

Monday, December 14, 2015 7:00 PM
CITY OF MINNETONKA BEACH
CITY COUNCIL MEETING MINUTES

Roll Call: Mayor Rick Skalla, Council Members: Jill Bartel, Paul Kozloski, Jaci Lindstrom, Mike Taylor. Absent: Treasurer Randy Gilster.

Staff Present: City Administrator Susanne Griffin, City Clerk Heidi Honey, Public Works Director Ben Young.

Guests: Police Sergeant Chad Stensrud

1. Mayor Skalla called the meeting to order at 7:28 p.m.

2. Public Works Director Young led the Pledge of Allegiance.

3. Approve Agenda for the December 14, 2015 City Council Meeting.

Council Member Bartel asked to move 6.1 Police Report to after 4.1 Open Forum. Council Member Lindstrom asked to put the Mathews/Hacker/Santiago issue on the agenda. Mayor Skalla explained that would be out of order because it is a Board of Adjustment issue and not a City Council issue.

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

4. Open Forum

4.1. Guests

4.1.1. State Senator Osmek was unable to attend.

4.1.2. Mayor Skalla explained that there will be no open comments regarding the Board of Adjustment appeal because the Board of Adjustment is a different body than the City Council therefore only comments regarding City Council can be heard. He went on to explain that Nell Mathews and Max Hacker, appellants, can request the Board of Adjustment to re-convene but there are specific requirements for that process. Any comments regarding the appeal will be considered out of order and not heard today.

John Winston, attorney – Certified Real Estate Law Specialist.

Mr. Winston commented that he was asked by the appellants to look at the issue for them to see if he believed Council considered everything. He believes that Council didn't get an opportunity to consider everything. They would like the Board of Adjustment hearing to be reopened to consider procedural and substantive issues. Mayor Skalla asked them to submit the request in writing to City Hall to start the process. Mayor reminded everyone that this is not the Board of Adjustment and only Council related items will be discussed, not Board of Appeal items.

Max Hacker, Nell Mathews – 2643 Arcola Lane.

Mr. Hacker asked if anyone was missing from Council tonight that was in attendance as the Board of Adjustment. Mayor Skalla explained there are notification requirements for the Board of Adjustment to meet and comments cannot be heard at this Council meeting regarding the Board of Adjustment ruling. Mayor Skalla further explained that there must be a request for the Board of Adjustment to meet again, and, if the Board decides to re-open the appeal, there would

have to be public meeting notifications. Mayor Skalla recognized that Mr. Hacker would like to have the issue put on the calendar for another meeting but he stated that the procedural rules of the City must be followed to protect the appellant as well as all citizens of the City. Ms. Mathews referred to Section 110, 2b of City Code and said as a City Council they have the power to issue a stop work order if a permit was issued on an invalid basis or if there was inaccurate or incomplete information for the basis of the permit. She is requesting Council to issue a stop work order at 2637 Arcola Lane. She also stated that she does not know the process for Board of Adjustment. She stated they informed the City on Friday, December 11, 2015 about this and still has no clear direction of the process to re-open this. Mayor Skalla stated again to send written notice to the City requesting the Board of Adjustment to reconsider. When that notice is received, the City will begin the process to reconsider. Mr. Winston said they would re-address a letter to the Board of Adjustment and send it to City Hall. Mr. Hacker asked the time frame for the process. Mayor Skalla stated that he understood Mr. Hacker's concern and was unable to answer to the question at this time.

Corey Orehek – Vice Chair of Planning Commission

Mr. Orehek stated he is here as a citizen with the Planning Commission but not speaking for the Planning Commission. He stated there have been issues brought to their attention over the past few weeks where project may or may not have violated City ordinances. He feels Planning Commission should have been consulted as an advisory commission for Council. He also stated that the Planning Commission feels the presentations created by Zoning Administrator Gozola are not always neutral with pros and cons versus advice on how the City ordinances are interpreted. This is different from the previous Zoning Administrator.

Mayor Skalla explained that the role of the Planning Commission is to look at ordinances, make recommendations for changes in ordinances, and present the recommendations to Council. In the same aspect, variances are considered by the Planning Commission and then, working with staff, making recommendations to Council. That is the role of the Planning Commission. The role of the Council is then to consider the recommendations and make rulings on them. If there are any rulings that a citizen does not agree with, they can appeal the ruling with the Board of Adjustment which is a quasi-judicial part of the City. The role of the Zoning Administrator is to look at the ordinances which are in place and administer rulings or interpretations to determine whether what is being requested is consistent with code. If the Planning Commission determines that there are codes that do not make sense, they can recommend changes to Council and Council would take action if they find that things need to be changed. If Council thinks something needs to be changed, they would send it back to Planning Commission to research it along with Staff and make recommended changes to Council. Mayor Skalla went on to say that presentations can be interpreted by different people differently. He suggested that the Planning Commission and Zoning Administrator Gozola work together to make the process better for the City and added Administrator Gozola is doing a great job.

Steve Howarth – Planning Commissioner

Mr. Howarth stated he agrees with Mr. Orehek's concerns. He believes there used to be more historical judgment in code interpretations and today there are more black and white interpretations. He is concerned with the amount of power given to the Zoning Administrator and thinks his interpretations are changing the overall interpretations of the City's ordinances. Mayor Skalla said that new eyes always bring new interpretations and it is the Planning Commission's role to discuss code interpretation with the Zoning Administrator to educate him on decisions

made in the past. They should continue to have discussions about the grey areas of code. He went on to say that Administrator Gozola is the expert on code interpretation. Planning Commission can influence the Administrator's interpretations. Mayor Skalla said the role and the power of the Zoning Administrator has not changed, but the person in that role has changed. Mayor Skalla suggested they continue to work together on the zoning code work plan and make recommendations to Council.

5. Approve Minutes

5.1. Regular Meeting of November 9, 2015

Council Member Lindstrom noted that the time at the top of the page needs to be changed to 8:25pm and the names of council members who made the motion to approve the minutes needs to be added. Clerk Honey will make these changes. The time and motion information to close the November 9, 2015 meeting needs to be recorded. Administrator Griffin will listen to the Closed Session tape to get the time and motion information.

A motion was made by Council Member Bartel and seconded by Council Member Lindstrom to approve the Council meeting minutes of November 9, 2015 as amended. With all members voting in favor, the motion carried.

5.2. Board of Adjustment of November 9, 2015

Council Member Lindstrom commented that the edits to the minutes provided by Zoning Administrator Gozola were significant so she would like Clerk Honey to listen to the tape to make sure the minutes are accurate to what was said. Council Member Bartel agreed. Administrator Gozola said that he often provides edits to the minutes and believes the audio will support his edits. Council wants to make sure it is as close to verbatim as possible for this meeting. Clerk Honey and Administrator Griffin will review the audio and bring the minutes back at the next meeting.

A motion was made by Council Member Lindstrom and seconded by Council Member Bartel to table the Board of Adjustment meeting minutes of November 9, 2015 until Administrator Griffin and Clerk Honey listen to the tape to verify accuracy. With all members voting in favor, the motion carried.

6. Police Report –

6.1. Police Report – November Report

Sergeant Stensrud reported there has been an increase in thefts from unlocked cars and garages. Thieves are taking whatever they can grab. There has also been an increase in package theft from doorsteps. Clerk Honey will put an article in the Beachcomber reminding residents to not leave valuables in vehicles and have neighbors take packages. Sergeant Stensrud also reported an increase in telephone scams with the caller asking for money to be wired or bank account information. The Orono Police have scheduled the Use of Force class for February 6, 1-5 pm. They will send invites.

7. Consent Agenda

7.1. Fire Report – November

7.2. **Resolution 2015 – 46** 2016 Council Meeting Dates

7.3. **Resolution 2015 – 47** Reappointment of Dennis Klohs as the City's LMCD Representative

7.4. Consider Amending Personnel Policy to Allow for Post-Employment Health Care Savings Plan

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

8. Planning and Zoning

8.1. Consider Adopting and Authorizing Summary Publication of Ordinance No. 106, 2nd Series, An Ordinance Regulating Small Wind Energy Conversion Systems (SWECS)
Zoning Administrator Gozola stated that this ordinance is recommended by staff and the Planning Commission. This ordinance is in response to a year-long moratorium which expires December 28, 2015. Administrator Gozola reviewed the ordinance with Council and referred to various changes in code that were in his report. Section 1 includes findings of fact. Section 2 has new definitions relating to SWECS. Section 3 amends Section 206, sub. (6) the Permitted Accessory Use Table I showing the SWECS would not be allowed in any required setback. Section 4 amends Section 207 sub. (2) the Accessory Land Use Performance Standards, Table II which shows SWECS setbacks of front, rear and side of 50' and a lake set back behind AMBS or 75', whichever is greater. Administrator Gozola went on to review Section 5 showing new section 209 (7) minimum standards for SWECS. SWECS must prove viability by certification, and require a conditional accessory use permit. Section 6 is the repeal of moratorium.

Administrator Gozola showed a map with possible SWECS installation locations based on lot size, setbacks, structure setbacks, view protection, and tree protection. This resulted in 16 possible locations. Council Member Taylor said the Planning Commission recommend taking action tonight. Council Member Bartel asked if multiple designs were considered. Administrator Gozola said they did not specify certain designs, but instead, looked at a variety of factors that may relate to varying designs to protect the City from SWECS impact. Council Member Bartel asked to include language regarding alternative designs. He said Council could pass this tonight and then they would have to hold another public hearing if they decided to amend it at a later date.

A motion was made by Council Member Taylor and seconded by Council Member Lindstrom to approve Ordinance No. 106, 2nd Series: An Ordinance Amending the Zoning Chapter of the Minnetonka Beach City Code to Regulate Small Wind Energy Conversion Systems (SWECS). With all members voting in favor, the motion carried.

A motion was made by Council Member Lindstrom and seconded by Council Member Bartel to Approve Resolution 2015-50 Authorizing Publication of Ordinance No. 106, 2nd Series by Title and Summary. With all members voting in favor, the motion carried.

8.2. 2016 Zoning Code Review Work Program

Zoning Administrator Gozola reported on the 2016 Work Plan and Budget. Administrator Gozola presented Planning Commission with a list of zoning issues that have come up. The work plan is broken into high, medium and low priority items with two potential budgets for 2016. The Planning Commission recommends cost savings by dealing with all of the issues at one time. That option would address all listed issues at one lump sum cost or it can be done at hourly not to exceed. Another option is to approach each item al la carte by focusing on high priority items first and dealing with lower priority items later. The main differences in costs are driven primarily by preparation for and attendance at meetings. Administrator Gozola asked Council to direct staff in the manner in which they would like to proceed.

Council Member Taylor asked if what was presented to the Planning Commission is the same as what is on the itemized list tonight. He said Planning Commission is very supportive of this program but knows it is not in the budget. Administrator Gozola stated this is a more detailed list presented tonight. Council Member Kozloski asked if there has been a large overhaul and change of the code in the past. This has not been done in the past. Mayor Skalla and Council agreed this is very important so there are not differing perceptions and code is very clear. He suggested using some reserves if needed to do this work program. Council Member Kozloski asked how the City can be assured there will not be interpretation issues after this is completed.

Mayor Skalla explained that the issues in the past were because of differences in interpretation between citizens and the Zoning Administrator. Administrator Gozola added that every city experiences this with their code. Items are added piecemeal and then eventually the entire code needs to be examined for consistency.

Council Member Lindstrom asked about the time table and process. Administrator Gozola stated it would take approximately a year to complete. He recommends breaking it into components starting with the legal issues to make sure the framework is up to code. He would then update processes with applications, permits, commissions and other processes. He then would review the residential and P-1 zoning district and then move on to performance standards. These components would then form the zoning code. He will do a timeline for Council and they can amend it before they start if Council thinks it is necessary. Council asked how the current AMBS moratorium would be affected by the City code rewrite. The City would follow the current process. This code update would not include a legal review so the City will need to get a quote for that from City Attorney Hilke for that additional cost. Administrator Griffin will get a quote from City Attorney Hilke.

A motion was made by Council Member Taylor and seconded by Council Member Lindstrom to approve the 2016 Work Plan and have Administrator Gozola come back to Council with a contract for the proposed scope of work for \$30,000 in January 2016. With all members voting in favor, the motion carried.

Mayor Skalla called a five minute recess at 8:57 pm and called the meeting back to order at 9:02 pm

9. Treasurer's Report

9.1. Consider Motion to Approve December Checks

Griffin reported the settlement statement is \$58,000 higher this year than last. Council Member Bartel asked if any of the Lindquist and Venum charges are related to Dawson. Administrator Griffin can provide a breakdown of Lindquist and Venum charges at the next meeting. Council Member Lindstrom commented on large deposits. Administrator Griffin stated they were primarily utility payments.

A motion was made by Council Member Taylor and seconded by Council Member Bartel to approve 47 checks numbered 15329 through 15375 in the amount of \$99,639.90. With all members voting in favor, the motion carried.

9.2. YTD Budget Report and Previous Year Comparison Report

YTD report was handed out at the meeting. There will be no police contract bill by the end of the year. There may be one more from Sambatek and one more from the City Attorney. The box for the

plow truck has not been paid for yet. It will be about \$20,000. There is approximately \$50,000 in expenses remaining to be paid by the end of the year.

- 9.3. Motion to authorize payment of 2015 invoices received between December 15-31, 2015 to be approved at January 2016 Council Meeting.

A motion was made by Council Member Taylor and seconded by Council Member Bartel to authorize payment of 2015 invoices received between December 15-31, 2015 to be approved at January 2016 Council Meeting. With all members voting in favor, the motion carried.

10. Old Business

- 10.1. Resolution 2015-48 Consider Adopting 2016 Final Budget and Tax Levy
Council Member Kozloski asked if Council should respond to the resident who sent a letter to Council about the taxes. Administrator Griffin can send a letter thanking him for his comments.

A motion was made by Council Member Lindstrom and seconded by Council Member Taylor to approve Resolution 2015 – 48 Adopting the 2016 Final Budget and Tax Levy. With all members voting in favor, the motion carried.

- 10.2. Resolution 2015-49 Authorizing Partial Bond Payment from Water Revenues

A motion was made by Council Member Bartel and seconded by Council Member Taylor to approve Resolution 2015- 49 to Authorize Partial Bond Payment from Water Revenues. With all members voting in favor, the motion carried.

11. New Business

- 11.1. Tim Prindiville/Sam Heins – 2217 Huntington Point Road East – Regarding LMCD Variance request to adjust extended lot lines at Dock 10.

Mr. Prindiville representing Sam Heins and Stacy Mills at 2217 Huntington Point Road East gave Council a presentation showing the view of Dock 10 from the Heins/Mills property as well as site survey drawings with terrestrial boundary lines projected into the lake in this area. Based on his drawings, he showed that lots lines converge in the dock use area and that Dock 10 is visible from the Heins/Mills property. Mr. Prindiville went on to state that they believe the current location of Dock 10 presents some problems. He said it is unsafe because there is little room to maneuver, and it is unsanitary because the canopies are full of waste from the gulls and it is washed into their swimming area when it rains. He also said it is unsightly and obtrusive and denies them to their right to privacy. In the past, the homeowners of the property to the south allowed Dock 10 to be in a different configuration and in the northern portion of their property. He is proposing rotating the dock toward the south to be located evenly between the two property owners.

Council discussed the gas line located along the lake bottom which goes from this area to Big Island. It is currently not being used but could be used in the future. Council Member Taylor said that by supporting this, the City is advantaging one resident while disadvantaging another resident. The City does not want any change to Dock 10 to affect the City's ability to have four slips at this dock. Dennis Klohs, LMCD representative, gave history of Dock 10 and the vacation of Lafayette Road.

Mayor Skalla asked how this would benefit the City. Mr. Prindiville admitted it would not. Mayor Skalla agreed with Council Member Taylor that it is not in the City's best interest to benefit one resident while disadvantaging another. He went on to say that lot lines traditionally dictate dock locations and the property owner knew the lot lines when then bought the property. Mr. Prindiville said if the City supports the application, then the LMCD would be more likely go along with it. Mr. Heins stated they want to avoid litigation but the current situation is not viable and with the dock variance application process it can be challenged every year. He is not asking to remove the City docks but he wants the burden of the dock to be shared between him and the homeowners to the south.

11.2. 2016 LMCD Multiple Dock License Application

Administrator Griffin received a proposal from the Dock Committee. She was not able to meet with the LMCD to discuss the proposed addition of two jet-ski slips and a larger slip at the priority one dock at the swimming beach. She requested Council table this until the January 11, 2016 Council meeting so she can meet with the LMCD to make sure the City would not lose anything with the proposed changes. Council Member Bartel stated she would not support additional slips at the swimming beach.

A motion was made by Council Member Bartel and seconded by Council Member Kozloski to table the 2016 LMCD Multiple Dock License Application until the January 11, 2016 Council meeting. With all members voting in favor, the motion carried.

12. Council Meeting Action Notes and Staff Reports

12.1. Council Meeting Action Notes

Administrator Griffin discussed the unfunded liability funds for post-employment severance and a Post-Employment Health Savings Account. She has discussed this with all staff members eligible and they are in favor of the concept. She will do more research and report back to Council. It would require an amendment to the personnel policy.

Public Works Director Young updated the status of the driveway at 2542 Lafayette Road. He spoke with the son of the property owner who he is the resident there. Administrator Griffin will follow up with Mary McLaughlin, the property owner, and explain the details that Council is proposing which is a one-time repair of the asphalt and she would be responsible to repair the concrete. After that discussion, the City Attorney will follow up with a letter stating the details.

Administrator Griffin also reported that the City is still negotiating the contract with Revnet for a new email server. Some of the language is driven by Microsoft so she will follow up with City Attorney Hilke.

The hazardous tree at 2303 Huntington Point Rd. has been removed.

Mayor Skalla stated that if Council wants to work on amending the employee review policy, they can undertake that. Council Members Bartel and Kozloski offered to work with staff on amending the policy and bringing recommendations back to Council.

Utilities did not have a quorum for the regular meeting on December 9th so they will meet on December 21st. Planning Commission meeting is January 7, 2016.

12.2. Director of Public Works Young

Public Works Director Young reported that he needed to fix the curb stop at the Dawson property, 2932 Northview Rd, and was trying to coordinate that work with the demolition company. The demolition was postponed, so he had to go ahead with the repair. He also repaired a water main leak last week at Lafayette Road and Shoreline Drive. The bill for that will need to be paid this year. He anticipates the cost to be about \$6,000. The bearings went out on the lift station pump at Lake Road.

12.3. City Clerk's Report

Clerk Honey stated that the Home Sale and Building Permit reports are in the packets. She handed out information from Excel Energy regarding LED street lighting. Excel Energy is hoping to start rolling out the LED program by second quarter of 2016. LED lights would save the City 4-6% on the energy usage portion of the monthly bill.

12.4. Administrator Griffin

Administrator Griffin reported that the City received the LMCIT dividend check. It is approximately \$3,000. She also reported that the Mayor is allowing City Hall to close at noon on December 24, 2015.

13. Council Reports

13.1. Mayor's Report – Mayor Skalla provided the following summary statement of the closed meeting: A closed City Council session was held November 9, 2015 to discuss the personnel review of Susanne Griffin, City Administrator. The Council had a broad discussion providing feedback to Susanne.

Mayor Skalla reported on the police meeting. They talked about the difficulties in being a police officer, even in this area. He suggested to Chief Farniok that Orono Police communicate their message to residents. Mayors and city managers met to discuss the police contract and proposed changes. They are planning to meet again and will bring suggestions to Council after they meet. The current contract is a three year rollover. The last time it was amended was 2010, when the formula changed for fees.

13.2. Liaison Reports-

Council Member Bartel – Civic hosted a successful Tea and Toddies Holiday Party.

Council Member Kozloski – no report

Council Member Taylor – Planning and Docks was already discussed. Planning Commission moved their December meeting to January 7, 2016. Planning Commission talked with the Dock Committee, and plan to talk with each committee for feedback on the transportation plan. There is a public hearing on January 7, 2016 for AMBS ordinance amendment proposals.

Council Member Lindstrom – The Utilities Committee meeting was informational only because they did not have a quorum. The meeting is rescheduled for December 21, 2015. They are seeking guidance from Council for deadlines on InfraSeek and the stormwater drainage projects in CIP. There is \$10,000 for study and \$10,000 for design for the stormwater projects. Mayor Skalla said they should come back to Council with the timeline based on the amount of time they predict it will take because they are more familiar with the project. Council Member Lindstrom also reported that City Engineer Amundsen believes the City's leaf removal system may be the most effective way to reduce phosphorous. There are studies showing that the removal of leaves and street sweeping is the most effective way to reduce phosphorous. Engineer Amundsen suggested meeting with the MCWD to discuss the City's leaf removal program. More information on that will be available after the

Utilities Commission meeting on December 21st. Civic Committee hosted the Holiday Tea and Toddies and it was a great success.

A motion was made by Council Member Taylor and seconded by Council Member Bartel to adjourn the meeting at 10:31 pm.

PUBLIC IN ATTENDANCE – The following individuals signed the sign-in sheet: John Winston, Nell Mathews, Max Hacker, Jody Spurduto, Jeff Steinke, Steve Howarth, Sam Heins, Dennis Klohs, Corey Orehek.

Respectfully submitted,

Heidi Honey, City Clerk