

Monday, October 10, 2017 7:00 PM (6:30 Special Meeting Closed Session)
CITY OF MINNETONKA BEACH
CITY COUNCIL MEETING MINUTES

Mayor Taylor called a Special City Council Meeting to order at 6:30 p.m. Mayor Taylor and Council Members Bartel, Kozloski, Myers and Treasurer Howarth were in attendance. Also in attendance were attorney Justin Templin and City Administrator Griffin. Mr. Templin stated that pursuant to M.S. 13D.05, subd. 3b, the City Council may close the meeting to have a confidential discussion regarding litigation (Mathews/Hacker vs the City of Minnetonka Beach).

A motion was made by Council Member Bartel, and seconded by Council Member Kozloski to close the meeting under the attorney/client privilege provisions of state statute. With all members voting in favor, the motion carried.

A motion was made by Council Member Bartel, and seconded by Council Member Kozloski to adjourn the closed session at 7 p.m. With all members voting in favor, the motion carried.

Roll Call: Mayor Mike Taylor; Council Members: Jill Bartel, Paul Kozloski, and Andrew Myers; Treasurer Steve Howarth. Absent: Council Member Jaci Lindstrom

Staff Present: City Administrator Susanne Griffin, City Clerk Heidi Honey, Public Works Superintendents Ben Young and Brian Berent, Zoning Administrator Ben Gozola, City Engineer Darren Amundsen

Guests: Police Sargent Chad Stensrud; LMCC Representative Jim Lundberg; Planning Commission Chair Corey Orehek

- 1. Mayor Taylor called the meeting to order at 7:05 p.m.**
- 2. Council Member Myers led the Pledge of Allegiance.**
- 3. Approve Agenda for the October 10, 2017 City Council Meeting.**
Kozloski asked to add holiday decorations for the city as New Business item 12.3. Bartel asked to add appointing Betsy Taylor to the Park Commission as Consent Agenda item 10.7. Myers asked to amend Consent Agenda item 10.6 adding approval of the grant agreement to the approval of the historian contract.

A motion was made by Council Member Bartel and seconded by Council Member Myers to approve the agenda as amended. With all members voting in favor, the motion carried.

- 4. Approve Minutes –**
 - 4.1. Regular Meeting of September 11, 2017
Council Member Bartel noted the word “if” needs to be added on the bottom of page 4.

A motion was made by Council Member Bartel and seconded by Council Member Kozloski to approve the September 11, 2017 Regular City Council meeting minutes as amended. With all members voting in favor, the motion carried.

5. Recognition of Ben Young, Retiring Public Works Director

Mayor Taylor read a proclamation to Ben Young, recognizing him for 23 years of dedicated service to the City. A retirement open house for Young is planned for October 24, 6 to 7 pm at City Hall.

6. Open Forum

Nell Mathews, 2643 Arcola Lane. Mathews stated she received a response to her request for an audit from the City Administrator which was written by the City's Attorney Justin Templin. She was concerned that he wrote the response but was not part of the initial process. She did not feel he addressed her concerns about the Zoning Administrator costs being over budget and a violation of data practices act for disclosure of property complainants. She expressed concerns about the process and decision making of a small committee consisting of Myers, Lindstrom, Howarth and Griffin. She does not think it is right for the city attorney to say decisions have been made when there has been no discussion or agenda item regarding it. She questioned Templin's knowledge about the audit request. She did not feel it was a satisfactory response and she would like clarity on the process. She went on to mention concerns about the hours billed by the zoning administrator for meetings and feels the City should look at that since they are working on budgeting. Mathews said her issue is that she does not think the City engaged in a proper decision making process and, if the City thinks it did, then she should be given the discovery information she is requesting instead of having to bring motions. She then discussed the assessment to their property taxes that they had to remove at their expense.

7. Police Report

7.1. Police Report – September 2017

Sgt. Stensrud reviewed the activity report and highlighted two vehicle fires, an online credit card scam, and a DUI from a traffic complaint. There has been a lot of mail theft in Mound, Deephaven and Minnetrista during all hours of the day and night. People need to be diligent about bringing in their mail. Coffee with a Cop will be at the Mound Caribou on Saturday, October 28, 8-10 am.

8. Guest Reports – Jim Lundberg, LMCC

8.1. Lundberg stated the LMCC has joint power agreements with 11 surrounding cities and they video record meetings for nine of those cities. Minnetonka Beach and Woodland do not videotape. The LMCC hosts audio files of Minnetonka Beach meetings. Videotaped meetings can be agenda parsed so someone can click on an agenda item and hear that portion of the meeting. Lundberg would like the Council to consider allowing them to video record up to two meetings per month. Access would be through cable TV and online. Costs are absorbed by cable TV subscribers and there is no cost to the City. The LMCC would provide the equipment. LMCC staff would arrive 30 to 60 minutes prior to the meeting. Bartel asked what residents in the audience thought. Joann Anderson said her feeling was that Minnetonka Beach did not want to be televised and there were no requests for it in the past. Nell Mathews said a meeting was recorded when she was on Council and it was very distracting at the time. Council discussed the size of the room. Lundberg said taping often streamlines meetings and people get used to it. Myers asked to get feedback from other commissions and residents. Joann Anderson supported trying it for the Planning Commission. Colby Skelton, Corey Orehek and Jennifer Halverson expressed strong support. Kozloski suggested talking with other cities and residents prior to starting to ensure there are no strong objections. Mayor Taylor will put information in the Beachcomber and talk with council members or mayors of other cities before Council makes a decision in November.

9. Reports

9.1. Staff: Public Works

Ben Young reported a service break that the City will have to pay for at 2310 Huntington Pt Rd W. They started picking up leaves. Berent sampled water at the shop and tested it at Excelsior. The hardness was 12 grains, and the iron was .06 milligrams per liter, manganese was .023. These results are very good. After they finish picking up leaves, he will take more samples from other areas of the City. Kozloski's have been having a recent problem with rust in their water. Berent discussed getting a new trailer for the asphalt roller for \$1,100-1,200. A tilt bed trailer that could also hold the bobcat is \$2,300. Taylor stated that they could replace two deteriorated trailers with one. Howarth suggested making a decision on the trailer purchase at the November meeting based on capital expenses. Council thought there may be enough in Public Works' operating budget to purchase the trailer as Young had intended on in the past. Taylor recommended including it in the expenses to be spent by the end of the year. Howarth then discussed capital expenditures for 2018 and possibly pulling any unspent funds from 2017 into 2018. Council then discussed again that there will likely be enough in the operating budget to pay for the trailer. Taylor suggested putting \$2,000 in the projected expenses for 2017 since Public Works is under budget. Berent discussed future alarms for the lift stations but there is no immediate need. Howarth then discussed the City's aging infrastructure but, after meeting with Young, Berent and Bartel, they determined there are no immediate needs. Young then discussed the paving study and that the City needs to decide if they want curb and gutter because that affects storm sewers. He also said that the storm sewer by 2323 Huntington Pt. Rd. E. should be replaced.

9.2. Commission Reports

9.2.1. Planning Commission – Chair Corey Orehek

Orehek gave an update from the safe crossing subcommittee meetings. Hennepin County is putting together updated plans and funding for a safe crossing. The county will pay for work on CSAH 15. The subcommittee is getting bids for a path to access the crossing. Three Rivers is also involved in the discussion regarding access to the trail. The proposed location for the path to the crossing is to run parallel to County Road 15 from Woodbridge to Lafayette Road. A dirt path is proposed along Arcola Lane.

Howarth expressed concerns about safety and thinks they need to get trail users off the street. He is also concerned that it may affect the aesthetics of the homes on Arcola Lane. He believes Arcola Lane residents should be made aware of the plan prior to any approval.

Orehek asked what the process is for approval of the crossing and associated costs, if any. Taylor stated they need to see a plan with associated costs and have a public hearing for feedback. They can then do a survey and see if residents support the plan, and determine if residents are willing to spend money on it. Kozloski recommended Orehek talk with the people most impacted prior to presentation of the plan at a public hearing. Orehek stated that he is taking into consideration the people who are affected on Arcola Lane, but he believes he is responsible to all of the residents who are asking for a safe crossing. After a lengthy discussion about the previous plan and the new plan that needs to be finalized before it is presented, Orehek again stated that he is looking for what the Council needs for them to proceed so it can be communicated to the county and subcommittee. Taylor stated that the process is that they need to present a plan that should be vetted with interested parties prior to coming to Council. They need to have a public hearing with people who are impacted. If modifications arise, those can be brought to Council with their recommended plan. After Council reviews the proposed plan, a survey can be sent out asking residents if they support the plan or not and if they approve spending the funds or not.

Griffin suggested the other reports be given after the Consent Agenda and after Planning and Zoning so Ben Gozola does not have to sit through all of that.

- 9.2.2. Park Commission - no meeting in October, no update
- 9.2.3. Civic Committee – no report
- 9.2.4. Finance Committee – no report

10. Consent Agenda

- 10.1. Fire Report –September
- 10.2. **Resolution 2017 – 40** - Snow Plow Agreements – Arcola Lane
- 10.3. **Resolution 2017 - 41** – Snow Plow Agreements – Crescent Street
- 10.4. Civic Committee Membership and Leadership
- 10.5. Ordinance No. 116, 2nd Series – amending Section 904, City Code, Park Commission
- 10.6. Water Tower Historian Consultant Contract

A motion was made by Council Member Bartel and seconded by Council Member Myers to approve the Consent Agenda items. With all members voting in favor, the motion carried.

11. Planning and Zoning

- 11.1. **Resolution 2017 – 42** – Consider Land Use Application Variance Request 1909 Beach Lane

Administrator Gozola reported that the new home proposed for 1909 Beach Lane would be the same footprint with the same volume as the previous home but it requires expansions. They are requesting a 4’1” variance from the required 8 foot side yard setback and a 5’2” encroachment into the required encroachment plane. No concerns were raised by residents. The neighbor at 1915 Beach Lane requested that all existing and proposed landscaping, decking, garden borders, etc. that extend onto the adjacent properties be corrected as part of the home construction project. This is a recommended condition of approval. The Planning Commission and Gozola recommend approval of the requested variances. Gozola confirmed that no proposed changes to the zoning code would impact this variance request. Gozola then explained the Planning Commission’s discussion on setbacks for patios.

Resident Nell Mathews stated the color photos do not show the patio but it is shown on the proposed survey. She thought that building plans should also be required. Gozola explained they are considering variance requests and not approving building plans. The plans will be submitted with the building permit application and will need to meet all requirements for approval. The Architect explained that the plans and color diagrams are meant to address the variance requests without the distraction of architectural details.

A motion was made by Council Member Kozloski and seconded by Council Member Myers to adopt Resolution 2017-42 approving a side yard setback variance and a side yard encroachment plane variance to authorize construction of a new home on the property at 1909 Beach Lane with the conditions as listed in the resolution. With all members voting in favor, the motion carried.

Lehman’s builder addressed condition nine and stated they will document the existing plantings and replace them up to that point.

11.2. Ordinance No. 117, 2nd Series – Zoning Code Amendment Update

Taylor stated that they cannot approve the updated zoning code tonight due to a new 10-day notice requirement. Gozola requested discussing 13 points that he either wants feedback on or that are new changes that Council has not yet reviewed. Gozola reviewed the following:

- Page 8, Table 2-1: Roles of Decision Making Bodies. For subsections 2.4(A) - 2.4(F), 3.7(G) and (I), Planning recommends that the Zoning Administrator be listed as “Ad” – Advisor, but City Attorney Hilke recommends his role be listed as “R”-Recommendation (Responsible for Review and Recommendation). Orehek said Planning wants to be sure that their recommendation is presented to Council along with the Zoning Administrator’s recommendation. Council thinks Gozola currently presents the Planning Commission’s recommendation and decided to have his role in those sections as “R” - Recommendation.
- Page 10: Board of Adjustment and Appeals. Currently the Board consists of members of the City Council. Planning recommends a new body made up of four Council members and three Planning commissioners with four members as a quorum. Council decided that the elected officials should remain as the Board and requested it be kept as it is now.
- Page 12: Attorney Hilke recommends that the Zoning Administrator be allowed to make recommendations on planning issues. Council agreed.
- Page 16: Gozola recommends escrow or performance agreement options. Council agreed.
- Page 26: Hilke recommends that variance review criteria may be modified time to time by statute or court decisions.
- Page 27: Hilke recommends that the Planning Commission may be given the opportunity to review appellant information prior to review by the Board of Adjustment and Appeals and then the public hearing would be held by the Board of Adjustment and Appeals. Currently the public hearing is held at the Planning Commission meeting. Bartel expressed concern about the language of the 60 day time frame as it is written. It appears it could go directly to the Board and skip Planning if they don’t have enough time. Gozola will work with Hilke on the language and bring it back to Council in November.
- Page 39 – Hilke recommends that an appellant has 30 days to file an appeal of an administrative decision. Council then discussed #3, and questioned the 10 day reference. Nell Mathews asked to discuss who hears the administrative appeal and suggested the Planning Commission be used as an advisory body. She discussed her experience with the appeals process. She does not feel the process is fair. Joann Anderson said that it was discussed at the Planning meeting and Orehek said that is why they came up with the proposal to add planning commissioners to the Board. Orehek said the Planning Commission agrees with it as proposed. Anderson suggested a third party. Council said the appellant has their own professional to support them and the Zoning Administrator is the expert for the City. If they didn’t use Gozola as the expert, then the City would have to hire another expert. Taylor said it is similar to the tax valuation process. Council discussed that the Planning Commission is not the expert and they would want to know why the Zoning Administrator made the decision in the first place. Council agreed to leave it as it is written.
- Page 60, Table 3-3 Specialized Yard & Lakeshore Setback Requirements: Sheds would not have a specialized setback requirement and can go up to 75 feet from the lake. Patios would remain at 75 foot lakeshore setback and with a 8 foot side yard setback as previously discussed. Nell Mathews stated that at a previous meeting, Council agreed to not allow patios into the AMBS or into the side setback. She then handed out photos of the view of her neighbors patio from her property. Taylor stated that the Planning Commission and the City Attorney have reviewed this requirement. Jennifer Halverson stated that Planning may have changed their minds after Gozola left the Planning meeting. Orehek said Planning has not

seen the updates in green from the City Attorney. Taylor directed Orehek to take Table 3-3 and the proposed recommendations from the City Attorney back to Planning and present their recommendations to Council in November.

- Page 67, Table 3-6 R-1 Development Standards: Planning Commission added a footnote referencing other sections of code referring to hardcover.
- Page 138: City Attorney recommended adding that fence removal costs be borne by the property owner.
- Page 155, Table 5-2 Permitted Accessory Uses: The Planning Commission recommends amending the table to specifically identify what is not a structure. Gozola does not think it is necessary and recommends relying on the definitions. Orehek said Planning didn't want to limit land use. Council prefers to rely on definitions and not amend the table with asterisks.
- Page 185 Enforcement: Council approved the City Attorney's edits in green.
- Page 212- Definition of Impervious Surface (Hard Cover): The current code includes rip rap as hardcover. The recommendation is to remove rip-rap as well as rock over permeable surfaces from hardcover. Rock walls would still be considered hardcover. Council agreed.

Bartel asked who pays for complaints on suspected code violations on page 186. This is a policy decision that Council will need to discuss at a later date. She then referred to page 170 and said there is no provision on how long someone has to remove a SWECS. Planning will review and make a recommendation. She noted a typo on page 159, 8A. She asked if resurfacing a driveway is considered general maintenance. Planning did not want to trigger a permit for resurfacing as long as there is no change to the shape. On page 37, she asked why an interim use runs with the land. Specific situations can be written into the interim use, such as accessibility provisions.

Gozola explained that specialized lakeshore setbacks would remain the same as they are now and were set aside for future discussion if the Planning Commission would like to continue to discuss them.

Planning will review the changes at the October meeting and the final version will be on the November Council meeting agenda for approval.

12. New Business

12.1. Proposal for Study of Replacing Remaining 4" Water Mains - Stantec
Administrator Griffin said the study is approved in the 2017 Capital Improvement Program and budget. The study would provide accurate costs for replacing the water mains. She met with Alan Carlson and Jaci Lindstrom and they recommended moving forward with the study.

A motion was made by Council Member Bartel and seconded by Council Member Myers to approve Stantec's proposal authorizing the study to replace remaining 4" water mains. With all members voting in favor, the motion carried.

12.2. Decorating City Spaces

Kozloski asked if the library or the parkway area in front of City Hall can be decorated with holiday lights. Most cities decorate for the holidays. Myers stated that Parks seems to have too much work already and the discussion turned to proposing the idea to Civic. Berent could possibly install them. Myers will talk with Parks and Nell Mathews will ask Civic about lights. Council discussed who will pay for lights.

13. Treasurer's Report

13.1. Consider Motion to Approve October Checks

A motion was made by Council Member Bartel and seconded by Council Member Myers to approve 56 checks numbered 16340 through 16395 in the amount of \$75,428.45 for October 2017 expenses. With all members voting in favor, the motion carried.

13.2. YTD Budget, Previous Year Comparison Reports

Howarth stated the areas of concern continue to be legal fees and salary adjustment but he believes the City should be able to make up that amount. He stated when they scheduled the investments, the three month treasury note matures on October 31, 2017 and he wants authorization to reinvest it for another three month period.

A motion was made by Council Member Bartel and seconded by Council Member Myers to approve Treasurer Howarth to reinvestment the matured investment for another three month period after review of actual expenses and determination that the funds are not needed by the City. With all members voting in favor, the motion carried.

13.3. Outstanding Accounts Receivable Reports

13.4. 4M and Investment Reports

Howarth stated that Griffin will verify if CIP and other budgeted funds will be spent and project all expenses through the end of the year. Council discussed the use of reserves. Taylor then discussed the impact on property taxes for a 14% increase in city taxes. On a \$1 million home, the impact would be about \$600.

14. Old Business

14.1. Possible Nuisance Ordinance Violations Update – 2328 Lafayette Road

Administrator Griffin referred to an email from Roger Peitso, the City's building official, who stated there have not been any improvements to the property. Council directed Griffin to have Roger Peitso write a letter to the resident stating that there have been no improvements and he has until a specific date in November to give the city an update on the progress or Council will take action at the November meeting. Griffin will ask the police to serve the letter. City Attorney Hilke will review the letter prior to the police delivering it.

14.2. City Council Code of Conduct

Griffin included the updated Code of Conduct policy and Statement of Values in the packet. The policy in the packet is based on the model policy from the League of MN Cities. The code of conduct is a law based document which incorporates court rulings or state statutes. Attorney Hilke has not reviewed the policy. Howarth expressed concerns about being in violation if he expresses personal concerns during a Council meeting. Mathews stated that elected officials bring different experience and perspective and they just should not cross a line. Howarth recommended Hilke review the policy and Council can discuss it at the next meeting.

14.3. Amendment to Outside Employment Policy

Howarth asked why the City would allow Berent to respond to a fire call during City working hours. The policy outlines conditions in which he can respond. Taylor said they can ask Excelsior what

level of call he was allowed to respond to when he worked there. Griffin will update the quarterly report requirement to add the date of response, time left Minnetonka Beach and time returned.

A motion was made by Council Member Myers and seconded by Council Member Kozloski to adopt the amendment to Outside Employment Policy. With all members voting in favor, the motion carried.

15. Action Notes and Staff Reports

15.1. Council Meeting Action Notes

Howarth requested a report from Griffin of the assessed values vs sale price and date sold for all homes sold in 2017.

15.2. Clerk's Report

Honey worked on updating the Water Supply Plan for Stantec. They will meet to finalize the plan for submittal to the DNR. The DNR will be looking for some water conservation measures which will eventually be brought to Council for adoption.

15.3. Administrator's Report

Administrator Griffin recognized Clerk Honey for achieving her Certified Municipal Clerk Certification.

16. Council Reports

16.1. Mayor's Report

Taylor stated that he, Bartel and Griffin have been meeting to discuss the Comprehensive Plan update. He received the specialized checklist from the Met Council which the City is required to fulfill. Taylor will review the current comprehensive plan and compare it to the checklist. He will also determine what work can be done by the city and what needs to be done by others. Griffin asked Stantec to submit new proposals for updating the plan to meet minimum requirements only.

16.2. Liaison Reports (if necessary): Kozloski – Docks, Bartel – Planning, Lindstrom – Utilities/Civic, Myers – Parks

A motion was made by Council Member Bartel and seconded by Council Member Myers to adjourn the meeting at 11:32 pm. With all members voting in favor, the motion carried.

PUBLIC IN ATTENDANCE – Nell Mathews, Sue Kozloski, Bob Stretmater, Patty Rezabek, Marilyn Regnier, Jim Lundberg – LMCC, Jennifer Halverson, Colby Skelton, Ted Martin, Harlan & Dee Lehman, Corey Orehek

Respectfully submitted,

Heidi Honey, City Clerk