

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, SEPTEMBER 29, 2003**

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 Brad Wiersum, Terry Schneider, Al Thomas, Jan Callison, Dick Allendorf, and Karen Anderson were present. Ken Tauer arrived at 6:47 p.m., during the discussion of item #8.

4. APPROVAL OF AGENDA.

City Manager John Gunyou reviewed the two addendums. Regarding item #13A, a vacation of a right-of-way, the address was changed in the report and in the resolution, and the first stipulation was amended to allow for future construction of a neighborhood trail connection. For item #13B, the sports dome, additional e-mails had been received after the agenda packet was distributed, and those e-mails were provided. In addition, staff recommended changes to condition #11, a new condition #12, and a change to the staff recommendation regarding the request for an EAW in order to clarify the recommended action.

Callison moved, Thomas seconded a motion to accept the agenda with the addendum. Wiersum, Schneider, Thomas, Callison, Allendorf and Anderson voted "yes." Tauer was absent. Motion carried.

5. APPROVAL OF MINUTES. None.

6. SPECIAL MATTERS:

A. Presentation of Center Point Energy Community Partnership Grant to the Police Department.

Connie Hargest of Center Point Energy presented a \$2,500 grant to the Minnetonka Police Department to purchase additional automatic external defibrillators for squad cars. Police Chief Joy Rikala accepted the grant on behalf of the police department and

the residents and guests of the city of Minnetonka who will benefit from this life-saving equipment. Anderson said that the city periodically receives letters of appreciation from those whose lives have been saved by defibrillators.

B. Proclamation: "City Wide Open House" on October 7, 2003.

Anderson read a proclamation regarding the October 7, 2003 City Wide Open House. She noted the many fun family activities available at the event.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported that the city council would hold a special study session with the planning commission on October 2. There will not be a council meeting on October 6 in observance of Yom Kippur, and the next regular city council meeting will be held on October 13.

Callison invited participation on the CASH sponsored Walk-a-Mile program, which is designed to bring policy makers together with those affected by their policies.

Allendorf attended the grand opening of the newest city park—Pioneer Park. He noted that this is the fourth partnership since he has been on the council, including the Lindbergh Center that saved the taxpayers \$2 million, the cultural arts facility, and the Public Works facility, which provides space for Hennepin County. In this case, the city partnered with the church to provide a park that benefits the entire neighborhood.

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

Victoria Kasdan, 18101 Tamarack Drive, asked that the city provide a street light at the intersection of CSAH 101 and Tamarack Drive despite the lack of unanimous consent from property owners near the intersection. She said that the light was needed for public safety reasons because the intersection provides the only access for the Tamarack development.

Anderson thanked Kasdan for her information and asked staff to provide a recommendation to the city council. She advised Kasdan that she would be notified when the council will consider her request.

Schneider asked that staff indicate if there were any road projects planned for that area.

9. BIDS AND PURCHASES:

A. Items pertaining to the Sunrise Farms Sewer/Water Project No.5126:

- 1) **Resolution accepting plans and specifications.**
- 2) **Consideration of quotes.**

Gunyou provided a brief introduction to this item.

Allendorf moved, Callison seconded a motion to:

- 1) Adopt Resolution No. 2003-089 accepting plans and specifications for the Sunrise Farms Sewer/Water Project No. 5126, and
- 2) Awarding the bid for the Sunrise Farms Sewer/Water Project No. 5126 to Metro Utilities, Inc. in the amount of \$44,420.25.

All voted "yes." Motion carried.

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

A. Claims for council authorization.

Schneider moved, Allendorf seconded a motion to approve the September 29, 2003 claims list, including checks numbered 177217 through 177495 totaling \$1,071,266.29. All voted "yes." Motion carried.

B. Approval of a supplemental agreement for Minnehaha Creek Headwaters Site Improvement Project No. 4748.

Schneider moved, Allendorf seconded a motion to approve a supplemental agreement for Minnehaha Creek Headwaters Site Improvement Project No. 4748. All voted "yes." Motion carried.

C. Adoption of an ordinance amending the public indecency ordinance.

Schneider moved, Allendorf seconded a motion to adopt Ordinance. No. 2003-24 amending the public indecency ordinance. All voted "yes." Motion carried.

D. Approval of an agreement with N.A.R.S.

Schneider moved, Allendorf seconded a motion to approve an agreement N.A.R.S. All voted "yes." Motion carried.

E. Authorization of \$10,000 for Advantage Center outreach programs at Crown Ridge Apartments.

Schneider moved, Allendorf seconded a motion to authorize \$10,000 for Advantage Center outreach programs at Crown Ridge Apartments. All voted "yes." Motion carried.

F. Resolution appointing election judges for the General Election on November 4, 2003.

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2003-090 appointing election judges for the General Election on November 4, 2003. All voted "yes." Motion carried.

G. Resolution approving a conditional use permit for a detached garage taller than 12 feet and larger than 1,000 square feet at 16108 Birch Lane for Victor and Dianne Carlson.

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2003-091 approving a conditional use permit to construct a 25-x-40-foot detached garage at 16108 Birch Lane. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Plant three, six-foot tall Black Hills spruce trees as indicated on the site plan dated July 21, 2003. The applicant is responsible to replace any tree that dies within five years of planting.
- 2) Tree protection and erosion control fencing must be installed and maintained throughout the construction process to protect existing trees.
- 3) The structure may not be used for commercial activity.
- 4) The structure may not be converted to a dwelling used for residential occupancy.
- 5) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 6) Record this resolution with the county before the city issues a building permit.
- 7) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

H. Final approval of the SUNRISE FARMS plat at 4821 and 4813 Williston Road for John and Linda Paulson.

Schneider moved, Allendorf seconded a motion to approve the SUNRISE FARMS final plat that was received on September 15, 2003, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat; and
- 2) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

I. Temporary banners for the Minnetonka Community Theater for their fall production at Minnetonka High School, 18301 State Highway 7.

Callison pulled this item and item #10M from the consent agenda. Anderson said that because the issues were similar, the discussion would relate to both items.

Callison noted the number of temporary signs requested for the Minnetonka High School site. She said that past requests were granted with the understanding that the city council would be discussing this issue in the future. Callison noted that signs on fences are prohibited by the ordinance. Signs in residential areas are restricted to 32 square feet in size, and the requested signs would exceed that restriction. She said that businesses are limited to temporary signs for two days, and these signs would be posted for 10 days. There is no limit to the number of organizations that would like to post signs at the high school. Callison said that the sign requests were pushing the limits of the ordinance, which was not fair to others.

Schneider would not oppose a sign for five to ten days at the start of the season, but did not support rotating signs on the fence.

Callison noted that the approved reader board is not being used.

Tauer would not object to a sign for a one-time event, but felt that the football season did not qualify. He said that people know about that season.

Wiersum said that the signs were excessively large and were being posted on structures not designed for them, which fell outside the ordinance.

Anderson was concerned that the signs could present a safety hazard for drivers who would try to write down phone numbers while they were driving. She noted that the city council will discuss this issue at its December 8 study session, and suggested putting requests for temporary signs on hold until that discussion occurs.

Thomas agreed and said that the signs push the ordinance beyond its intent.

Callison moved, Wiersum seconded a motion to deny a request for two temporary banners as proposed for the Minnetonka Community Theater, at Minnetonka High School, 18301 State Highway 7, for their fall production from October 20 through November 15, 2003 for this year only. All voted "yes." Motion carried.

J. Resolutions ordering the abatement of nuisance conditions existing at:

- 1) **5537 County Road 101**
- 2) **14016 Knollway Drive North**
- 3) **3512 Hopkins Crossroads**
- 4) **2504 Bantas Point Road**
- 5) **12790 Amy Lane**
- 6) **3919 Haven Road**

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

- 1) Resolution No. 2003-092 for 5537 CSAH 101.
- 2) Resolution No. 2003-093 for 14016 Knollway Drive North.
- 3) Resolution No. 2003-094 for 3512 Hopkins Crossroads.
- 4) Resolution No. 2003-095 for 2504 Bantas Point Road.
- 5) Resolution No. 2003-096 for 12790 Amy Lane.
- 6) Resolution No. 2003-097 for 3919 Haven Road.

All voted "yes." Motion carried.

K. Amendment to the City Manager's agreement.

Schneider moved, Allendorf seconded a motion to adopt an amendment to the city manager's agreement. All voted "yes." Motion carried.

L. Strategic Framework.

Schneider moved, Allendorf seconded a motion to adopt the Strategic Framework. All voted "yes." Motion carried.

M. Temporary banner for the Minnetonka High School football program, 18301 State Highway 7.

Callison moved, Wiersum seconded a motion to deny a request for one temporary banner for the Minnetonka High School football program, 18301 State Highway 7, on October 3, 10, 21 and 25 for this year only. All voted "yes." Motion carried.

11. CONSENT AGENDA (Items requiring Five Votes).

A. Appeal of the planning commission's denial of a side yard setback variance for a two-car garage at 4923 Clear Spring Road for Tim O'Conner.

Planning Director Geoff Olson reviewed the changes to this request after the planning commission discussed it.

Schneider moved, Thomas seconded a motion to adopt Resolution No. 2003-098 approving a six-foot variance from 10 to 4 feet for a two-car garage at 4923 Clear Spring Road for Tim O'Conner, based on the revised plans. Approval is based on the following findings:

- 1) The applicant has increased the setback from 2 feet to 4 feet to be consistent with the current garage setback;
- 2) The lot width is substandard at only 100 feet, while the code requires 110 feet; and
- 3) The applicant has reduced the garage size to the standard two-car garage size of 24 feet by 24 feet.

Approval is subject to the following conditions:

- 1) Submit proof of having recorded this resolution with the county before the city issues a building permit; and
- 2) This variance will expire December 31, 2004, unless the city has issued a building permit for the project covered by this variance.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES. None.

13. PUBLIC HEARINGS.

A. Public hearing to consider a resolution to vacate a public right-of-way over 5707 and 5715 Kipling Avenue for John and Jill Velure.

Anderson noted the addendum information concerning this item. In response to her question, Olson clarified the addresses.

Anderson opened the public hearing at 7:11 p.m.

The applicants, John and Jill Velure, asked for clarification of the trail easement request. Olson said that the easement would be used if the neighbors request a neighborhood connection to Purgatory Park.

Anderson asked if trail access occurs now on an informal basis. The Velures said that it does. Anderson favored keeping the trail easement, and said that the easement being vacated would have provided for a street.

The Velures also wanted to ensure that the trail would not interfere with drainage near their driveway. Olson said that there are no existing designs or plan for a trail, and if there were a future request, drainage would be considered.

Anderson closed the public hearing at 7:16 p.m.

Callison moved, Allendorf seconded a motion to adopt Resolution No. 2003-099 vacating a public right-of-way over 5707 and 5643 Kipling Avenue for John and Jill Velure, subject to the following conditions:

- 1) Retain a drainage and utility easement; and
- 2) The owners of 5707 Kipling Avenue must record a private driveway easement with this resolution to the owners of 5643 Kipling Avenue. The easement must cover that part of the driveway to 5643 Kipling Avenue that crosses 5707 Kipling Avenue. The city attorney must approve the easement before the city will release this resolution.

All voted "yes." Motion carried.

B. Public hearing to consider an appeal of the planning commission's decisions concerning a temporary sports dome at the Minnetonka High School stadium at 18301 Highway 7 and 18325 Delton Avenue for Minnetonka Independent School District 276.

Anderson explained the process that would be followed for the discussion of this item.

Gunyou advised that copies of the addendum were available for the audience. He noted that the discussion would relate both to the request for an EAW and the site plan approval.

Thomas added that council discussion about the facility would not relate to district financing issues.

Olson provided the staff report for the item. He deferred Callison's question regarding the turnaround to the applicant.

Callison asked if the fence proposed to reduce cut-through traffic was required by staff or offered by the school. Olson said that the district suggested the fence to address neighborhood concerns.

Callison asked Environmental Resources Coordinator Jo Colleran to confirm the health of the Tamarack bog. Colleran said that trees in the area of open water were declining, but the remaining trees were healthy. Callison asked if reducing the water would improve the health of the trees near the open water. Colleran said that there would not be a sufficient change to affect the health of those trees.

Thomas noted the staff report indicated that most of the runoff was coming from the Tamarack development rather than the school property. He asked about the source of the main pollutants. Colleran explained the drainage pattern and the sources of the water runoff.

Schneider noted that the diesel range organics were well within the range expected in a sediment pond.

Colleran provided further clarification of diesel range organics. She said that the Minnesota Pollution Control Agency is the appropriate agency to make determinations about such pollutants. She indicated that diesel range organics could come from a number of sources, including natural sources.

Thomas noted that stipulation #7 states that private security would be hired, and asked if that would be a stipulation of approval. He was concerned about controlling late night activities. Olson said that would be part of the conditions. Olson also noted that a separate campus management plan, like the one approved for the Hopkins High School campus, would be required. Thomas asked if the council would approve the plan. Olson responded that staff

proposed to approve it administratively, but said that it could be referred to the council. Olson said that the council reviewed the initial plan, and staff would review the plan annually.

Gunyou clarified that the revised Hopkins plan was submitted to the city council because it had been determined that the existing plan was inadequate. He said that their revised plan would serve as a good model for the Minnetonka School District.

Gunyou also clarified that the diesel range organics that were found were not petroleum based, and were typical of what would be expected in a sediment pond. There was no evidence of their presence in the bog. Staff felt the issue was one for the MN Pollution Control Agency, and that it did not rise to the level of requiring an EAW.

In response to Callison's request, Olson reviewed the stipulation provisions in the addendum to revise condition #11 concerning the field lights, add condition #12 to require a trail from the Pagel Center, and revise the wording regarding the EAW request.

Allendorf said that in the case of the Hopkins School District's management plan, the neighbors found it to be inadequate because there were no teeth in it. He asked about the recourse if stipulations were not met. Peterson said that the stipulations would be a condition of the site plan approval and the district would be required to comply with them. If they did not, the city could pursue enforcement action, issue penalties, or seek an injunction requiring them to implement the plan by court order.

Allendorf doubted that the city would take the school district to court. He wanted something more immediate to deal with issues raised by neighbors. Peterson said that an ordinance had been introduced by the council allowing the city to take additional enforcement action for violations of conditions. She said that the city would have the option of hiring the work done and charging the district. Allendorf said he wanted to be able to respond to the concerns of the neighbors.

Schneider was concerned about providing a forum for neighborhood feedback. He asked if a continued violation of a condition would void the city's approval. Peterson said that could potentially occur. She noted that if there were violations, the city could prohibit the erection of the dome in subsequent seasons.

Olson noted that some aspects of the management plan had been resolved, and others remained in discussion. He said that details, such as who to call when there are problems, would be coordinated with the neighbors.

Peterson suggested that the following language be added to stipulation 9: Compliance with the approved management plan is a specific condition of this approval.

Thomas asked that staff address the concerns raised by the Stoneybrook Townhomes Association.

Anderson said that staff had not found sufficient evidence to require an EAW, and she said that there were many items supporting the recommendation in the staff report. Olson said that staff had ten specific findings to deny the EAW, and the city attorney had provided additional basis in the addendum. Anderson added that diesel range organics were discussed in those findings.

Peggy Stefan, Chair of the Minnetonka School Board, asked the city council to uphold the planning commission's decision. She noted that the school was trying to operate in the 20th century with a 1952 footprint. Title IX required additional sports offerings, which increased demands. She noted the city's support of recreational uses through the Williston Center and the Arts Center. She also noted the increasing need for athletic fields. Due to current state funding, the district has little prospect for additional funds beyond user fees and rental fees. The school already has a \$600,000 commitment for the dome, as well as rental commitments.

Stefan said that the district has been working with the city since May on this project to correct drainage and erosion issues. They supported the city's request for a management plan. She noted that any reduction in height would render the dome unusable. She said that the Minnetonka dome was smaller than the one recently approved for Hopkins. Stefan noted that the Tamarack neighborhood is uniquely surrounded by 93 acres of school property, including the elementary school and district offices.

Stefan said that donations had been received without any organized fundraising as of yet. The project did not meet the criteria to mandate an EAW, and it would cause no negative impact on drainage, but would improve it. The height variance was justified, and the project would benefit children without any tax increase.

Kathy Wallace, project architect, and Jared Lee, landscape architect, explained how the turnaround would work. Callison said that people will seek out the shortest route, and may have trouble getting out of the turnaround loop area. Anderson said that signage might be needed.

Anderson asked for the source of the request for the fence. Callison said that students walk to and from school via the trail. Wallace explained the location for the fence. Stefan said that during the informational meeting, neighbors raised concerns about students smoking in that area. She said that the trail access would not be blocked, but it would be difficult to access during the day.

Callison said that it is healthy to have students walk and said it would be a shame to discourage that. Stefan said that the neighbors did not want students to park in areas where they did not belong, and the school has no jurisdiction over signs for the streets.

Wiersum said it would be a travesty to block use of the trail for students traveling to and from school. He suggested that the district monitor the situation and request help from the city to ticket violators.

Allendorf suggested that the management plan address the parking issues.

Tauer compared the trail situation to the cross-country ski trail near Lindbergh where increasing legitimate uses discouraged mischief. He said a fence could provide a visual barrier that could encourage bad behavior. He did not want to discourage pedestrians, and suggested that the liaison officers be consulted. He noted that in the case of Hopkins High School, the "no parking" signs are moving further out.

Stefan said that the city had posted "no parking" signs in response to the Michael Lane neighborhood.

Anderson opened the public hearing at 8:40 p.m.

Elizabeth Daitch, 5504 Tamarack Circle, provided evidence to support her request for an EAW. Her reasons were:

- The property abuts an extraordinary and protected wetland that is home to a Tamarack bog that contains significant ecologically sensitive resources.

- The project may impact the environment through hydrology stresses, runoff from impervious surfaces, and cumulative impacts from past projects as well as the proposed project.
- The neighbors raised the erosion concerns that have occurred since 1997.
- The water levels have increased in the area of open water as well as in the wetland, and she believed this was a result of the school's construction in 1997.
- The diesel range organics are changing the microclimate of the wetland.
- There is trash and litter in the wetlands from trail users.
- Additional parking spaces will increase the level of pollutants in the bog.
- The road will not be wide enough for emergency vehicles.
- The conditions of the 1997 development agreement are not being met, and no specific noise or light levels have been provided.
- The legal standards used in the staff recommendation that an EAW was not required were questionable, and the model provided by the school district was not appropriate. The use of "may" versus "will" was a significant error on the city's part.
- The new project would send pollutants directly to the cattail marsh and from there to the wetlands.

Daitch clarified that she supports the schools with her vote and taxes.

Anderson thanked Daitch for her detailed research. She noted that some project changes were a result of input from the neighbors and those changes improved the project. Anderson said that while the information was interesting, it was not all relevant to the council's decision. Anderson was concerned that Daitch characterized the sediment pond as a wetland. Anderson said that one pond was installed in the 1950s as a sewage settlement pond. Anderson noted that staff had provided clarification as to the use of the word "may" versus "will" with regard to the EAW. She said that the stipulations would establish criteria for measurements and recourse. She said that the city has enforced the ordinance in the past. Peterson added that enforcement is done on a complaint basis, and that compliance is sought if testing indicates a problem.

Erin Verneris, 5516 Tamarack Circle, spoke on behalf of the 39 residents of that development. She said that the building height is not appropriate for a residential area, and the three-point undue hardship tests had not been met. She felt that the property could be used for educational purposes without the use of the fields. The dome was a financial mechanism to pay for the needed turf and economics could not be considered a hardship. The school district elected to place the school in a

residential area near a wetland. The dome would alter the character of the neighborhood because it could be seen during the winter when foliage is off the trees. She said that the dome structure would be a monolithic mass without aesthetic benefits.

Verneris suggested that a conditional use permit would be more appropriate, and would require suitable buffering and mitigation of the lighted playing fields. She argued that the district was getting special treatment to depart from the requirements of the zoning ordinance. Verneris asked that the city require a conditional use permit and deny the variance because the property could be reasonably used without a variance. She said that the dome would dramatically alter the character of their neighborhood.

Anderson said that the city attorney would respond to the specifics of the comments raised after all comments were made.

Stephen Fitzgerald, 5490 Tamarack Circle said that the character of the neighborhood is the wetland. He provided graphics to demonstrate how the dome will appear, comparing it to the dome in Plymouth, the Cargill building, and the Osmonics office building. The structure will dwarf surrounding homes. Fitzgerald said that there were not homes as close to the Hopkins dome, and there were not wetlands adjacent to the Hopkins dome. He said that the visual height of the dome would be 78 feet. He believes that the dome would impact the wetland, and result in a loss of open space. There will be additional impact from increased use of the facilities, and there are already traffic problems.

Fitzgerald said that trail users have encroached on private property. The dome will have a non-standard finish without windows, and include exterior mechanical systems and port-potties. The dome will change and degrade the essential character of their neighborhood. Fitzgerald said that the dome would not meet the requirements of the ordinance concerning building materials. He did not view the structure as temporary because it will be used for six months of the year for 20 years. Fitzgerald said that while there is a need for the dome, the project does not meet the factual tests. If it is approved, he fears that there will be domes erected throughout the city. He asked the city council to draw the line and say "enough" to protect their neighborhood.

Schneider said that there is a trail easement to reduce possible impacts to the bog. Fitzgerald said that the trail encroachment occurs at the Wanders' property where an informal footpath is used to access the athletic fields. Anderson said that a fence in that area would address that issue.

Allendorf asked staff to clarify the proximity of the dome to the nearest homes. Olson said that there would be between 400 and 450 feet between the dome and the nearest existing home. He noted that there is one vacant lot closer to the dome.

Fred Hanus, 15801 West Oaks, asked the council to uphold the planning commission decision. He said that the need for the dome exists, and the project will help resolve existing drainage problems. The project will also upgrade parking. He supported the city attorney's opinions about the project.

Tom Berge, Executive Director of Finances and Operations for Minnetonka Schools, said that the project would increase use of the artificial turf, but not of the site. The school will work closely with the city and the neighbors on the management plan, and a school staff person will be designated responsible for the gate and enforcement of the plan. He would agree to enforcement action if the district did not meet the conditions of the plan. He said that if the district does not comply, the dome would not be erected the following year.

David McDonald, 5214 Sequoia Drive, asked if the capacity of the dome and the level of contaminants that would exceed the capacity of the system was known. He noted that there would be 22,400 vehicles traveling through that area each winter. He lives in the Skyline Terrace neighborhood, and said that there are parking issues related to the Pagel Center. Anderson clarified that there were problems from runoff from the Pagel roof.

Anderson asked the city engineer to clarify if the corrections related to the new dome or existing issues. Lee Gustafson said that the 1997 project resulted in a very good storm sewer system that was easy to clean out. Runoff from the parking area by the new dome will be directed to the sediment pond. Gustafson clarified that some pollutants evaporate. The vegetation in the ponding area is well established and will help absorb pollutants. The system is very good to handle pollutants, and he wished more systems were like it. Gustafson could not estimate the level of pollutants at which the system would no longer work, but said that the project will be an enhancement to wetland 850 and should handle what is there. He said that it would be difficult to protect against any catastrophic event, but the existing system would allow for clean up before damage would be done to the wetland under most circumstances.

Schneider said that there are national standards for the size of ponds, and this pond exceeds those requirements. Flooding is always a possibility, but the excess water would flush the wetland. The project far exceeds the expected needs.

Olson said that the issues related to the upper Pagel Center lot would be addressed in the management plan. This project provides additional leverage to address those issues. Anderson said that the new traffic would not be able to use that parking lot after 3:30 p.m.

Anderson closed the public hearing at 9:52 p.m.

Anderson asked the city attorney to respond to the issues regarding the need for a conditional use permit rather than a variance, and the hardship standards.

Peterson said that her opinion to the planning commission was a matter of public record and was included in the packet. She explained the city's requirements for conditional use permits. In this case, the educational facility already exists and the athletic fields are provided for under the existing conditional use permit. Another conditional use permit would not be required. There would be no change in terms of use. A site plan review is needed when the intensity of use will change. As a practical matter, she saw no difference in either mechanism, because the city must approve either one.

Peterson took issue with the interpretation of the hardship standards. She explained the interpretation of the courts with respect to reasonable use. She cited a case involving a church in Moorhead that wanted to line up an addition with their existing structure. The city granted a variance that was challenged by the neighbors. The court ruled in favor of the applicant, citing practical difficulties. In the case of this project, Peterson said that the staff's facts are sufficient to support that there are practical difficulties making it reasonable to enclose the field due to Minnesota's weather. The height is needed for the dome to function.

Peterson said that the problems are unique to the property and were not self-created, as supported by the facts. Schools are unique in residential areas. They are permitted but are not required to meet R-1 standards. Schools do not automatically receive variances, but reasonable requests are granted.

With regard to the character of the neighborhood, Peterson said that the neighborhood is larger than the single-family neighborhood. It is part of a 93-acre educational facility and already has structures of this height. There were facts to support a finding that the dome would not alter the essential character of the neighborhood.

Peterson clarified that the council was not required to grant the variance, but said there were sufficient facts for the city council to grant or deny the variance.

Tauer asked staff to respond to the building material issue and its temporary nature.

Peterson said that each variance must be reviewed on its own merits. This building is different from the Arts Center. Olson said that there was nothing in the code to prohibit the materials, and that issue was left to the council's discretion.

Peterson added that the courts require cities to treat similar situations, contemporary in time, equally. She noted that this dome is like the Hopkins dome that was recently approved.

Schneider said that in addition to the Hopkins dome, the city once had a dome. He said that a dome was fully justifiable.

Callison said that the school's fields are located within a bowl so they are fairly well buffered, reducing the impact to houses. A sharp embankment buffers it from the trail. She said that the nearest home was 435 feet from the dome. The ordinance addresses the impacts to the neighborhood. She did not think there would be light spillage or noise impacts. She thought the dome might lessen the noise impacts. The only potential impact would be to the wetlands, and there are a series of water treatment ponds before the wetland to filter the runoff. The project provides an opportunity to improve that drainage, so she could not see any likelihood of substantial impacts.

Callison said that the essential character of the neighborhood is not the wetland, but rather the school that it abuts. She did not feel that a finding to require an EAW had been proven. She did not believe there would be substantial impact to the neighborhood. She also did not expect to see a proliferation of domes within the city.

Schneider agreed. As he walked the site, it was difficult to feel there would be an overwhelming impact due to the density of the brush. Schneider noted that natural turf could create pollutants through fertilizer runoff, so he was comfortable with the parking lot. He said that precipitation would be limited during the months the dome was used.

Schneider suggested that the school district consider purchasing a conservation easement over the adjacent vacant lot to address the issues related to the Wanders' property. This could also ensure that the

vegetation remains. Schneider did not suggest making this a condition of the approval.

Allendorf did not feel that the city could learn anything more about the project and its effects on the environment if an EAW were required over the information already provided by staff. Requiring an EAW would only delay the project and would not improve it.

Allendorf questioned which came first, the school or the development. The people who bought homes in the Tamarack development knew they were adjacent to a major high school, with the possibility of expanding athletic fields. He did not think the dome would change the character of the neighborhood. The foliage and the spruce trees would buffer it. He had walked through the neighborhood, and considered the grade change to the east, the foliage, and the proposed Black Spruce trees. With the nearest home 435 feet from the dome, he did not think total screening should be required.

Allendorf said the management plan should be well thought out and followed. He asked that a school staff person be designated responsible for calls about the plan. He noted that practically it would be difficult to prevent erection of the dome due to violation of the management plan. Allendorf supported Peterson's additional language making compliance with the plan a condition of approval, combined with the new ordinance regarding enforcement of conditions.

Thomas noted the early meetings with the neighbors who were concerned about the bog. He relied on the comments from staff and the Department of Natural Resources representative that the project would not impact the bog. He supported the management plan and noted the importance of the written stipulations. He said it was crucial to meet with the Michaele Lane and Tamarack neighbors to help find solutions to problems. Thomas noted that the Michaele Lane neighbors had not called when there were problems because they did not want to be pests, and said that he encouraged them to call when there are concerns.

Thomas asked the engineering staff to look at the request from the Stoneybrook neighbors. Thomas said that leaving junk on the hill was not being a good neighbor, but most of it had been removed. Thomas said that there are city ordinances regarding noise and light levels. The Spruce trees will help to buffer the neighbors. Thomas said that the school is part of the character of the neighborhood. He would support the project.

Wiersum said that most of his points had already been made. He said the site was appropriate and there was precedent for the school use. The neighborhood borders a high school, and changes are to be expected.

The dome will be 450 feet away from the nearest home and occupied lot. Wiersum could see no reason to deny the project, and said he would support it. Wiersum said this would not be the last change at the campus, so the management plan will be critical. He wanted the plan to have teeth to meet the concerns of the neighbors. He wants the school and the neighborhoods to be good neighbors to each other. He said that the project would be a great benefit to the school and to athletics.

Tauer said the presentations of the neighbors made him think carefully. He appreciated Peterson's response. Regarding the request for an EAW, Tauer said that he has trusted staff for 12 years because they have been very accurate. Staff is an advocate for balance and not for the school district. Tauer said he would not support the request for an EAW.

Tauer supported Peterson's comments regarding the variance. He noted that the dome is white, which should reduce visual impacts in the winter. The noise level may be lower due to the enclosure of the field. Tauer said he would not oppose the fence, but asked that it not increase nuisances by providing visual screens. He stressed the need for interaction with the neighbors on the management plan, and suggested that the district provide a list of names and numbers for the neighbors to call.

Schneider moved, Allendorf seconded a motion to:

- 1) Deny the request to require an environmental assessment worksheet because there is no potential for significant environmental effects, based on the following findings which are supported by the detailed information in the staff report:
 - a. The project does not meet the mandatory categories for an EAW, as listed by the Environmental Quality Board.
 - b. Wetlands would not be negatively impacted.
 - c. There has been no cumulative impact on the site to justify an EAW.
 - d. There would be no negative impact on drainage and hydrology; rather, drainage and water quality would be improved.
 - e. The dome would not affect the ability to implement the policies and standards of the Comprehensive Plan.
 - f. The dome would not affect the design, capacity and nature of local streets.
 - g. The dome would not impact existing or planned improvements to the city's park and open space system, public facilities, or utilities.
 - h. The dome would not impact the city's ability to provide normal city services in an equitable manner; and

- i. The dome would not change the educational/ recreational use of the site in terms of its compatibility with and long-term effect on surrounding property.
 - m. Council dismissed a similar EAW petition from the Tamarack neighborhood in 1997 for a wetland alterations done as part of the last high school addition.
- 2) Approve the site and building plans, with a height variance from 35 to 58 feet, for a temporary sports dome at 18301 Highway 7.
Approval is based on the following findings:
- a. With the exception of the height variance, the proposal would meet the required standards and ordinances for site and building plan approval.
 - b. The proposal would meet the required standards for a variance, because:
 - (1) The proposed use is reasonable, since the dome would be over an existing stadium field on school property;
 - (2) Given the other potential locations, the proposed site would have the least impact to surrounding properties;
 - (3) The dome would meet the spirit and intent of the height ordinance since it would be 435 feet to the nearest home and would be at least partially screened from surrounding properties by trees to the south and a hill to the east;
 - (4) The city approved a similar height for the Hopkins High School dome, which was closer to adjacent homes, as well as height variances for theaters at both Hopkins and Minnetonka High schools;
 - (5) The dome would have a public benefit in providing increased athletic opportunities for a public school and community groups; and
 - (6) Given that the dome would be a reasonable use, there is a unique hardship and practical difficulties in meeting the height requirement caused by:
 - a) limiting the height of this dome on a large institutional property to a height usually applied to single-family homes on residential lots; and
 - b) The 35-foot height limit does not allow enough height to make reasonable use of the dome for its intended purpose.

Approval of the site and building plans is subject to the following conditions:

- a. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:

- Site plan, date stamped September 23, 2003
- Grading plan, dated August 27, 2003
- Utility plan, date stamped August 27, 2003
- Landscaping plan, date stamped August 7, 2003
- Building elevations, date stamped August 7, 2003
- b. Complete the following before the city issues a grading permit or before starting any site work:
 - (1) Fence all trees to be preserved, install erosion control fencing to protect the wetland boundaries, and install erosion control measures.
 - (2) Submit final grading, drainage, utility and erosion control plans for staff approval.
 - (3) Submit final plans for the storm sewer and pond calculations, subject to the city engineer's approval.
 - (4) Submit a letter of credit or cash escrow for 150% of the estimated cost, or 125% of an actual bid to do the work, to comply with the grading permit requirements and restore the site.
 - (5) Submit a copy of watershed district approval. The city may require revisions to the site plan to meet the requirements of the watershed district.
 - (6) Submit a construction management plan for staff approval.
 - (7) Submit a copy of the NPDES Storm Water Permit.
 - (8) Remove the soil and rock piles at the south end of the track.
- c. Submit the following to the city before the city issues a building permit:
 - (1) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping.
 - (2) An illumination plan, subject to staff approval.
- d. A double row of six-foot Black Hills Spruce, spaced 15 feet apart, must be planted south of the athletic field to provide additional screening.
- e. All ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units are exempt from the screening requirement.
- f. Except for the 2-3 trees that would be removed for the rerouting of the storm sewer, the existing trees that are south of the dome and provide screening from adjacent residential property may not be removed without city council approval.
- g. Meet fire marshal requirements.
- h. Provide portable toilets away from the dome.

- i. Before using the dome, provide an overall campus management plan for staff approval that includes the parking restrictions in the August 12, 2003 Management Plan, the location and storage practices for soil, ballfield aggregate, and miscellaneous material, and the operational complaints made by neighbors. Compliance with the approved management plan is a specific condition of this approval.
- j. The dome may only be up from November through April.
- k. Hours of operation are limited to school hours and from 6 p.m. to 10 p.m. on weeknights and 7 a.m.-10 p.m. on weekends. The lights must be off after 10:30 p.m. every night.
- l. A pedestrian trail must be added from the Pagel Center to the dome. The trail must be separated from the road.

All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Consideration of an agreement to accept the Shady Oak Lake Cemetery.

Gunyou provided the staff report for this item.

Allendorf said that this would provide a wonderful addition to Lone Lake Park. In response to his question, Gunyou said that the cemetery would be administered with existing staff.

Allendorf moved, Tauer seconded a motion to approve an agreement to accept the Shady Oak Lake Cemetery.

Anderson noted the historic nature of the cemetery, and hoped that would be emphasized. She thanked those who put together the history of the site and the proposal.

Thomas supported the agreement and said it would benefit the park.

Gunyou noted that the city will only sell a limited number of additional gravesites, and then the cemetery will be maintained.

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS. None.

16. ADJOURNMENT.

Thomas moved, Wiersum seconded a motion to adjourn the meeting at 10:42 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk