

**Monday, May 11, 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. Treasurer: Randy Gilster.

**Staff Present:** City Administrator Susanne Griffin; City Clerk Heidi Honey; Public Works Director Ben Young; City Attorney Wally Hilke.

**Guests:** Police Sergeant Chad Stensrud, Police Three Rivers Park District Representative Charlie Hise, Guest resident Helen Lindsay; Guest Attorney George Hoff.

- 1. Mayor Skalla called the meeting to order at 7:23 p.m.**
- 2. City Clerk Honey led the Pledge of Allegiance.**
- 3. Approve Agenda for the May 11, 2015 City Council Meeting.**

Administrator Griffin asked to amend the Consent Agenda with the addition of 8.4 to approve a dock permit application for dock 19-1, Paul and Christina Ridgeway.

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

Action Notes:

Council Member Kozloski asked for the status of City emails for Council. Administrator Griffin stated she will request Council approval during her staff report because it is a City expenditure. Council Member Lindstrom will have Tobacco Ordinance complete for the June 8, 2015 meeting. Mayor Skalla requested adding the Finance and Utilities joint meeting set for May 20, 2015 added to the Action Notes.

**4. Approve Minutes**

4.1. Regular Meeting of April 13, 2015

Council Member Bartel requested clarification on page 4 regarding the bids to replace the City Hall steps. Public Works Director Young and City Administrator Griffin confirmed the original contractor would be replacing the steps for no additional cost. They did get additional bids from other contractors to replace the steps along with completing the sidewalk project so the comparison would be fair when evaluating the sidewalk bids. Council Member Kozloski asked which lawsuit was referenced in 4.1. Mayor Skalla stated it was Brooks Lane litigation. City Administrator Griffin confirmed that in regards to the settlement, the City did not incur any cost. The City has not been charged any deductible as of yet.

**A motion was made by Council Member Lindstrom and seconded by Council Member Bartel to approve the Council meeting minutes of April 13, 2015. With all members voting in favor, the motion carried.**

**5. Open Forum**

5.1. Helen Lindsay – Beekeeping

Ms. Lindsay has five University of Minnesota beehives in Minnetrista. She harvested 20 pounds of honey but the intent is not so much for the honey but for the preservation of honeybees. She is an advocate for bees and currently there is a problem with colony collapse. Three of her five colonies collapsed in March. The University of Minnesota is working very hard to get community involvement to help. She believes being advocates for honeybees fits the Minnetonka Beach community. Many other cities have ordinances allowing bees. People confuse honeybees with wasps and bees that sting. The beehives are isolated and not in areas open to the public so it is safe and honeybees do not sting. She requested Council allow her to bring the head of the University of Minnesota Bee Squad to a Council meeting. Mayor Skalla told Council beehives are not allowed and considered a nuisance under City Code. Council would like to add this to the June 8 meeting.

**6. Police Report – April**

6.1. Police Report – April Report

Sergeant Stensrud reported a few burglaries in Minnetonka Beach. On Cross Point, someone went into a garage and took cash from a car. On Westwood Road, there was a burglary of wood piled up as well as things taken earlier in the year. Sergeant Stensrud reminded everyone to remove valuables from cars, lock cars and homes, and call police if something seems suspicious. There is an open investigation regarding methamphetamine found during a vehicle stop. The driver was not a resident of Minnetonka Beach. The half marathon went well on May 3 and police dealt with typical complaints. Masked Ninjas have been dancing around Mound. Police are aware of them and they are not being cited for crimes.

6.2. Dakota Regional Trail– Three Rivers Park District Representative

Three Rivers Park District Representative Charlie Hise reported there have been complaints about bikers on the trail, which is typical this time of year. There have been fishing violations from the Tanager Lake bridge. Warranty work on the seal coating on the trail will take place at the end of summer. They do not have the saturation dates yet for patrolling the trail but will get them to the City when they are available. Resident Helen Lindsay discussed dead trees east of Arcola Bridge lying along the trail. Officer Hise will follow up with Three Rivers maintenance. City Administrator Griffin offered to help Ms. Lindsay get in contact with Three Rivers. There was discussion about speed limits on the trail and bikers not abiding by traffic signs. Administrator Griffin stated that Boe Carlson, Danny McCullough and Hugo McPhee will be at the June 8, 2015 Council meeting with information on speed and safety issues on the trail. Mayor Skalla asked Administrator Griffin to supply information to Council Member Kozloski from a previous Council meeting when this was discussed so he has background information.

**7. Public Hearing**

7.1. Resolution 2015 – 20 Consider Amending Resolution 2015 – 10 (clarifying intent)

Mayor Skalla opened the public hearing at 7:50pm and explained the following guidelines for the hearing. The hearing is on a limited topic which is whether the intent of Council was to limit the variance granted by Resolution 2015-10 to a specific house plan and, if not, to consider the removal of condition 2 from the resolution. All comments are limited to the subject matter of the hearing. The hearing is not to re-open discussion or facts or to add any additional facts or reasons for the Council's decision in 2015-10. Comments that stray beyond that constraint will be deemed irrelevant to the hearing and may be curtailed. Following the hearing, the Council will consider whether to amend Resolution 2015-10. This process is for Council to listen and to ask any questions of what is brought forward. There will be no discussion at that time, just clarifying questions. Mayor Skalla asked those in support to speak first, followed by those opposed to it. Mayor Skalla noted there was

only one side present to speak. After that, Mayor Skalla will close the public hearing. City Administrator Griffin referenced a memo from her in the packet which states two requested actions. The first is to hold a public hearing taking comments on the consideration of amending Resolution 2015-10 specific to the paragraph two condition. The second is requesting a motion to approve Resolution 2015-20 amending Resolution 2015-10.

Beverly Aho, attorney at James H. Gilbert Law Group representing Mr. Scott Dawson addressed Council. The following is a summary of her public hearing statement. Ms. Aho stated there is false information in the proposed Resolution 2015-20. Ms. Aho stressed the importance of following procedures governed by Minn. Stat. 15.99 and Minnetonka Beach ordinances regarding written applications for a variance. She stated the importance of transparency and fairness in Council's deliberations and accuracy in Minutes and Resolutions. Ms. Aho described the sequence of events in Mr. Dawson's application process as follows: Mr. Dawson applied for a variance for a setback of 113' on October 6, 2014. The City then requested additional information. October 21, 2014, Mr. Dawson supplied requested information thereby completing the written variance application on that date. On November 10, 2014 the City extended time to consider Mr. Dawson's written request from 60 to 120 days per Minn. Stat. 15.99. January 12, 2015, Mr. Dawson's variance request was considered at a public hearing before City Council.

Ms. Aho stated the City provided Council with a draft Resolution 2015-10 which included denial of the written variance request. Mr. Dawson asked for approval of his written request and also submitted a draft Resolution approving the 113' variance. At that meeting, there were two resolutions, one asking that Council approve and one asking that Council deny. Council did not vote on the written requested variance on January 12, 2015. Mr. Dawson agreed to an extension to Feb. 10, 2014 to consider the requested 113' variance. She then stated the City provided Mr. Dawson with a letter to sign for the purpose of extending the time until Feb. 10, 2015. Ms. Aho stressed that Mr. Dawson only submitted one written variance request for 113' setback. He never withdrew or amended it. He only asked Council to approve it. Another public hearing took place at the February 9, 2015 Council meeting.

Ms. Aho believes the actions of Council at the February 9, 2015 meeting were not accurately reflected in the Minutes or in Resolution 2015-10 which was approved at the meeting. Gilbert Law Group submitted a letter dated April 29, 2015 stating Council has no jurisdiction to consider Resolution 2015-20. Because the time to consider the issue has expired, Council has no jurisdiction over the written variance request or Resolution 2015-10.

Ms. Aho went on to say that statements in Resolution 2015-20 are inaccurate and false. She requested Council read the 6<sup>th</sup> "Whereas" clause in Resolution 2015-20 stating "the Applicant has not agreed to the Variance [2015-10] in writing, despite requests from the City". She explained that Mr. Dawson did not agree to the variance because of two reasons. The first is that Council passed a resolution mandating that he build the home as planned, but with a setback so far back from the Lake that it would violate rear and side setbacks. The second reason is an inaccurate statement in Whereas Clause #11 of that Resolution, stating "Whereas, the City Council, at the request of the Applicant, continued its deliberation until its Feb 9, 2015 to consider a lesser variance." Ms. Aho said this is inaccurate because Mr. Dawson gave Council more time to consider his written variance request at 113 feet, not to consider a lesser variance. He did not withdraw or amend his written request.

Ms. Aho had reviewed the January 12, 2014 Council meeting minutes and transcript, and determined the following: Mr. Dawson requested approval of the variance request at 113'. Mr. Gilbert submitted

a draft resolution to Council to approve the variance. The City staff provided a draft resolution denying the 113' variance. Ms. Aho emphasized that Council never voted to approve or to deny Mr. Dawson's variance request on January 12, 2015 or on February 9, 2015 but instead considered at least 5 variance setback distances. The only written variance request by Mr. Dawson was for 113'. On Feb. 9, 2015, Council voted to deny a lesser variance at 127' and then voted to approve a lesser variance at 143 feet, which is Resolution 2015-10 but Mr. Dawson never withdrew and never amended his only written application for a setback of 113'. By Statute, Council should have denied his written application for 113' and then considered a lesser variance, but did not.

In looking at Resolution 2015-20, Ms. Aho referenced Whereas Clause #3, "Whereas, by Resolution 2015-10, adopted February 9, 2015 the City denied the requested variance from the AMBS..." but argues there was no vote to deny the request. She goes on to say the new Resolution 2015-20 is an attempt to re-write history. The draft Resolution 2015-10 that was in the Council packet on Feb 9, 2015 included language that denied Mr. Dawson's request but the Resolution 2015-10 that was approved did not. Minn. Stat. 15.99 states that failure to deny a variance within statutory timeframe is approved as a matter of law. Ms. Aho is seeking to amend their Complaint to include a count for declaratory judgment, asking the Court to approve the variance as submitted by Mr. Dawson. She submitted a letter dated May 6, 2015 for the record.

Ms. Aho summarized that she feels Council has no jurisdiction to vote on Resolution 2015-20, Mr. Dawson's written application was never denied, all time periods for review and appeal have expired, and the resolution as drafted contains false information. She requested Council not take any action on the proposed resolution.

City Attorney Hike stated for the record the Order of Judge Mary Vasley which states that Council can have this hearing and can vote on this tonight. Mayor Skalla closed public hearing at 8:06pm. No discussion.

Council Member Bartel asked for clarification on the 3<sup>rd</sup> Whereas. City Attorney Hilke stated that in the complaint when Dawson filed the lawsuit, they had alleged that the City had denied the variance by granting an alternative variance. The City's legal position is that the City denied the variance. Ms. Aho asked to speak. Mayor Skalla reminded her that the public hearing was closed.

**A motion was made by Council Member Taylor and seconded by Council Member Lindstrom to approve Resolution 2015-20 deleting condition #2 on page 5 of Resolution 2015-10 clarifying the City Council's intention that there is not a condition on the granting of the variance that a specified structure be built. Council Members Bartel, Lindstrom and Taylor voted in favor. Council Member Kozloski abstained. The motion carried.**

## **8. Consent Agenda**

- 8.1. Fire Report – April
- 8.2. **Resolution 2015 – 21** Consider Appointment of Steve Howarth to Planning Commission
- 8.3. **Resolution 2015 – 22** Consider Appointment of Linda Cornelius to Utilities Commission

Mayor Skalla introduced Steve Howarth, who would like to serve on the Planning Commission. Steve Howarth discussed his desire to serve on the Planning Commission to help preserve the heritage of Minnetonka Beach.

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

## **9. Treasurer's Report**

### 9.1. Consider Motion to Approve April Checks

**A motion was made by Council Member Lindstrom and seconded by Council Member Bartel to approve checks numbered 15000 through 15043 in the amount of \$54,291.79. With all members voting in favor, the motion carried.**

### 9.2. YTD Budget Report and Previous Year Comparison Report

Treasurer Gilster stated everything shows positive on the January through December Profit & Loss Statement (P & L). Dock permits and building permits are in line with expectations. There was discussion about the expectation that expenses should be 33 percent of total budget this time of year yet some things are higher. The comparison actually needs to be made to the previous year instead of looking at the percentage. There was discussion about the process for setting the budget based on the P&L. Council Member Kozloski discussed setting a benchmark for line item details when they go over a certain percentage. Treasurer Gilster said if there is truly an outlier, he will work with City Administrator Griffin to provide detailed information at Council meetings. Mayor Skalla recommended any Council member with detail questions regarding the budget to contact City Administrator Griffin prior to the Council meeting so she can provide the detail for everyone at the meeting. City Administrator Griffin discussed the process for the outstanding accounts receivable. The residents have been invoiced, they will receive another statement and they will receive a letter that Council will consider special assessments to their taxes in August. Mayor Skalla asked Treasurer Gilster about setting up fund balances. That will be discussed at a future Finance Committee meeting.

### 9.3. Outstanding Accounts Payable Report – Report received.

## **10. Old Business**

### 10.1. Planning and Zoning Consultant Recommendation

City Administrator Griffin referenced her memo in the Council packets which requests two actions. The first is to accept the recommendation of the Planning and Zoning Administrator Review and Selection Committee to contract with Sambatek, Inc., and specifically with Ben Gozola and Laura Chamberlain as the City's contract Planning and Zoning Administrator. The second requested action is a motion to authorize the Mayor and City Administrator to negotiate a contract with Sambatek, with review by the City Attorney, for Council to consider at the June 8, 2015 Council meeting. City Administrator Griffin also stated another option which would be for Council to authorize the Mayor to enter into an agreement with Sambatek, with review by the City Attorney, for Council to ratify at the June 8, 2015 Council meeting. This option would speed up the process. City Administrator Griffin reviewed the process that was followed by the selection group consisting of City Administrator Griffin, Mayor Skalla, Planning Commission Chair Andrew Myers, and Planning Commissioner Max Hacker to select the new P & Z Administrator. Council discussed the cost of the new P&Z Administrator versus Dick Krier. Last year, the City expense for P & Z Administrator Krier was \$18,000 and Sambatek would be approximately 27 percent higher, or \$23,300 for the same number of hours but they feel there will be significant benefits with this firm and the increase was budgeted for. Their rates are middle to low of the other candidates' rates. There was further discussion about the experience, size of firms, ability to have a lead and backup, references from other cities, and which firm was the best fit for the City, it's residents and staff. None of the firms

had litigation experience. This firm will handle all Planning and Zoning for the City and it's residents including drafting resolutions for variance requests. Council Member Lindstrom asked how the new P & Z firm would transition into the position and also if there is a probationary period with the firm. Mayor Skalla stated Sambatek will reach out to Mr. Krier, review City ordinances, and talk with the Planning Commission to understand Minnetonka Beach. Council Member Kozloski asked who does the P & Z for other local cities. City Administrator Griffin stated many have their own staff and use a firm like this to do special projects.

**A motion was made by Council Member Taylor and seconded by Council Member Lindstrom to accept the recommendation of the Planning and Zoning Administrator Review and Selection Committee to contract with Sambatek, Inc. and specifically with Ben Gozola and Laura Chamberlain as the City's contract Planning and Zoning Administrator and to authorize Mayor Skalla and City Administrator Griffin to negotiate a contract and authorize the Mayor to enter into a contract with Sambatek Planning Services, with review by the City Attorney, for Council's full approval at the June 8, 2015 Council meeting. With all members voting in favor, the motion carried.**

#### 10.2. Administrative Citations Ordinance

City Administrator Griffin requested direction from Council whether to draft an administrative citation ordinance for Council consideration at the June 8, 2015 meeting. Orono would handle the administration of the citations and payment to the City with no additional staff work for us. Minnetonka Beach would try to have the same citations as Orono for consistent enforcement. The fee schedule would be set by resolution.

**A motion was made by Council Member Lindstrom and seconded by Council Member Taylor to direct City Staff to create an administration citation ordinance for consideration at the June 8, 2015 City Council meeting. With all members voting in favor, the motion carried.**

### 11. Staff Reports

#### 11.1. Public Works Director Young

Public Works Director Young reported that he ordered the new truck. The City will go through another vendor to purchase the box tax exempt and save the City \$700. He also reported on the City Hall steps and sidewalk project. He is waiting for an additional bid on replacing the steps so it can be used to fairly compare the sidewalk bids. He will also replace the railing. Public Works Director Young recommended lowering the sidewalk at the bottom of the stairs by approximately 5 inches so people can open their car doors and he also recommended a retaining wall. The bid that he received for this is \$8,000. He discussed the handicap accessible ramp. The ramp would be 48 inches wide, start at the corner of Lake, and go around the side of City Hall to tie into the back entrance. Public Works Director Young thinks they can get it done within the \$30,000 budget but he is waiting for one more bid on the retaining wall. Council decided a motion was not needed because the budget has already been approved and this would be within the budget.

Public Works Director Young updated Council on the reflective stakes at the various intersections. He would have to remove the stakes to change the reflectors to something more attractive. Council stated the reflectors and stakes should remain in place as is.

#### 11.2. City Clerk Report

Clerk Honey reported on attending Clerk's training the week of May 4 through May 8.

11.3. Administrator's Report

City Administrator Griffin requested Council approval to move forward with getting Council emails with Avenet. There was discussion about the ability to forward emails from Avenet to phones or another email accounts as well as finding a different company to host the emails such as Mediacom. Council Member Kozloski recommended Administrator Griffin contact Network Solutions to see if they would be able to host the website and offer emails. There was discussion about using personal computers and phones for City email business. Mayor Skalla asked Administrator Griffin if other councils use personal or city owned hardware (ipads/tablets). It varies by city.

**12. Council Reports**

12.1. Mayor's Report – Mayor Skalla attended the Fire Commission meeting with Council Member Taylor. He thanked staff for their hard work and encouraged everyone to attend the Progressive Dinner on May 16.

12.2. Liaison Reports-

Council Member Taylor – Council Member Taylor attended the Fire Commission meeting and discussed their budget. They have implemented a new duty officer program so now an officer is on call and responds to calls that do not require a fire truck. They saved 695 firefighter hours last year due to this program. The West Hennepin Fire Group met and most west metro cities were represented. They discussed a west metro consolidated network. Fire chiefs feel there would be increased service with no increase in costs. Mound Fire Chief told Mayor Skalla they are fine as they are and don't need to merge with other cities because they have plenty of volunteers and resources. There is a formula based on property value, calls for service and number of homes to determine our contract with Mound Fire.

Council Member Taylor also reported on the Dock Committee meeting. They discussed changing the way the square footage of available dock is dispersed. Minimum dock sizes must be maintained to not lose dock space. The dock renters paid for the new dock sections needed at the beach. Mayor Skalla asked Council Member Taylor to have the Dock Committee clearly convey to residents the timing of dock installation and work with the installer to manage expectations for the residents and the installer. Council Member Taylor will bring it up at the next meeting.

Council Member Lindstrom – Civic Committee's budget looks good. Progressive Dinner numbers up toward 100.

Council Member Lindstrom – Utilities and Finance joint committee meeting is set for May 20.

Council Member Bartel – Finance Committee. No report.

Council Member Bartel –Park Commission. Park Commission will have a study session on May 13.

Council Member Taylor asked Council Member Bartel to have Parks look at the area by the library where the tree was removed. It appears the stump was not ground down enough.

**A motion was made by Council Member Lindstrom and seconded by Council Member Bartel adjourn the meeting at 9:50pm.**

**PUBLIC IN ATTENDANCE – The following individuals signed the sign-in sheet: Charles Hise, Beverly Aho, Adam Sienkowski, James Gilbert, Steve Howarth, Dan Lindsay, and Helen Lindsay.**

**Respectfully submitted,**

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**Heidi Honey, City Clerk**