

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, NOVEMBER 24, 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 Dick Allendorf, Ken Tauer, Brad Wiersum, Terry Schneider, Al Thomas, Jan Callison, and Karen Anderson were present.

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou reviewed the changes to the agenda. The petitioner for item #9A, the Woolman Drive storm sewer project, could not be at the meeting and submitted an email listing the reasons for his petition. The planning director suggested a new condition 3e for item 14A, the D'Amico preliminary plat. The new condition required a conservation easement before a grading permit would be issued.

Callison moved, Thomas seconded a motion to accept the agenda with the addendum. All voted "yes." Motion carried.

**5. APPROVAL OF MINUTES.**

Allendorf moved, Wiersum seconded a motion to approve the minutes of the November 10, 2003 Minnetonka City Council meeting as submitted.

All voted "yes." Motion carried.

**6. SPECIAL MATTERS: None.**

**7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.**

Gunyou reported on the upcoming council meeting schedule:

- There will not be a meeting on December 1.
- The council will hold a joint meeting with the park board on December 3. That discussion will focus on the status of the referendum projects, and the park board's goals.

- The December 8 study session discussion about temporary signs was postponed to January 12 to allow the new council members to participate in the discussion. The Truth in Taxation hearing will still be held on December 8.

Anderson reported that she accepted a Smart Growth Award from the United States Environmental Protection Agency on behalf of the Metropolitan Council. Anderson accepted the award because she chaired the Met Council's first Livable Communities Committee, and Minnetonka received one of the first livable communities grants for Westridge.

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

Tom Mooney, 5128 Woodhill Road, thanked the city for its support of the Glen Lake Mighty Mites program. Anderson thanked Mooney for the positive feedback and the quality of their program.

Jerry Haugen, 4835 Gaywood Drive, requested that the city reimburse him for expenses he incurred to restore his property after Gaywood Drive was resurfaced. He had previously mailed the claim to council members.

Callison asked if Haugen had expressed his dissatisfaction and allowed the city an opportunity to re-do the work prior to undertaking his own repairs. Haugen said that he had returned a project survey in March 2003, and had tried unsuccessfully to reach Jeff Dubay in Public Works. He said that the corrections made to his neighbor's property did not satisfy him.

Schneider said that the council directs staff to complete projects in the most efficient way, which typically calls for seeding of areas to be restored. He noted that seed rarely matches the higher quality of sod. The city has not chosen to sod because it would add to taxpayers' costs.

Haugen said that the street elevation was raised, requiring fill about 15 feet into his yard from the curb. This elevation change occurred only at his property, and to a lesser extent, to his neighbor's property.

Anderson said that the council usually refers items not on the agenda to staff for follow up. However, because Haugen was not satisfied with staff's response, she asked that the council give direction. She was concerned about setting precedent, and said that each project has unique and different circumstances. She said that sodding could not be done without assessing the cost to property owners. She was not inclined to honor Haugen's request for reimbursement.

Haugen said that the city had reimbursed others for repairs to sprinkler systems and invisible dog fences, and thought his request was similar.

Tauer said that he had not been able to view the problem due to the recent snows. He agreed with Anderson's comments, and said that seed takes longer to establish. Tauer said that the homeowner is responsible for watering the seed to ensure growth. Tauer questioned the tone of Haugen's letter, saying that it seemed to be more of a demand than a request.

City Engineer Lee Gustafson said that the city had reimbursed three property owners in this project for damage to sprinkler systems or invisible fencing, because the notice alerting them to protect their property was not timely. All subsequent claims were denied.

Schneider would not support Haugen's request due to precedent. He suggested that a better approach would have been for Haugen to contact the city upon learning that seed would be used, to request a credit that he could apply toward sod.

When Anderson informally polled the council, no one wished to take action on Haugen's claim.

**9. BIDS AND PURCHASES:**

**A. Consideration of quotes for the Woolman Drive Storm Sewer Project No. 4864S.**

City Engineer Lee Gustafson provided the background.

In response to Anderson's question, Gustafson said that this agenda item represented Phase 1 of a two-phase project. Quotes would be solicited for the Woolman Drive portion of the project next spring.

Callison asked if staff had any concern that the project would not fix the problem. Gustafson responded that he did not have any concerns. He said that some damage would always be possible due to the slopes. However, the water shooting from the existing pipe would be contained within a pipe system. The pipe currently points at the petitioner's property. He further noted that the ditch alignment has changed over time.

Anderson noted that the most severe impact has been to the property at 18021 Priory Lane. She asked if the city has compensated them for damage to their carpet when the lower level flooded. Gustafson said that the city had compensated them, and

that the city has sandbagged their property on at least two occasions.

Cori Gunnells and Curt Weaver, 18112 Woolman Drive, represented themselves and their neighbors at 18106 and 18118 Woolman Drive. Gunnells questioned the justification for the project, and opposed what they viewed as “clear cutting” of the easement area on their property. They requested studies or other documentation that the petitioner’s problem would be remedied by the proposed project. Gunnells said that erosion is evident between 18112 and 18118 Woolman Drive, and that a tree has died due to that erosion. She said that the catch basin on Woolman Drive is ineffective. She questioned the phasing of the project, suggesting that if phase one preceded phase two, the work would need to be re-done. She raised safety and visual concerns about the proposed manhole covers. She said that seed or sod would not grow in the easement area, and the work might adversely affect the value of their property. Gunnells said that they did not want the project to take place until the problem had been proven.

Weaver said that they had lived in their home since 1998, and had never seen a drainage problem. He said that water would have had to run uphill for their property to have contributed. He said that the petitioner’s downspouts emptied onto their home’s patio, and suggested that corrections be made as an alternative to the project. He did not want the burden of the solution to fall on them.

Anderson noted that there was some urgency to complete the project this year, and asked about the impact of the recent snow. Gustafson said that the snow would help the project by preventing frost from entering the ground. Gustafson explained how the drainage had meandered outside of the easement area over time, and said that the erosion problem between the two homes mentioned by Gunnells were an indirect result of the problems below. He said that staff is certain that the phasing for the project is correct. If more water was forced at a higher velocity, the problem would worsen below. Gustafson said that the project should be done this year, especially while the trees are dormant.

Gustafson explained the design and purpose of the drains, noting that one was added to save an additional three to four trees. Gustafson said that the restoration mix can be natural or typical, and that the choice could be made by the residents. He said that the alignment of the project minimizes the loss of trees and saplings. There are fewer saplings in the area, because of the watermain project of several years ago.

Anderson asked about the timing of Phase 2. Gustafson said that it would be done in mid-to-late May, as soon the frost is out of the ground and the asphalt plants are open.

Anderson asked if there were safety problems related to catch basins. Gustafson said that he was not aware of any problems. He noted that the covers weigh as much as 200 pounds, and could not be opened by a child. Gustafson also said that a beehive casting would be used, which would reduce the likelihood of items washing into the pipe.

Anderson suggested that the city's environmental resources coordinator be involved in selecting the best seed for the wooded area. She asked if the city had noted any impact on property values with storm sewer projects. Gustafson said that a pipe installation in this area would not affect property values. He noted that there could actually be some benefit to the property from correcting the erosion problems.

Anderson asked if staff was certain of the correlation of the problems above and below. Gustafson said that there is a 10-year history of problems, and the city has provided sandbags at the petitioner's property.

Anderson asked if the city would have greater liability if they failed to act, because damages had been paid to the petitioner in the past. City Attorney Desyl Peterson said that she could not answer that question without knowing the specifics of the past payment. She said that arguments could be made both ways, including that the city council had discretion in allocating resources.

In response to Tauer's question, Gustafson described methods to control erosion, including the use of fabric. He said that storm sewer projects within a residential street are typically designed to handle a 10 year storm event. A berm could be used on Woolman Drive to better divert the water.

Thomas asked about the city's history of providing sandbags for private properties. Gustafson said that it only occurs occasionally.

Thomas asked Gunnells to explain her claim that permanent and irreparable damage would occur to their property. Gunnells said that their property will change. She said that the easement area is shaded, so Kentucky bluegrass seed will not grow. Weaver raised

the downspout issue again, and said that they had not learned of the project until after the plans were drawn, so they had no input.

Anderson noted the petitioner's email citing the flooding problems. She said that Gunnells and Weaver did not live in the area during the previous flooding incidents, and noted that there have been long-standing drainage problems.

Gunyou clarified that staff had not suggested Kentucky bluegrass seed. The seed could be appropriate for a forest undergrowth as desired by the residents.

Callison said that the mere fact the city was willing to sandbag indicated an obvious drainage problem. She added that water had been seen gushing out of the pipe. The project will cost \$21,000, and could be accomplished on an existing easement. She noted that the property was purchased with the existing easement in recognition of the problems. She also supported the second phase, and saw a greater risk in doing nothing. She thought that the project would do minimal damage.

Schneider agreed. He noted that the topographical map indicates that the water is directed toward the petitioner's home. He did not believe that the city needed to prove the source of the water. The city could advise the petitioner of the downspout concerns. He said that the project offered one of the more reasonable solutions he has seen. He thought the focus should be on restoration, rather than whether or not the project moves forward. He suggested options, including an insoluble mat, that would allow the property owner to plant seedlings or saplings that would grow in shade.

Tauer supported the project as simple and straightforward, and noted that the heavy rains were in 1997, prior to Gunnells and Weaver moving into the neighborhood.

Wiersum noted that the previous work had already fit within the easement area, and said that this project could do the same. The project should be a benefit for all.

Allendorf thought that the true problem was communication between neighbors and between the neighbors and the city. He suggested that Gunnells and Weaver call the petitioner to talk about their issues. He suggested that communication continue on the issue of restoration and safety for the manhole covers. If that occurs, he thought the project would be a win/win situation. He supported the project.

Thomas agreed. He viewed the properties prior to the snow and found that the sandbags kept water from the petitioner's house. He said that no homeowner in Minnetonka should have to sandbag their property. He hoped that staff would work with the neighbors on restoration. He also supported the second phase of the project.

Schneider moved, Tauer seconded to award the contract for the Woolman Drive Storm Sewer Project No. 4864S to Metro Utilities, Inc. in the amount of \$21, 390.

Anderson supported the project, and expressed concern about neighborhood animosity and lack of communication. She said that staff goes out of its way to provide information and respond to issues, and she expected that to continue.

All voted "yes." Motion carried.

**B. Consideration of bids for the park renewal projects at Covington and Linner Park.**

Gunyou provided the staff report for this item, explaining the planned change orders to correct a confusion in the original bids.

Thomas asked for an update on the park renewal costs to date. Recreation Program Manager Perry Vetter said that exact figures will be provided for the council's December 3 joint meeting with the park board. He said that projects are on time and on budget. Gunyou said that overall, bids have been competitive so the projects are running under budget.

Wiersum questioned whether a lower price could have been achieved if the two projects had been bid separately. Gunyou said that the city typically groups projects to achieve overall lower total costs, and that individual bids would have differed if the two projects had been bid separately. Vetter added that there is often less interest for smaller projects.

Callison moved, Thomas seconded to award the bid to Barber Construction Co., Inc. for the park renewal work at Covington and Linner Park with a base bid of \$900,040.28, including a change order to revise the quantities, for a total contract of \$551,676.94 (Covington \$271,955.62 and Linner \$279,721.32). All voted "yes." Motion carried.

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

**A. Claims for council authorization.**

Tauer moved, Thomas seconded a motion to approve the November 24, 2003 claims list, including checks numbered 178532 through 178822 totaling \$1,555,618.65. All voted "yes." Motion carried.

**B. Resolution declaring the results of the November 4, 2003 Municipal Election as to Ward 1 Council Representative.**

Tauer moved, Thomas seconded a motion to adopt Resolution No. 2003-110 declaring the results of the November 4, 2003 General Election as to Council Representative Ward 1. Tauer, Wiersum, Schneider, Thomas, Callison and Anderson voted "yes." Allendorf abstained. Motion carried.

**C. Ordinance amending the City Code regarding public safety alarms.**

Tauer moved, Thomas seconded a motion to adopt Ordinance No. 2003-27 amending sections 915.005 – 915.030 of the City Code including the addition of a new section 915.029 regarding public safety alarms. All voted "yes." Motion carried.

**D. Consideration of project change order No. 5 for the city's public works facility.**

Tauer moved, Thomas seconded a motion to approve change order No. 5 for the public works facility in the amount of \$56,673. All voted "yes." Motion carried.

**E. Approval of an encroachment agreement granting Children's Healthcare a permit to install telecommunications cable.**

Tauer moved, Thomas seconded a motion to execute an encroachment agreement with Children's Healthcare, for the purposes of installing telecommunications cable between their two buildings on Clearwater Drive. All voted "yes." Motion carried.

**F. Resolution approving a conditional use permit for more than 1,000 square feet of detached structures at 3676 Lakeview Place for Dan Hamman.**

Tauer moved, Thomas seconded a motion to adopt Resolution No. 2003-111 approving a conditional use permit for more than 1,000

square feet of detached structures at 3676 Lakeview Place for Dan Hamman. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Tree protection/erosion control fencing must be installed and maintained throughout the course of construction.
- 2) No additional curb cuts are allowed.
- 3) The structure may not be used for commercial activity.
- 4) Building materials must complement the existing structures on the property.
- 5) Additional screening must be planted along the east property line. The applicant must work with the environmental resources coordinator to determine a species and location that will not negatively impact the existing hedge.
- 6) The city council may reasonably add or revise conditions to address any future, unforeseen problems.
- 7) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 8) Record this resolution with the county before the city issues a building permit.
- 9) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

**G. Resolution receiving petitions for storm sewer improvements and authorizing preparation of feasibility reports.**

Tauer moved, Thomas seconded a motion to adopt Resolution No. 2003-112 receiving petitions and authorizing the preparation of feasibility reports for storm sewer improvements in the vicinity of 5338 Highland Road, 3469 and 3487 Orchard Lane, 13539 Wentworth Trail, 15915 Excelsior Boulevard, and 3050 Minnehaha Court. All voted "yes." Motion carried.

**H. Approval of 2004 fee schedules for consulting engineering services.**

Tauer moved, Thomas seconded a motion to approve the revised 2004 fee schedules proposed by the city's general services consulting engineering firms, and authorize the mayor and city manager to execute the Addenda to the Agreements for Professional Services with the following firms:

Barr Engineering Company  
Kaeding and Associates, Inc.  
Benshoof & Associates, Inc.

SECOR International Incorporated  
Brauer & Associates, Ltd.  
Short Elliott Hendrickson, Inc.  
Braun Intertec Corporation  
SRF Consulting Group  
Gale-Tec Engineering, Inc.  
STS Consultants, Ltd.  
Hansen Thorp Pellinen Olson Inc.  
WSB & Associates, Inc.

All voted "yes." Motion carried.

**I. Resolution approving the public auction of certain tax forfeited land within the City of Minnetonka (5359 Miracle Lane).**

Tauer moved, Thomas seconded a motion to adopt Resolution No. 2003-113 approving the public auction of certain tax forfeited land within the City of Minnetonka (5359 Miracle Lane). All voted "yes."  
Motion carried.

**J. Items concerning a water treatment facility at 3391 Williston Road for the City of Minnetonka:**

- 1) Ordinance amending the master development plan.**
- 2) Resolution approving a conditional use permit.**
- 3) Final site and building plans.**

Tauer pulled this item from the consent agenda for discussion. He asked staff to restate the reasoning for the location of the structure, noting his concerns about the impact to what he considered the nicest area of the campus.

Gunyou said that the location shift to the southwest was based on cost and feasibility considerations, since soil tests indicated substantial problems with constructing the water treatment plant at the original site. The new location was selected due to its proximity to the existing wells and pipes. The overall civic center campus layout previously reviewed by the council reflects this location for the plant. He noted that final approval of the layout had been postponed during the leave of absence by the project's consultant.

Gunyou noted that a council member had previously asked about moving the structure as far to the east and south as possible. He said that the proposed location moves the structure as far as the soils would allow. He noted that the tanks in the western portion of the structure would be underground, so that people could use the area. Heavy trucks could not be used in that area.

Public Works Director Brian Wagstrom said that there were two main obstacles to the siting of the plant. The new plant design includes an underground backwash water reclaim tank and a pumping clear well that are negatively impacted by the high water table at the current location. Costs to de-water the construction area at the current location would be extremely high.

Wagstrom said that the plant design specifications and associated construction costs for these tanks would also increase to ensure that ground water does not leak into the tanks. The design would have to be approved by the Minnesota Department of Health to ensure that there is no contamination to the potable water contained in the tanks. He said that this could not be accomplished within the budget if the building was not shifted to the new location.

Gunyou said that the layout also provides for a turnaround for the active use area near the creek. He thought that the new location worked better for the overall design of the entire campus.

In response to Schneider's question, Wagstrom said that the backwater reclaiming tank would be located two feet below ground, and the building would be positioned above it.

In response to Anderson's question, Wagstrom said that the old structure will be demolished. The new building should not interfere with the fireworks for the summer festival.

Anderson noted that some cities and counties use their water treatment facilities for educational tours. Wagstrom said that the city could do this on a limited scale to ensure security as required by Homeland Security. He said that the plant will be secure and will meet current security standards.

Thomas said that at the planning commission, a resident said that the city did not meet screening requirements at the ice arena. Gunyou said that bids are being solicited for screening of the dumpster and mechanicals at the ice arena.

Allendorf moved, Callison seconded a motion to:

- 1) Adopt Ordinance No. 2003-28 amending the civic center master development plan to replace the existing water treatment plant at 3391 Williston Road. This resolution is based on the finding that the proposal meets the required conditional use permit standards.

- 2) Adopt Resolution No. 2003-114 approving a conditional use permit for a public building/facility at 3391 Williston Road.
- 3) Approve the final site and building plans for a water treatment plant at 3911 Williston Road. Approval 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 dated September 12, 2003
    - Grading plan dated September 12, 2003
    - Landscape plan dated September 12, 2003
  - b. Submit storm sewer plans acceptable to the city engineer and environmental resources coordinator.
  - c. Install additional valves on the area water main if required.
  - d. Prior to any site work, install tree protection/erosion control fencing at the woodland edge south and east of the proposed building. The fencing must be maintained throughout the course of excavation and construction.

All voted "yes." Motion carried.

**K. Re-authorization of the Mediation Services agreement.**

Tauer moved, Thomas seconded a motion to approve the Mediation Services Agreement. All voted "yes." Motion carried.

**11. Items requiring Five Votes:**

**A. Preliminary approval, with variances, of the two-lot Imperial Acres plat at 3323 Shores Boulevard for Imperial Development Investors Group.**

Anderson invited public comment, but there were none.

Schneider moved, Callison seconded a motion to give preliminary approval to the Imperial Acres plat, dated July 30, 2003, with the following variances:

- 1) A lot area variance from 22,000 to 17,206 square feet for Lot 1, and from 22,000 to 13,744 square feet for Lot 2;
- 2) A lot width at the front yard setback variance from 110 to 90 feet for Lot 1; and
- 3) A lot depth variance from 125 feet to 90 feet for Lot 2.

Approval is based on the following findings:

- 1) Except for the variances, the proposal meets the required standards and ordinances for a preliminary plat.
- 2) The proposal meets the required standards for a variance, because:
  - a. There is a unique hardship to the property caused by platting and development of the property and surrounding neighborhood before the effective date of the current ordinance.
  - b. The plat is consistent with the development of the surrounding neighborhood and represents a reasonable use of the property.

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
  - a. Show the following on the final plat:
    - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven foot-wide drainage and utility easements along all other lot lines.
- 2) The following items must be submitted to the city before the city releases the final plat:
  - a. An electronic CAD file of the final plat in microstation or DXF.
  - b. The following documents for the city attorney's approval:
    - (1) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
    - (2) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions below that have not been met as of the release of the plat.

These documents must be recorded with the final plat, and a drawing of any easements must be attached to the easement deed.
- 3) The following must be submitted to the city before the city issues a building permit:
  - a. A grading and tree preservation plan for the new lot, subject to staff approval. The plans must demonstrate no negative impact on adjacent property and maintain existing drainage patterns.

- b. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
  - c. A copy of the recorded plat and any easements or covenants required to be recorded.
  - d. A hookup fee for sanitary sewer and water.
  - e. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
- 4) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
  - 5) The existing garage must be moved onto Lot 1 and meet all required setbacks.
  - 6) The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

All voted "yes." Motion carried.

## 12. INTRODUCTION OF ORDINANCES.

### A. **Ordinance amending a master development plan for a bank with drive-through teller facilities at 10653 Wayzata Boulevard for Red Stag Properties, LLC.**

Callison moved, Wiersum seconded a motion to introduce an ordinance adopting a planned I-394 district master development plan and approving final site and building plans for a two-story bank/office building at 10653 Wayzata Boulevard and refer it to the planning commission. All voted "yes." Motion carried.

### B. **Ordinance concerning outdoor speakers in the Planned I-394 zoning district.**

Allendorf moved, Tauer seconded a motion to introduce an ordinance amending City Code Section 300.31, subdivision 7. c) 5) d., concerning outdoor speakers in the planned I-394 zoning district and referred the ordinance to the planning commission. All voted "yes." Motion carried.

### C. **Ordinance concerning landscaping security.**

Wiersum moved, Tauer seconded a motion to introduce an ordinance amending City Code Section 300.27, subdivision 19, concerning landscaping bonds and referred the ordinance to the planning commission. All voted "yes." Motion carried.

**D. Ordinance amending the city's noise ordinance.**

Peterson provided a brief staff report for this item.

Callison moved, Allendorf seconded a motion to introduce an ordinance amending City Code Sections 850.05, 850.010 and 850.015 regarding noise regulations. All voted "yes." Motion carried.

**E. Ordinance amending Section 710 of the City Code regarding building, electrical, plumbing, and mechanical permit fees and certain related fees.**

Gunyou provided a brief introduction for this item, commending Community Development Director Ron Rankin's initiative in pursuing a joint fee schedule with the League of Minnesota Cities and the Association of Metropolitan Municipalities when the state refused to accept the responsibility.

Schneider, who serves on the LMC Board, said that Rankin's efforts were noteworthy because laws are often passed overreacting to fees set by an individual city. He said that this type of broader coalition has far reaching implications, and commended staff for their efforts.

Wiersum moved, Tauer seconded a motion to introduce an ordinance amending Section 710 of the City Code regarding building, electrical, plumbing, and mechanical permit fees and certain related fees. All voted "yes." Motion carried.

**13. PUBLIC HEARINGS:** None.

**14. OTHER BUSINESS:**

**A. Items regarding city fees:**

- 1) **Ordinance amending Section 710 of the City Code regarding food, liquor, lodging and swimming pool license and inspection fees, and certain other fees and authorization to publish a summary of the ordinance.**
- 2) **Resolution increasing the city's monthly recycling fee.**

Rankin provided a staff report for this item, and noted that he had received three calls in opposition to the fee increase for Class C licenses. He said that the fees for environmental health services were scheduled to increase by about seven and one-half percent, which reflected actual costs for inspections and follow-ups. He said that these fees were last increased in 2001.

Tauer asked about the nature of the calls. Rankin said that Carol Rausch was in the audience to express concerns about her license for the coffee/gift shop at Children's Hospital. He had also been called by the small convenience store in the Carlson Center building, and by Cousins Subs in Minnetonka Mills. He said that staff may be able to address the concerns raised by Cousins Subs.

In response to Allendorf's question, Rankin clarified that the council was being asked to approve all fees except the planning fees, which would be referred to the planning commission before being submitted for council approval on December 15.

Rausch said that she paid \$350 for a license when she opened the shop in September 2002. She paid \$400 for a license on January 1, 2003, and her fee was proposed to increase to \$430 for 2004. She suggested that the city re-examine fees for small operations. She noted that the letter from staff said that Minnetonka's fees were among the lowest. She said that should be applauded, since government ought to be efficient. She suggested that the fee be based on the revenue of Class C operations, or a sliding fee.

Anderson thought that fees based on sales would be difficult to monitor. She was not aware of other cities using such an approach.

Rankin said that staff tries to relate fees to costs. He said that establishments are charged an additional fee for such things as a bar in a restaurant, and establishments pay added fees for additional follow-up visits after correction orders are issued. He said that some cities base fees on the size of facilities. Rankin said that varied fees would be hard to administer, particularly if they required re-inspections.

In response to Wiersum's question, Rankin explained the difference between Class C and Class E operations.

In response to Callison's question, Rankin said that Rausch would have experienced three increases in her license fee with the proposed change.

Gunyou noted that the council has been reviewing all fees annually to avoid larger increases, and to ensure that all costs are covered so taxpayers are not subsidizing licensed operations. He said that the changes would cover costs.

Thomas wanted to ensure parity within classes, and asked for an explanation of potentially hazardous foods. Rankin said that they are foods which require specific temperatures.

Schneider noted the difficulty of fitting Rausch's operation into a specific class. Wiersum agreed, and said that some discretion might be appropriate.

Callison said that there were two issues: the proposed fee increases, and the classification of Rausch's operation. She suggested that they be viewed as separate issues, and the council should first decide if the proposed fees were reasonable. She suggested that Rausch pursue the question of her classification with staff.

Tauer asked about the number of inspections for Classes A and C. Rankin said that restaurants are more complex and require more inspections. He said that additional fees can be applied, depending on the circumstances. He will re-examine the classification of Rausch's operation.

Wiersum moved, Allendorf seconded a motion to:

- 1) Adopt Ordinance No. 2003-26 amending Section 710 of the City Code regarding food , liquor, lodging and swimming pool license and inspection fees, and certain other fees.
- 2) Find that that the title and summary of the ordinance clearly informs the public of the intent and effect of the ordinance, approve the text of the summary and authorize its publication.

All voted "yes." Motion carried.

Schneider moved, Thomas seconded a motion to adopt Resolution No. 2003-115 increasing the city's monthly recycling fee. All voted "yes." Motion carried.

**B. Preliminary plat, with lot width variances, for a two-lot subdivision at 4401 Wilson Street for Angelina and Paul D'Amico.**

Planning Director Geoff Olson presented the staff report for the item.

In response to Callison's question, Olson explained the location of the conservation easement.

Thomas asked if the hill fit into the steep slope ordinance. Olson said that it did not meet the definition of a steep slope. He said that the applicant wants the building site to stay off the hill as much as possible. The conservation easement would cover the slope.

In response to Wiersum's question, Olson said that two significant trees would be removed through grading. He said that might change with the final design.

Michelle Caron, 4335 Wilson Street, thanked staff and council members for visiting the site. She was happy that housing was being considered for the site, and appreciated the additional requirement for a conservation easement.

Schneider generally supported the lot split, and found that it was in character with the neighborhood. He hoped that the final home design and custom grading would mitigate any tree removal. He said that this might be a case where a sideyard setback variance to increase the buildable area would provide a net benefit to everyone. He hoped that the purchaser of the lot would look at that option.

Anderson was willing to look at that option when the house is designed. She said that the trees are spectacular, so she would be willing to consider a variance.

Callison said that the lot split was appropriate, and that the neighbors have helped the process.

Callison moved, Thomas seconded a motion to approve the two-lot preliminary plat with the lot width at the required setback variances for both lots from 110 to 100 feet, and the lot width at the right-of-

way variance from 80 to 0 feet for Lot 2. The approval is based on the following findings:

- 1) The proposal meets the required standards and ordinances for a preliminary plat.
- 2) The proposal meets the required standards for a lot width at the right-of-way variance in Section 300.10, Subdivision 5(h)(2)(b).

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
  - a. Show the following on the final plat:
    - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven foot-wide drainage and utility easements along all other lot lines.
    - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer.
    - (3) Drainage and utility easements storm water ponds, as determined by the city engineer.
    - (4) A drainage and utility easement must be established over the 976 contour, which is the 100-year stormwater elevation in this area.
  - b. Pay the city a park dedication fee of \$2,375.
  - c. If the developer is petitioning the city to construct the public water and sewer improvements, the city council must order the improvements.
  - d. If required, submit evidence of watershed district and pollution control approval. The city may require revisions to the preliminary plat to meet the requirements of these agencies.
- 2) The following items must be completed before the city releases the final plat:
  - a. The following documents for the city attorney's approval:
    - (1) Title evidence that is acceptable to the Minnetonka City Attorney. Title evidence must be current within thirty days before release of the final plat.
    - (2) Conservation easements over an area 25 feet outward from the wetland on Lot 2, and a drawing of the easements for the approval of the city attorney. The easements and drawing must be recorded with the final plat.

- (3) Provide a 34-foot private driveway easement acceptable to the city attorney. This easement shall be located along the south lot line of Lot 1, or over the lot to the south. The easement shall state the maintenance responsibilities of each owner. The minimum driveway width shall be as required by the fire marshal.
- (4) A private utility easement across Lot 1 to provide services to Lot 2.
- b. All buildings on Lot 1 must be removed, or a cash deposit must be made to the city ensuring the removal of the buildings within a period agreed upon by staff.
- c. All outstanding bills owed to the city must be paid.
- 3) The following must be completed before the city issues a grading permit or any site work is started:
- a. Final utility, grading, drainage and erosion control plans must be submitted for staff approval.
- b. A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site must be submitted to the city.
- c. All trees to be preserved must be fenced and erosion control measures must be installed for staff approval.
- d. A construction management plan must be submitted for staff approval.
- e. A conservation easement from the easterly grading limits of the easterly lot to the easterly property line, subject to staff approval.
- 4) The following must be submitted to the city before the city issues a building permit:
- a. A grading and tree preservation plan for each lot, subject to staff approval. The plans must be in substantial compliance with the agreed building areas as required with the final plat. The sewer and water services must be shown to minimize impact to the significant trees. The existing significant trees along the north, south and west lot lines shall be preserved.
- b. All trees to be preserved must be fenced and erosion control measures must be installed for staff approval.
- c. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.

- d. A copy of the recorded plat and any easements or covenants required to be recorded.
  - e. A hookup fee for sanitary sewer and water.
  - f. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
  - g. A new home on Lot 2 must be provided with a fire protection sprinklering system, subject to the fire marshal's approval.
  - h. Minimum basement elevation must be at least 986.1.
- 5) Before the city makes a final inspection of the house on Lot 2, the drive must be paved from the street to the house. A driveway setback of at least seven feet must be maintained from the side lot lines. Existing trees along the lot line must be protected during construction and preserved. The city may approve a time extension if weather prevents paving of the drive.
  - 6) The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval shall be void.
  - 7) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
  - 8) Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 1/2 inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
  - 9) The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

Tauer said that he would probably not be on the council if the project returns. He does support lots behind lots unless additional variances are involved. Because similar variances were given to the lot to the south, he would support this lot division.

Wiersum said that the lot split was consistent with the character of the neighborhood. He would consider variances to save more trees if the plan would not dramatically impinge on the neighbors.

Schneider hoped that the owner would get a qualified grader to provide a more creative plan.

Allendorf said that the variances might be a good idea. He asked how the council's input could be given to the buyer of the property.

Paul D'Amico, buyer of the property, said he will build the house, and that he will work with staff.

Schneider said that the conservation easement should not be used to force the issue.

Anderson said that she was willing to follow through on this item without additional stipulations.

All voted "yes." Motion carried.

**15. APPOINTMENTS and REAPPOINTMENTS.** None.

**16. ADJOURNMENT.**

Thomas moved, Wiersum seconded a motion to adjourn the meeting at 9:22 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk