

**Minutes
Minnetonka City Council
Monday, April 26, 2021**

1. Call to Order

Mayor Brad Wiersum called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members Brian Kirk, Rebecca Schack, Susan Carter (excused from the meeting at 8:00 p.m.), Deb Calvert, Bradley Schaeppi, Kissy Coakley and Brad Wiersum were present.

4. Approval of Agenda

Kirk moved, Schack seconded a motion to accept the agenda with addenda to Item 13.B. All voted "yes." Motion carried.

5. Approval of Minutes:

A. March 22, 2021 regular meeting

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

B. March 15, 2021 study session

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

6. Special Matters: None

7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming city events and council meetings. It was noted the council would begin meeting in person in June.

Coakley explained the city was hiring a diversity, equity and inclusion coordinator. She encouraged black, indigenous, people of color, trans, and the LGBQ community consider applying for this position. She discussed the listening

conversation that was held last week and stated she appreciated all members of the community that attended.

Schack thanked Councilmember Coakley for her involvement in the community conversation. She noted she attended this meeting and was very pleased with the robust turnout from the community.

Schack discussed the census results and thanked all residents of Minnetonka for filling out their census information.

Schaeppi thanked Councilmember Coakley for taking the lead on the community conversations. He welcomed the public to provide the city council with any additional feedback they may have.

Schaeppi stated May was National Bike Month. He discussed the family bike event that would be held on May 19, 2021 near the Minnetonka Community Center. He explained he had the opportunity to bike around Ward 3 with Mr. Van Saten.

Wiersum explained he received a correspondence from the Twin Cities Biking Alliance encouraging him to ride his bike to work once in April. He discussed how better off the community would be if it were human powered.

Wiersum reported two weeks ago the city council meeting was canceled, which was unprecedented. He stated this meeting was canceled out of respect to Daunte Wright after his tragic killing. He believed this demonstrated solidarity with communities of color and allowed the council to express its remorse. He noted the last several weeks have been incredibly challenging. He acknowledged the weight of the circumstances that all people were feeling, especially communities of color. He thanked Councilmember Coakley for hosting a community conversation on policing. He stated this was a very positive event for the community.

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

9. Bids and Purchases:

A. Bids for the Ridgemount Avenue Improvements Project

Public Works Director Manchester gave the staff report.

Schaeppi asked if Ridgemount Avenue would be closed at times during the improvement project. Manchester reported the roadway may be closed at times during the day but would reopen in the evening.

Coakley questioned if other bids are ever considered, except going with the low bidder. Manchester explained the city follows state regulations for the competitive bid process for all projects valued over \$175,000. He indicated this required the city to award projects to the low bidder. City Attorney Heine commented generally state law requires contracts for improvement of this type, over \$175,000 be competitively bid and this requires the contract be awarded to the lowest responsible bidder. She noted there are exceptions to this, such as the use of the best value method which was used for the public safety facility.

Kirk questioned if the city had any criteria in place to support minority and women owned businesses (MOB) as the contracts are reviewed. Manchester reported the city does not have a DBE requirement.

Carter explained there are always elements to consider that may or may not elevate costs. She recommended the city also consider fair treatment of employees, basic human rights, fair housing, benefits, and ensuring that a minimum criteria is followed on the job site. She did not want to see rape or human trafficking occurring on job sites. She wished that the city had a basic screening process in place to ensure that contractors that work for and in the city were honest and decent.

Calvert stated she was contacted by someone in the community to let her know that two people pled guilty to sex trafficking in the construction trade in Bloomington. She understood the city had to comply with the law, but as a public leader she understood the community was asking for some way to vet contractors that are doing business in Minnetonka. Manchester commented all contractors were licensed through the state and were subject to fair labor standards. Heine reported the points raised were all good ones. She noted staff could consider these and determine whether changes could be made to the contracting process. She explained for the benefit of the public, the awards being made this evening, the city was not aware of any evidence that the contractors have engaged in any of the practices about which a concern has been raised.

Wiersum thanked staff for the comments. He explained greater diligence would serve the city well. He indicated he was contacted several years ago about contractors building homes in the community. He thanked the council for raising this question.

Schack moved, Kirk seconded a motion to award the contract. All voted "yes."
Motion carried.

B. Bids, resolution and agreement for the Groveland-Bay Improvements Project

Public Works Director Manchester gave the staff report.

Schack moved, Kirk seconded a motion to award the contract, adopt Resolution 2021-027, and approve the agreement. All voted "yes." Motion carried.

C. Bids for the Opus Area Bridge Improvements - Phase II Project

Public Works Director Manchester gave the staff report.

Schack moved, Kirk seconded a motion to award the contract and adopt Resolution 2021-028. All voted "yes." Motion carried.

D. Bids for the Williston Road Lift Station Forcemain Rehabilitation Project

Public Works Director Manchester gave the staff report.

Schack moved, Kirk seconded a motion to award the contract. All voted "yes." Motion carried.

E. Bids for the Ridgedale Drive Watermain Improvements Project

Public Works Director Manchester gave the staff report.

Schack moved, Kirk seconded a motion to award the contract, authorize funds and amend the CIP. All voted "yes." Motion carried.

10. Consent Agenda – Items Requiring a Majority Vote:

Schaeppi requested Item 10.A be pulled from the consent agenda for further discussion.

A. Minor change to sustainability commission membership language

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

B. Ordinance amending city code 820.035, subdivision 1(a), regarding health and safety standards

Kirk moved, Calvert seconded a motion to adopt Ordinance 2021-07. All voted "yes." Motion carried.

C. Collective Bargaining Agreement between the City of Minnetonka and International Union of Operating Engineers (IUOE), Local No. 49, AFL-CIO

Kirk moved, Calvert seconded a motion to approve the collective bargaining agreement and the three (3) Memorandum of Agreements. All voted "yes."
Motion carried.

D. Reinstating the utility bill late fee and the termination of water services

Kirk moved, Calvert seconded a motion to approve Resolution 2021-029. All voted "yes."
Motion carried.

E. Resolution for the cooperative agreement for the Trunk Highway 7 project

Kirk moved, Calvert seconded a motion to adopt Resolution 2021-030. All voted "yes."
Motion carried.

F. Agreement for public works maintenance services

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

G. Resolution approving a twelve-month extension of DAMYAN'S ADDITION preliminary plat at 9598 Ann Lane

Kirk moved, Calvert seconded a motion to adopt Resolution 2021-031 approving the twelve-month time extension. All voted "yes."
Motion carried.

A. Minor change to sustainability commission membership language

Schaeppi discussed the shortcoming that occurred with the scoring system that was used when considering the appointment of sustainability commission members. He reported he spoke briefly with City Manager Barone regarding this matter. He explained he would not be supporting the proposed language change to this ordinance because the intent of the council was to have a high school person on the sustainability commission.

Schack stated her position has gotten stronger in that the correction makes the council more flexible and improves the language. She believed the proposed change would assist the council in meeting its goals of keeping young people engaged but does not lock the council in if a wider pool was needed. She stated she supported the proposed change.

Kirk reported he spoke with City Manager Barone regarding this matter as well. He believed “may” was the better word. He encouraged the council to focus on recruiting a high school student during the next go round.

Schack moved, Calvert seconded a motion to adopt Ordinance 2021-06.

Wiersum noted he attended the Minnetonka School District Board meeting last week and he asked for their support in finding students for the city’s boards and commissions. He explained he respected Councilmember Schaeppi’s position, but stated he supported the proposed language change.

Calvert, Kirk, Schack, Carter and Wiersum voted “yes”. Coakley and Schaeppi voted “no”. Motion carried.

11. Consent Agenda – Items requiring Five Votes:

A. Resolution approving a conditional use permit with variances, for a restaurant expansion and outdoor seating area, at 14725 Excelsior Boulevard

Schack moved, Kirk seconded a motion to adopt Resolution 2021-032 approving the request. All voted “yes.” Motion carried.

12. Introduction of Ordinances:

A. Items concerning Taco Bell at 12380 Wayzata Boulevard:

- 1) Major amendment to the master development plan;**
- 2) Conditional use permit, with variances; and**
- 3) Site and building plan review, with variances.**

City Planner Loren Gordon gave the staff report.

Calvert commented the city has a lot of restaurants that have drive throughs. She stated as the city works to become more sustainable and to reduce fossil fuel emissions, she explained she had concerns with the fact this site was a drive through only. She encouraged the planning commission to probe a bit deeper into this business model.

Schack stated she too was concerned about the drive through because it required a variance. She understood the Ridgedale district requires a variance for drive throughs. She noted she was uneasy and believed the city should be moving away from this business model. She encouraged the planning

commission to look into this type of business further. She looked forward to hearing now Commissioner Henry would respond to this matter.

Schaeppi indicated he would like the planning commission to ask the tough questions noting he would like to better understand how pedestrians and bicyclists would be able to access this site. He understood this was a unique concept, but he feared that pedestrians would be in the way on this property.

Wiersum stated from his perspective there would be no incremental hard surface. He understood this concept was both unique and challenging. He discussed how drive throughs had become necessary because of the pandemic. He noted not every car in the future would be putting pollutants into the air. He indicated this location was challenging and noted there aren't many fast food restaurants around Ridgedale. He encouraged the planning commission to thoroughly consider the variances being requested for this site.

Kirk moved, Calvert seconded a motion to introduce the ordinance amending the master development plan and refer it to the planning commission. All voted "yes." Motion carried.

B. Ordinance relating to animal control regulations

City Attorney Heine gave the staff report.

Calvert asked if holding an animal for five to ten days before they were destroyed was the minimum. Heine reported this was the minimum. She explained attempts are made to contact the owner in order to get them to pay the impound fees to recover the animal.

Schaeppi stated he appreciated staff looking at this ordinance. He indicated he had a Ward 3 member reach out to him with suggestions for this ordinance. He noted this individual would be following up with staff.

Kirk explained he appreciated the comment regarding chickens.

Wiersum stated it was important for the city council to take a look at ordinances over time. He supported the city's leash law and discussed the importance of residents keeping their dogs under control when being walked in the community.

Schack moved, Kirk seconded a motion to introduce the ordinance. All voted "yes." Motion carried.

Wiersum recessed the city council meeting.

Wiersum reconvened the city council meeting.

13. Public Hearings:**A. On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for Toma Mojo Grill, LLC., at 12977 Ridgedale Drive**

City Manager Geralyn Barone gave the staff report.

Wiersum noted this was a continued public hearing. He asked for comments from the public at this time.

Michael Knox, representative for the applicant, thanked the council for their time and consideration. He appreciated staff's time and noted he felt very welcomed in this community.

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

Calvert moved, Kirk seconded a motion to continue the public hearing from March 22, 2021, and grant the licenses. All voted "yes." Motion carried.

B. Resolution vacating a portion of a drainage and utility easement at 05-117-22-12-0033

Public Works Director Will Manchester gave the staff report.

Wiersum opened the public hearing.

Joseph Humann, the applicant, explained he was part of small HOA community with seven other homes. He reported ongoing discussions will continue with the HOA regarding holding onto easements over rain gardens. He noted this was a separate matter from the city's action on this matter. He explained he was requesting to remove a portion of the easement and not the entire easement.

Wiersum commented on the statement provided by Mario Goessi.

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

Kirk moved, Carter seconded a motion to hold the public hearing and adopt Resolution 2021-033. All voted "yes." Motion carried.

C. Opus Tax Increment Financing District

Community Development Director Julie Wischnack gave the staff report.

Kirk asked if the government bonding allowed infrastructure work to begin prior to construction of any buildings. Wischnack explained this was not getting the city ahead but rather the city was working to anticipate all of the different functions of the TIF budget.

Kirk questioned when work on the major intersections that were failing could begin. Wischnack stated one project being completed in Opus did not mean the intersection was failing. She indicated the totality of the entire project within Opus would cause these intersections to fail. She indicated staff was considering the right sequences of the development projects along with when street improvements should be done.

Wiersum noted for the record that Councilmember Carter has left the meeting.

Coakley explained that with all the different projects within Opus, she would like to see the city contracting with women and people of color. In addition, she did not want to see human trafficking occurring. Wischnack stated there are some safeguards in place within the contracts. She explained if the mayor and city council wanted to change the way the contracts are written, the council could discuss this at a future worksession meeting.

Schaeppi stated there was a lot of information for the council to digest when it comes to Opus. He questioned how this recommendation would impact or restrict the specific mix of percentage AMI units that can be delivered. Wischnack discussed what was on the table for today, what had already been approved and explained each future project would be reviewed on a case by case basis. She reported a lot of contracts have already been negotiated, which takes close to two months to complete, and would be coming to the council for review and approval. City Manager Geralyn Barone reported if the majority of the council wanted to review the AMI mix within the contracts staff would bring this matter back with additional background information at a future worksession meeting.

Coakley supported the council having a further conversation regarding this matter.

Wiersum discussed the amount of TIF that was being generated within Opus. He asked if by approving this TIF district the city was obligated to approve future projects. Wischnack reported it was hard to talk about TIF districts without projects. She explained the Mayor was correct, the council was not signing off on individual projects, but rather a district was being created to collect increment to help support the projects.

Wiersum requested further comment on the different rates for the TIF districts. Stacie Kvilvang, Ehlers & Associates, discussed the different rates with the council.

Wiersum opened the public hearing.

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

Schack stated this was a well thought out, deliberate plan that offered the city a great deal of flexibility when working with developers. She indicated this plan also addresses the AUAR. She thanked staff for all of their efforts on this plan.

Calvert agreed stating she appreciated Councilmember Coakley's concerns. She discussed the definition of TIF and how the increment was utilized by the city. She applauded staff for their tremendous efforts on this plan.

Kirk agreed staff had done a tremendous job on this plan. He explained he supported the council discussing additional conditions within the contracts that are used by the city.

Wiersum thanked staff for bringing new thinking and creativity into this plan. He stated with respect to Councilmember Coakley's comments, he recommended the city have higher standards. While he understood the city had to be competitive, he did not want to see the city's morals and values being compromised.

Kirk moved, Schack seconded a motion to hold the public hearing and adopt the Resolution 2021-034, approving a tax increment financing plan for the Opus Business Park Tax Increment Financing District and a modified development program for Development District No. 1. All voted "yes." Motion carried. (Councilmember Carter excused).

14. Other Business:

A. Conditional use permits for small cell wireless facilities near the following intersections:

- Linner Road and Tammer Lane
- Holdridge Drive and Post Road
- Indian Circle West and Council Circle
- Lake Street Extension and Hull Road
- Pioneer Road and Merilee Lane
- Baker Road and Deerwood Drive

City Planner Loren Gordon gave the staff report.

Kirk asked if Verizon has compromised in any way or would the poles remain in their proposed location. Gordon stated the Tammer Lane location would move slightly.

Kirk questioned if other design standards, such as the design from Denver, Colorado were being considered. Gordon reported if the city has something specific they wanted, this could be specified for the community or specific locations. He noted the Denver information seemed specific to an urban design for a certain area. He discussed how the city had different design standards throughout the community and noted one option for these small cell wireless facilities may not fit the entire city.

Coakley understood the city did not have a choice about having these towers in neighborhoods. She questioned if the neighbors could help in selecting which tower they wanted. Gordon reported this could be discussed this evening and if there are preferences that neighborhoods have, this can be detailed within the motion for approval.

Calvert explained several residents wrote to her with concerns regarding proximity to trees. She understood consideration had to be made to the critical root zone for trees but feared several large trees in the community would be impacted by the new towers. Gordon explained there has been some consideration regarding the location of the towers, particularly the tower at Tammer Lane. He noted this tower could be moved to be outside of the critical tree root zone. He indicated this may not be possible for every location stating this hinged on the amount of right of way available at each site.

Calvert stated documentation was required to assure Verizon could not collocate these towers. She asked if this documentation had been provided to the city. Gordon reported an affidavit was provided by an engineer from Verizon stating these were locations that would fill the gap for service.

Schaeppi explained the applicant had requested five applications all at once, which led to a lot of questions from the council. He understood this would be the first of many. He inquired what authority the city had within the CUP to work with existing poles and pole location. He requested staff to paint a picture as to what the city looks like in the future. Gordon commented he did not have a good answer for the crystal ball question. He explained the answer depends on who needs coverage and where they are located within the community. He reported more people are working from home currently, but this may change over time. He anticipated there would be more build out from other providers in Minnetonka. He understood Minnetonka was a hard city to cover given the topography and vegetation.

Schaeppi requested further comment on the distance requirement and explain what residents would see in the future. Gordon explained the city has expectations within its ordinance for new support structures, noting they had to be generally 200 feet apart, or 100 feet if on the opposite sides of the right of way.

Schaeppi asked for further information regarding the different types of utility poles in the city. Gordon discussed the different types of support structures and utility poles in the city that are used by radio, cellular, telephone, electricity and cable companies.

Calvert questioned if the city would be creating unintended consequences with the spacing requirements given the fact small cell towers would eventually proliferate the city. She inquired if the city could require telecommunication companies to collocate on towers in the right of way. If not, she asked if the city should be examining its spacing rules. Gordon reported he did not have a real good answer to these questions because he did not know how many towers would be coming into the community. He explained the number of towers would be dependent upon how good the coverage was in the city. He anticipated the telecommunications companies would continue to create new ways to attach support structures in the right of way. He understood that collocation was more efficient than single pole structures, but noted collocation may not always be an option.

Wiersum asked what federal and state law says about what local government can and cannot control through the CUP process regarding cellular facilities. City Attorney Heine reported under the right of way statute, state law provides that a city can require a CUP for a new wireless support structure that is going in a residential area within the right of way. She advised the general law regarding CUP's is that if an applicant meets the requirements and standards set out in city ordinance then the applicant was entitled to approve of the CUP. She stated in order to deny a CUP, the city has to identify a requirement of city ordinance that has not been met.

Wiersum commented further on the process followed for considering CUP's. He was of the opinion the city's hands were tied as to what can be dictated. He questioned what limitations can be set. Heine explained federal law says the city cannot refuse to approve something based upon concerns from health effects if the installation meets federal regulations. She commented per state law, the city can have separation requirements.

Wiersum inquired how Verizon defined "slightly" and asked where the pole at Linner Road and Tammer Lane would be moved to. Gordon reported the pole would be moved approximately 50 feet.

Wiersum asked if the applicant had any comments at this time.

Tamora Hartman, Verizon representative, explained she has been working on this project with staff for quite some time. She discussed the amount of time it takes to build a network and was happy to report the city's needs could be addressed through small wireless facilities versus more macro towers. She indicated Verizon has needs at this time and the proposed locations were key to filling gaps in the system. She commented further on the preferred design option for the wireless facility poles along with the RF safety requirements. She reported Verizon would be installing 10 small cell wireless facilities in Minnetonka and several would be collocation situations. She commented further on the frequency Verizon would be using for the new towers, noting all FCC safety requirements would be met. She explained Verizon was expanding its network because people were relying more and more on their wireless devices. She stated wireless availability was critical to communities.

Amber Johnson, Verizon, stated the local Verizon team had a dedicated website (www.improveyourwireless.com/twincities/) available for emails, comments or questions.

Kirk explained when this application first came to the city, he thought it was a 5G recommendation, but understood this was a 4G request. He questioned how many poles would be required to support a 5G network in the future. He inquired what Verizon's five year plan was for the City of Minnetonka. Chad Loecker, Verizon, explained this was a somewhat speculative and difficult question to answer. Ms. Hartman reported this was a very technical question. She indicated Verizon was before the council to discuss the 4G needs. She stated Verizon's five year plan was its competitive edge. Anthony Dorland, Verizon's attorney, advised that Verizon's five year plan for 5G was confidential. He noted there were portions of the city that already had 5G capability. He commented further on how the growing number of devices being used on the network was creating a need for more small cell towers.

Kirk asked if there was any evidence that other cell providers would collocate on the towers being requested today. Ms. Hartman reported Verizon was always willing to collocate on a tower. She described how the needs for Verizon were different than other users.

Kirk questioned what would prevent Verizon from speaking to Xcel to have poles swapped out in order to ensure these poles would structurally meet Verizon's needs. Ms. Hartman indicated there were two different types of utility poles, Xcel distribution poles and light poles. She noted Verizon was not able to collocate on light poles. She stated her goal was always to pursue permitted uses for her small cell towers. She explained pursuing CUP's was always the last option. She

discussed how overhead lines on distribution poles sometimes conflicted with Verizon's needs.

Schaeppi thanked Verizon for educating the council this evening. He explained he understood there was both state and federal legislation in place to govern this issue. He stated he was a realist, he understood Verizon was trying to minimize the impact on the community. However, he hasn't seen any good faith evidence of conversation with other companies or the city about the availability of other poles. He requested comment from legal counsel as to the city's ordinance and the language that addressed the wireless support structures. Mr. Dorland explained the city's ordinance matches the state's language when it defines a wireless support structure. He indicated the authority the city can have is with respect to separation requirements. He advised Verizon needed 10 small cell towers in Minnetonka, and three of these were going on Xcel distribution towers that could support Verizon wireless facilities. He reported the City of Minnetonka did not own its streetlights, which was not common when compared to neighboring communities. He discussed how the wireless industry had asked for the right to put facilities on light poles noting the utility industry had declined this opportunity.

Kirk stated it seems there are a lot of locations close to Xcel distribution poles. He explained Verizon had not convinced him that of these small cell towers could not be collocated. Mr. Dorland reported three of the ten would be collocated on Xcel distribution poles. He reviewed the type of Xcel pole that could support Verizon facilities. He stated in some cases, Xcel distribution poles had safety concerns, were overloaded or and did not have space for a small cell facility. Ms. Hartman reported if she could collocate all 10 of the small cell towers in Minnetonka, she would have in order to eliminate the need for CUP's. She indicated the reason this did not occur was because there were safety concerns with collocating on Xcel energy distribution poles.

Calvert commented a lot of what was happening was due to the fact this was a modern world that required a fully built out cellular network. She discussed the unintended consequences of the recently approved state legislation. She asked if Verizon could speak as to why listening sessions were not held with the neighborhoods. Ms. Johnson reported the process to view information and ask questions via email was much more effective when managed through Verizon's website versus holding a meeting. She explained she and Ms. Hartman respond to each and every question or comment from the public.

Calvert explained this matter was a public hearing because it would allow the public to voice their questions or concerns. She believed there was a big difference to sending a long email versus having an in person meeting and addressing the concerns of Minnetonka residents face to face. She commented on how important the human connection was.

Wiersum went back to the questions that were raised by Councilmember Kirk. He was of the opinion that Verizon and their counsel has done a great job skirting and avoiding answering the city council's questions. He did not feel Verizon has operated in good faith and this irritated him. He stated the council was not asking for Verizon's five year confidential plan. Rather, the council was trying to set expectations for Minnetonka residents in order to better understand what was coming to the community. He understood the city needed technology but he was frustrated by how Verizon has hidden behind its five year plan rather than providing a picture of what residents can expect. He stated the city council has very little authority because the telecom industry has done a great job at the state and federal level of stealing local control. He expressed frustration with how Verizon was now able to come before the city, could sit in the catbird seat and was able to dictate what they want, even if it was contrary to what the city wanted. He indicated he was very disappointed with Verizon's approach as to what would happen in the next year or two. He stated he did not need to know what AT&T or T-Mobile was going to do in the next two to five years. Rather, he wanted to understand what Verizon was going to do in the community and how many more poles the city council should anticipate in Minnetonka. He indicated this was a relevant question. Ms. Hartman stated she was before the council with her hat in her hand. She reported she was not trying to bully or bulldoze the city. She indicated her plan at this time was for ten poles in Minnetonka in 2021.

Wiersum asked what Verizon's plans were for 2022 and 2023. Ms. Hartman explained she did not know what her plans were for 2022 and 2023. She reported technology was constantly changing and she wanted to partner with the city. She understood there were members of the community that were concerned about pole proliferation. She indicated she heard this from every city she worked in.

Wiersum inquired what would happen if a person were to hit a small cell Verizon pole in a Minnetonka neighborhood. Ms. Hartman explained anticipated the pole would tilt if the car was driving 25 to 30 miles per hour.

Thomas Johnson, 1501 Tammer Lane, stated he had submitted a letter of opposition to the city regarding the proposed location of the Verizon small cell tower. He indicated he was not advocating for the wireless facility in the Linner Road area. He wanted to see an upgrade to wireless services in the area, but not at the visual expense of what is being proposed. He stated he was strongly opposed to the tower at its proposed location. He recommended alternatives be considered to minimize the visual impact. He believed approval of this tower would violate city ordinance and current city code. He was of the opinion the city would be granting a variance that was not permitted under a CUP. He reported the reason Verizon was before the council was because wireless facilities in low density residential districts had to obtain a CUP. He explained the CUP process

was in place to balance the rights of the neighboring properties and affected citizens with those of the applicant. If the council were to act as if there were no conditions in which the resident's rights were considered this would be an abdication of state statute which requires this very process. He encouraged the council to balance the rights of the surrounding neighbors with the rights of Verizon. He reported the most egregious aspect of the proposed location was the visual impact of a cell tower being located midblock on a landscaped lawn, close to residential driveways, with no screening. He defined the term stealth as being an effort to blend into the surrounding area and not sticking out like a sore thumb. He stated if the Linner Road tower were approved this would forever remind the neighborhood just how little Verizon cared for them and the environment. He encouraged the council to ask questions and get answers from Verizon regarding the following:

- Does Verizon have a stealth design policy in place?
- Is the Linner Road location a possible location for stealth design?
- What is the cost for the wireless facility on Linner Road?
- When 5G is rolled out, would Verizon commit to putting its 5G equipment on this wireless tower and not build a second tower?
- Would Verizon be exclusive on the Linner Road tower or would Verizon allow another wireless company to collocate?
- Are there other projects in the metro area being completed by Verizon?
- For Mr. Loecker he asked please describe the responsibilities as an RF engineer for Verizon?
- Is it important to have an engineering license to perform an RF certification?
- Was Mr. Loecker a licensed engineer?

Mr. Johnson reported he had a petition that was signed by 51 residents representing 26 households in the service area. He noted these neighbors opposed this location and expressed a desire for this wireless facility to be collocated at the corner on the Xcel street light. He requested Verizon to comment on the public relations aspect in light of the strong opposition to the stealth design. He questioned if Verizon did any outreach prior to choosing the Linner Road location and whether they think it is important to do so. He encouraged the council to weigh the visual impact and aesthetic burden for this wireless facility versus the small enhancement in coverage for so few homes, especially when over half the homes have expressed opposition and do not rely on Verizon to provide them with high capacity streaming through private networks and routers. He reviewed some comments that were made by Verizon at the planning commission meeting noting the proposed tower was only supposed to enhance coverage by 10% and noted the range for this tower was 500 feet, which would cover 50 homes. He reiterated that over 50% of the homes in his neighborhood opposed this tower and encouraged Verizon to consider locating this tower elsewhere given the small enhancement that would be

provided by the Linner Road tower. He indicated he does not fully understand Verizon's need for a tower at this location.

Wiersum urged Mr. Johnson to wrap up his comments.

Mr. Johnson explained the city attorney has said a wireless facility on an Xcel pole is not a wireless facility. He asked where this was stated in city code. He was of the opinion that the proposed location on Linner Road violated city code and would require a variance in order to be approved because it was closer than 200 feet to another wireless facility. He recommended another location be chosen for the Linner Road small cell wireless facility.

Wiersum recessed the city council meeting.

Wiersum reconvened the city council meeting.

Wiersum reported the council has heard from staff, the applicant and the public regarding this matter. He questioned how the council wanted to proceed.

Kirk asked if any of the questions from Mr. Johnson had not been addressed. He stated he would like to know more about the wireless tower signal and what makes an Xcel pole unavailable for a wireless tower. Gordon reported this was a question for the applicant and their ability to collocate. He indicated this was not a question that staff analyzes because this was not within staff's review process. Ms. Hartman explained there were three reasons she could not collocate to the Xcel Energy pole. She noted this was a light pole and federal law allows her to attach to Xcel distribution poles, but not light poles. She indicated the pole was not structurally sound and there was already equipment attached to it.

Kirk questioned if the Pioneer Road and Merilee Lane wireless pole could be moved 50 feet to Excelsior Boulevard in order to push this pole out of a neighborhood. Ms. Hartman reported Excelsior Boulevard was looked at, but noted Verizon could not collocate to any of the poles running along Excelsior Boulevard for safety reasons. She reiterated that she would always choose to collocate on an Xcel Energy pole versus needing to pursue a CUP.

Calvert requested further information from staff on what stealth means and what this applies to. She questioned if there was any vegetative screening Verizon would be willing to invest in to make the tower look less offensive. Ms. Hartman explained Verizon poles were deployed to look like other poles in the right of way. She reported if there were not other screening requirements for other utility poles in the right of way, Verizon would not screen their poles. Heine explained Mr. Johnson referred to "stealth design" and noted he incorrectly cited a portion of city code that does not apply to small cell wireless towers.

Wiersum clarified these were not 5G towers, but rather were 4G towers that qualified for small cell wireless technology. Heine reported this was the case.

Coakley commented it was unfortunate that Verizon was unwilling to bend. She explained Verizon has said they want to work with the city but it did not appear there was a whole lot of room for negotiations. She thanked the mayor and her fellow councilmembers for advocating on behalf of all Minnetonka residents. She stated she was frustrated by the fact there was no room for negotiation, but recommended the council move on.

Schaeppi stated he appreciated everyone's comments. He explained he spent a lot of time thinking about this request and he found his answer in city code section 1120.063 subdivision 4G. He commented further on the language stating any new wireless support structure must be placed a minimum of two lot lines or approximately 200 feet, whichever is greater, from any existing wireless support structure or utility pole on the same side of the street or right of way. He indicated this was the language that was determined by the city prior to this application. He reported with this language in place, any request that fails this language, he would not be willing to support.

Schack explained she appreciated a lot the good questions that were raised. She agreed with Councilmember Coakley and her distillation of the situation. She indicated she was furious with the federal and state leaders that put the city in this position. She indicated the city's hands are tied. She commented she left it to staff to determine if the request was in conformance with the distance requirement. She indicated the problem was that if this request was denied, someone else would have a pole in their front yard. She was frustrated that Verizon was only taking comments via email, while this allowed for public engagement, it was only a one-way engagement with the public. She did not believe this was the best model when engaging with the public. She encouraged Verizon to consider a more community centered or more collaborative approach. She stated she was worried about the visual pollution that was being created by all of the towers in the community. However, as a society, there was a need to have highly reliable internet and cell phone access. She believed there was a bigger problem at higher levels of government. She indicated if staff was telling her these towers met the distance requirements, then she would be supporting the request.

Calvert agreed with Councilmember Schack. She strongly encouraged everyone who was upset to contact their federal and state legislators and describe to them how they feel. She noted she would continue to advocate for a better approach. She indicated she was extremely frustrated by Verizon's one-way communication approach along with their general tenor because it appeared disingenuous and not terribly helpful. She reported if there was a tower location that does not meet

city ordinance distance requirement, particularly the tower on Linner Road, she could not support that.

Kirk stated he feels for Ms. Hartman and feared that by leading with the Verizon attorney at the planning commission a certain tone had been set. He thanked Councilmember Schaeppi for sharing the language in city code. He reported the problem is from the get go, the fox was watching the hen house and Verizon could do whatever they wanted to do. He commented the City of Minnetonka has been working to bury power lines in order to eliminate visual clutter. He explained he would like the aesthetics of small cell towers to be better and not like the junk the city was working to get rid of. He stated the towers that were used in Denver may be a better option. He indicated he would be objecting to this request because he believed there had to be a better option.

Wiersum commented he found this request very frustrating. He stated he tended to agree with Councilmember Coakley that the council did not have the tools in their hands to say no. He understood the council could not vote based on the ordinances the city wished it had in place. Rather, the council had to live by the rule of law and acted based on the laws that were on the books. He agreed with Councilmember Kirk that there may be a better way and he challenged the applicant to do better. However, he did not believe the council had the wiggle room to deny the request. He was extremely disappointed in the officials that allowed this legislation to pass. He explained the League of Minnesota Cities lobbied against this issue and lost so now Minnesota was stuck. He found this to be an untenable situation. He questioned the validity of approving CUP's for these requests given the fact the city had no say in the matter anyways. He feared there was only an illusion of control. He encouraged the council to consider making a change down the road. He stated unfortunately the law requires the council to vote contrary to the desires of Minnetonka residents and therefore, he would be voting in favor of this request.

Schack moved, Coakley seconded a motion to adopt Resolution 2021-xxx approving the conditional use permits. Schack and Wiersum voted "yes." Kirk, Calvert, Schaeppi, and Coakley voted "no". Motion failed. (Councilmember Carter excused).

B. Boards and commissions recruitment and appointment process review and recommendations

Assistant City Manager Mike Funk, Assistant to the City Manager McKaia Ryberg and Intern Hanna Zinn gave the staff report.

Calvert agreed stating this was a tremendous presentation. She questioned what was different this year for recruitment versus in past years. Ryberg discussed all

the different efforts staff took on to recruit board and commission members this year.

Schaeppi thanked staff for their efforts. He encouraged the city to continue to investigate what it means to volunteer in Minnetonka.

Coakley thanked Ryberg and Zinn for their efforts. She explained she also appreciated the efforts of community members to spread the word about the open board and commission seats.

Schack explained she appreciated all of the work that went into this, both the presentation and staff's effort to improve the process. She suggested a city hosted volunteer table be considered at the farmer's market or Summerfest.

Kirk stated he appreciated the heavy lifting staff did on this topic. He encouraged the city to also consider how to recruit individuals for city council and how to educate the public on the work being done by the council.

Calvert reported both of her children participated in Youth In Government. She explained this may be a good way to get the next generation interested in city government. She supported the city having a volunteer sign up booth at city sponsored events and thanked staff again for all of their efforts.

Wiersum thanked staff for their excellent presentation. He encouraged the council to continue to provide staff with any ideas they may have.

Provided feedback and accepted the staff recommendations. No formal action was required. (Councilmember Carter excused).

Wiersum requested the council go back to the previous item, Item 14.A. He asked what the council's next steps should be given the fact the CUP was denied. City Attorney Heine explained the council was required to make written findings to support the denial. She recommended one of the four members that voted against the request make a motion to reconsider action on this item. She indicated this would put the action back on the table and then the council can table action on the item to May 10, 2021 to allow city staff to draft written findings of denial based on the comments of the city council.

Schaeppi moved, Kirk seconded a motion to reconsider action on Item 14.A. All voted "yes." Motion carried. (Councilmember Carter excused).

Kirk moved, Schaeppi seconded a motion to table action on Item 14.A to the May 10, 2021 city council meeting. All voted "yes." Motion carried. (Councilmember Carter excused).

Kirk requested staff renotify the public that this item has been tabled to the May 10, 2021 city council meeting. City Manager Barone reported staff can notify the applicant and all of the people who have contacted the city regarding this request.

15. Appointments and Reappointments:

A. Appointments and reappointments to the Minnetonka Senior Advisory Board

Wiersum moved, Schack seconded a motion to approve the recommended reappointments and appointments. All voted "yes." Motion carried. (Councilmember Carter excused).

16. Adjournment

Calvert moved, Kirk seconded a motion to adjourn the meeting at 11:16 pm. All voted "yes." Motion carried. (Councilmember Carter excused).

Respectfully submitted,



Becky Koosman
City Clerk