

**Minutes
Minnetonka City Council
Monday, May 10, 2021**

1. Call to Order

Mayor Brad Wiersum called the meeting to order at 6:32 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members Rebecca Schack, Susan Carter, Deb Calvert, Bradley Schaeppi, Kissy Coakley, Brian Kirk and Brad Wiersum were present.

4. Approval of Agenda

Schack moved, Kirk seconded a motion to accept the agenda with addenda to Items 10.A, 10.B and 14.A. All voted "yes." Motion carried.

5. Approval of Minutes:

A. April 12, 2021 Local Board of Appeal and Equalization (LBAE) meeting

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

B. April 26, 2021 Local Board of Appeal and Equalization (LBAE) meeting

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

C. April 26, 2021 regular council meeting

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

6. Special Matters:

A. Bike Month Proclamation

Schaeppi read a proclamation in full for the record declaring May to be bike month in the City of Minnetonka. He encouraged residents to attend the short bicycle event for families that will be held next week at city hall.

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 be transitioning back to in person meetings in June.

Schaeppi wished Mayor Wiersum a happy birthday.

Kirk reported he met with the Friends of Lone Lake Park and Lone Lake Park. He stated it was exciting to walk through that park and see how the new bike trail was being used. He discussed the new pollinator planting areas and explained the Friends of Lone Lake Park would be reaching out to staff to discuss the plantings.

Wiersum indicated there were so many volunteers that make the quality of life in Minnetonka better. He thanked all of these volunteers for making Minnetonka great.

Hennepin County Commissioner Chris LaTondresse provided the council with an update from the county. He explained he was the newly elected representative for District 6. He reported he lived in Hopkins but noted he frequented Minnetonka parks often with his children. He commended the City of Minnetonka for adapting and leading this community through the pandemic. He discussed the continued challenge local government would be facing in 2021 by combating COVID-19. He described the investments the county has made in small business assistance programs, emergency rent/landlord assistance, education support services, and healthcare.

Hennepin County Commissioner LaTondresse explained the county approved funding for the Excelsior Boulevard trail extension. He stated he was extremely excited about the embedded social worker program within the public safety system and discussed how this new program would provide mental health services to those in need. He commented on the county's environmental priorities along with the climate action plan. He discussed his priorities for the coming year which focused on housing, public safety and economic inclusion.

Wiersum thanked Hennepin County Commissioner LaTondresse for his presentation and for spelling out his top priorities.

Calvert thanked Commissioner LaTondresse for his presentation and stated she looked forward to working with him. She stated she supported the county's climate action plan.

Kirk asked if Commissioner LaTondresse met with the public. Hennepin County Commissioner LaTondresse explained the first Saturday of every month he held a virtual Coffee with Chris event. He noted these events were an open forum. Further discussion ensued regarding the county's transit oriented affordable housing projects.

Carter thanked Commissioner LaTondresse for sharing his priorities with the council. She asked if specific projects could be discussed with him further. Hennepin County Commissioner LaTondresse encouraged the council to contact him via phone or email with comments or questions.

Schaeppi explained most of Minnetonka does not have high frequency transit. He discussed how the county has evolved in their design of county highways and applauded the county for funding more trails and bike paths. He stated he would like to see more people walking and biking to school or work in order to reduce the number of miles traveled in the community. Hennepin County Commissioner LaTondresse discussed the county's multi-modal goals and looked forward to continuing a conversation with Councilmember Schaeppi regarding trails and bike paths.

Wiersum thanked the county for their COVID-19 dashboard. He explained he appreciated Commissioner LaTondresse's priorities stating we all do better when we all do better. He understood the community needed to focus on affordable housing, public safety and economic inclusion. He stated he looked forward to the continued strong partnership the City of Minnetonka has with Hennepin County.

8. Citizens Wishing to Discuss Matters not on the Agenda:

Terry Anderson, 4835 Deerwood Dr., expressed concern with what the city was doing with the property at 13200 Excelsior Boulevard. He explained he has heard several different things as to what would be done on this property. He was of the opinion that the permit was not for what was built and he requested clarification from the city as to what was going on.

Wiersum explained staff was working on this enforcement matter. He recommended Mr. Anderson be in touch with Community Development Director Julie Wischnack and the community development team.

9. Bids and Purchases:

A. Bids and Agreement for the Excelsior Boulevard Storm Sewer Improvement Project

Public Works Director Will Manchester gave the staff report.

Kirk moved, Calvert seconded a motion to award the contract for the Excelsior Boulevard Storm Sewer Improvement Project to New Look Contracting, Inc. in the amount of \$366,036.00 and; Authorize the city engineer to expend the allocated funds for project costs, without further council approval, provided the total project costs do not exceed the project budget of \$485,000 and; Authorize the mayor and city manager to execute the Construction and Maintenance Agreement with Hennepin County, subject to non-material changes as approved by the city engineer and city attorney. All voted "yes." Motion carried.

10. Consent Agenda – Items Requiring a Majority Vote:

A. Ordinance relating to animal control regulations

Calvert moved, Schack seconded a motion to adopt Ordinance 2021-08 relating to animal control regulations. All voted "yes." Motion carried.

B. Resolution approving preliminary and final plats for a two-lot subdivision at 12701 Lake Street Extension

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

C. Resolution amending a conditional use permit for a microbrewery and taproom at 5959 Baker Road

Calvert moved, Schack seconded a motion to adopt Resolution 2021-036 amending a conditional use permit for a microbrewery and taproom at 5959 Baker Road. All voted "yes." Motion carried.

D. Order for stipulation for the property at 14809 Margaret Place

Calvert moved, Schack seconded a motion to approve a motion issuing the enclosed Findings of Fact, Conclusion, and Orders for Caspian Group. All voted "yes." Motion carried.

B. Resolution approving preliminary and final plats for a two-lot subdivision at 12701 Lake Street Extension

Kirk discussed the information that was presented within the packet and asked if there was anything unique about this subdivision that would allow for the

clustered two home care facility. He indicated he was concerned about the shared driveway and the garages behind the homes. He reported they city wouldn't normally approve flag lots. City Planner Loren Gordon explained this was a two lot subdivision in the R-1 zoning district. He stated the developer had to provide a grading and drainage plan. He commented the applicant was proposing to construct a six unit residential care facility on one lot and the other lot the use was uncertain. He indicated there was nothing about this development that was different from other subdivision applications.

Kirk asked if the standards for the subdivision were being met. Gordon reported this was the case noting the intended impact of the development had been considered. It was noted the subdivision did not require a variance.

Wiersum stated there were several residents that would like to speak to this item.

Jeffrey Louwagie explained the neighborhood understands there was a need for this type of housing. He indicated he has been paying attention to this subdivision and discussed the concerns from the neighborhood. He discussed how the neighborhood wanted to provide feedback to Plateau about their development. He encouraged the council to consider the density that was allowed within this project, knowing full well this was a business. He suggested the city consider putting a limit on the density given the fact there could be two group homes next to each other on this property.

Brad Wistrom indicated he has driven by the other group home residences in his neighborhood and explained they have more cars and activity. He reported these were single-family homes that already fit the R-1 description. He stated the Plateau development would be different homes, that more closely aligned with a nursing home. He discussed how the proposed 24 hour care facility would require more staffing and would generate more traffic. He commented on the plans for the second lot and anticipated the lot would not sell to a homeowner given the fact it would share a driveway with a 24/7 commercial nursing home. He feared how the neighborhood would be impacted if two nursing homes were squeezed onto this property. He was of the opinion the proposed nursing homes would change the character of this neighborhood. He stated he objected to this proposal moving forward.

Barry Stock, Plateau Development, discussed the size of the buildings, noting the scale has been reduced. He reported the building was down to 4,000 square feet in order to address the concerns of the neighbors. He indicated he would be happy to reach out to the neighbors in order to address their concerns regarding lighting and landscaping prior to submitting a building permit. He addressed the question regarding how many of these types of facilities should be allowed in neighborhoods and explained this was addressed by state statute.

Calvert commented this was a subdivision request and most of the things that are being brought up by the neighbors were not under consideration. She stated she understood the concerns that were raised and she appreciated the fact that Mr. Stock was willing to work with the residents.

Wiersum thanked Councilmember Calvert for clarifying this point.

Kirk asked if a commercial nursing home fell under the same category as a personal care facility. Gordon reported the distinction was between the state licensing for these two facilities. He stated a care facility typically found in Minnetonka is not the same as what some refer to as a nursing home. He explained nursing homes were not being built these days.

Kirk commented he supported the proposed request because it met all of the city's subdivision standards. However, he indicated he did not want to see care facilities clustered in Minnetonka. He stated he understood the site plan for this project would be reviewed by staff. He encouraged staff to ensure this site plan fit the character of the neighborhood.

Schaeppi agreed this subdivision application would be approved. He indicated he did not support the clustering of care facilities in residential neighborhoods and suggested the council discuss this matter at a future worksession meeting.

Wiersum stated this was an important issue. He explained he has been working on these types of requests for many years. He indicated in many ways, the council's hands were tied. He was of the opinion the state has taken all authority away from the city. He suggested the city council speak with local and state representatives regarding their concerns regarding the clustering of group homes. He reiterated that he understood the value and importance of group homes in the community but he did not want to see large group homes or clustering taking over residential neighborhoods.

Kirk moved, Schack seconded a motion to adopt Resolution 2021-035 approving the preliminary and final plats. All voted "yes." Motion carried.

- 11. Consent Agenda – Items requiring Five Votes: None**
- 12. Introduction of Ordinances: None**
- 13. Public Hearings: None**

Wiersum recessed the city council meeting.

Wiersum reconvened the city council meeting.

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.

Schack reported the findings in Option 2 were not consistent with staff's recommendation but were based on the comments received from the council at the April 26, 2021 city council meeting. Gordon stated this was the case.

Carter explained she had to step away from the last meeting to address a family matter. She requested further comment on the options available to the council. Gordon reviewed the two options and findings as proposed by staff.

Carter questioned if the findings from staff would support a motion for denial. City Attorney Corrine Heine advised if the council is going to deny an application for a conditional use permit there needs to be specific grounds and the council must find that one of the requirements in the conditional use permit was not met. She reported Section 310 is based upon a requirement in city ordinance. It was noted all of the findings proposed by staff were based on the comments made by the council at the April 26, 2021 city council meeting.

Schaeppi discussed how difficult it was to connect the state statute to local ordinance with the comments made by the council. He indicated he spent some time reviewing documents in order to understand how this matter should move forward. He discussed the concerns that were raised by Anthony Dorland, which had to do with a utility pole. He asked if Mr. Johnson's analysis fails with respect to the Xcel Cellnet wireless facility. He indicated he was struggling to see how Mr. Johnson's argument fails the 200 foot test. Heine explained the city has an ordinance that says there needs to be a separation and the distance varies from 100 to 200 feet or two lot lines. She reported the ordinance says between any proposed small wireless facility or structure and an existing small wireless support structure of utility pole. She indicated Mr. Dorland is focused on the utility pole language because state law allows us to have a separation requirement for small wireless support structures but doesn't say you can have a separation requirement between small wireless structures and utility poles. She commented as the staff report has pointed out, that provision in the ordinance is not

enforceable. She explained this meant the 200 foot separation requirement only applies to small wireless support structures and any existing small wireless support structures. However, under state law, the term small wireless support structure includes poles that are capable of holding a small wireless support facility. She stated the resolution that was before the council proposes denial based upon staff's interpretation of the ordinance that says you must maintain that separation from any existing structure that is capable of holding small wireless antennas. She commented Verizon's engineer has submitted letters indicating that the nearby poles are not capable of holding Verizon's facilities. She indicated Mr. Johnson has asserted that if the poles are capable of holding micro facilities, then they are small wireless support structures and therefore the 200 feet of separation was required. She stated it would be up to Verizon's engineer to clarify whether the nearby poles can support small cell wireless facilities or micro facilities.

Schaeppi thanked staff for the detailed response. He requested further information on the "capable of holding" language. Heine stated the separation requirement was between any proposed pole and any existing structure in the right of way that is capable of holding a small wireless facility, including a micro facility.

Coakley commented after reading the document from City Attorney Heine and understanding all of the legal ramifications, she was bothered by the fact the council had to vote on this. She was of the opinion the city council would be putting its residents at risk if they were to vote no on this matter. She explained after talking to City Manager Barone, she indicated she was not willing to risk the greater good of the community for this matter. She did not want to see the city losing its insurance over this request. City Manager Geralyn Barone commented her conversation with Councilmember Coakley had to do with the items that come before the council and how professional opinions are offered by city staff. She reported if recommendations for denial were made there were reasons. She reiterated staff understands the final decision rests with the city council. She stated if the council were to deny this request and the city were sued by the applicant, there would be a cost to the city that would be passed onto taxpayers.

Wiersum reported the council spent an extensive amount of time discussing this matter at its last meeting. He requested the council ask questions and focus on new information.

Carter thanked Councilmember Coakley for her comments. She indicated staff was very valuable to the city council and this was their field of practice. She reported the city council gets as smart as they can as fast as they can, but this was not the council's field of practice. She explained the council understood the resident's pleas, but stated sometimes these issues were bigger than the council, and the council had to consider what was best for the city. She stated at times,

the council would disappoint some people, but lawsuits and litigation also have negative impacts on the city. She commented the council sometimes had to make decisions keeping in mind the long term impact on the community. She indicated sometimes the council was asked to do hard things that were less popular and she understood now why not everybody runs for city council.

Wiersum asked for comment from the applicant at this time.

Tammy Hartman, Verizon representative, stated she understood the frustrations the city was facing with this legal process. She indicated Verizon was trying to follow the new rules and wanted to work with the city to be a good partner. She commented at the last meeting she did not adequately present information to the council and apologized for not meeting the city's expectations. She requested the council approve all six of the requested tower locations.

Calvert questioned how micro facilities were defined and asked why the pole on Tammer Lane was not being considered for colocation.

Otto Dingfelder, Verizon representative, explained Xcel Energy has a set of rules and guidelines that Verizon must follow and they have deemed that any structure that has a light pole was incapable of supporting a small wireless facility. He indicated this could be due to safety and structural concerns. He reported these requirements are dictated to Verizon by Xcel Energy and this was why the pole could not be used for colocation.

Wiersum stated the council has read the information from Mr. Johnson and the other neighbors. He reported he saw the antenna with a solar powered unit beside it. He anticipated some of the neighbors have chosen to identify this unit as a small cell wireless or micro facility. He requested comment from Verizon on why this does not qualify. Mr. Dingfelder explained his background was in civil engineering and based on his observation of this site, he indicated this pole had equipment that was being used for meter reading. He stated this pole was not being used as a small wireless facility to communicate with handheld devices, but rather was being used to communicate with neighbor's meters.

Anthony Dorland reviewed how the state statute defines a small wireless facility, noting it has to provide wireless services between the user equipment and a wireless service network. He stated Xcel Energy had their own private meter reading and was not providing wireless service to anybody else.

Kirk discussed the aesthetic value of these poles. He stated he would much rather see the monolithic poles that were used in Denver, used in Minnetonka. He believed that based on the answers received at the last meeting, these would not be the only small cell wireless towers in the city. He commented if this was the case, he wanted the city to pursue a model that was in line with Minnetonka

neighborhoods with the understanding the city was working to remove the clutter and electrical lines from the community. He indicated the city was now proposing to introduce small cell wireless towers that would outlast electrical lines. He encouraged the council to consider the aesthetic value. He asked if there was another style of the pole with a cleaner look at the base that could be considered as an option. Ms. Hartman stated the Xcel Energy box needs to be present on each small cell wireless pole. She reported Xcel needs to read the meter in order to charge Verizon for electricity usage. She commented the other pole used in Denver was for different technology and different equipment.

Kirk stated he was looking for a cleaner design than what was being proposed by Verizon. He feared that a design standard was being established this evening that would be carried out throughout the City of Minnetonka and because of this, he wanted the city to have the chance to consider cleaner pole options. Ms. Hartman discussed the original design stating she was proposing to have an eight inch pole with an antenna and radio mounted at the top. She reported staff requested the radio and antenna be enclosed. She indicated the Denver poles were not housing the same equipment that would be deployed in Minnetonka. She stated if the pole were round, it would be larger than eight inches.

Schaeppi indicated he was in the weeds in definition section 237.162. He commented on the different subdivisions and how they were interrelated. He asked if Mr. Dorland could attest to the fact the Xcel meter reader service does not meet the licensed or unlicensed system definition. Mr. Dorland explained Subdivision 15 addresses wireless service. He noted Xcel was not providing wireless service. He stated wireless service was provided by AT&T, T-Mobile and Verizon, or other wi-fi providers. He indicated private meter reading was not considered to be a wireless service.

Schaeppi stated this was not how he read the subdivision but thanked Mr. Dorland for his response.

Calvert understood the city was very limited in how they could respond to small cell wireless requests. She suggested the council explore other community's small cell wireless ordinances at a future worksession meeting in order to strengthen the city's conditional use permit while still operating within state and federal law. She thanked Councilmember Coakley and Councilmember Carter for stating the council's feelings and position so eloquently. She indicated there has been some talk about making this an administrative item that can be approved by staff. She commented the ability to deny these requests was extremely limited. She stated she was very disappointed by the applicant's tenor and lack of transparency at the last meeting. She was disappointed by the fact Verizon saw no value in holding a community meeting in order to allow them to hear from the neighbors. She understood this item has taken a lot of time, but she was pleased by the fact the neighbors had a place to air their frustrations. She hoped this

applicant and future applicants takes the frustrations to heart. She explained council's hands were tied by the state and federal legislators and they were the only people who could fix this situation. She encouraged residents to contact their state and federal legislators to let them know that municipalities need more local control in order to maintain their local aesthetics.

Schack stated her view on this has not changed since the last meeting. She indicated the council was a review and policy making body. She reported the council did not have a lot of policy making authority on this matter. She explained she would appreciate a conversation to reevaluate what the right approach to these requests should be. She understood there were a lot of poles and towers in the community, but noted these poles and towers allowed residents to run their lives with more convenience. She stated she didn't want to downplay this vital service. She reported the applicants were human beings that were being asked to do a job on behalf of their employer and she requested the council treat these individuals with respect, even when the request was frustrating.

Kirk stated he agreed with what has been said and he understood this request was frustrating. He commented if he was curt at the last meeting, it was purposeful. He indicated Ms. Hartman started the meeting off explaining she wanted to work with the city and this changed to policy and statute when it was made known Verizon had no reason to compromise. He discussed his request to move the Pioneer Road tower 40 to 50 feet onto Excelsior Boulevard and stated the applicant reported this would push the tower outside the designated service area. He was of the opinion Verizon plans on putting their towers where Verizon plans on putting their towers. He expressed frustration that Verizon has deflected the council's questions and has not defended their requests. He believed aesthetics should be further considered, but understood this topic was going nowhere with Verizon. He stated he hated the idea of approving this request this evening and hoped that the next vendor to approach the city would be more willing to work with the city. He was of the opinion the findings in the second option would not be defensible and would lead to a lawsuit.

Schaeppi stated this was democracy, there were applications, tough questions were being asked and this was how it works. He explained he appreciated the time and effort from Verizon. He indicated he believed the request on Linner Road was defensible based on the legal definitions in Subdivision 15. However, he stated he was a realist as well and understood the state legislators had tied the council's hands. He explained he would be supporting each of the requests, except for the tower on Linner Road.

Wiersum commented he appreciated Councilmember Schack's comments. He understood the council was frustrated at the last meeting and he came down hard on Verizon. He stated he did this because he believed there were questions not being answered by Verizon. He understood the council did not always had to

agree, but the group did have to be respectful. He explained the challenge with this request was that the state legislators have let the city down in this area and the council's hands were tied. He reported the city was working with a large multi-national company and the power these companies have really crushed local control. He understood that each member of the city council loved Minnetonka and he feared the council was being put into a position where all local control has been lost. He understood the council could not vote against this item for fear of a costly lawsuit. He commented he hated to see the city council in this position and if the city continues to be put in this position, the council may want to take another look at how to handle these situations. He stated he would be voting to support this matter because his hands were tied and he did not want to throw away money on a lawsuit that the city would lose.

Schack moved, Carter seconded a motion to adopt Resolution 2021-037 taking final action on the proposed installations with the revised plan for the Linner Road and Tammer Lane small cell wireless facility. Calvert, Coakley, Schack, Carter and Wiersum voted "yes". Schaeppi and Kirk voted "no." Motion carried.

B. A front yard setback variance for a shed at 16920 Excelsior Boulevard

City Planner Loren Gordon gave the staff report.

Kirk asked if city staff searches out these types of violations. Gordon discussed how staff addresses the enforcement of city code violations. He explained staff does not proactively look for non-compliance. Rather, staff relies on complaints and then follows up on code enforcement concerns. He indicated staff follows up on all safety issues as well.

Lara Villavicencio, 16920 Excelsior Boulevard, reported this type of structure does not require a building permit in Minnetonka. She indicated there was no check point to educate her on the utility and city setback rules for sheds. She stated she was unaware that the shed was violating city setbacks. She explained she built the shed to blend into the property as it matches the existing structure and was set back into the tree line and shrubbery. She noted she spoke with all of her neighbors and there were no objections to the shed. She commented the shed houses a snow blower that does not fit into the garage. She requested the shed not be required to be placed in the rear yard because it was lowland. She stated it would be very difficult to get a snow blower from the rear yard up to the driveway. She explained there were many homes in her neighborhood that had sheds in front of the front line of the home. She requested the council be allowed to move the shed back a little further to address the utility setback concern but that it be allowed to remain in the side yard.

Jhony Villavicencio, 16920 Excelsior Boulevard, explained there were six other properties on Excelsior Boulevard that have sheds. He questioned why he would be the only person being asked to move the shed 50 feet when there were others sheds located in front of homes. He requested the city allow his shed to remain like everyone else at 35 feet from the roadway.

Calvert commented she read the packet very closely and watched the planning commission meeting. She explained she shared the sentiment of the planning commissioners and sympathized with the property owner. She appreciated the fact that the shed matched the existing structure and understood why the shed was placed where it was. However, like the planning commission she would support enforcing city code on this matter. She was of the opinion the city should remain consistent on these types of issues.

Kirk stated in order to overturn the planning commissions recommendation the council would have to identify findings that supported a variance that would allow the shed to remain in its current location. He explained he would be supporting the planning commissions recommendation to deny the variance.

Wiersum agreed but stated this was a hard one for him. He reiterated that the city was not out looking for violations, but rather enforced city code on a complaint basis. He explained when the city becomes aware of violations, the city could not look the other way. He stated without enforcement, the city's ordinances simply become suggestions. He indicated he would like the city to remain consistent and for this reason he would be supporting the planning commission's recommendation.

Kirk moved, Schack seconded a motion to adopt Resolution 2021-038 denying a variance request for a shed within the front yard setback at 16920 Excelsior Boulevard. All voted "yes." Motion carried.

15. Appointments and Reappointments: None

16. Adjournment

Calvert moved, Kirk seconded a motion to adjourn the meeting at 9:32 p.m. All voted "yes." Motion carried.

Respectfully submitted,



Becky Koosman
City Clerk