beach Update

Mayor Pagano gave a summary of the scope of this project and goals, emphasizing the importance of committees' and commissions' collaboration with clear direction provided by council. He stated that many consider the Swim Beach Common as the jewel of City parks and open spaces system. It is the Beach in Minnetonka Beach, home for many community events and informal sporting activities, and provides breath-taking views of Lake Minnetonka for all 540 villagers to enjoy. It is also the docking place for 24 family's boats. A holistic view is required to safely balance all that fun in a little over half an acre and 600 feet of shoreline. We are requesting that both the Park Commission and the Dock Committee can provide recommendations of how that is best achieved. Docks point of view is critical as the slips and boat canopies impact the safety of the swimming area, and the view of the lake for park users and surrounding residents. Consistent with our commitment to provide direction and oversight, Council has been asked to approve the guidelines for dock recommendations tonight.

Breazeale, who is Council liaison to both the Dock Committee and Park Commission, stated that residents who have lived in this community for a long time may recall that there was a time when fewer docks were at the Swim Beach than today. The view was more open and there was more room for the swim area. Over the years, the City has had greater demand for docks at the Swim Beach. There was no cross-committee collaboration back then in looking at a holistic viewpoint. She added that Parks is doing their 5YP and determining what their priorities are over next five years, so the timing is great.

Breazeale added that last summer a number of beach closures occurred due to E coli test results. Parks has a responsibility to find out what is causing it. One area of thinking is that potentially the number of boats there, dock configuration, and water not moving might be contributing to that issue. Dock Committee Chair Jeff Steinke, LMCD reps Richie Anderson and Dennis Klohs, Mayor Pagano, and herself have met and offered possible solutions. They don't want to discuss those ideas yet as the Dock Committee has not met yet. She is asking for City Council to make a motion to accept the objective and project scope. Jeff Steinke authored a concise objective for the group to be given to the Dock Committee and Park Commission liaison, Lucian Panait. They are proposing that consistent with the City's Mission Statement and Comprehensive Plan, the Dock Committee explore and recommend to Council opportunities to expand lake views for residents, water quality and safety, while preserving non-riparian dock access. The scope of project is for the Dock Committee to look at all the beach slips and come forward with their recommendations for dock slip holders and the City at large. It could entail moving docks, and layout

change. Breazeale stated that an objective of Docks is to maintain as many Swim Beach dock slip renters. There will be no surprises, and everyone will be part of the process. First, water depth will be measured at both the south and north ends to determine if docks can go in one or both of those areas. How far docks can go out will be considered, and the LMCD indicated docks can go out further so multiple boats can be docked in same vertical direction coming out from the beach configured differently. Safety is an issue, changes would be looked at for traffic flow and the swimming area. LMCD would have to approve any changes and there would be resident input from those who live near the beach. Costs for the City and slip holders would be evaluated and the goal is to not have lawsuits, not have people angry with each other. she added that they hope Docks can find solutions that everyone will be happy with.

Steinke stated that Breazeale covered everything well. He said he thinks there is an opportunity to improve the Swim Beach views noticeably, without sacrificing the dock slip renters. Although he does not dock there, he thinks they would welcome possible changes. He added that they will make recommendations to Council. Breazeale stated that the timing is good for the Dock Committee to come forward with recommendations with possible changes this spring before docks go in. Steinke stated that the committee will meet February 5 or 6 to discuss.

Halverson motion Dovolis second to approve the objectives and scope of the plan for the Swim Beach Docks as presented by Breazeale and written on page 56A. All ayes, motion passes.

8. Finance

9.1. Financial Dashboard

Zinn presented highlights from the Financial Dashboard stating that cash is very strong year over year and up by \$300,000 which is significant. Debt Service is flat and going down slightly. He explained the City's bond activity. Bond interest payments were made and due 2/1 and 8/1. Zinn noted that we hired Security and Sound \$5,800 for a first ever fire and burglar alarm system for City Hall, and staff purchased fire and waterproof boxes for important file and document storage in the basement. Rob's Electric repaired the totally rotten light pole repair at Ray Peters Park. He added that the City finished well under budget for zoning and legal costs. Close monitoring of legal, zoning and engineering services by staff has paid dividends.

9.2. Summary Report of City Finances - Year to date: Unaudited December 2023 Budget Review pgs. 57-65

Zinn stated that even though the City budgets for a break even, there is a surplus. He added that this is consistent with what has been discussed instead of waiting for debt service to hit, the City is building reserves slowly. Big picture items he covered included the collection of \$20,000 more in tax than budgeted, building permits revenue is up and 2023 grants total almost \$40,000. Honey and Zinn discussed that maybe a Finance Committee member would like to apply for grants. Zinn stated that Honey did a good job monitoring fund investments as earnings were \$65,000 which is excellent as only \$3,000 was budgeted. Higher interest rates helped too. He added that 2023 was a high year for water usage coming in at \$40,000 above budget to help fund the new water treatment plant. Zinn listed many other accounts that came in over budget. Of note, Hilgers farmer contact who allowed residents' leaves to be disposed of at his farm at a cost of only \$2,100 versus the \$19,000 it cost to do so one year prior elsewhere. The farmer will take City leaves next year as well. The CIP came in under budget as well. Zinn concluded that money is being spent wisely in the City and managed closely.

10. Consent Agenda

10.1. Police Report - December

10.2. Fire Report – December

10.3. **Resolution 2024 – 01** Appoint Bridgewater Bank as Official Depository for 2024

10.4. **Resolution 2024 – 02** Designate the Laker Pioneer as the Official Newspaper for 2024

- 10.5. **Resolution 2024 – 03** Weight Restriction Exemptions
- 10.6. **Resolution 2024 – 04** Approve Employee Floating Holiday
- 10.7. **Resolution 2024 – 05** Set 2024 Local Board of Appeal & Equalization Meeting Date for April 15, 2024, 6 pm
- 10.8. **Resolution 2024 – 06** Annual Appointments
- 10.9. **Resolution 2024 – 07** Consider Appointment Jolynn Gamble to Park Commission
- 10.10. Stantec 2024 Rates
- 10.11. Approve Checks: Final December 2023 and January 2024

Breazeale motion, Halverson second to approve the Consent Agenda. All ayes, the motion carried.

11. Staff Reports

11.1. Administrator's Report

Honey stated her memo is in the packet but highlighted her activities pertaining to finances, zoning code amendments, infrastructure funding, the water treatment plant, PFAS Class Action lawsuit, resident issues, HR work completed, and the document storage project.

11.2. Clerk's Report in packet

Burgess' report is in the packet, but she provided an update on the five elections to be held in Minnetonka Beach in 2024.

11.3. Public Works Superintendent Report – Summary of 2023 and forecast of 2024

Hilgers explained that the City is doing rip rap repair projects at Dock 2, 3 and 5-7 all on Crystal Bay to stop erosion. \$35,750 was budgeted but another \$2,000 is needed as the price increased to \$100 a foot from \$85 a foot. He is asking for the \$2,000 from leftover CIP reserves and the Council approved. He added that projects he has worked on include fixing water mains, fire hydrants - one was hit by a car and one broke. He repaired two storm sewers, inspected a lot of trees for removal requests. The water treatment plant project has taken up a lot of his time and will continue to do so in the future. He thinks there will be ice at the rink for the Feb. 4th Civic Skating Party - he is flooding it twice daily now that the temps are finally cold.

12. Council Reports

12.1. Liaison Reports

Breazeale – She directed council members to the Park Commission meeting minutes in the packet as they are super thorough. She stated they are primarily setting plans for the coming year, determining SPOC assignments and working on the new 5 Year Plan.

Dovolis – no report

Halverson – no report

Mohr – no report

12.2. Mayor's Report

Pagano stated that he reviewed his standing council agenda items by month and created a roadmap, calendarized spreadsheet for the year. He included all major projects discussed since November and items frequently on council agendas. Many projects require cross-department work and emphasized how important it is that council give clear direction as part of the governance commitment, and it works. He added that all the pieces are fitting together in this City. Cross pollination between committees and commissions is working and impacts residents. He feels the City is on point with the right items the right people with strong commissioner chairs. As mayor he is excited and

optimistic about where the City is at. He added that once the water treatment plant is finished that the City will return to a more normal mode. He explained the meeting with the Senate to discuss funding for the City's water main needs. Of the 687 projects seeking funding Minnetonka Beach is at the bottom of the priority list.

13. Adjourn

Halverson motion, Breazeale second to adjourn the meeting. All ayes, the motion carried.

The meeting adjourned at 7:57 pm.

PUBLIC IN ATTENDANCE – Phil and Jessica Stoltenberg, Michelle Snow, Jeff Steinke

Respectfully submitted,

Jane Burgess, City Clerk