

Monday, June 13, 2022, 6:00 PM
CITY OF MINNETONKA BEACH
CITY COUNCIL MEETING MINUTES

Roll Call: Mayor Jaci Lindstrom; Council Members: Tracey Breazeale, Susan Enlow, and Vibhu Sharma; Treasurer: Chris Zinn

Staff: City Administrator Heidi Honey, City Clerk Jane Burgess

Absent: none

Guests: Dennis Klohs, Sgt. Sonnek, Sgt. Jurgenson

1. Mayor Lindstrom called the meeting to order at 6:00 p.m.

2. Pledge of Allegiance

3. Approve Agenda for the June 13, 2022, City Council Meeting

Breazeale requested to add 12.14 to the Consent Agenda items as a Tree Removal Request at 2432 Lafayette Rd

Enlow motion, Sharma second to approve the June 13, 2022 agenda as amended. All ayes, the motion carried.

4. Approve Minutes –

4.1. Regular Meeting of April 11, 2022

Enlow motion, Breazeale second to approve the April 11, 2022 Regular City Council meeting minutes. All ayes, the motion carried.

4.2. Regular Meeting of May 9, 2022

Sharma motion, Breazeale second to approve the May 9, 2022 Regular City Council meeting minutes. All ayes, the motion carried.

4.3. Special Meeting of May 23, 2022

Sharma motion, Enlow second to approve the May 23, 2022 Special City Council meeting minutes. Breazeale abstained. Lindstrom voted aye. Ayes-Enlow, Sharma. Abstain: Breazeale. None opposed. Motion carried.

5. Police Report

5.1. **Police Report – May – Sgt. Sonnek**

Sonnek reported that in May there were 34 incidences in our community. Of that six were alarms, one animal complaint, one medical, two suspicious acts, one welfare check, and 17 traffic stops. This spring, there were not as many thefts and burglaries as this time last year and overall. Sonnek reminded all to lock homes, vehicles and take bags inside from cars parked outside as burglars are using garage door openers to open doors. Lindstrom asked Burgess to put this precautionary information in the Beachcomber.

Lindstrom stated that one of the suspicious persons reported was a Lafayette Club worker who rode the city bus to Minnetonka Beach.

Enlow asked how many officers Orono Police has now and Sonnek stated there are 30-32 including part time. The department is struggling as they are short three officers by at least one since last fall.

5.2. **Three Rivers Park District – Dakota Trail Representative – Sgt. Corey Jurgenson**

Sgt. Jurgenson stated they had 20 calls for service on the Dakota Trail. Of that 16 were in the last month and a half, and they gave them verbal warnings for stop sign violations. They too, are understaffed he stated, with 11 full time and seven part time staff.

Lindstrom asked for maximum saturation for Minnetonka Beach, especially on weekends. Lindstrom asked about branches and debris from storms, and he stated that maintenance staff drive the trail and make sure it is cleaned after storms.

Sharma stated he observed a stop sign runner get pulled over and praised Three Rivers for doing a great job patrolling the trail by the Lafayette Club.

6. Guests

6.1. Dennis Klohs, Lake Minnetonka Conservation District (LMCD) Representative

Lindstrom introduced Klohs and said that he will be speaking about the effect that wake boats and large cruisers have on the erosion of the lake's shoreline.

Klohs stated that he has been the City's LMCD rep since 2005. In the last four years the LMCD and Minnetonka Beach have been on parallel tracks defending non-riparian access of the lake. Efforts have been very successful on every level, even on court level and legal theories, which if the outcome was different, it could have affected everyone on the lake. The LMCD maintains the integrity of the legacy JJ Hill started in the 1880's, Klohs added.

He stated that at a June 8th LMCD public input meeting regarding boat-generated wakes, nearly 300 people attended including Mayor Lindstrom. Boat industry people and lakeshore owners were there, and they are at opposite sides of this issue which is very emotional and controversial Klohs stated. The LMCD website also provides good educational information for review on this topic, and the listening session from this public input session is available. The LMCD Board is discussing what action to take, if any.

Klohs stated that the St. Anthony Lab is highly regarded worldwide for fluid dynamics, and they conducted the first of its kind three-phase study on the impact of wake boats and wakes on lakes and rivers. GoFundMe money came in for this study from all over the world. The first phase is about the power of the wake and its energy. The second phase is how boat-generated wakes affect the lakeshore, and the third phase will be how wake boats affect the churning of the lake bottom. Klohs stated this is the most viewed webinar in the history of the 100-year-old organization. They are using science and facts, measuring a water column and depth. Boats are churning sediments, algae, and toxins from the bottom of the lake and stirring things up from the bottom that may have been there for hundreds of years. The frequency of boating has increased as well.

He added that present restrictions for the distance between boats and shoreline was created 50 years ago when boats were only about 17 feet long. Wake boats didn't exist in the past, and something must be done he stated.

Lindstrom asked if this will be regulated. Klohs' said it's not defensible. He predicts the solution will be they should be 300-1000 feet from shoreline. Some people want boats to be 700-1000 feet from lakeshore.

Lindstrom asked if Klohs feels that these boats are associated with beach closures, and he said he hasn't seen data on that. He said if we extend the swim beach docks to 200 feet out it might help.

Sharma stated that the water quality and shoreline should be protected and whatever council does should be based on fact.

Klohs asked if City Council wants to take a position on this and he will convey that to the LMCD board. He suggested that a resolution be done for the LMCD to take some action rather than reviewing and doing nothing. He suggested not waiting for the state to act by passing a law. He added that the LMCD may wait for further information to be released from the St. Anthony studies, or propose an ordinance based on public suggestions that addresses distance of boats to shoreline, distance to shoreline by different types of boats, consideration of restrictions for smaller bays vs larger ones, and restricted hours or days for some recreational boating activities.

Breazeale and Lindstrom stated that they are not comfortable with the word “action.”

Breazeale feels the City does support the lake, quality of water and shoreline. She stated that if recommended distance from shoreline is determined once research is done, she said that would be better. Many in Minnetonka Beach own wake boats and they would not be supportive of possibly not using them in certain bays she added.

Lindstrom recommended council send a carefully worded letter of support and Sharma said it should include mention of shoreline protection and quality of water.

Enlow said she feels that council is not in position to make any kind of stronger statement. Water and shoreline and lake bottom are important.

Lindstrom stated that she will send the letter of support to the LMCD.

7. Open Forum – Items not on the agenda - no discussion. 6:34 pm opened and closed at 6:34 pm

8. Public Hearing

8.1. Stormwater Pollution Prevention Program – Annual Report and Public Hearing

Honey presented an executive summary of the SWPP Program which is a requirement of the City’s MS4 permit. One way the City protects the lake by following MPCA requirements to prevent pollution from stormwater runoff to the lake. This report is based on the City’s previous permit and she’s working with Stantec to complete the implementation requirements of the new permit.

Mayor Lindstrom opened the Public Hearing at 6:36 pm and closed it at 6:36 pm.

9. Old Business

9.1. Tree Removal Request – 2903 Westwood Road – Ziebarth

Honey presented that Ziebarth’s are requesting removal of a 24” Maple Tree, and he is concerned for the safety of his neighbor’s home and property at 2827 Westwood Rd. He stated that his tree trimmer said this tree is not as healthy as it appears to be, is hazardous, and has carpenter ants in it. He stated that his insurance company said they would be liable and responsible if it falls on the neighbor’s house due to negligence. Ziebarth wants to remove the tree as it’s a hazard with 30% of the tree’s weight is in the top half of it, and leaning towards the neighbor’s house.

Lindstrom asked how close the tree is to the neighbor’s home construction and Ziebarth stated the tree is 12 feet from their house. He added that construction traffic drove over the roots of this tree, and it wasn’t protected. Damage to roots is unknown and to be determined. Ziebarth added that excavators drove over the tree roots for three months. He said he would replace the tree.

Council discussed that there were two professional opinions that this tree is healthy, and it is premature to take it down. They discussed whether that tree should have been protected during the neighbor’s home construction. Enlow stated that there is no documentation from an arborist that states that this tree is not healthy.

Sharma said that as a resident who has perhaps the most trees in the City, it cost him \$35,000 when a neighbor’s tree fell on his house. He stated that he has lost several trees recently, and supports the tree removal at Ziebarth’s for safety reasons, the wind usually blows in the direction toward Ziebarth’s neighbor’s house, insurance company position, and he likes that a replacement tree will be planted. Sharma added that while he appreciates the tree removal moratorium, he supports Ziebarth’s request.

Breazeale asked Ziebarth if tree trimmers have detected poor conditions of the tree that deem it unhealthy. She then asked for discussion for this tree if removal were to have been requested if the Tree Preservation Ordinance is approved and the moratorium lifted.

Enlow addressed that question stating that a permit would be required, and all requirements met including looking at property tree density, no heritage 30” trees removed, trees must be more than 75 feet from lake, trees not on steep hill or bluff, in a non-emergency situation a hazardous tree to be removed would follow the ordinance requirements. No replanting would be required for a tree of this size if the homeowner meets the minimum tree density requirement.

Enlow motion that the tree not be removed. No second. Motion fails.

Sharma motion to approve the removal of the tree at 2903 Westwood Rd with the replacement of a maple or similar tree 4-6” in diameter during the calendar year 2022. No second. Motion fails.

Breazeale stated she is on the fence on this request due to the differing opinions given from tree trimmer and arborist. Paulsen said it is healthy. There is no report from tree trimmer. She wants to see the existing branches’ health to balance with what Paulsen stated.

Sharma said the tree removal moratorium was put in place for safety, to prevent clear cutting and improving views. Council should go back to the intent of the moratorium and ordinance and solve the matter.

Breazeale motion Enlow second to continue the topic of this tree removal to the July meeting and request information from the tree trimmer along with contractor information documentation showing unsafe nature of this tree. Breazeale aye, Enlow aye, Sharma nay. Motion passes.

9.2. ADU/DNR Zoning Code Update

Enlow stated that the ADU moratorium expires on 8/15/22. The provisions to extend the ADU moratorium are in Minn Stat Sec. 462.355. The task force, comprised of Enlow, Mathews and Swanson, is taking their proposal to the June 27th Planning Commission meeting for direction. Then it would go to the DNR before drafting the proposed ordinance language. City Attorney Batty would then review it along with the City’s zoning administrator, then back to the Planning Commission with a properly 10 day noticed public hearing. Enlow stated that this can’t be completed before it expires. There are no ADU requests pending at this time she added.

Lindstrom stated she is not comfortable with squeezing things in and that it would be a big problem if the DNR didn’t have a full 30 days to review and proper noticing requirements have to be met.

Enlow stated that City code is very complex and needs to be cleaned up. Over the last six weeks, the task force has focused on the ADU portion of the code to get that completed.

She added that in 1992 the code was submitted to the DNR and in 1996 they approved seven items that Minnetonka Beach would not have, including guest cottages, in exchange for a 30 % hardcover limit. The DNR limit is 25%. Enlow stated that Hedeem’s request for their home at 2508 Arcola Lane triggered this project. Enlow stated the task force wants a conservative ADU recommendation that the DNR will accept.

Lindstrom stated that the City should not extend the ADU moratorium..

Breazeale asked that when it expires can someone request an ADU and if they meet the requirements then are they good to go? Enlow stated she thinks so adding that the City has 8 or 9 ADU’s currently.

10. New Business

10.1. Resolution 2022 – 23 Acceptance of Council Member Howarth Resignation and Consideration of Potential Appointment and Process to Fill a Vacancy

Lindstrom stated that Council Member Howarth submitted his resignation due to his move from Minnetonka Beach, effective May 16, 2022. His term expires on 12/31/22. City Council needs to formally accept his resignation via resolution.

Sharma motion, Breazeale second to adopt Resolution 2022 – 23 Acceptance of Council Member Howarth Resignation and Declaring that a Vacancy Exists on the City of Minnetonka Beach City Council. All ayes, the motion carried.

Lindstrom stated that the options are to not fill the vacancy as there is no legal obligation to do so, or City Council could fill Howarth's vacancy by appointment with an application process and timeline.

Honey stated that in the past, when filled by appointment, Council determined a timeline for placement of articles in the Beachcomber, applications, and letters of interest from residents. Following a City Council meeting where interviews are conducted and appointments take place all requires 30-45 days to get the proper notices out. This could be done at the July 11th council meeting Honey added. Another option would be that City Council appoint a candidate without the appointment process. She stated that the last option would be a City Council special election, but Hennepin County said the City cannot have a special election in 2022 due to the regular General Election, so the soonest would be February of 2023.

Lindstrom stated that the appointment may be seen as endorsement of a candidate. She listed the important issues coming up including tree preservation and ADU ordinances, variance requests, and asked if council wants someone to gain experience ahead of time.

Sharma asked about the timeline when Council Member Andrew Myers moved. Lindstrom stated Myers moved in the month of July. Sharma asked if council has only three members, can city business be conducted if a council member cannot be at a meeting?

Lindstrom stated that she can break a tie and two members are a quorum. The state statute requires that more than three are required for summary publication of an approved ordinance, which is less expensive than publishing the full ordinance. Four of four need to vote for a full council.

Sharma asked if the treasurer can fulfill dual roles as council member and treasurer. Lindstrom said yes, but Honey said she did not know and needs to ask City Attorney Batty. He also asked if he cannot be physically present at a council meeting, can he be present in the meeting at a public place. Honey said yes as we did this in May for a Special City Council meeting, but the City prefers to not do this because everyone must be able to see everyone at both locations.

Enlow suggested posting for applicants and see how many apply. If only one does, then she feels that is great.

Breazeale stated that she does not want to show endorsement of one candidate. She added that Treasurer Zinn is a creative option.

Zinn stated that he is willing to do it, if possible, but he intends on running for treasurer again in the November General Election not for City Council.

Lindstrom stated that she is in favor of not filling the vacancy, and Zinn can slide right into the council member position for now if it's allowable. Appointments are a big process then awkward if council changes their minds and does not fill the position.

Enlow stated that if permissible and Zinn can do it, one of the benefits would be the cost savings of a summary publication of the long Tree Preservation and ADU Ordinances.

Honey stated that she will look at the Charter to see if the City can allow Zinn to serve two roles.

Breazeale motion, Enlow second, conditional on City Attorney Batty's approval, for Zinn to remain as Treasurer and be appointed interim City Council member filling Howarth's vacancy from resignation until the end of his term of office 12/31/2022. All ayes motion carried.

Enlow motion, Breazeale second, that the appointment of Zinn be effective immediately upon City Attorney Batty's approval. All ayes motion carried.

11. Treasurer's Report

Zinn reported from the Financial Dashboard that the City is down slightly from last year at this time in the cash position. \$264,000 of restricted funds can be released back to the General Fund as the City paid for the Brooks Lane/Westwood Rd Watermain Improvement Project completed last fall out of the General Fund. In 2023, debt service for bonds will increase \$100,000 due to principal and interest payments to be paid on 2021A Bonds. In 2022, the City made interest only payments.

Lindstrom stated that inflation will be 8.7% so Zinn recommended not lowering the tax levy for 2023. The Preliminary Budget will be shocking at first, but there is time to refine it, although there is not much that can be cut and the City will be subject to inflationary pressures.

Zinn noted that Caldwell Tanks final payment was made. Kennedy & Graven invoices for legal fees were high due to the Tree Preservation and potential golf cart ordinances. He added that of the \$13,000 in Stantec invoices, \$6,000 of them are city related the rest is pass through.

Honey stated that some initiatives City Council approved including ADU's, golf carts, tree preservation, are costly. She will determine actual costs vs budgeted which will help with more accurate budgeting going forward.

Lindstrom asked Zinn if his quarterly report will be in the July meeting packet, and he confirmed that it will.

Zinn stated that it does not appear the City will be getting money from the state for the water treatment plant, so the City should have a utility rate study done soon.

Sharma stated that the City has serious road conditions to deal with especially Huntington Pt Rd W. Zinn explained that in his discussions with Hilgers regular patching, fixing and sealcoating annually is critical to maintaining City streets. Sealcoating half the City each year is invaluable according to Hilgers.

12. Consent Agenda

- 12.1. Fire Report – May
- 12.2. League of MN Cities Insurance Trust Tort Liability Waiver
- 12.3. Payment Request No. 11 / Final - Caldwell Tanks, Inc. - \$33,060.72
- 12.4. **Resolution 2022 – 24** - Appoint Joe Pagano to Park Commission
- 12.5. **Resolution 2022 – 25** – Absentee Board, Appoint Election Judges
- 12.6. **Resolution 2022 – 26** – Council Appointments
- 12.7. **Resolution 2022 – 27** – Additional Dock Permit Applications
- 12.8. Tree Removal Request – 2811 Westwood Road – Lindstrom
- 12.9. Tree Removal Request – 2324 Lafayette Road – Snell
- 12.10. Tree Removal Request – 2327 Lafayette Road – Ellis
- 12.11. Special Event Permit – Running of the Bays on Dakota Rail Trail, 9/10/2022
- 12.12. Waterfront Restoration Contract – Beach Cleaning Services
- 12.13. Approve Checks: June 2022
- 12.14. Tree Removal Request – 2432 Lafayette Road - Livingston

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

13. Action Notes and Staff Reports

13.1. Council Meeting Action Notes

Council reviewed the Action Notes and made the following updates:

- Alan Carlson wants the Utilities Commission to study streets where water pools at intersections and put on the CIP 2024-2025.

13.2. Administrator's Report

Honey stated that two speed bumps were installed in front of City Hall and on Westwood Rd. to slow traffic down coming onto Westwood Rd. from Lake Rd. A resident requested them as there are many young children just to the east of City Hall.

Honey stated that she and staff spend a great deal of time on tree removal moratorium questions, tree removal process and permit questions, assessment of tree conditions and processing tree permits and follow up. She stated that staff heard from a resident that there is a lot of misinformation, disinformation in the community about what the tree preservation ordinance is all about. Honey recommended that a special eblast be sent on this topic. She updated the City website with information that Golf Cart/ATV's are regulated by state statute, and operators are at their own risk. Honey stated that she completed and submitted the annual MS4 Permit application and had discussions with Stantec regarding new implementation requirements for the new permit.

She also set up meetings with senators, Mayor Lindstrom, and Ryan Capelle on water treatment plant funding. She is continuing to work on tracking down approval documents from the DNR review of zoning code 2017, and she researched where ADUs are located in the City.

Honey met with the City's copier/printer sales rep, and ordered a new unit with enhanced features for a slight discount of \$30 per quarter. She stated that she continues to work on trying to get maintenance agreements and as-built surveys from residents. She issued building permits, grading permits, follow up on work by the lakeshore, help applicants with tree removal permits, helped applicants with variance requests, and addressed concerns about the organics recycling container.

Honey's work on the CIP involved answering questions and updated requests for the CIP Review meeting on Wednesday. She also began work on the 2023 Budget.

13.3. Clerk's Report

Burgess reported that she is training and preparing for the Primary and General Election including getting judges secured and equipment training. Absentee voting begins June 24th so she is preparing for that as well.

She has helped a great deal with the dock installation problems at the Swim Beach Docks and fielded many resident and vendor calls and complaints. There is a Dock Committee meeting on 6/16 to discuss options for the future. She issued 71 dock slip renters their final permits for 2022, checking registration and preparing for dock inspections too. She also stated that she met with fire suppression and security and surveillance companies as there is neither one installed at City Hall.

Burgess stated that she completed minutes for two City Council meetings in May, a Parks Commission meeting, and meeting prep and follow up. She created the May Beachcomber, and weekly SPLASH! eblasts reaching out to Civic for information on their events and photos as well.

Along with Honey and Gage, Burgess stated that a great deal of time is spent at City Hall with resident and vendor tree removal process inquiries, and residents calling to report suspicious tree-related activities of their neighbors. Staff instructs them how to proceed with the process – arborist, Hilgers, photos, diagnosing if dead, dangerous etc. She has been hung up on twice by a resident, and witnessed his mistreatment of Honey about the process but it was his misinformation. She also completed several City Clerk reports to the state and county.

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

14. Council Reports

14.1. Mayor's Report

Lindstrom stated that about 80 new residents attended the wonderful Newcomers Party.

Regarding the water treatment plant, the divided, polarized legislature adjourned without a final agreement on the state budget. Only Governor Walz and the Lieutenant Governor can call a special session to come to a final agreement on the final budget. They left \$6 billion of Federal money for our state for infrastructure without a match, so Minnesota will get no money and there was \$680 million of the \$6 billion slated for MN water infrastructure. Phillips'

chief of staff said that August 1 is the firm deadline if they decide to reconvene for a special session. If not, the money will go to another state.

14.2. Liaison Reports (if necessary):

- **Breazeale – Parks/Civic**

Breazeale stated that the Summer Picnic July 17th. The Progressive Dinner is September 17th. A dessert house is needed and dinner host houses. Civic merchandise ordered will be here for the summer picnic. Monday Fundays are now from 4:30-6pm so parents can attend, and they will have food. Soccer and Food Truck Fun For All events are 6/29, 7/27 and 8/17 at Ray Peters. Waterfront Restoration (bi-weekly), and Public Works part-time employee Kohlton are cleaning the Swim Beach and removing weeds. Parks meeting discussed the CIP and moved some items to Public Works budget, Parks and/or City Hall – will be finalized. Parks two co-chair positions are now extended to July of 2023 instead of expiring 2022 and going back to one chair position.

- **Enlow**

Enlow reported that the Future Fire Service planning group met June 1 and they discussed future fire service protection. They are looking at district model for recruitment, training, equipment, etc. Hamel and Loretto departments are merging. Orono gave official notice ending their contract with Long Lake Fire at the end of 2025 giving three years notice. They jointly own the fire station on Willow Drive and got it appraised as they are discussing who is buying out who. Orono is 80% of Long Lake Fire’s budget. She added that Orono said they would provide fire department services to Long Lake, Minnetonka Beach, and Maple Plain when they go out on their own and work out the split ownership of the Willow Drive station. Orono Mayor put out an August 1 deadline for everything to be resolved. Enlow said there is more information to come.

Enlow reported that the Tree Preservation Task Force presented to Planning Commission. Five residents attended the Public Hearing, and all were from Lafayette Ridge. They primarily spoke of their opposition to the tree removal moratorium and Enlow stated that it was not informed discussion. The Task Force is working on feedback from that meeting and determined concerns heard were permit fees, and should construction activity have a higher fee. They were asked to provide a table of what other cities are doing. The Task Force is proposing a fee of \$50 for a normal tree removal, \$200 for construction-related activity based on services provided. She said most other cities’ fees are higher.

Enlow stated that Planning discussed ADU’s, and other items on the project list. They affirmed all other work is on hold.

- **Sharma – Docks Committee update**

The installed Swim Beach docks changed to Rassatt Docks over last four years or so. The first two years were fine but now there are problems with this installer. Sharma met with Dock Committee Chair Jeff Steinke and Todd Pottebaum who is Swim Beach Docks Captain to discuss the situation. Seven residents did not paid Rassatt this spring for last year. They are looking at a new vendor and looking into storing those docks at the Swim Beach or at Ray Peters Park. They will look at all options.

- **Zinn –**

Zinn stated that he already discussed what he needed to tonight but agreed with Sharma that the CIP can’t redo our roads - the City needs to invest more for this annually.

15. Adjourn

Sharma motion, Enlow second to adjourn the meeting. All ayes, the motion carried.

The meeting adjourned at 8:55 pm.

Members of the Public: Nell Mathews, Joann Anderson, Katie Norman and her fiancée, Jeff Ziebarth and Laura Hanser.

Respectfully submitted,

Jane Burgess, City Clerk