

**Minutes
Minnetonka City Council
Monday, October 18, 2021**

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

4. Approval of Agenda

Kirk moved, Carter seconded a motion to accept the agenda with addenda to Item 14.C. All voted "yes." Motion carried.

5. Approval of Minutes:

A. October 4, 2021 regular meeting

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

6. Special Matters:

A. Recognize Corrine Heine as recipient of the Brown, Mulligan, Rocha Distinguished Public Service award from the International Municipal Lawyers Association (IMLA)

Wiersum recognized City Attorney Corrine Heine as the recipient of the Brown, Mulligan, Rocha Distinguished Public Service award from the International Municipal Lawyers Association (IMLA). He provided background information and read the award in full for the record.

City Attorney Corrine Heine explained it was a great honor to receive this award. She reported she has had a very satisfying career serving the City of Minnetonka as its legal attorney.

He commended Ms. Heine on her tremendous efforts on behalf of the city and presented her with a plaque. A round of applause was offered by all in attendance.

7. Reports from City Manager & Council Members

Acting City Manager Mike Funk reported on upcoming city events and council meetings.

Public Works Director Will Manchester provided the council with an update on the Groveland Bay project.

Calvert thanked staff for making the recent open house a tremendous event. She noted she recently attended a National League of Cities conference call regarding PFOS, which are dangerous chemicals. Calvert noted she also attended the Minnetonka Family Collaborative meeting where a presentation was given by Braver Angels.

Coakley reported last weekend she attended the Minnetonka Coalition for Equitable Education that was hosted by youth. She thanked all of the youth that were involved in this forum.

Coakley explained she scheduled a home inspection with CenterPoint Energy and Xcel Energy. She encouraged residents to consider having a home inspection done in order to improve the efficiency of their home.

Schaeppi commented he appreciated the positive actions that were taking place at Lone Lake Park for combined buckthorn removal.

Schaeppi discussed the amount of graffiti that has been painted onto bike trails and signs in the community. He noted he has been in contact with the DNR and explained a group would be formed to discuss adopting tunnels and signs in 2022.

Schaeppi commented on the crime statistic report the council received from Police Chief Scott Boerboom at its last meeting. He noted this information was available on the city's website. He explained the crime has continued in the past two weeks. He stated he looked forward to addressing this concern going forward.

Wiersum reported he attended the Regional Conference of Mayors today where he received an update from MNDOT on the goal to reduce the number of vehicle miles traveled. He encouraged residents to walk and bike more in the community in order to reduce the overall vehicle miles in the community. He explained the group also received a report on water.

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

Liz Evans, 2705 Crestwood Circle, explained she has been a resident of Minnetonka for the past 21 years. She noted her home was broken into a month ago and she thanked Councilmember Schaeppi for addressing the crime concerns in the community. She encouraged the council to consider what was meant by “low crime”. She stated crime in Minnetonka was higher than Eden Prairie, certain parts of Plymouth and Wayzata. She commented on the stats that were given to the council and questioned what would be done to minimize or reduce these numbers. She recommended the council consider how to address the rising crime rates in the community, to consider hiring more police officers and to protect its parks. She suggested the city consider investing in more cameras in order to deter crime in the community.

Wiersum explained staff would provide the council with a response to this matter at a future meeting. Acting City Manager Mike Funk explained he had received an email from Ms. Evans and commented on the strategies that were being considered by the police department to address the cities rising crime statistics.

9. Bids and Purchases:**A. Bids for the Opus Lift Station Secondary Forcemain Project**

Public Works Director Will Manchester gave the staff report.

Kirk moved, Calvert seconded a motion to award the contract for the Opus Lift Station Secondary Forcemain Project, Project No. 21911, to Ellingson Drainage in the amount of \$139,763 and authorize the Utility Operations 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 \$350,000. All voted “yes.” Motion carried.

10. Consent Agenda – Items Requiring a Majority Vote:**A. Resolution concerning a No Parking zone on Dynasty Drive**

Calvert moved, Kirk seconded a motion to adopt Resolution 2021-109. All voted “yes.” Motion carried.

B. Resolution providing for the redemption and prepayment of the city’s G.O. State-Aid Street Bonds, Series 2008A

Calvert moved, Kirk seconded a motion to adopt Resolution 2021-110. All voted “yes.” Motion carried.

C. Resolution adopting the 2022 meeting schedule for the Minnetonka City Council

Calvert moved, Kirk seconded a motion to adopt Resolution 2021-111. All voted "yes." Motion carried.

11. Consent Agenda – Items requiring Five Votes:

A. Resolution approving TONKAWOOD FARMS THIRD ADDITION at 15014 Highwood Drive

Schack moved, Calvert seconded a motion to adopt Resolution 2021-112. All voted "yes." Motion carried.

12. Introduction of Ordinances:

A. Items relating to Dick's Sporting Goods at 12437 Wayzata Boulevard

City Planner Loren Gordon gave the staff report.

Calvert stated she found the proposed changes very intriguing. She explained she wanted to learn more about who gets to access the turf field space.

Schack questioned what would happen if the field space was no longer used in the future and stated she too wanted to learn more about how Dick's would be using this field space.

Kirk questioned if there was a way to capture stormwater on the turf field. He indicated he was concerned with the remaining space left in the Sears box.

Schaeppi commented he was generally concerned with how the field will be patrolled and used.

Carter challenged the planning commission to press on potential public/private partnerships for this field space.

Coakley stated she would like to know more about how the field space would be used and how it would be accessed.

Wiersum indicated he was curious about how Dick's would be using the field space as well. He encouraged the planning commission to dig into this further as he wanted to see what can be done to make Ridgedale more vital and distinctive.

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

13. Public Hearings: None

14. Other Business:

A. Resolution providing for the issuance and sale of GO Utility Revenue Bonds, Series 2021A in the proposed aggregate principal amount of \$10,000,000

Finance Director Darin Nelson gave the staff report.

Carter thanked staff for the detailed presentation. She explained she liked the idea of the city having a pricing committee. She questioned if this was a common or emerging practice. Nelson indicated the pricing committee was new to him and stated it made a great deal of sense. Doug Green, Baker Tilly, commented further on the benefits of the pricing committee. He stated there was always a demand for AAA municipal bonds.

Wiersum explained the city does not go into this bond issuance lightly. He noted this funding would be used for infrastructure improvements in the community and requested further comment from staff on this project. Nelson stated utility rates would be impacted in order to assist with funding the city's proposed infrastructure improvements. He described how staff had adjusted utility rates in order to stay ahead of infrastructure improvements.

Schack indicated she supported the proposed bonding. She appreciated how the city stays ahead on its infrastructure improvements and was proud of the fact the city had a AAA bond rating.

Calvert stated she has been contacted by constituents this week that shared consternation with her commitment to modern infrastructure. She reported this bond issuance helps makes the case as to why the city can invest in infrastructure. She indicated clean drinking water should never be taken for granted. She thanked staff for their great work on this bond issuance.

Wiersum discussed how infrastructure improvements are funded by the city through utility bills and bonding. He thanked the public works and finance team for all of their efforts on these types of improvement projects because they make the city better. He commented he was proud of the way the city was taking care of its infrastructure.

Schack moved, Calvert seconded a motion to adopt Resolution 2021-113. All voted "yes." Motion carried.

B. Ordinances pertaining to definitions and lot shape

City Planner Loren Gordon gave the staff report.

Kirk stated he supported the proposed changes as it would clear up some confusion within the existing language.

Calvert agreed.

Kirk moved, Calvert seconded a motion to adopt Ordinances 2021-22 and 2021-23. All voted "yes." Motion carried.

C. Ordinance regarding tree protection

City Planner Loren Gordon gave the staff report.

Calvert thanked staff for all of their efforts on this ordinance. She understood a lot of work had gone into this ordinance. She requested further information regarding the natural resources fund. Gordon explained the natural resources fund would be set up to address all parts of landscaping within a project.

Calvert noted she had additional questions that she addressed with staff prior to the meeting.

Schaeppi thanked staff for all of their hard work on this ordinance. He asked what prohibits a single family homeowner from prior to selling removing an excess number of trees. Gordon stated this ordinance was triggered by development. He reported there was not a prohibition on tree removal on single family properties in Minnetonka. He commented there could be a property owner that chooses to subdivide and removes trees prior to subdividing, and a look back would then be required. Community Development Director Julie Wischnack stated this look back provision did not happen very often in Minnetonka. She noted it was harder to identify if residents remove trees slowly over time versus all at once.

Schaeppi inquired if the natural resources fund would apply to a single family home development. Gordon reported the fund would apply to any situation where a developer could not plant the full amount of plantings required by city code.

Schaeppi questioned if staff was concerned that the council would create a new tension between staff and the council and how the good faith flexibility would create unnecessary conflict on applications. Gordon reported for the single family

homeowner this would not happen. He commented for the larger developer on a difficult sight, some conflict may occur.

Schaeppi stated he appreciated the green and red triangles within the diagrams. He noted he watched the planning commission meeting and asked if there were any examples from the past several years where this ordinance would be a true impediment. Gordon explained the difficult properties in Minnetonka were not developed before due to an ordinance like this, rather they required more creativity. He noted the city does not have very many undeveloped properties. Wischnack stated anticipated homeowners that wished to subdivide their lot that were heavily treed would have concerns once this ordinance was in place.

Schaeppi commented the red triangle within the single family diagram was one of his primary sticking points and he was trying to understand. He noted a few community members have commented about the science and ecology of this ordinance. He requested staff speak to this further. Natural Resources Manager Leslie Yetka responded the City of Minnetonka was very fortunate to have the resources and funding dedicated to staff that are professional ecologists, certified master arborists and horticulturists. She noted the science portion of this ordinance was left to these staff members and explained she also consults with outside experts frequently.

Schack questioned if the list would be reviewed annually and asked who would be the decision makers. She stated she would like staff to be making these decisions because they have expertise that she does not. She commented on the city's tree sale and questioned if there would be a tipping point where residents would be hesitant to plant more trees given the new tree ordinance. She asked if staff had concerns about how the veracity of the tree ordinance would impact the ability to meet affordability goals within the community. Yetka stated in terms of lists within the packet, this was meant to be an example. She indicated lists are provided to developers quite frequently to assist in guiding plant selections in their landscaping. She noted the intent on this ordinance was recognize all trees have benefits while placing a priority on certain varieties. She indicated the proposed ordinance would provide more protection to existing trees. She understood that some trees were going to be climate winners and others would be climate losers in the next 100 years. She stated this was the idea behind the proposed list and explained staff would continue to update the list over time. She reported she did not know if there would be a tipping point for residents and their tree plantings going forward. Wischnack stated there may be some sites that would have to prioritize affordability over trees. She commented staff understood the council saw value in both trees and affordable housing and if a request were to bump against this ordinance, staff would bring this matter to the council for further consideration.

Kirk indicated he watched the planning commission meeting several times. He asked if staff believed there was anything that should be changed based on what the city has heard in the past month. Gordon stated staff has looked at a lot of things, many questions have been asked and staff believes all the boxes have been checked. He anticipated other ordinances would be drafted to address ecosystems and soils in order to help trees. Wischnack explained there was more that could be done to address compaction, but this will be done in another portion of ordinance.

Kirk commented this ordinance has brought about an interesting intersection between an environmentalist group working to protect trees and developers with their rights. He noted there may be issues that have yet to be considered. He questioned if staff responded to the Friends of Lone Lake Park. Wischnack stated this group submitted a letter before the planning commission meeting and all of their questions were addressed. She commented further on the letter that was submitted and how staff responded.

Kirk questioned if the ordinance could be written in a way to have the tree list reviewed on an annual basis, if necessary. Wischnack stated the ordinance could state the city shall keep a list of priority trees on file.

Kirk discussed the fine reduction from \$5,000 to \$2,000. He explained he was of the opinion the city could not penalize development high enough sometimes. He questioned why the city reduced the fines. City Attorney Corinne Heine reviewed city charter noting ordinance violations that are deemed a civil penalty shall come with a \$2,000 fine. She reported an increase in fine amounts would require a charter amendment.

Kirk commented on a lot that was clear cut in Independence and how this lot led to an ordinance amendment. He understood the city wanted to protect its trees, and knew rules had to be in place for that one outlier that wanted to clear more trees than was allowed. He asked if there was something the city could do between nothing and something. Wischnack stated residents in Minnetonka loved their trees and they don't typically clear cut. She questioned if the council wanted to regulate for the outlier or for the general developer. She anticipated developers would believe the city went to far if the city were to regulate for the outlier.

Kirk inquired if he can get a map on the woodland preservation area. Wischnack stated the links were not working in the packet and noted there was a link on the city's website.

Kirk explained he views the woodland preservation area (WPA) as an environmental easement. He stated if development rights were limited, he would want the adjacent property owners to know this. He commented the planning

commission questioned if the WPA could grow. He indicated if this were to happen, property owners would have to be notified because property development rights would be restricted. He noted he liked the restrictions within the WPA, but he wanted to make sure property owners understood this responsibility. Wischnack noted when the original tree ordinance was drafted in 2008 this was part of the notification, that all property owners that touched a WPA were notified individually. She clarified that staff has to verify where the boundaries of the WPA are for property owners.

Kirk discussed how the WPA is fragmented and asked if a woodland preservation area could be taken down by 25% now and then again 10 years from now. Gordon reported staff has seen very little impact on the WPA since 2008. He noted only four acres have been removed, which was a very small percent. He explained a provision could be drafted that limits the size and threshold. He indicated this would presume that WPA's wouldn't grow and he anticipated some will. He reported staff had drafted language regarding WPA's stating: In addition to those thresholds, for onsite removal, the city may consider the proposals impact on the cumulative impact within the larger WPA. Wischnack explained staff found it difficult to understand how this would work, which was why the language was left looser.

Calvert stated the majority of the councilmembers would like the ordinance to address the cumulative WPA removal.

Coakley reported Councilmember Schack asked her question already, noting she had the same concern regarding subdivisions for affordable housing and how the tree ordinance would impact these requests. She was of the opinion affordable housing was more important than trees in some cases and she didn't want these two matters pitted against each other. Wischnack reported the subdivisions that were occurring in the city were not creating affordable housing, but rather were creating more expensive homes. She indicated this point was well taken though, and noted the tree ordinance would be onerous for those trying to create affordable housing through an ADU or by other means.

Wiersum recessed the city council meeting.

Wiersum reconvened the city council meeting.

Schaepfi asked language should be included in the ordinance to address the concerns that have been raised regarding affordable housing. Wischnack commented language could be included stating if a developer has affordable housing, they could remove 50% of high priority trees, as opposed to 35%. However, she noted all sites were very unique and this language may not to apply to every development. She further discussed how city staff worked with a

developer to move their building eight times in order to preserve trees and provide affordable housing.

Carter thanked the council for their comments. She explained she did not want any ordinance to be combative or create polarity in two truths that the city desperately wants more affordable housing and simultaneously the city cares about sustainability and trees. She reiterated that she did not want any ordinance that has the city choosing between housing and trees. She requested staff draft language that never forces the council to have to compromise but allows the city to work with developers, especially those who were working to pursue affordable housing. She did not want to see the city making it harder for developers than it already was to create affordable housing units. She recommended there be space within this ordinance for both affordable housing and trees without competing against one another.

Wiersum commented on the tree coverage in Minnetonka. He reported Minnetonka was in a strong position when it came to tree coverage. He asked if this was a direct reflection of the tree protection activity in the city or was this due to something else. Yetka explained this was due to a number of factors. She reported Minnetonka originally had oak barren and oak woodlands. She noted the community was more wooded than it was originally. She indicated Minnetonka has really rich soils with rolling topography and wetlands that assist in growing trees.

Wiersum indicated Minnetonka was a very desirable location for development. However, it was not cheap to develop in this suburb when compared to neighboring communities. He reported this ordinance does not make it cheaper to develop in Minnetonka, which gets to the questions that have been raised regarding affordable housing. He stated when issues are brought to the council that are black and white are easy, but things get hard when there are shades of gray. He indicated serving on the city council is not always about easy decisions but rather there are tradeoffs and values. He understood that the city only received comments from one developer and other developers may have been hesitant to provide the city with feedback. He explained the city did not want to value one thing over another. He understood the community valued trees, but he also understood there was a matter of property rights for homeowners. He commented further on how the council previously addressed a shoreland buffer matter. He was of the opinion trees had become a more complex issue because it impacted development, land use, property rights and affordable housing. He questioned if passing this ordinance was going to make it more difficult to secure the type of development the council wants in Minnetonka. Wischnack commented it was already hard. She reported when she meets with developers, she has a script that reviews what is important to Minnetonka, which includes trees, affordable housing, natural resources, and neighborhood engagement. She noted there were some developers that choose not to play by the rules in

Minnetonka. She anticipated the ordinance would make it harder, but noted the city was at a crucial point with climate concerns and this was as important as having good developments. She was hoping the city could get there and that this ordinance would not create negativity in the development world. She indicated staff would be honest with the council if issues were to arise and developers believed this was too tough.

Wiersum stated the city will have to be aware if this ordinance was a tipping point. He indicated the city had to be careful to not let perfect be the enemy of the good. He explained the council would have to then scale back, with the understanding risks have to be taken in order to achieve certain values. He encouraged staff to keep their radar up if the city has reached a tipping point.

Calvert commented she has been thinking about the two year ownership and asked if this timeline should be expanded further. She inquired if private homeowners want to take trees down could the city ask them to pay into a fund if a high priority tree were lost.

Schack stated the community has asked good questions and she understood residents want the council to go further. She reported she was comfortable with that because she has seen this in action. She reviewed a portion of the ordinance stating she wanted to be assured affordable housing remained a priority without weaponizing the need to save trees. She thanked staff for all of their efforts on this ordinance and noted she would be offering her support.

Calvert reported she has had conversations with the North Star Chapter of the Sierra Club. She encouraged the council to keep in mind residents already pay a tremendous price due to climate change and if something isn't done now, the piper would be paid later. She spoke to what is meant by "climate justice". She believed the council had a responsibility to protect the environment for all residents. She agreed that this ordinance was a vast improvement and she supported the WPA language be included when the ordinance was approved.

Coakley commented she appreciated the way staff broke down the information regarding trees along with all of their efforts on the ordinance. She suggested language be included in the ordinance to further address affordable housing. She stated she did not want this ordinance to deter developers from trying to pursue affordable housing in Minnetonka.

Schaeppi thanked staff for all of their work on this ordinance. He explained he supported the city having a list of trees that can be updated annually. He indicated he was struggling with trying to understand how many lots in Minnetonka would be impacted for future development should this ordinance be approved. He recommended that staff track how many developments would not move forward because of this ordinance in order to provide the council with

feedback, should the need arise to amend the tree ordinance. He stated he would be reluctantly offering his support to this ordinance.

Kirk stated in his experience this ordinance would have more of an impact on single lot subdivisions than multi-family housing developments. He believed the language was tight enough that staff could waive the tree requirements when affordability comes across the table. He recommended the language not be further tightened. He commented it did not bother him to slow down one lot subdivisions because the newer homes don't always fit in with the surrounding 1970's neighborhood. He suggested the list of trees be somehow attached to the ordinance. He recommended the WPA language also be included in the ordinance. He appreciated the fact that soil compaction would be addressed by another portion of city code. He suggested the city have a look back period that was closer to four years than two years in order to address trees that have been impacted by construction. He commented further on how some of the issues raised by the Friends of Lone Lake Park should be brought to the sustainability commission for further consideration. He encouraged the council to consider how to better educate the public on what trees are deemed high priority or valuable.

Wiersum stated this was a complex ordinance. He recalled when the ordinance was previously amended noting it took a great deal of time. He believed the council was supportive of the ordinance, with some language rewrites. He questioned how the council should proceed. Wischnack reported staff was working to rewrite portions of the ordinance language.

Wiersum indicated he would like to see the city and its residents planting more trees. He indicated he has planted dozens of seedlings. He recommended the city make seedlings and bare root trees available to public. He explained this would show the city was doubling down on its commitment to preserving trees. He supported the tree list being attached to the ordinance with the understanding staff would have the ability to amend the list. He anticipated this ordinance would require adjustments in the future and noted he would be offering his support this evening. He requested comment from staff on the proposed language changes for the ordinance. Wischnack reviewed the proposed language amendments to the ordinance which included the following statements:

The city shall maintain a list of acceptable native tree species for planting and update as necessary.

In addition to these thresholds for onsite removal, the city may consider a proposal's impact on the cumulative removal within the larger WPA.

Heine commented on another amendment that would have to occur within the ordinance to Section 1 stating after the phrase tree protection it should be noted

the remainder of the section was attached as Attachment A to this ordinance is repealed in its entirety.

Schack stated she supported the ordinance with the proposed amendments.

Kirk indicated he would still like to see development areas protected for four years instead of two years. Wischnack discussed how the language was currently written and explained what Councilmember Kirk was proposing would add an entirely new section to the ordinance.

Kirk questioned if there was anything in the ordinance that recognizes damage to trees during construction. Wischnack reported language was included and commented further on this language.

Kirk asked if there was a way to include language that forces developers to be more careful in order to protect trees that were meant to be saved. Wischnack stated it would be difficult for the city to track down developers four years after they complete a project if a single tree were to die, she noted there would be no security or escrow in place at that time. She believed this issue needed further discussion before being considered.

Kirk questioned if there was a way to include this matter in the tree compaction ordinance to encourage developers to be more diligent about protecting trees. Wischnack stated staff can analyze this more.

Calvert indicated she and Councilmember Kirk were trying to get at the same thing. She noted some of the concerns raised by the Friends of Lone Lake Park were that short cuts were taken and slow growth trees were being damaged during construction. She asked what could be done to protect these trees and questioned if studies should be done on previous developments. Wischnack reported there was protection post development that was secured by a letter of credit to ensure the developer did what they said they were going to do. She commented that Councilmembers Calvert and Kirk were asking for a higher level and this requires more information. She stated if the council could support adopting the ordinance as is, this could be done. Staff could then research the matter further and the issue could be addressed when the soil compaction ordinance was discussed.

Schaepfi supported this matter being further researched by staff and that further discussions be held by the council.

Wiersum inquired if a four year look back would be a tipping point. He anticipated this type of requirement would make development in Minnetonka less desirable. He questioned if there were other things, that were more overt or preventative,

that could be done to protect trees versus having a four year look back. He asked if the council wanted to table action on this ordinance or move it forward.

Schack supported the ordinance moving forward. She noted the council has been discussing this ordinance for the past two years and she supported all of the extra protection that was being offered. She encouraged the council to not let perfect be the enemy of the good. She indicated this ordinance could always be revisited in the future.

Kirk agreed the ordinance should move forward and noted he would support the ordinance with the staff language amendments.

Calvert moved, Schack seconded a motion to adopt Ordinance 2021-24 as amended. All voted "yes." Motion carried.

15. Appointments and Reappointments: None

16. Adjournment

Calvert moved, Kirk seconded a motion to adjourn the meeting at 10:07 p.m. All voted "yes." Motion carried.

Respectfully submitted,



Becky Koosman
City Clerk