

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, JUNE 24, 2002**

**1. CALL TO ORDER.**

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

**2. PLEDGE OF ALLEGIANCE.**

All joined in the Pledge of Allegiance.

**3. ROLL CALL.**

City Clerk Kathleen Magrew called the roll. Council members Terry Schneider, Linda Koblick, Jan Callison, Al Thomas, Ken Tauer, Dick Allendorf, and Karen Anderson were present.

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou advised that there were no changes to the agenda.

Schneider moved, Allendorf seconded a motion to approve the agenda as submitted. All voted "yes." Motion carried.

**5. MINUTES.**

Allendorf moved, Thomas seconded a motion to approve the minutes of the June 10, 2002 regular council meeting as submitted. All voted "yes." Motion carried.

**6. SPECIAL MATTERS.**

**A. Presentation of "C.C. Ludwig Leadership Award" to Mayor Karen Anderson.**

Callison recognized Mayor Anderson's public service, which was the basis for her receiving the League of Minnesota Cities' C.C. Ludwig Leadership award. Callison said that Anderson's service record would have justified the award, even if she had not also served as the President of the National League of Cities. Tauer said that the Mayor's award was an honor for the community. Schneider said that there was no question that she was the most qualified person for the award. Koblick noted Anderson's

mentorship of others, and said that Anderson excels at representing all viewpoints.

Anderson said that receiving the award was a humbling experience. She expressed her appreciation of present and past city council members and city managers. She accepted the award on behalf of the city.

**7. REPORTS FROM THE CITY MANAGER AND COUNCIL MEMBERS.**

City Manager John Gunyou reported that there will not be a council meeting on July 1, and the next regular council meeting will be held on July 8. He noted the upcoming Summer Festival and Ice Cream Social on June 29.

Barbara Obershaw, the new Executive Director of the Twinwest Chamber, was introduced. Obershaw was previously with the Burnsville Chamber, and looks forward to working with our multiple cities.

Anderson commented on the dedication of the city's newest park, Mills Park, earlier that day. Callison provided historical information about the area at the ceremony.

**8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA.**

No one appeared.

**9. BIDS AND PURCHASES:**

**A. Consideration of bids for the fuel dispensing system at the Gray's Bay Public Access Project No. 4721-F.**

Gunyou provided a brief introduction of this item.

Tauer moved, Callison seconded a motion to award the bid for the fuel dispensing system for the Gray's Bay Public Access Project No. 4721-F to Pump & Meter Service, Inc. in the amount of \$47,350.93. All voted "yes." Motion carried.

**10. CONSENT AGENDA (Items Requiring a Majority Vote):**

**A. Claims for council authorization.**

Tauer moved, Koblick seconded a motion to approve the June 17, 2002 claims list, including checks numbered 167190 through 167537 totaling \$1,661,880.09. All voted "yes." Motion carried.

- B. Resolution amending Council Policy No. 11.1 related to use of the Burwell property.**

Tauer moved, Koblick seconded a motion to adopt Resolution No. 2002-060 approving changes to Council Policy No. 11.1 concerning use of the Burwell Property. All voted "yes." Motion carried.

- C. Resolution authorizing the preparation of a feasibility report for the extension of sanitary sewer and water main at 14620 Woodhill Circle.**

Tauer moved, Koblick seconded a motion to adopt Resolution No. 2002-061 authorizing the preparation of a feasibility report for the extension of sanitary sewer and water main at 14620 Woodhill Circle. All voted "yes." Motion carried.

- D. Resolution receiving petition and authorizing preparation of a feasibility report for municipal water service for the Spring Lake Renewal lot division.**

Tauer moved, Koblick seconded a motion to adopt Resolution No. 2002-062 receiving the petition and authorizing the preparation of a feasibility report for municipal water service for the Spring Lake Renewal lot division, subject to the receipt of a feasibility report deposit in the amount of \$5,000 from Rings Development. All voted "yes." Motion carried.

- E. Resolution approving a cooperative agreement with the Minnesota Department of Transportation for the CSAH 73/TH 7 Intersection Improvement Project No. 4887R.**

Tauer moved, Koblick seconded a motion to adopt Resolution No. 2002-063 approving Cooperative Agreement No. 83450 with the Minnesota Department of Transportation for the CSAH 73/ TH 7 Intersection Improvement Project No. 4887R. All voted "yes." Motion carried.

- F. Resolution accepting plans and specification and authorizing the advertisement for bids for the King's Drive Storm Sewer Project No. 4652.**

This item was pulled from the consent agenda for discussion by Allendorf, who noted that there seemed to be a disconnect with the neighbors on this project.

Jan Freier, 4422 Loretta Lane, said that her perception of the discussion with the neighbors was that they had only grudgingly approved the minimal amount of work to be done. She would only support minimal work and felt that a 30" standpipe would be an excessive response.

Chris Kastl, 4416 Loretta Lane, said that the neighbors are concerned about erosion, and he had issues about the possibility of a pond and the loss of trees.

Marv Pearson, 4407 Loretta Lane, presented a card from a neighbor who could not attend the meeting, asking the council to postpone the item. He had attended a May meeting with staff and assumed the neighbors would have another opportunity to discuss the plans when they were ready. He was surprised the project was being presented to the council. Pearson said that he has lived in his home since 1960 and has never seen water pond in the area. He questioned the need for a pond that was 5.5 feet deep, and thought a pond would create a nuisance. He asked the city council to postpone their decision to allow time for more discussion.

Kim Munyon, 14235 Coronet Drive, said that water had eroded the soil on her lot. She noted that trees are toppling, and expressed concerns about safety.

Lance Lundstrom, 4350 Kings Drive, said that the problem is getting increasingly worse. He did not want the project to be delayed another year.

Charles Blackman, 4338 Kings Drive, agreed with Lundstrom. He said that there has been significant erosion during the past few years and a portion of his property has been affected.

Sandy Weis-Freier, 4422 Loretta Lane, said that she went out during the rainstorm and watched how the water ran. She noted that the water does not pond for long, and thought that was because the soil was sandy. She thought the problem came from water that drains across Highway 7.

Carol Gatlin, 4408 Loretta Lane, said that they would like to see the Kings Drive problem resolved, but she did not want the problem to shift from Kings Drive to Loretta Lane. She was concerned about the potential for loss of trees, which she said were needed as a sound and visual barrier. She was not opposed to a limited easement, and asked if the project costs would be assessed.

Gunyou read the card Pearson presented from Don and Barbara Shelby, 4429 Loretta Lane. The Shelbys said that they would appreciate more time to examine the plans.

Gunyou said that the city does not assess the cost for drainage improvements, unlike many other cities.

City Engineer Lee Gustafson, said that the comments from the neighborhood were accurate. He said that staff was proposing a pond on the south side of Highway 7. He explained how the drainpipe currently functions, and said that a huge ravine has developed as a result of the runoff. Staff tried to find a solution for the problems on the north side of Highway 7 that would not adversely affect properties on the south side of Highway 7. He said that the city was not proposing to dig a pond at 4408 Loretta Lane, and only wants the right to pond water at that location. Staff anticipated that it would take six to seven days to drain the water from a 100-year storm in that area. Staff's proposal would provide a four-foot standpipe to allow the water to drain into the ground, and the sand and gravel in that area will drain well.

Gustafson said that staff proposed to bid the project in August. The project could be delayed until the winter or spring, if the council felt that additional work was necessary. He noted that half of the neighbors want a delay, and the others want a timely resolution. Gustafson said that the proposed project is what staff believes is needed. He was willing to look at the Loretta Lane issues again. Gustafson felt that the project should be completed by the spring. He confirmed that there would be no assessment to adjacent properties for the project.

In response to Anderson's question, Gustafson said that with a typical winter and the soils in the project area, it would be possible to do some of the work in the winter, and finish the project in the spring. Anderson expressed concern if next May is also rainy and there are also torrential rains next June.

Allendorf commented that none of the neighbors questioned that there is an erosion problem on the north side of Highway 7. He felt that there was some lack of understanding of all the options and why some had not been chosen. Because there is a feasibility report, Allendorf did not feel a year delay was necessary. He suggested that over the next 30 to 45 days he and staff meet with the neighbors, listen to their input, and help them understand staff's recommendations.

In response to Tauer's question, Gustafson explained that a larger standpipe would cause the water to flow faster, creating more bounce and causing concerns around the edge of the downstream pond. Staff's goal is to not raise the elevation of the pond. He said that the project would call for filling the ravine and stabilizing the soils to allow drainage to flow overland to the existing pond. A catch basin could be added at Highway 7, if feasible. The proposed project is intended to control the rate of water runoff.

Tauer asked about the benefit of slowing the flow rate sooner. Gustafson said that staff calculated the full volume of the line, including the rate at which water percolates into the ground.

Callison said that she would support a short delay because some uncertainties remain, such as how much water the area contributes, the ultimate impact from the solution, and how many trees would be lost.

Gustafson said that if the project were delayed 30 to 45 days, it could still be bid in September, with construction occurring in October or November. He said that some restoration might need to be delayed until next year.

Koblick agreed with Callison's comments. She wanted to make sure the neighbors know what is happening. She noted their concerns about how encompassing a ponding easement might be. Gustafson said that the proposed easements are only for pond and drainage purposes. They did not include utilities, which would allow any public or private utility to use them. This restriction would mean that the land could only be used for ponding and drainage. If the city proposed to excavate that area, it would require council approval, and informational meetings would be held.

In response to Koblick's question, Gustafson said that the definition of ponding is vague, and could allow for temporary or permanent storage of water.

Koblick noted that in her tenure she did not think a 100-year storm elevation had been changed. Gustafson said that in this case staff was proposing a change to that elevation.

Koblick said that she would support a short delay of the project.

Schneider asked how the amount of sediment could be reduced. Gustafson said that there is a slight elevation change downstream of the pond. Staff proposes a standpipe without perforation,

because that would provide the maximum water quality and eliminate all sediments.

In response to the neighbors' skepticism about a ponding easement, Tauer asked if the easement could be limited to maintaining the existing elevation. Acting City Attorney Steve Bubul said that the easement could be drafted to limit the rights to the existing surface and prohibit excavation.

Allendorf moved, Thomas seconded a motion to postpone the King's Drive Storm Sewer Project No. 4652 for up to 45 days (with the actual time to be designated by staff based on the meetings needed), and directing staff to notify the neighbors of the meetings. All voted "yes." Motion carried.

Anderson suggested that the neighbors contact engineering staff if they want additional information about the project.

**G. Resolution authorizing the execution of a joint cooperation agreement between the City of Minnetonka and Hennepin County for participation in the Urban Hennepin County Community Development Block Grant (CDBG) Program in Fiscal Years 2003 through 2005.**

Tauer moved, Koblick seconded a motion to adopt Resolution No. 2002-064 authorizing a joint cooperation agreement between the City of Minnetonka and Hennepin County for participation in the Urban Hennepin County Community Development Block Grant (CDBG) Program in Fiscal Years 2003 through 2005. All voted "yes." Motion carried.

**H. Resolutions ordering the abatement of nuisance conditions existing at:**

- 1) 3803 Tonkawood Road**
- 2) 5545 Woodland Road**
- 3) 16609 Devon Drive**
- 4) 17621 Creek Ridge Pass**

This item was pulled from the consent agenda by Chris Tiggas, 16609 Devon Drive. Tiggas advised that he was unable to mow the lawn due to his health. He said that he could complete the mowing in another seven to 14 days. Because the inspector had denied his request, he asked the council for an extension.

Community Development Director Ron Rankin said that staff typically asks for a reasonable date certain compliance date, but in this case that had not been provided. Absent a date certain, staff brought the matter to the council.

Tiggas said that he could mow the lawn by July 2. Koblick said that the city would be grateful if he could maintain his property to the community's standards. Rankin suggested that the council adopt the resolution ordering abatement of the nuisance, and said that staff would postpone action until after July 2. Anderson noted that the resolution gives the city the authority to mow the lawn throughout the season if further violations occur.

Rankin advised that the property at 5545 Woodland Road was mowed, so no council action was required.

Koblick moved, Tauer seconded a motion to adopt the following resolutions ordering the abatement of the nuisance conditions:

- 1) Resolution No. 2002-065 concerning 3803 Tonkawood Road.
- 2) Resolution No. 2002-066 concerning 16609 Devon Drive.
- 3) Resolution No. 2002-067 concerning 17621 Creek Ridge Pass.

All voted "yes." Motion carried.

**I. Resolution providing for the issuance and sale of \$5,000,000 General Obligation Open Space and Park Improvement Bonds, Series 2002A.**

Tauer moved, Koblick seconded a motion to adopt Resolution No. 2002-068 for the issuance and sale of bonds in the amount of \$5,000,000. All voted "yes." Motion carried.

**J. Consideration of purchase agreements with the City of Eden Prairie for one used ladder truck, and Precision Fire Apparatus for one new pumper truck.**

Tauer moved, Koblick seconded a motion to authorize staff to enter into a purchase agreement with Precision Fire Apparatus for the purchase of one 1250 gpm pumper for the sum of \$218,177.00, and enter into a purchase agreement with the City of Eden Prairie for the purchase of one Sutphen ladder truck for the sum of \$50,000.00, and authorize staff to proceed with the sale of Ladder 3. All voted "yes." Motion carried.

**K. Authorization of Minnetonka Community Recognition Award program.**

Anderson pulled this item from the consent agenda to publicize the new program. Magrew reviewed the information in the staff report about the program. In response to Anderson's questions, she said that applications would be reviewed by Administrative Services staff, with the intent of being more inclusive. The Reflections Award will be maintained as a special award for larger projects or more years of service to the community. Magrew said that the program will be publicized in the August *Minnetonka Memo*.

Koblick applauded the logo for the program. Becca Harris, the Web Technologies Coordinator, was credited for her creativity.

Anderson moved, Koblick seconded a motion to authorize the Minnetonka Community Recognition Award Program. Schneider, Koblick, Callison, Thomas, Allendorf and Anderson voted "yes." Tauer was absent during the vote. Motion carried.

**L. Item relating to transit service:**

- 1) **Resolution authorizing participation in the transit service replacement program.**
- 2) **Approval of Transit Cooperation Agreement between the city and the Metropolitan Council.**

This item was pulled from the consent agenda by Koblick, who asked that staff review the program to give notice to the public. Rankin provided the summary. Koblick said that the program would bring people to Minnetonka businesses. She noted the city's debt of gratitude to Representative Ron Abrams and Metro Transit for their work on this project.

Koblick moved, Allendorf seconded a motion to:

- 1) Adopt Resolution No. 2002-069 authorizing participation in the transit service replacement program; and
- 2) Approve the Transit Cooperation Agreement between the city and the Metropolitan Council.

All voted "yes." Motion carried.

**M. Approve a new agreement with the City of Deephaven for inspections services.**

Tauer moved, Koblick seconded a motion to approve the new agreement with the City of Deephaven for inspections services. All voted “yes.” Motion carried.

**11. Consent Agenda (Items requiring Five Votes).**

**A. Resolution approving a two-lot subdivision, with lot width and lot area variances, at 5409 Woodland Road for RAM Construction.**

Callison said that this request was similar to another request two weeks ago where the lot did not meet the city’s standards. She opposed that request and would also oppose this one. She disagreed with staff’s conclusion that the new lots would be in keeping with the character of the neighborhood. She referred to a letter in the packet from a neighbor, which referred to the neighborhood’s character as a wooded environment. She said that the city was going to spend \$7 million to preserve open spaces, and felt that the city could preserve this wooded area by enforcing its ordinances.

Anderson asked for an explanation of the fill that would be needed. Planning Director Geoff Olson said that the applicant has sufficient buildable area without filling. He said that the applicant wanted to increase the building pad for a house that might be built on the lot. Olson said that the net result was that there would be no loss of storm drainage in the area. There might be an improvement, because the city would require the applicant to find an existing outlet and unplug it, or install a new outlet.

Anderson noted that the lot is heavily wooded, and asked how many trees would be lost due to filling, grading, or increasing the buildable area. Olson said that there are 45 significant trees on the property, 25 of which are box elder trees. Olson said that staff would work with the applicant to minimize tree loss. Olson said that the city does not require the replacement of trees in ponding or other excavation areas.

In response to Tauer’s question, Olson said that the applicant did not need to enlarge the buildable area to meet the code, and he was doing it at his own choice. Tauer said if that was the case, he felt the expectations of the city should be higher. Olson said that a ponding easement would be required, and the applicant would just dig that area deeper.

Tauer agreed with Callison, in principle, about the character of the neighborhood, but did note that there are five lots to the south of this one that appear identical. He said that the property would not qualify for small lot status because of the ordinance requirements.

Koblick shared Callison's concerns. She noted a neighbor's concerns about drainage. Olson said that one property cannot force runoff to an adjacent property. Koblick asked about the remedy if that occurred. Gustafson said that the amount of fill and compensating storage created must be equal. If that were documented, it would prove that the project did not impact drainage. Gustafson noted the difficulty in dealing with people's perceptions on this subject.

Koblick asked about the expected height of the house. Olson said that this would be a two-story house, and the other houses in the neighborhood were one-story ramblers.

Callison said that the elevation demonstrated that the proposed house did not fit with the character of the neighborhood.

Tauer could not see a hardship for this property, and said he would vote against the request. He noted the wetland and trees in the area, and said that it would damage the environment to put a house on a substandard lot in this area.

Thomas agreed and said he would not support the request.

Anderson expressed concern about the unwarranted fill. She thought there was enough buildable area on the lot to build a house, and said she would not support the request.

Rod Miller of RAM Construction, 5524 Dickson Road, spoke as the applicant. He had done a tree survey and said that only five trees would be removed that would have to be replaced. He would install a culvert as required by the city to address the drainage concern. He said that filling related to the required ponding easement, and said that the city wanted some mitigation done. He said that the soil in the ponding area would be removed. He had agreed to all the staff recommendations. He felt that the lot was compatible with the neighborhood, and said that the lots to the south were very similar. He felt that his property would qualify for a hardship because of the 100-foot width.

Tauer responded that he would be fine with the 100-foot width for the existing lot, but not to create two lots. He said the applicant's explanation had not changed his vote.

Schneider said his only issue was the need to fill to create buildable area. He did not see any merit in saying the lot would be out of character, because it is an unusually long lot. He did not feel the city should be involved in deciding the type of home to be built because Minnetonka has diverse types of housing within neighborhoods. He could not see a reason to deny the request, and saw the rationale of the fill only being done for ponding.

Tauer moved to deny the request. Anderson asked for the city attorney's direction on this. Bubul suggested that the motion be for approval, and if that failed, a motion could be made to direct staff to prepare findings of fact to support the denial. Schneider clarified that in the past, only a simple majority was required to deny a variance; five votes would be needed to approve the variance. Tauer withdrew his motion.

Olson said that the council had until August to act on this item.

Koblick moved, Schneider seconded a motion to adopt a resolution approving a two-lot subdivision, with lot width and lot area variances, at 5409 Woodland Road for RAM Construction. Schneider and Koblick voted "yes." Callison, Thomas, Tauer, Allendorf, and Anderson voted "no." Motion failed.

Koblick moved, Tauer seconded a motion to direct staff to prepare findings of fact for denial of the application. Koblick, Callison, Thomas, Tauer, Allendorf and Anderson voted "yes." Schneider voted "no." Motion carried.

Bubul stated that there was sufficient information on the record for staff to prepare the findings of facts for denial.

## 12. INTRODUCTION OF ORDINANCES.

### A. Ordinance amending City Code Section 300.28, Subd. 15 regarding grading and filling.

Gunyou provided a brief introduction for this item. Anderson noted that the proposed change would be consistent with rules of the Minnehaha Creek Watershed District.

In response to Tauer's question, Gustafson said that the intent of the ordinance is to address erosion control. A simple re-sodding project would not likely trigger the ordinance, but roto-tilling and reseeding a yard might.

Allendorf moved, Tauer seconded a motion to introduce an ordinance amending City Code Section 300.28, Subd. 15 regarding grading and filling, and refer the ordinance to the Planning Commission. All voted "yes." Motion carried.

### **13. PUBLIC HEARINGS.**

#### **A. Public hearing to consider a resolution authorizing an increase in municipal water and sanitary sewer rate charges.**

Gunyou provided a brief introduction for this item. He noted that a discussion of tiered water rates would occur in the future.

Anderson opened the public hearing at 8:13 p.m. No one spoke, and the hearing was closed.

Callison moved, Tauer seconded a motion to adopt Resolution No. 2002-064 authorizing an increase in municipal water and sanitary sewer rate charges as follows: \$0.05 per thousand gallon in water fees and \$0.10 per thousand gallon in sanitary sewer charges. All voted "yes." Motion carried.

#### **B. Items pertaining to the TH7/Williston Road South Frontage Road Project No. 7504U:**

- 1) Approval of first amendment to the improvement agreement between Dr. Wayne G. Hines and Kathleen R. Hines and the City of Minnetonka.**
- 2) Public hearing to consider a resolution ordering the vacation of certain public highway and/or right-of-way easements in the vicinity of 14617 State Highway 7.**
- 3) Resolution approving the revised final plat of Tower Hill 2nd Addition.**

Gustafson provided the background report for this item.

Anderson opened the public hearing at 8:16 p.m. No one spoke, and the hearing was closed.

Allendorf asked when the right turn lane would open. Gustafson said that the city's portion of the project is basically completed. The

final course of pavement is scheduled to be installed when the bank drive-up area is completed, and the date for that is not yet available from the private contractor working on that project. Allendorf asked if the final course on Williston Road could be expedited. Gustafson said that it could, but that would likely require additional payment to the contractor because the original project anticipated all overlays occurring at the same time. Allendorf asked staff to make this inquiry.

Allendorf moved, Tauer seconded a motion to:

- 1) Approve the first amendment to the improvement agreement between Dr. Wayne G. Hines and Kathleen R. Hines and the City of Minnetonka.
- 2) Adopt Resolution No. 2002-065 vacating certain public highway and/or right-of-way easements next to 14617 Highway 7.
- 3) Approve the revised final plat of the TOWER HILL 2ND ADDITION received on April 30, 2002, subject to the following conditions:
  - a. Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat; and
  - b. Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.
  - c. The resolution vacating the highway and/or right-of-way easements must be recorded with the plat.

All voted "yes." Motion carried.

**B. Public hearing to consider an application by the South Tonka Lions Club for a temporary on-sale 3.2 percent malt liquor license for use at the Minnetonka Summer Festival to be held on June 29, 2002.**

Gunyou provided a brief report on this item.

Anderson opened the public hearing at 8:21 p.m. No one spoke, and the hearing was closed.

Tauer moved, Callison seconded a motion to approve a temporary on-sale 3.2 percent malt liquor license for the South Tonka Lions Club for use at the Minnetonka Summer Festival to be held on June 29, 2002. All voted "yes." Motion carried.

#### 14. OTHER BUSINESS:

##### A. **Resolution receiving feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the Platwood Road Storm Sewer Project No. 7003S..**

Gustafson provided the staff report on this item, and verified that there would be no assessments levied for the project.

William Anderson, 2222 Platwood Road, noted that the feasibility study did not reflect the heated comments from neighbors at the public meeting. Anderson likes a natural environment, which is why he chose to live in Minnetonka. He opposed concrete curbs and gutter, and wanted to avoid unnecessary expenditure of public money. He said that the proposed storm sewer would benefit only one property. He said that the surface of Platwood Road was damaged due to construction of the homes and driveways (including his) along that street, and not from water runoff. He questioned the cost-effectiveness of curb and gutter, and noted that the neighbors along Westernesse paid for their own brick pavers. Anderson said that the proposal would result in significant tree loss, and was concerned about the safety of children if curbs were installed.

Tauer asked if Anderson was more opposed to the storm sewer or to curb and gutter. Anderson said that he opposed spending tax dollars. He would prefer a smaller solution. Allendorf asked Anderson for clarification of his answer. Anderson said that he wanted the street to be resurfaced in the same manner it was paved 20 years ago with a bituminous curb and no storm sewer.

Kay Johnson, 2227 Platwood, provided a history of Platwood Road. She noted that there were originally five large lots along the street, with lots of trees and ground cover. When more homes were built, the quantity and velocity of the runoff increased. There is now a ditch on her property created by runoff. She provided photos showing the poor condition of the road surface, and noted safety issues because the plows cannot scrape to the road surface. Someone struck her mailbox due to the ice. Johnson said that they have lost many trees and their shed is leaning. She said that the

runoff is not just from her property; it also comes from Essex and Platwood. She stated her preference for Option 1. She said that Option 2 would require the removal of many ornamental trees and a berm that provides privacy from their neighbor to the north. She also said that Options 2 and 3 would take away their potential of creating another lot. Johnson said that Option 1 was the best solution for the longstanding problem in their area. She said that installing storm sewer when the road is reconstructed would make the street safer and prevent further loss of trees.

Jeff Howarth, 2201 Platwood Road, asked for an explanation of the cost estimates between the options. He thought that the city should take into consideration the age of trees that would be removed. He would like curbs that are more "kid-friendly," like the lower and smoother curbs in Maple Grove and Eden Prairie. He asked why staff recommended Option 1 when only one property owner at the public meeting supported that option.

Gustafson said that the street reconstruction costs would be nearly the same for all three options. He expressed concern about the soil conditions under the roadway and said that if base material were not added, the road would not last. The estimates could be off by \$10,000 to \$15,000, but that would not be known until after bids are received.

With respect to curb and gutter, Gustafson said curbs are used to control drainage, not vehicles. He noted that other cities that are under development do not know where driveway cuts will be made, so they make lower curbs to reduce their costs. Developers can then place driveways at any point on the curb. Minnetonka knows where the driveway cuts are. Gustafson said that curbs facilitate snowplowing.

In response to Tauer's comment, Gustafson said that easement acquisition evens things out between the options. He noted that there would be a significant increase in the number of trees removed under Options 2 and 3, which is one of the reasons staff chose Option 1. Gustafson said that installing the storm sewer near the sanitary sewer line would facilitate maintenance and guarantee access to both lines.

Callison asked how much of the costs related to the street reconstruction, and how much to the storm sewer. Assistant City Engineer Jennifer Posma said that about two-thirds of the cost is related to street reconstruction.

Anderson asked if staff considers the age of trees when considering options. Gustafson said that the city does consider the age of trees. He noted that the city takes great care to preserve trees whenever possible.

Anderson noted that the council has discussed curb and gutter for 10 years, and there is no intent to install them throughout the city. However, she said that they are appropriate when there has been severe damage due to runoff undermining the road surface. Anderson said that she is familiar with Platwood Road and how it looked before the newer homes were built. She noted that under existing ordinances, the area would not likely have developed as it did.

Allendorf disagreed with staff's characterization that curb and gutter would be in keeping with the character of the other streets in that area. He said that there is no concrete curb and gutter along Oakland Road north to the commercial area.

Callison said that the street could not be resurfaced as it was 20 years earlier because homes now exist that didn't previously. She could not recall another time when people preferred an option that would result in greater tree loss. She was convinced that there were severe water erosion problems in the area, and that there was a need for the storm sewer. She said that curb and gutter is important when erosion and runoff are a problem. She did not think that installing curb and gutter would be a waste of money, and said that failing to install them would likely be a greater waste of money. She supported staff's recommendation.

Tauer said that he also likes the rustic look and understands people who do not want curb and gutter. He is convinced that concrete curbs and gutters save money in the long run, especially when repairs are needed. He cited Jordan Avenue as an example of where the street could be milled and overlaid because of the curb and gutter. He was puzzled by the neighbors' opposition to storm sewer because storm sewer was needed to drain the street. He noted that properties that do not have a problem with runoff might still be contributing to the problem. He said that Option 1 was the clear choice because the costs were similar, it did not intrude on private property and would have access through city property, and it would preserve trees. He said that street reconstruction is needed due to the condition of the street.

Allendorf said that 80 percent of the project cost related to the street reconstruction. Everyone supported the street reconstruction,

but most opposed Option 1, the preferred option. He agreed that curb and gutter would significantly change the look of the street so Platwood would no longer be in character with other nearby streets. He could have supported an asphalt gutter for aesthetics alone, but did not hear that request from the neighbors.

Koblick said that everyone agrees that the road is in bad condition. She asked about options to colorize the curb and gutter. Gustafson said that there have been experiments with different colors of sidewalks and curb and gutter. Minnetonka has not used this in the past, but an adjacent city has. Colored surfaces are significantly more costly. There could be consistency issues if neighborhoods chose different colors, and colored surfaces are more difficult to match during repairs.

Anderson asked Howarth and Wm. Anderson for their thoughts on colored curbs. Anderson said that he objects to curbs. Mayor Anderson said that the council must heed the advice of its professional engineers on this issue. She said that runoff undermines roads.

Schneider opposes curb and gutters unless they are clearly needed. He would support staff's recommendation due to the subsurface conditions in that area as demonstrated by the frost heaving. He said that drain tile would be required and could only be installed with curb and gutter. He reluctantly supported Option 1.

Anderson said that she was sorry that there was disagreement in the neighborhood on the storm sewer issue. She noted the increase in neighborhood disagreements on this topic. She was convinced that a storm sewer project would maintain the environmental viability of the neighborhood by restricting the quantity and improving the quality of the run off. She suggested that staff consider public education on this issue to ensure the best public input on these types of projects.

Tauer moved, Allendorf seconded a motion to adopt the Resolution No. 2002-066 receiving the feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the Platwood Road Storm Sewer Project No. 7003S. All voted "yes."  
Motion carried.

**B. Authorizing bids for the 2002 mill and overlay project.**

Gunyou noted that this project is proposed to keep Minnetonka roads in the best condition possible. Gustafson provided the background information for the item.

Anderson asked if this change would still allow sufficient funding to repair a road in an unusual circumstance. Gustafson said that there would be sufficient funding through the budget allocation for pothole repairs.

In response to Tauer's question, Gustafson said that spot overlays have come to include doing a whole neighborhood.

Allendorf applauded staff's response to the biggest problem identified in the community survey, the condition of roads.

Allendorf moved, Callison seconded a motion to authorize bids for the 2002 mill and overlay project. All voted "yes." Motion carried.

Anderson asked that staff gather data to learn the short and long-term benefits of the program. Gunyou said that it was staff's intent to gather data over the next two to three years to determine if modifications to the program were necessary.

**C. Items concerning a proposed three-phased senior rental apartment building at 801 Sunset Drive and 12701 Fairfield Road West for Myron Kunin:**

- 1) Ordinance adopting a PID master development plan and approving final site and building plans.**
- 2) Preliminary plat.**

Olson introduced the item.

Callison noted that affordable housing was not part of this phase, and asked how likely it was that affordable housing would be included in later phases. Rankin said that affordable housing would be difficult in these townhouses. The more feasible opportunity would be to provide affordable units in the existing RidgePointe apartments during phase 2. He noted that phase 3 was not yet planned. Callison asked if the developer was willing to include affordable housing in subsequent phases.

Allendorf said that future promises are fine if there is leverage to ensure performance. He suggested a process similar to landscape bonds. For example, the developer would post a bond and, if he

does not provide affordable housing by a date specific, the bond would go to WHAHLT.

Rankin said that the item on this agenda only related to phase 1. He said that the city's best leverage would be in phases 2 or 3. A bond could be considered.

Anderson noted that additional phases were discussed when RidgePointe was approved in 1985. She was concerned about another 18-year delay for affordable housing. She noted that the developer was not present. Olson said that the deadline for the council to act on this proposal is July 22. Callison said that it would be helpful to have the developer present for the discussion.

Callison moved, Allendorf seconded a motion to postpone the consideration of a proposed three-phased senior rental development called Fairfield Rolling Estates at 801 Sunset Drive and 12701 Fairfield Road West for Myron Kunin to no later than July 22, 2002.

Gunyou asked if it was the council's intention to negotiate a commitment on affordable housing at this stage.

Tauer said that he was not convinced that the expensive nature of the units justified not having affordable units. He would prefer a way to tie affordable units into the existing building rather than in later phases.

Allendorf understood that affordable units were not feasible in the first phase. He would like some commitment through something like a bond, with a date certain for providing affordable units. Anderson supported that as reasonable.

Schneider said that he supports getting as many affordable units as possible, but he was concerned about mandating them. He said that phase 3 would provide the greatest opportunity to negotiate something. Anderson agreed and said that the council was asking staff to negotiate for the affordable units.

Koblick noted the EDA discussion of this issue. They found that phase 3 provided the best opportunity for affordable units because of the tower density. She would be uncomfortable mandating affordable units in phase 1. Anderson said that the developer's input would be needed.

Allendorf suggested requiring the developer to provide a certain number of affordable units by a specific date, and if that doesn't happen, the developer would forfeit the bond. He noted that the developer brought up providing affordable units in the existing units, which opened the door to the discussion.

Tauer and Anderson commented on age-specific housing, and wondered about two-story housing for seniors. Tauer suggested wheelchair friendly housing by making units that are adaptable.

All voted "yes." Motion carried.

**C. Bennett Family Park financial agreement.**

Gunyou provided a background report to introduce this item.

Chris Gabler, President of Bennett Family Park, noted that the park is a community center. They have recently approached other cities for support, and Deephaven has contributed \$20,000. Gabler said that they could do a better job of soliciting support from other cities. He said that the park provides services at a cost of less than \$55 per participant. His vision is to see the park used nine to ten months of the year. Gabler noted the national recognition of and respect for their program, and said that they often send teams to the World Series. They are modeling their park after Big Willow Park, and want a park of which people are proud. They are entirely volunteer run, and have three to four youths who work the concession stand, and six or seven grounds people.

Gabler noted that the park took the unprecedented step of supporting a political issue when it supported the city's parks renewal and open space referendum. They never expected that the park would be a recipient of the funds. Gabler said that they could not survive without the city.

Anderson asked Gabler if he supported the staff's recommendation. Gabler said that if he knew nothing about the park, he would not. But knowing what he does, including the work they have done and the value they provide, he would. He noted that they have raised nearly \$90,000 in their capital campaign.

Tauer asked if Gabler could give a sense of the value they give to Minnetonka and its residents. Gabler responded that 1,500 children participate in programs at the park. About 55 to 58 percent of those are Minnetonka residents. He calculated the total value per child at \$100 to \$200. Gabler said that their programs include Little League

(ages 5-12), Babe Ruth (ages 13-18), Girls Softball (ages 5-18), and some American Legion tournaments.

Koblick asked about the number of volunteers each year at the park. Gabler said that there are about 200 to 400 coaches. The board has 17 members.

Recreation Services Director Dave Johnson said that the city's soccer program generates \$85,000 in registration fees to cover the cost of that program. The city spends about another \$50,000 to administer that program, so the cost per child for soccer programming is about \$33.

John Powers, 3611 Rainbow Drive, has lived near Bennett Park since 1995. He finds the noise from the park a sweet sound, but he was concerned about a private/public partnership. He said that the Bennett Park Board has not contacted him to discuss their lots and access. Without an easement from him and his neighbor, he questioned the feasibility of developing the Bennett lots. He asked that the city be wise in spending its money, and questioned what the city would get when it buys a conservation easement.

Anderson noted that Lot 4 could be developed without an easement.

Powers said that the city should get something of fair value for its expenditure. He noted that Bennett would retain the right to develop another ballfield, which would add to the noise.

In response to a question from Anderson, Gunyou said that the developability of the three northern lots is dependent on obtaining an easement for access to those properties. He said that even with access easements, a variance would also be needed for the frontage area. He said that these unknowns are tied directly to the value of the property to the community.

Koblick said that the city has approved lots without frontage in the past through cluster development. She asked if another form of development would work.

Gunyou said there were other conceivable development options. He said that a developer could buy out Powers and his neighbor, and then replat those properties with the access easement and re-sell them. The likelihood of this occurring is unknown.

Anderson said at this point, the city only knows that the two existing homeowners are not interested in selling. She has seen similar instances throughout the city where suddenly an offer becomes too good to turn down.

Allendorf said that there is no doubt that Bennett Park provides a service for the people of Minnetonka, and that is reflected in the \$217,000 the city has given them over the past five years. He questioned whether staff's recommendation would have been similar if a private developer had approached them with the same concept. Allendorf said that staff perceives that the council likes to work with Bennett Park. Allendorf supported the \$30,000 lease for field #3, and he would have no problem leasing land for a skateboard park. He also would have no problem with a \$100,000 loan that would be repaid. He would prefer an up front arrangement. He suggested that Bennett Park sell lot #4 and get the money for it outright. He suggested that the concept presented was a ruse. He preferred to find another way to provide financial assistance to Bennett Park similar to the way the city has handled it over the past five years.

Schneider said that there is no question that Bennett Park is an asset to the community. He suggested that the city do what is reasonable to facilitate their needs. He thought the \$30,000 lease for a soccer field was appropriate and justified. He agreed with Allendorf's issues on the conservation easement. He said that any arrangement must be able to withstand scrutiny. He said that lot #4 is not visible from CSAH 101, so a conservation easement would be of less value to the community. Reserving an area for ballfields would not be consistent with open space preservation. Schneider suggested that lot #4 might be valuable to a potential buyer, because it offers a great view. He said that preserving trees to buffer the neighbors to the north would increase the value for him.

Callison disclosed that her husband is on the Bennett Park Board, and explained that this is not legally a conflict of interest for her on this issue. She noted that Bennett Park first asked the city for a loan. She did not agree with staff's opinion that such a loan would be illegal. She noted that the city gives money to the Music Association and Relate. There is a clear return for the dollars spent at Bennett. She questioned why it was acceptable to spend city dollars for field improvements, but not for a concession stand. She also questioned the need to use park fund dollars for a loan, and suggested that other funds could be used. If a loan is not possible, the next option was the conservation easement.

Callison also referenced times when neighbors later decide to sell their properties to provide access, noting that this recently happened on Plymouth Road. She suggested that Bennett was giving more than it would get in granting the conservation easement, and said that if she were on the Bennett Board, she was not sure she would approve it. She said that there was value to the neighbors in knowing how far Bennett Park could expand. She did not see any reason for Bennett to talk to the neighbors at this point, since the discussion items were just concepts. She hoped that the city would consider providing open space in smaller neighborhoods, because that is what gives Minnetonka its character. She supported the staff recommendation.

Tauer said that a development was legally possible, but he did not know the value of the land. He also questioned the distinction between spending dollars for field improvements or a concession stand. He saw the overall issue as improving Bennett Park and their ability to serve people. He would favor a loan. He said that Bennett Park provides lots of service to Minnetonka youth. If they failed, someone would have to provide those services, and the recreation services department is already overloaded.

Anderson said that she had no problem supporting the staff recommendation. There is no question the lots are developable. A conservation easement would guarantee the neighbors will have open space, and that was the intent of the referendum. She said that the city has little experience with valuing conservation easements. She said that this conservation easement made more sense to her than another one the city acquired because it provides a better value. She also supported the \$30,000 lease for a soccer field. She supported the conservation easement and could also support a loan.

Koblick said that she served on the Bennett Board for most of her seven years on the city council, and she also represents the neighbors of the field as the Ward 3 representative. The park is a huge amenity and value to the community and provides tangible and intangible benefits. The arrangement should be structured on the value of the services they provide. Although \$100,000 sounds like a lot of money, the conservation easement would provide a buffer. She noted that once something is built on land, the open space is gone forever. She also found the lease for the soccer field appropriate.

Thomas said that no one questions the value of Bennett Park, and he had no problem with leasing the soccer field. He noted that over

the past five years, the city has given an average of \$50,000/year to the park. He would not have a problem with a loan, but he had some problem with the conservation easement. He would like additional restrictions on the conservation easement, and could support a value of \$50,000. When he was on the park board, he was the only person who did not recommend that the council spend dollars on a private organization. Bennett Park is a non-city facility and it provides service to 700 to 800 Minnetonka youth. He appreciated that Bennett Park has started soliciting support from other cities, and said they need to be contacted. He said that the city should get all of the property rights if it spends \$100,000.

Allendorf said that he would like to see Bennett get the money it needs, but wanted that to occur without a ruse. He suggested that the city let them sell lot #4 because it is not visible from CASH 101. He suggested asking staff to reconsider the loan idea. He would support an interest free loan and \$30,000 for the soccer field.

Anderson said that she would not support the concept if it were based on a ruse; she did not think it was. She said that the city does not have the authority to give permission to Bennett to sell lot #4.

Allendorf did not think that lot #4 qualified for a conservation easement, and suggested that Bennett get as much value as they could for it.

Koblick viewed the concept as a financing technique and did not think it was a ruse. She noted that the city attorney said that a loan was illegal. She questioned the ability of a non-profit to repay a loan and said that fundraising can be difficult. The future ownership of the property comes into consideration, and there is more value with contiguous property.

Schneider moved, Callison seconded a motion to authorize a ten-year \$30,000 lease between the city and Bennett Park for a soccer field. All voted "yes." Motion carried.

Tauer moved, Callison seconded a motion to approve the statement of intent and direct the city manager to execute the agreement as recommended by staff. Koblick, Callison, Tauer and Anderson voted "yes." Schneider, Thomas and Allendorf voted "no." Motion carried.

Anderson expressed regret that there was division on the issue.

Nancy Countryman, 19200 Lake Avenue, Deephaven, provided historical information on the early years of fundraising for Bennett Park, noting that the park has approached other sources through the years.

**15. APPOINTMENTS.** None

**16. ADJOURNMENT.**

Thomas moved, Koblick seconded a motion to adjourn the meeting at 11:40 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk