

**Minutes
Minnetonka City Council
Monday, August 1, 2022**

1. Call to Order

Mayor Brad Wiersum called the meeting to order at 6:31 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members, Brian Kirk, Rebecca Schack, Kimberly Wilburn, Bradley Schaeppi, Kissy Coakley and Brad Wiersum were present.

4. Approval of Agenda

Calvert moved, Kirk seconded a motion to accept the agenda with addenda to Items 9.A and 14.A. All voted "yes." Motion carried.

5. Approval of Minutes:

A. July 18, 2022 regular meeting minutes

Schack moved, Calvert seconded a motion to approve the minutes. All voted "yes." Motion carried.

6. Special Matters: None.

7. Reports from City Manager & Council Members

Acting Assistant City Manager Moranda Dammann reported on upcoming city events and council meetings. She encouraged all residents to participate in Night to Unite on Tuesday, August 2.

Schack thanked staff for all of their hard work and efforts that went into the funeral for Assistant Fire Chief Jim Flanders.

Schack commended staff for holding a wonderful staff luncheon.

Kirk commented on the life of Assistant Fire Chief Jim Flanders noting he has been a friend and neighbor to Jim for the past 30 years. He stated his funeral was truly a tribute to his life.

Calvert explained she missed Assistant Fire Chief Flanders funeral because she was attending the National League of Cities Summer Conference in Atlanta. She commented on the topics her committee addressed which included infrastructure.

Calvert invited residents to encouraged their local legislators to revisit the budget. She discussed the infrastructure dollars that were being lost because the State had not adopted a budget. She reported August 1 was the anniversary of the I-35W collapse and commented further on how valuable a strong and maintained infrastructure was to the community.

Calvert thanked Mayor Wiersum for his tremendously courageous service as the League of Minnesota Cities president noting he served nearly his entire term anonymously during COVID.

Calvert reported EMS response times have changed due to staffing shortages. She encouraged the public to respond to the EMSRB in order to provide the council with feedback.

Calvert noted she attended the Metro Cities meeting last week where street racing was discussed and will attend the League of Minnesota election task force meeting on August 2.

Schaeppi stated he was able to attend Assistant Fire Chief Flanders celebration of life ceremony. He thanked all who shared and participated in this event.

Schaeppi indicated he would be hosting a Night to Unite party from 5:00 p.m. to 7:00 p.m. on August 2.

Wilburn explained she was unable to attend the funeral for Assistant Fire Chief Flanders but extended her condolences to the Flanders family.

Wiersum commented on how the funeral for Assistant Fire Chief Jim Flanders was a touching event that truly celebrated Jim's life. He discussed how firefighters throughout the region were hurting due to this loss because Jim was a known leader across the state. He thanked all of the first responders in the community for their service. He sent his condolences to the City of Hopkins stating he understood they were hurting after the loss of life that occurred from a recent explosion in their community.

Wiersum encouraged residents to get out and vote for the primary election.

8. Citizens Wishing to Discuss Matters not on the Agenda: None.

9. Bids and Purchases:**A. Bids for Delton Avenue Trail**

Public Works Director Will Manchester gave the staff report.

Kirk moved, Calvert seconded a motion to award contract and amend CIP. All voted "yes." Motion carried.

10. Consent Agenda – Items Requiring a Majority Vote:

Coakley requested Item 10.B be pulled from the consent agenda.

A. Final plat of WEBER 3, a residential two-lot subdivision, at 2326 Oakland Road

Calvert moved, Kirk seconded a motion to adopt Resolution 2022-057. All voted "yes." Motion carried.

B. Resolution approving the use of Hennepin County Redevelopment Authority Affordable Housing Incentive Funds by Homes Within Reach

This item was pulled from the consent agenda for further discussion.

C. Repeal and replace Resolution No. 2018-037, approving a conditional use permit for CREO Arts and Dance Conservatory, at 15000 and 15100 Minnetonka Industrial Road

Calvert moved, Kirk seconded a motion to adopt Resolution 2022-059. All voted "yes." Motion carried.

B. Resolution approving the use of Hennepin County Redevelopment Authority Affordable Housing Incentive Funds by Homes Within Reach

Coakley asked what portion of the funding was being used for Minnetonka residents. Community Development Director Julie Wischnack stated she would have to investigate this further and would report back to the council.

Coakley moved, Schack seconded a motion to approve Resolution 2022-058. All voted "yes." Motion carried.

11. Consent Agenda – Items requiring Five Votes:**A. Conditional use permit, with variances, for Brito’s Burritos at 11044 Cedar Lake Road**

Schack moved, Calvert seconded a motion to adopt the Resolution 2022-060. All voted “yes.” Motion carried

B. Conditional use permit, with a parking variance, for First Light Donuts and Café at 11014 Cedar Lake Road

Schack moved, Calvert seconded a motion to adopt the Resolution 2022-061. All voted “yes.” Motion carried

12. Introduction of Ordinances:**A. Ordinance amending City Code 830 relating to lodging establishments**

Community Development Director Julie Wischnack gave the staff report.

Calvert asked if AirBNB’s fit into this. Wischnack discussed how city code addresses AirBNB’s noting they do not fit into the city’s lodging regulations.

Calvert moved, Kirk seconded a motion to introduce the ordinance. All voted “yes.” Motion carried.

13. Public Hearings:**A. Temporary on-sale liquor license for The Rotary Club of Minnetonka Foundation, 14350 County Road 62**

Community Development Director Julie Wischnack gave the staff report.

Wiersum opened the public hearing.

Chris Rose-Lunden, Minnetonka Rotary President, thanked the council for considering the temporary on-sale liquor license for the Rotary’s Links and Libations event. He explained his club was focused on building responsible youth. He discussed how the funds raised by the Rotary are used to positively impact the community. He invited the council to consider attending the Rotary golf event on September 8 at 1:00 p.m. and noted he was available for comments or questions.

Wiersum thanked Mr. Rose-Lunden for all of the great work the Rotary Club does in the community.

There being no further comments from the public, Wiersum closed the public hearing.

Wilburn moved, Schack seconded a motion to grant the license. All voted "yes."
Motion carried.

14. Other Business:

A. Ordinance Amending City Code Section 625 Regarding Tobacco Sales

Community Development Director Julie Wischnack gave the staff report.

Coakley thanked staff for providing the council with a detailed staff report.

Wiersum stated he appreciated the input the city received from residents on this ordinance.

Calvert thanked Mr. Stockert for sending his comments to the city regarding this ordinance.

Calvert moved, Coakley seconded a motion to adopt Ordinance 2022-10. All voted "yes." Motion carried.

B. Appeal of the planning commission denial of a side yard setback variance for construction of a new home at 2203 Windsor Lake Drive

City Planner Loren Gordon gave the staff report.

Kirk asked if the city had an ordinance in place that encumbers a developer from coming into 1950's and 1960's neighborhoods and building larger homes.

Gordon stated as long as current ordinances were met, ramblers could be torn down and replaced with a two-story home.

Wiersum reported the applicant was appealing the denial from the planning commission. He discussed how variances trigger the McMansion policy. He questioned if the city has seen a plan from the applicant that was 608 feet smaller than the current proposal. Gordon reported he has not seen this plan.

Wiersum requested the applicant come forward at this time.

Don Meier, 2203 Windsor Lake Drive, introduced himself to the council. He reported he does not have a smaller plan. He indicated he did not intend to go back to a smaller home (2,800 square feet) which was what he currently had. He stated he was proposing to construct a 3,500 square foot home with a slab on grad home. He explained how he believed the original home sat 10 feet from the property line, but does not. He discussed how his irrigation was not properly located given the fact the property line has shifted, along with landscaping and hardscape. He expressed frustration with the city's McMansion policy and noted he was requesting to build a three bedroom house in order for him to be able to work remotely. He introduced his neighbors to the council and thanked them for supporting his variance request. He asked that the council allow the property line to remain as it was and that his variance request be approved.

Wilburn questioned where the actual property line would be. Gordon explained the house sits at 5½ feet today and he would like to build the house at 7 feet and city code requires 10.

Wiersum inquired if the same foundation could be used to build a new house in order to allow it to be in the same location. Gordon stated this was a common question with rebuilds. He noted there were rights with where the home was built. He reported the city would have to consider if there was more mass built at this setback. City Attorney Corrine Heine explained the provision about being able to build back requires a home to be a lawful non-conforming use. She indicated the statement at the beginning of the staff report was that this property was approved for a 12 foot setback and there must have been a 15 foot setback at the time. She noted the previous property owners did not follow this and instead built 5½ feet from the property line. She stated this was not a lawful non-conforming use. For this reason, the property owner did not have the right to rebuild on the existing foundation based on these facts. She commented city ordinance also refers to state law and noted variances can only be approved if all requirements are being met or proved. She reported the burden of proof for variances lied with the property owner.

Calvert thanked staff for all of the clarifying information. She explained each member of the council was sympathetic to property owners rights, but council also had to follow city code and state statutes. She believed the design of the home was lovely, but she could not support the variance because it would perpetuate the concerns that were addressed within the McMansion ordinance. She did not believe it was fair for future property owners to perpetuate problems that have existed since 1965 when the home was built. She believed the burden of proof had not been met when it comes to practical difficulties and therefore she would not be able to support the variance.

Schack agreed with Councilmember Calvert. She stated the issue with this request was that the practical difficulties were not being met, noting preferences

were not practical difficulties. She encouraged the council to abide by existing ordinance for consistency reasons.

Kirk thanked the neighbors for offering their support to the applicant and noted their comments have been heard. He stated he would be supporting staff's recommendation for this variance as he believed the setback had to be maintained.

Wiersum commented on the McMansion policy noting this ordinance protects neighborhoods from larger homes creeping in, stating the main focus was proportion and scale. He thanked all of the neighbors for showing up and speaking on behalf of the applicant. He understood the applicant could build his house if he moves it and complies with city setbacks. He discussed why people liked to live in Minnetonka, because the city had tremendous neighborhoods and the council upholds reasonable and objective standards. He agreed that the applicant has not demonstrated a practical difficulty and therefore he would be supporting staff's recommendation.

Kirk moved, Calvert seconded a motion to adopt Resolution 2022-062. All voted "yes." Motion carried.

C. New Commission Formation

Acting Assistant City Manager Moranda Dammann and Senior Diversity, Equity and Inclusion Coordinator Keith Clark gave the staff report.

Coakley thanked staff for the detailed report. She suggested a youth member be included in this work. She suggested the commission be called the human rights, diversity, equity and inclusion commission because this touches on all of the aspects this group would be addressing. Clark reported at this time staff wants to make sure a solid foundation was in place, while understanding youth voices were important. He agreed that in the future youth members would be a part of this group.

Schaeppi asked how the city would define diversity, equity and inclusion while limiting the scope from the work being done by existing advisory groups. Clark responded staff has worked tirelessly to ensure there would be no overlap with the DEI commission with other boards. He noted the DEI commission would work at the privy of the council and would adhere to all city ordinances.

Wilburn recommended the DEI commission be made up of a minority that is not a woman business owner. She suggested someone with a disability be included on the commission, along with someone from the LGBTQ community.

Calvert thanked staff for all of their efforts on this commission. She explained she had broad comments regarding the membership. She reported diversity was comprised of many things such as ability or disability, age, race, religion, and ethnicity. She recommended that if religions are included that more than faith be represented and that this individual be very ecumenical. She stated she would like this group to celebrate all of the different kinds of diversity within the community. She questioned why staff was proposing to have all of the DEI commissioner terms be two years, when other communities have three year terms. City Attorney Corrine Heine stated this was because all commission terms in Minnetonka were for two years.

Schack stated she believed the scope of the commission was great. She indicated she would like to push back on the use of youth members because she feared this position would become too prescriptive. She suggested each member that is interviewed for this commission be asked what unique voice they would bring to the group. She believed this would help the council when holding future interviews.

Kirk thanked staff for the detailed presentation. He explained he has the same concern that the youth position would be too prescriptive. He saw this group focusing on outreach, communication, training and education. He wanted to see that this group was reaching both adults and youth.

Calvert stated she appreciated Councilmember Schack and Councilmember Kirk's comments. She agreed if the members positions got too prescriptive then it would be difficult to find replacements. She believed it was more important that the questions asked during the interviews get to the fact of whether or not these individuals can represent the goals of the DEI commission. She asked how difficult it would be to change the size of the DEI commission. Heine explained this change would be made by ordinance and the council would have the flexibility to add youth members after one year or two years.

Wilburn addressed the prescriptive concern and stated she understood this. She explained she wanted to see a diverse makeup of this group. She stated as a person of color, she has observed homogenous groups that are responsible for making diversity decisions and she did not believe this was possible without diversity. She stated she wanted to be sure the city was committed to this group having diversity. Clark commented on how staff was focused on wording and definitions, and explained staff was very aware of how important it was to not marginalize any population or community. He reported he wanted Minnetonka to be a place that was welcoming and belonging for all communities.

Coakley asked if the DEI task force members would be considered for the DEI commission. Clark stated he was uncertain if these members would be interested in applying for the DEI commission if it was formed. Dammann commented

further on the city's recruitment plan for the DEI commission stating the DEI task force members would be invited to apply.

Schaeppi questioned if staff was looking for more comment as to the scope of the DEI commission. Dammann reported staff was seeking any and all feedback from the council at this time in order to assist staff with drafting the introductory ordinance.

Schaeppi hoped that the city would find a number of different avenues to reach out to the public for feedback and engagement. He wanted to see the city gaining a wide variety of feedback from the public. He anticipated it would be difficult for the DEI commission to be quasi-judicial, but rather he would like to see this group having clear and concise DEI objectives. He commented he wanted the goals and objectives of residents to be considered when considering the scope of the DEI commission. Clark stated defining the scope of work for the commission was being considered.

Calvert supported the DEI commission also addressing human rights. She recommended seasoned institutional knowledge be gained by all DEI volunteers before deeper level complaints on civil rights be taken on.

Kirk stated he liked the idea of the DEI commission being comprised of the someone with a disability or ADA knowledge, along with someone from the LGBTQ community. He suggested the DEI commission being structured like the park board, which has seven members and two youth.

Wiersum supported the DEI commission having seven members. He believed it would be important for this group to get off to a strong start, having some successes. He indicated this group would require people getting out of their comfort zone to do the hard and uncomfortable work of the commission. He supported the group having youth at some point in the future. He understood that diversity was important and monocultures were unhealthy. He explained he wanted all groups to feel equally comfortable and welcome in Minnetonka. He was pleased that the city was committed to making itself better for all people in the community. He discussed how Bill Russell was a great teammate and how this community needed more great teammates. He anticipated the council would have to rely on its DEI professional for assistance as this group is being formed. He was of the opinion this commission may have to be run differently than the city's other commissions and suggested three year terms be considered in order to assist with staggering the members.

Coakley commented she likes St. Louis Parks DEI commission.

15. Appointments and Reappointments: None.

16. Adjournment

Kirk moved, Calvert seconded a motion to adjourn the meeting at 9:08 p.m. All voted "yes." Motion carried.

Respectfully submitted,

A handwritten signature in black ink that reads "Becky Koosman". The signature is written in a cursive, flowing style.

Becky Koosman
City Clerk