

Monday, February 8, 2021 7:00 PM
CITY OF MINNETONKA BEACH
CITY COUNCIL MEETING MINUTES

Mayor Lindstrom determined that an in-person Council meeting was not practical or prudent because of the COVID 19 health pandemic and that this Council meeting was held remotely using Zoom Teleconferencing. This was done in accordance with MN State 13D.02

1. Mayor Lindstrom called the meeting to order at 7:00 p.m.

2. Roll Call: Mayor Jaci Lindstrom; Council Members: Tracey Breazeale, Susan Enlow, Steve Howarth, Vibhu Sharma, and Treasurer Chris Zinn. Staff Members: City Administrator Pat Melvin, City Clerk Heidi Honey, Utility/Office Clerk Jane Burgess, Public Works Superintendent Jason Hilgers, Zoning Administrator Phil Carlson, City Engineer Darren Amundsen. Absent: none
Guests: Park Commission Chair Joe Pagano, Planning Commission Chair Jim Haag, Utilities Commission Chair Alan Carlson

3. Approve Agenda for the February 8, 2021 City Council Meeting

Howarth motion, Breazeale second to approve the February 8, 2021 agenda. Roll Call Vote: Breazeale – aye, Enlow -aye, Howarth – aye, Sharma - aye. All ayes, the motion carried.

4. Approve Minutes –

4.1. Regular Meeting of January 11, 2021

Sharma motion, Howarth second to approve the January 11, 2021 Regular City Council meeting minutes. Roll Call Vote: Breazeale – aye, Enlow -aye, Howarth – aye, Sharma - aye. All ayes, the motion carried.

4.2. Special Meeting of January 12, 2021
Change Vibhu to Sharma.

Howarth motion, Breazeale second to approve the January 12, 2021 Special City Council meeting minutes as amended. Roll Call Vote: Breazeale – aye, Enlow -aye, Howarth – aye, Sharma - aye. All ayes, the motion carried.

5. Open Forum

Richie Anderson, 3205 Crystal Bay Road – Anderson is looking for support of treating weeds in Crystal Bay. He explained that there would be a Crystal Bay Lake Improvement District (LID) and the cost for treatment would be assessed to lakeshore property owners' taxes. Lindstrom will talk with Orono Mayor Walsh and information will be passed along to council.

6. Commission/Committee Reports

6.1. Park Commission – Joe Pagano, Chair

Pagano presented his annual report. He stated the future of the parks system is very bright, Parks is protective of its most scarce resource (time), and 2021 will be a year of historical significance.

Pagano reviewed the scope of Parks work which takes talent (people), time (capacity) and treasure (investment). He discussed their organizational structure consisting of commissioners, staff, public

works, and community volunteers who work together in many ways. They follow efficient, effective, and sustainable processes for the best use the commissioners' time and talents. Pagano explained the asset inspection process and reviewed the list of 2021 objectives including hard assets at standard or better by year end, replacement playground equipment at Half Moon and City Hall parks, update 5 Year Plan, system wide beautification plan, install grant funded forest and canopy management system, shoreline and parks protection, and Adopt a Park - Be a Villager. Between budget, CIP, grants and donations, \$280,000 will be invested in the parks in 2021. Enlow stated that Parks has been very busy, and the city is lucky to have such talent on the commission. Sharma asked if more should be done to deal with motorized vehicles in the parks and keep parks in great condition. Pagano stated that there have been complaints about motorized vehicles causing damage in the parks. He suggested continued communication that they do not belong in the parks and he also recommended that everyone evangelize with neighbors about what is going on in the park system and that Minnetonka Beach cares about its parks. Pagana stated that Breazeale has been a tremendous asset to Parks. Howarth stated their work is critical for the Beach and he acknowledged Pagano's thoughtful approach and engagement in the community. He suggested extra collaboration and extra transparency in all the activities they do even though he thinks Parks already does a great job of that. Howarth suggested discussing Parks involvement in the Half Moon Park project in the future as the project moves ahead. He asked Pagano to work with Zinn on funding of projects this year. Breazeale commented on the great work Parks does. Lindstrom stated citizens want the city to take care of its assets. She is impressed by what Parks has achieved and will achieve this year.

7. Planning and Zoning

7.1. Update on hardcover and **Resolution 2021 – 13** – Approving a Variance to the Side Yard Driveway Setback at 3126 Northview Road

Carlson stated that Mike Steidle replaced his driveway and reduced it in size but the city asked him to apply for a side setback variance because the driveway was close to the lot line. A condition of Council's variance approval on October 13, 2020 was to submit a survey showing hardcover at 30% or less. Although the driveway Steidle installed reduced hardcover and he did not do other work on the property, hardcover was still 32.2%. Since then, it was discovered that hardcover standards in 2007 were different than today and in 2007 the property was under the 30% hardcover limit because decks with pervious surface under them did not count toward hardcover as documented on a 2007 survey. Carlson's interpretation is that the two existing decks on the property are legal non-conforming structures and their hardcover would not be counted. Without the decks, current hardcover is 29.3% which meets Council's condition. Resolution 2021 – 13 would supersede previously approved Resolution 2020 – 51. Melvin stated that City Attorney Batty's opinion was that since there was no increase in hardcover, this would be the appropriate step to resolve this in a fair manner and that requiring the resident to be compliant with current hardcover requirements would only be considered if hardcover was increased. Carlson stated that the variance request is for a side yard setback and is similar to the request in 2007 but the area of the driveway is less than requested in 2007. Carlson discussed the structures on the rest of the property, stating that state statute clearly deals with legal non-conforming uses and structures. He added the city's local ordinance mimics the state standard, which is that legal non-conforming uses may remain, and they can be maintained, improved, or replaced in the same place. He further explained that structures could be replaced in the exact location, size and shape because they are protected as legal non-conforming status. Carlson stated that the variance process would deal with what is being requested but would not impact other structures that are not being touched with this protected status as legal non-conforming structures. Carlson explained when council required the 30% hardcover condition, it was unknown that some of the structures they were dealing with have a

protected legal non-conforming status which applies to any structures not being touched. Breazeale noted that the upper deck and stairs in the 2007 and 2021 survey look different and she expressed concerns about saying the two decks have zero hardcover, and about recalculating hardcover for structures in place prior to the code change in 2015 for all properties in the city. Carlson explained that the 2007 survey shows the proposed and existing homes, and the deck may have been built as shown on the 2021 survey but the hardcover would not have been counted either way. Breazeale stated they could approve the variance but they need to acknowledge the current hardcover is 32.2%. Enlow agreed it is difficult to go back and determine the code in place at the time the improvement was made. She said it appears in Resolution 2021-13 the side yard setback is less than it was prior to reconfiguring the driveway, going from 2.6' to 2.3' where it meets the right of way and 5.5' to 2.5' where it meets Northview. Carlson stated they are not asking for a variance to hardcover and what is suggested in the resolution is that according to the standard of legal non-conforming structures, this property meets the hardcover standard because the decks met the standard in place at the time so there is no variance to hardcover being granted. Enlow thought when a resident does an improvement, it is reviewed under the current ordinance. Carlson stated they always need to consider legal non-conforming status for structures on a property. He added that the original variance had nothing to do with the decks and how much hardcover they were, and that this resolution is responding to the condition council placed on the property as it met the standards at that time. He said if it was a setback variance, they would need to allow structures that violate the current setback ordinance to stay where they are if they are not being dealt with because that was the standard at the time it was built. They are applying the same principal to hardcover.

Howarth summarized that the existing decks were not counted as hardcover at the time of construction and state statute says these are legal non-conforming structures and they are required to measure hardcover under today's standards with the understanding they are legal non-conforming structures. He added that they are not granting a hardcover variance and there is no additional hardcover granted to this lot. Carlson said the lot is not entitled to 32.2% hardcover but the decks are exempt because they fit the definition in state statute as protected legal non-conforming structures. If the property was redeveloped, it would need to meet current standards. Breazeale expressed concerns about setting a precedence of looking back at old standards. Carlson stated the resolution is a response to the condition placed by Council. Breazeale stated the applicant was told if they cannot get closer to 30% then council would discuss it with him. Howarth stated the decks were not counted in hardcover based on 2007 code and Carlson believes state statute defines them as legal non-conforming and they are not being changed. The current survey counts everything except the decks and they are not granting an exception to exceed 30%. Carlson stated if hardcover were increased on a property, they would look at everything. Howarth was confused by his comment and asked to study it further.

Howarth motion, Sharma second to continue this matter to the March 8, 2021 City Council meeting. Roll Call Vote: Breazeale – aye, Enlow -aye, Howarth – aye, Sharma - aye. All ayes, the motion carried.

Carlson summarized that council is sympathetic to the situation but does not want to set precedence on how hardcover standards are interpreted. He added that council can grant the hardcover variance, recognizing it met the standard at the time, acknowledging it is over 30%, and not count those standards as today's standards. Steidle stated these are legal structures that bring them under the hardcover standard and there is documentation showing this. He added that Melvin and Carlson

have done a great job putting the information together. Steidle stated the structures are legal, meet the condition placed on him by council, and the hardcover standard was legally met.

7.2. Council review and prioritization of Planning Commission 2021 topics – Jim Haag, Chair Council prioritized Planning Commission topics: 1. Average Minimum Lakeshore Setback; 2. Grading to raise yards; 3. Enforcement/policing of zoning code; and 4. Tree preservation ordinance. Enlow discussed educational outreach to citizens regarding when permits are required. Howarth recommended that Planning come to Council for funding approval prior to pursuing a project.

8. New Business

8.1. Cost Estimate to update the Stantec Water Treatment Facility Report

The proposal was for engineering services to update the Condition Assessment Report (improvements and material and construction costs) for three scenarios: 1. Replace as needed - maintenance and replacing components due to failure/critical condition assessment to identify the next \$100,000 worth of most critical needs; 2. Replace existing filter equipment and rehabilitate existing Water Treatment plant; 3. Demolish existing plant and replace with a new facility. The 4th option is to purchase water from Orono, but water rates have increased since previous discussions and it will greatly increase costs. Amundsen stated Option 2 was discussed in the past as a midpoint between Options 1 and 3 and that it may be more cost effective to replace items before they break. Carlson asked for a firm figure to maintain the plant using best practices for health and safety standards to weigh that option against building new or buying from Orono. Amundsen stated given the age of components in the plant, in most communities best practice would have been to replace some items long ago. He added that it is difficult to identify optimal replacement timing, and things can fail out of order. Amundsen will come back with a new proposal focusing on Option 1. Orono wants to put in meters at the interconnects at the city's cost and also share the cost for other improvements. Amundsen will provide that information also.

Howarth motion, Sharma second to continue this item to the March 8, 2021 meeting. Roll Call Vote: Breazeale – aye, Enlow -aye, Howarth – aye, Sharma - aye. All ayes, the motion carried.

8.2. City Hall Playground Equipment Replacement Update

Breazeale stated that a lot of work has taken place and Parks followed an extensive process. Pagano then reviewed the timeline. He was assigned as the single point of contact (SPOC) for this project, so his job was to gather information and make recommendations to Parks. Parks determined and approved a recommendation for Council on February 2, and they notified neighbors of their recommendation February 3. Installation is targeted for Memorial weekend. Pagano then discussed the Park Commission's approach. The work was divided between Parks, Staff, and Public Works. An advisory board was created consisting of Kate Emmel, Teresa Mohr, and Hannah Lindstrom. There was frequent communication between them, neighbors, Pagano and Hilgers. Pagano reviewed 14 points of consideration and criteria used by Parks to make their recommendation. Equipment was narrowed down to two designs, Fun Zone and Appalachia, that fit in the budget with the 50% discount and three color palettes. Fun Zone is \$38,616 with the addition of requested monkey bars. Parks thought Appalachia was too tight for the play area. They hope to add a track ride and balance beam in a future phase. Parks unanimously voted to recommend the Fun Zone design in Color Option #1 and if needed to fund up to \$3,600 for the monkey bars from CIP and Parks 2021 budget. Pagano reviewed advisory board and neighbor letters. Neighbors were pleased that they were contacted and trusted Parks to do their job. Sharma asked if they have competitive and firm bids. Pagano stated that equipment is from Game Time distributed by MN WI

Playgrounds. Resident Harlan Lehman from MN WI is not on the Park Commission and has been very helpful and responsive. Melvin has three bids for similar equipment, and more bids are coming for the March meeting. Hilgers may do deconstruction to save money. Installation will immediately follow delivery and it is a three-to-five-day project. There was talk about Civic donating to the project, but Civic would need to vote on that use of their funds. Pagano explained that this equipment discount is a different promotion than last fall's grant. Howarth stated this was an outstanding and comprehensive presentation. Hilgers has been involved and is confident he can oversee the project. If it is approved in March, the replacement timeline will be on track.

9. Old Business

9.1. Hilgers update on the frequency of water main breaks, locations, costs, and recommendation to Council for further Utilities Commission discussions

Howarth stated that the breaks that happen a few times a year in the city are service line breaks from the main to curb stop. He recommended keeping the water mains on the list but there is not a sign of an emergent issue. Amundsen stated the last water main break was over 10 years ago. He recommended looking at road projects that also replace the water mains. There is \$4.2 million for replacing remaining 4" in 2024 and \$2.5 million each in 2026 and 2028 for streets in the FMP.

Enlow left the meeting at 10:13 pm.

10. Consent Agenda

10.1. Police Report – January

10.2. Fire Report – January

10.3. **Resolution 2021 – 12** Club and Sunday On-Sale Liquor License for Lafayette Club

Howarth motion, Breazeale second to approve the Consent Agenda. Roll Call Vote: Breazeale – aye, Howarth – aye, Sharma - aye. All ayes, the motion carried.

11. Treasurer's Report

11.1. Approve Checks – February 2021

Zinn stated a specific 4M account was opened for the Livingston Strong donation funds. The 2019 Infrastructure project remaining proceeds paid debt service due early 2021.

Howarth motion, Sharma second to approve 33 checks numbered 18189 through 18221 in the amount of \$90,314.31 for February 2021. Roll Call Vote: Breazeale – aye, Howarth – aye, Sharma - aye. All ayes, the motion carried.

11.2. YTD Budget to Actual Report and Prior Year Comparison

11.3. Outstanding Accounts Receivable

Zinn stated that Melvin is staying on top of the outstanding accounts receivable.

12. Action Notes and Staff Reports

12.1. Council Meeting Action Notes

Council reviewed the Action Notes and made the following updates:

- Mayor Lindstrom is working with Kelly Morrison on a bill she is drafting for funding assistance on the water treatment plant and replacement of water mains and 4" pipe.
- Melvin will delete Parks referral item regarding Livingston Strong from the Action Notes

12.2. Clerk's Report – Written report in packet

12.3. Administrator's Report

Melvin has been finalizing items for the Livingston Strong donation. Hilgers will inspect the equipment when it is delivered offsite to make sure everything is there. Landscape Structures and Hilgers agree that Hilgers can oversee installation. Melvin will work with Hilgers and the vendors on the project schedule. It will be a March or April agenda item for Council to provide guidance. Sharma suggested that the work either be done by Memorial Day or wait until end of summer so the park can be used during the summer. Melvin is also preparing for the audit in February. Burgess worked on PSN to make sure all electronic payment information was ready for the audit. Howarth asked for separate finance reporting on Livingston funds. Zinn will work with Melvin on it. Melvin is also working on a VOIP phone solution for Mediacom issues, as well as an emergency communications radio.

12.4. Public Works Superintendent's Report – written report in packet

11. Council Reports

11.1. Mayor's Report

Lindstrom will attend the regional fire meeting. She will report back to Council regarding the Lake Improvement District.

11.2. Liaison Reports (if necessary):

- Breazeale – Civic has not met and Parks updates were given earlier.
- Enlow – Planning discussed a revised AMLS with line-of-sight consideration. She attended the Fire Advisory Committee meeting where they discussed a shared fire services district.
- Howarth – Utilities will meet after Amundsen's proposed study is completed. Chris Vogt, LMCC, did a great job on a video of Mayor Lindstrom for the I'm a Villager campaign which is on the city website.
- Sharma – He met with Zinn to familiarize himself with Finance Committee discussions. Dock Committee will meet later this week.
- Zinn – no report

12. Adjourn

Howarth motion, Sharma second to adjourn the meeting. Roll Call Vote: Breazeale – aye, Howarth – aye, Sharma - aye. All ayes, the motion carried.

The meeting adjourned at 10:58 pm.

Members of the Public: Nell Mathews, Richard Anderson, Jill Bartel, Joann Anderson, Mike Steidle, Patty Rezabek

Respectfully submitted,

Heidi Honey, City Clerk