

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JANUARY 26, 2004**

1. CALL TO ORDER.

Mayor Anderson called the meeting to order at 7 p.m. The meeting start was delayed due to the preceding special meeting to interview applicants for boards and commissions.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL.

City Clerk Kathleen Magrew called the roll. Council members Al Thomas, Tony Wagner, Bob Ellingson, Brad Wiersum, Jan Callison, Terry Schneider and Karen Anderson were present.

4. APPROVAL OF AGENDA.

City Manager John Gunyou reviewed the addendum information. A resolution was provided for item 6A, citizen recognition, and the motions for items 15A and B were amended to correct typographical errors related to the appointments.

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

5. APPROVAL OF MINUTES.

Schneider moved, Wiersum seconded a motion to approve the minutes of the January 5, 2004 Minnetonka City Council meeting as submitted. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Citizen Recognition

Schneider recognized LeRoy and Marge Frankenstein, who received a Citizen Action Recognition Award for their work with the Birder's Club. Anderson presented them with a certificate and pins, and noted that Ann Cullen-Smith nominated them. Anderson said that the Birder's Club was about to fold until the Frankensteins brought the program back to life with quality speakers.

Marge Frankenstein said that it had been a pleasure to work with the group. She said that the project was good for her husband. LeRoy Frankenstein thanked the members of the group, and said that its members are knowledgeable and dedicated. He said that speakers come from throughout the state.

Callison then recognized Betty Johnson, who received a Citizen Action Recognition Award for her history presentations to area school classes and civic organizations. Anderson presented Johnson with a certificate and a pin.

Johnson said that she began taking the slides for her presentation in the early 1970s. She stressed the importance of residents having a feeling of the community's history, because the past is reflected in the present. Where a community comes from reflects where the community is going. She said that it is nice that people feel ownership in the community, and she gets that feeling from children, teachers, other adults, and the city.

Anderson asked Community Heritage Commission Chair Joe Van Sloun and Vice Chair Joan George, to join Johnson at the podium. Anderson read the resolution that was added in the addendum to proclaim Johnson as the city's official historian. Anderson moved, Callison seconded a motion to adopt Resolution No. 2004-006 proclaiming Betty Johnson as Minnetonka's official historian. All voted "yes." Motion carried.

Anderson presented Johnson with a paperweight and an identification pin with her title. Johnson expressed her appreciation and said that she would use her new title in the history articles she is writing for the *Lakeshore Weekly News*.

B. Proclamation designating February as National African American History Month in Minnetonka.

Anderson read a proclamation proclaiming February as National African American History Month in Minnetonka.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported that the city received a letter from the State Auditor commending Minnetonka's fund balances. He noted that the State Auditor's office has been critical of the fiscal management of some cities, but found that Minnetonka's balances provided the necessary protection

for unforeseen impacts on services, without amassing unneeded tax dollars.

Gunyou noted that the February 2 council study session will be a retreat, and explained the homework for that session. The city will host Kids Fest on Sunday, February 8, and the next regular council meeting will be held on February 9.

8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA.
None.

9. BIDS AND PURCHASES: None.

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

A. Claims for council authorization – January 12, 2004.

Wiersum moved, Callison seconded a motion to approve the January 12, 2004 claims list, including checks numbered 179405 through 179731 totaling \$973,599.72. All voted “yes” except that Callison abstained as to check no. 179727. Motion carried.

B. Claims for council authorization – January 26, 2004.

Wiersum moved, Callison seconded a motion to approve the January 26, 2004 claims list, including checks numbered 179732 through 180081 totaling \$2,490,339.12. All voted “yes.” Motion carried.

C. Authorization to enter into an agreement with Hopkins Independent School District # 270 and the cities of Hopkins and Golden Valley for junior and senior high liaison services.

Wiersum moved, Callison seconded a motion to authorize an agreement with Hopkins Independent School District # 270, and the cities of Hopkins and Golden Valley to provide Junior and Senior High Liaison service for the calendar year 2004. All voted “yes.” Motion carried.

D. Approval of community center rental fee adjustments.

Callison pulled this item from the consent agenda. She asked if other fees could be increased to avoid charging non-profits.

Gunyou noted that staff has been reviewing all fees. He said that setting the level of these fees was open to the council’s discretion.

Recreation Director Dave Johnson said that staff tries to ensure fees offset operating costs, and also sets them to increase the efficiency of facility use. Johnson said that over the past 10 years, the number of non-profit organizations using the community center has increased from 87 to 317, for an average increase of 23 new groups annually. He noted that some groups schedule rooms for more time than needed for their meetings, which prevents other usage of the space.

Callison said that the proposed fee would not generate much additional income, and asked if the intent was to reduce the number of hours groups use the rooms.

Johnson said there was a desire to increase accessibility. He said that there are often no-shows or late cancellations, which prevent another group from using the space.

Callison suggested that there might be a better way to address the issue, such as charging a fee after a certain number of free hours. She was concerned that once a fee was initiated for non-profits, it would increase in the future.

Wiersum said that people often don't recognize the value of something when there is no cost. He would support a penalty for no-shows.

Schneider generally supported the recommended changes. He didn't think it was necessary for the facility to be self-supporting, but wanted to recognize that there is a cost to taxpayers to clean the facility and provide utilities. He said that it would be worth the small impact to increase the fees.

Thomas said that \$5/hour would not cover much. He noted that his non-resident, non-profit organization reserved a room for a youth education event and was charged \$150. He saw that groups could extend their meetings beyond their conclusion, and that a fee would make them more sensitive to their actual need.

Wagner agreed with Wiersum's comment that people don't respect the facility if they don't pay.

Anderson asked Johnson about the difficulty of enforcing a penalty. Johnson said that he would like to discuss the issue with his staff. He noted that many groups use the facility only once a year, so that it might be difficult to collect a cancellation fee.

Anderson said that her first reaction was similar to Callison's. She said that it was always the council's intent that the facility be open for free use by non-profit groups. When she saw that non-profits would receive 12 annual two-hour reservations for free, that overrode her concerns. She noted that one weekly group collects a free will offering to offset costs. Anderson asked that staff provide a report to the council in six months. The report should indicate if the changes have resulted in a reduction in the number of users, the negative impacts, and any collection problems. She would be willing to re-examine the issue based on the findings in the report.

Callison said that her concern was not limited to the fee; she also questioned whether the proposed changes would accomplish the goal of getting people to reserve the facility only when they need it.

Schneider guessed that cancellations were a minor issue. He thought that without a time limit, a group would take the room for the evening when two groups could have used the same space. He supported trying the changes to see if the changes resulted in increased space utilization or other impacts.

Johnson said that non-profits generally book a year in advance. He thought they might think about their reservations if they had to pay for them up front.

Schneider moved, Thomas seconded a motion to approve the proposed fee schedule for the Community Center with an effective date of March 1, 2004.

Callison said that she would not support the motion, because the new fee schedule was not crafted in the right way. She would prefer that staff look at other options and bring those back to the council.

Wagner would like the usage report to reflect the number of cancellations, because this is the behavior that needs correction.

Anderson noted that there are a number of fee changes proposed, other than those for the community center. She said that if the motion failed, another motion could be considered to authorize those changes.

Wiersum supported increasing the fees for the banquet facility. He noted that expenditures exceed revenues by \$25,000. He supported increasing the fees to bring the facility as close to self-

funding as possible. Because there will always be non-profit use, the facility will never be totally self-supported.

Anderson said that there was always an expectation that the city would underwrite some of the cost of the facility, unlike the expectations for the Williston Center and ice arenas to be self-supporting. The gap was not of concern to her.

Thomas, Wagner, Ellingson, Wiersum, Schneider and Anderson voted "yes." Callison voted "no." Motion carried.

Schneider said that staff should try the changes to see how they work.

Anderson said that there was council concurrence for a report in six months. Gunyou said that staff would provide the report, but noted that the facility is often booked a year in advance. It is possible that some impacts won't be reflected within the first six months, because the fee changes would not be retroactive.

Wiersum noted the difficulty in knowing the length of some meetings, and noted that there would be operational challenges. He asked that the report reflect how the policy was implemented.

E. Approve the 2004 grant request from the West Hennepin Affordable Housing Land Trust (WHAHLT).

Wiersum moved, Callison seconded a motion to approve a grant of \$200,000 for WHAHLT in 2004. Thomas, Wagner, Ellingson, Wiersum, Schneider and Anderson voted "yes." Callison abstained. Motion carried.

F. Final approval of the EMERALD TRAIL 4TH ADDITION plat at 2501 South Plymouth Road for Lecy Construction, Inc.

Wiersum moved, Callison seconded a motion to approve the EMERALD TRAIL 4TH ADDITION final plat that was received on November 21, 2003, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat;
- 2) Add the lot number to the northeasterly lot;
- 3) Before release of the final plat, provide a temporary easement over the proposed cul-de-sac bulb that will expire when the street is extended. This easement is subject to the city attorney's approval; and

- 4) 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.

G. Resolution authorizing the police department to enter into a grant agreement with the MN Department of Public Safety.

Wiersum moved, Callison seconded a motion to adopt Resolution No. 2004-007 authorizing the police department to enter into a grant agreement with the MN Department of Public Safety. All voted "yes." Motion carried.

H. Authorization to renew local phone service with Qwest Corporation.

Wiersum moved, Callison seconded a motion to approve an agreement to renew local phone service with Qwest Corporation. All voted "yes." Motion carried.

I. Resolution approving the Metropolitan Council's use of Affordable Housing Incentive Fund assistance for Family Affordable Housing Program units.

Wiersum moved, Callison seconded a motion to adopt Resolution No. 2004-008 approving the Metropolitan Council's use of Affordable Housing Incentive Fund assistance for Family Affordable Housing Program units. All voted "yes." Motion carried.

J. Resolution requesting conveyance of certain tax-forfeited land to the City of Minnetonka for drainage and wetland preservation purposes.

Wiersum moved, Callison seconded a motion to adopt Resolution No. 2004-009 requesting conveyance of certain tax-forfeited land to the City of Minnetonka for drainage and wetland preservation purposes. All voted "yes." Motion carried.

K. Temporary banner until January 31, 2004 for the Accell Academy open house at 4626 Linnea Lane for Jim Walters.

Wiersum moved, Callison seconded a motion to approve a temporary banner until January 31, 2004 for the Accell Academy open house at 4626 Linnea Lane for Jim Walters. All voted "yes." Motion carried.

11. **Items requiring Five Votes:** None.

12. **INTRODUCTION OF ORDINANCES.**

A. Ordinance amending the City Code regarding the building code, general licensing provisions, and the housing code.

Gunyou introduced this item, noting that the changes were mostly routine, and were not expected to be controversial. He asked Community Development Director Ron Rankin to review the most notable changes. Rankin mentioned that Callison had suggested the possibility of incorporating fee waivers for affordable housing. Rankin said that he and the city attorney would research that idea before the item returns to the council for adoption.

Callison moved, Wiersum seconded a motion to introduce an ordinance amending City Code §§500, 505, 510, 515, and 715 regarding the building code, §700.015 regarding general licensing provisions, and §525.005 regarding the housing code. All voted "yes." Motion carried.

B. Ordinance rezoning 600 Sunnyvale Lane and 665 City View Drive from R-1, low-density residential, to PUD, planned unit development, for Gonyea Development LLC.

Anderson noted that rezoning ordinances are referred to the planning commission for public hearings.

Wagner moved, Thomas seconded a motion to introduce an ordinance rezoning 600 Sunnyvale Lane and 665 City View Drive from R-1, low-density residential, to PUD, planned unit development, for Gonyea Development LLC and refer it to the planning commission. All voted "yes." Motion carried.

C. Ordinance rezoning a wetland at 2511, 2531 and 2545 Crosby Road for Paragon Designers and Builders.

Callison moved, Wiersum seconded a motion to introduce an ordinance rezoning a wetland at 2511, 2531 and 2545 Crosby Road for Paragon Designers and Builders and refer it to the planning commission. All voted "yes." Motion carried.

13. **PUBLIC HEARINGS:** None.

14. **OTHER BUSINESS:**

A. Citizen petition to amend the previous preliminary approval of a three-lot subdivision, with a rear yard setback variance, at 15815 Minnetonka Boulevard for Kris and Peter Maritz.

Gunyou described the unusual circumstances related to this item, noting that staff could not recall a similar occurrence. Due to an oversight, staff did not notify the neighbors of the November 20, 2003 planning commission public hearing on this matter. Residents were given notice of a previously scheduled hearing, and its cancellation, but were not re-notified when the matter was rescheduled. State law provides that a failure in notice does not set aside the subsequent approval of a project. However, staff felt that any neighbors who wished to address the regulatory body should have that opportunity. Although not legally required, it was the right thing to do.

Gunyou explained that the 120-day rule would expire on January 26, so there wasn't time for a hearing before the planning commission. Because the city council is the final decision-making body, staff thought it appropriate to bring this item to the city council. Although council had previously approved the project, staff now recommended the addition of a condition that would typically have been imposed when the building permit was issued. This condition related to drainage issues raised by the neighbors and previously discussed by the planning commission.

Gunyou indicated that staff had reviewed various issues raised by the neighbors, and did not believe there were sufficient grounds to reverse the approval. Nevertheless, staff felt that the neighbors should have the opportunity to address the city council. If after the hearing, the council was uncomfortable with their previous approval, they would have the option to either reverse the approval or remand the project to the planning commission. The item could be placed on the February 5 planning commission agenda, and then on the February 9 council agenda for a relatively quick turnaround.

City Attorney Desyl Peterson explained the options available to the city council:

- The city council could do nothing and the prior approval would stand.
- The city council could amend the conditions or add new conditions.

- The city council could deny the project, in which case council members who voted against the subdivision would need to state their reasons for the record.
- The city council could continue the matter and send it back to the planning commission but only with the consent of the applicant.

Planning Director Geoff Olson provided the staff report for the item. He noted that the applicant called him before the meeting to say that the approval they are seeking is identical to approval given by the city council in 1976. Olson verified that the prior approval was given; however, the subdivision was never recorded. The city's ordinances provide that if a subdivision is not recorded within one year, the approval becomes null and void.

Anderson explained the process that would be used for council consideration of this item. She could not recall an instance in her time with the city where notice was not given. She apologized for the glitch in the system, and said that the council was holding the hearing, because it believes in the importance of allowing people to be heard.

In response to Schneider's request, Peterson clarified the effect of the previous approval. In addition to the 120-day rule, State law provides that once preliminary approval is given to a subdivision, an applicant can demand final approval as long as the applicant has complied with all of the conditions of the preliminary approval. Peterson said that each case would have to be considered individually. She noted that this applicant had not taken action in reliance on the prior approval, and no purchase agreement had been signed or additional fees incurred.

In response to Callison's question, Olson said that mailed notice to the neighbors was given of this public hearing. There was not sufficient time for a published notice in the newspaper.

Wiersum asked about the council's latitude if a subdivision without any variances was proposed for this property. Peterson said that a subdivision without variance that meets the requirements of the ordinance would have to be granted. The council would have no choice.

Olson said that he had spoken with the applicant. The applicant prefers to have the subdivision approved as submitted. If necessary, the applicant would alter the plat to eliminate the

variance, and could do that to retain the same number of lots and the same house pads.

Anderson asked about the distance between the buildable area of the new lots and the existing house. Wagner said that the distance was 53 feet.

Anderson asked the applicant if he wished to speak. The applicant said that he did not, but would respond to questions.

Scott Whitworth, 15838 Wood Knoll Lane, said that he was representing the homes on Wood Knoll Lane. He cited their main concerns as:

- Lack of due process because they did not receive notice. This hindered their ability to work with the planning staff.
- The significant variance requested at the rear setback.
- Wood Knoll Lane was not designed for houses on both sides of the street, so drainage and traffic issues could arise.
- The neighbors want written assurance from the city that they would not be assessed for future street or storm sewer projects.

Whitworth said that misleading statements had been made about the need to demolish the existing home without variances. Whitworth said that Cary Teague of the planning staff said that the property could be divided without variances. Whitworth suggested that a substantial maple tree located on the site of the proposed drainage easement could be saved if the lots were reconfigured. Whitworth referenced the city's brochure on variances, which states that variances are not granted as a matter of convenience or economics. He said that granting this subdivision would set a precedent for the property to the west. Whitworth raised drainage concerns, and said that the new lots would change the character of Wood Knoll Lane. He said that the architecture of the new homes could not fit, due to the flooding potential. He did not see a basis for the variance. He also raised the issue of a discrepancy in the size of the variance.

In response to Whitworth's concern about notice, Peterson said that state law and the city's ordinances provide that a good faith effort to notify would not be cause for reversal of the prior approval. She said that the courts would be hard pressed to show a lack of good faith on the city's part, because the omission was inadvertent. She said that is the purpose of the statute.

Anderson asked about Whitworth's comments that Wood Knoll Lane is not designed for houses on both sides. She had not heard this argument before. Peterson said that from a legal perspective, the courts would not support that argument. The neighbors' argument is that whoever goes first, gets to develop. Peterson said that the courts do not uphold decisions that treat people differently when both have developable land.

City Engineer Lee Gustafson said that there were no engineering issues to prevent development on both sides of the street. He noted that there is already a home with access on the north side of Wood Knoll Lane. He said that the width of the street would be looked at with a future storm sewer project.

Anderson noted that the storm sewer project was already under consideration, prior to this proposal. She said that the city has a street improvement fund that pays for street improvements rather than special assessments, and that all properties in the city contribute to that fund. She asked about financing new storm sewer projects.

Gunyou responded that with the new storm sewer fee, property owners are no longer individually assessed for storm sewer projects. Gunyou noted that Minnetonka is one of the few cities that do not assess individual property owners for improvements in their neighborhoods.

Anderson asked about the maple tree on the drainage easement. It was her understanding that drainage easements represent lines drawn and not ditches dug. Olson agreed. He said that such easements often provide for surface water runoff. He did not see a threat to the tree with the proposed subdivision, and said that there would be no change if the lot lines were amended to eliminate the variance.

Anderson asked staff to respond to Whitworth's statement that this subdivision would create precedent for the lot to the west. Peterson said that in general, variances set precedent only if a similar site is proposed within one year. The property to the west would have to have precisely the same circumstances, and the application would have to come in within one year. She said that if the facts were different, precedent would not be set.

Olson said that it would be difficult to say if the facts would be the same without a proposed plan. However, he said that there appears to be the potential for four lots on the adjacent property.

He said that the two properties seemed different, and he thought staff would look at each property individually.

In response to Schneider's question about Whitworth's noted discrepancy in the specific size of the variance, Olson said that staff rounds these figures to the nearest whole number. As a practicality, the difference was only a fraction of an inch.

Kyle Frazier, 15717 Wood Knoll Lane, said that the closeness of the existing home to the new lots might be an inconvenience to the existing or future homeowners for their location of fences or playlots.

Anderson said that anyone can put a child's play area or fence adjacent to a property line. She asked about the average sideyard setback. Olson said that there are no setback requirements for structures under 120 square feet in size. If the structure were larger than that, it would be viewed as an accessory building, and that would require a 10-foot setback. Olson said that the typical sideyard setback is 30 feet total, and that could be accomplished with one side at 20 feet, and the other at 10.

Schneider said that any inconvenience would be to the existing property owner, who is making the request. He noted that restrictive covenants could be used if setbacks were a concern.

Nancy Mullin, 15800 Wood Knoll Lane, did not see a hardship to justify the variance. She wanted this proposal to meet the same guidelines anyone else would have to meet. She questioned the need for a variance when the property could subdivide without a variance. She also questioned the city attorney's comments about the neighbors wanting to prohibit construction on both sides of the street.

Peterson thought the neighbors' argument related to the street being too narrow to accommodate homes on both sides. She said that the city could not deny the subdivision on that basis, and would need to treat all property owners equally.

Peterson clarified the court's rulings and laws on hardship. She noted that the statute and ordinance say one thing, but the courts interpret them differently. The laws say that there must be a hardship unique to the property. The Minnesota Supreme Court has said that does not mean that nothing else can be done. It allows a reasonable use where there would be practical difficulties complying with the ordinance.

Peterson said that it is not truly a hardship standard, but a practical difficulties standard. This means that if there are practical difficulties because of the way the land is laid out, or the shape of the land, or the property's geography or topography has created a difficulty in complying with ordinance, the applicant would not automatically get a variance, but the applicant could make a reasonable request given the circumstances. These requests are judged on a case-by-case basis.

In this circumstance, Peterson said that staff suggested that the applicant's request is reasonable because of the issue of creating odd shaped lots. The applicant could create them, but that would create problems. Staff found that it was better to grant the variance. The applicant would achieve two lots either way. Staff found that was a reasonable basis to grant the variance. She thought the variance would be upheld in court.

Schneider said that the original motion took into account the location of the existing house.

Peterson said that there are cases that have considered the location of an existing house on a lot and that has been a justification for a variance.

Jeff Peterson, 15708 Wood Knoll Lane, said that he built his home in 1985 or 1986. He noted that when a home was built nearby on Sussex Lane, the developer was required to use one lot for construction storage to avoid parking on the narrow street. He asked the council to consider the hardship for those living on the street during construction.

Olson said that the approval includes a condition that the applicant provide a construction management plan for staff approval. He said that parking could be addressed in the construction management plan.

Wagner said that he was on the planning commission when they considered this request on November 20, 2003. There was at least an hour of discussion on the issue. The planning commission struggled with the issue that the property could be divided into not only three lots, but it could also be divided into four lots. Olson agreed and said that those lots could be created without variance, and there was a potential for a fifth lot using a lot behind a lot configuration.

Wagner said that the planning commission knew there would be a 50 foot separation between the buildable area and the existing house, and that it is not common for the whole buildable area to be built upon. Based on this information, the planning commission felt that the 25-foot variance was justified. They understood that lots could be created without variance, but believed that this proposal provided the lots and protected the property owners. Anderson appreciated that information.

Callison said that she had thought about the issue of proper notice, because that is fundamental to what the city does. It ensures that people are given knowledge of what's going on, and that they are given the opportunity to participate. The fact that notice was given for this council meeting, and the completeness of what the council heard from the neighborhood indicated to her that the notice requirement had been satisfied. She was confident that the neighbors had been heard, so the council could move beyond that issue.

Callison said that much of the neighborhood concerns were about the mere fact that a variance was being requested, rather than the impact of the variance. She looked at the alternatives and found it difficult to think that a better result would be reached without a variance, than what could be achieved with the variance. She did not think gerrymandered lot lines would be an improvement. There would still be two lots, but the lines would be more difficult for the homeowners and neighbors to observe. The results would be worse than the results with a variance.

Callison was glad that the street and drainage improvements were scheduled for 2006, and noted that was not that far away. She felt that the impact on the street of these two lots would be negligible.

Callison encouraged the neighbors to pursue the open space matching grant program if they are interested in preserving the heavily wooded lot at the corner of Tonkawood Road.

Wiersum agreed with Callison on the gerrymandering issue. He noted that the new condition would limit the elevation of any house built, resulting in homes without basements. He thought that avoiding the gerrymandered lot lines would add to the value of the lots. Wiersum asked if the minimum elevation and no basement conditions would apply if the property subdivided without variances.

Gunyou said that the simplest way to look at it was that the lot lines had no impact on where building pads would be located. The same restrictions would apply with or without variances.

Anderson asked if fill could be brought in to build a basement. Gustafson said that grading permits are required if more than a certain amount of fill is proposed. The city would not allow fill for basements on these lots.

Schneider said that nice homes could be built on slabs on grade, and the city would not need to get into those details. That would be an issue for future buyers.

Ellingson was sympathetic to the arguments about the position of the houses with or without variances. He felt that the basis for the hardship in the staff report was that the homeowner would have to demolish the existing home to subdivide without variance. The staff report indicated that gerrymandered lines are the practical difficulty.

Olson said that the applicant's options were to either demolish the existing home or gerrymander the lots lines. Either option would pose a practical difficulty that would justify a variance.

Schneider interpreted that issue differently than Ellingson. To him, the issue wasn't that the home would have to be torn down to eliminate the variance, it was that the location of the home in the center of the lot was a practical difficulty to doing the subdivision without a variance. The fact that the home was there raised the issue of hardship.

Schneider clarified that the portion of the report Ellingson was referring to represented a staff comment and opinion of what staff saw as a problem. Schneider said that the council has to pay attention to the wording of the motion, not the staff narrative. The motion said that there was a unique hardship to the property caused by the location of the existing home in the middle of the lot. Schneider said that was what the council acted on, not the staff narrative.

Anderson said that the council has to decide if a variance makes sense or if it makes sense to require the applicant to gerrymander the lot lines. She said that the council understood that the house would not have to be torn down, and that the lot lines could have been gerrymandered. She did not think the gerrymandered lot lines made sense.

Ellingson said that the planning commission's motion gave the basis for the variance as the house would have to be torn down.

Callison agreed with Schneider's comments. She said that it is the council's job to review all of the information, determine what they believe to be true, and to state that in the motion. She felt that it would be unreasonable to expect the applicant to gerrymander lot lines or tear down the existing house to get three lots. She saw that as the basis for the discussion and the basis for the variance. She said that the council receives a lot of information. Unless that information is the basis for the council's decision, it's just interesting information, but not relevant.

Wiersum looked at it from the perspective as if he lived on the street, and what the impact would be on the neighborhood with or without a variance. He felt that there would be very little or no impact on the neighbors, and could not see a basis not to approve the subdivision.

Anderson did not understand the neighbors' issues, unless they simply wanted no development.

Wagner said that interpreting the planning commission's rationale for approval of the variance was that the house would have to be demolished was too literal. The house is there, and the other option was to gerrymander the lines. The planning commission felt that the variance was a common sense solution, because the house pads would stay the same and there would be no impact to the neighborhood. The person most affected by the subdivision would be the existing homeowner, who has a legal right to develop the property.

Ellingson asked about a variance for a smaller lot size that would maintain the setbacks.

Anderson said that in her experience, the city council has felt strongly about maintaining the one-half acre lot standard in existing areas.

Wiersum said that when someone divides their property, they look for a plan that has the best chance of approval. He said that smaller lots would require rezoning, which would also be an issue to the neighbors.

Schneider said that he came into the meeting with an open mind as to the public hearing notification issue. He spent 8 years on the

planning commission, and 12 on the city council. He said that extra efforts have been made to give notice to ensure participation in the process and dissemination of information. When the notice fails, there is the potential for the whole system to break down. Schneider usually wants to err on the side of safety. After listening to the comments, he changed his mind. He looked for the neighbors' reasons to justify additional planning commission review. All of their comments seemed to relate to not wanting the development to occur, or if it did, for there to be only one lot. He did not hear suggestions for improving the project, only that the neighbors did not get a chance to address the planning commission and kill the project. He felt that there had been due process. The city council is the final decision-making body, and Schneider saw no benefit to remanding the subdivision to the planning commission for another hearing. He felt that to do so would be an injustice to the applicant and perhaps a liability, because approval had already been given.

Callison moved, Thomas seconded a motion to amend the prior preliminary approval of a three-lot registered land survey, with a rear yard setback variance from 40 to 15 feet for the house on Tract A, at 15815 Minnetonka Boulevard. The amendment adds a new condition 7, which establishes a minimum floor elevation for the new homes. Approval is based on the following findings:

- 1) Except for the variance, the proposal meets the required standards and ordinances for a preliminary subdivision.
- 2) The proposal meets the required standards for a variance, because:
 - a. There is a unique hardship to the property caused by the location of the existing home in the middle of the lot. The home would have to be torn down in order to divide the property and meet all minimum code requirements or the lot lines redrawn in undesirable configurations.

Approval is subject to the following conditions:

- 1) Complete the following before final subdivision approval:
 - a. Provide deeds to the city for the following, subject to the city attorney's approval:
 - (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 drainage and utility easement along Minnetonka Boulevard and the east lot line

- must be 20 feet wide to accommodate future utilities.
 - (3) Drainage and utility easements must be established over the 944.00 contours.
 - (4) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (5) Dedication of a 7-foot road right-of-way along Minnetonka Boulevard.
 - b. Pay the city a park dedication fee of \$4,750.
 - c. If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
 - 2) The following items must be submitted to the city before the city releases the final RLS:
 - a. An engineering/utility inspection fee.
 - b. An electronic CAD file of the final RLS in microstation or DXF.
 - c. If the developer is constructing any public improvements, the developer must submit a signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements. This agreement must include an escrow to ensure that the developer completes all public improvements and complies with all city regulations. This escrow must be a letter of credit or cash deposit. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
 - d. 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 RLS.
 - (2) Provide restrictive covenants to be recorded against the individual lots with the RLS. The covenants must include the conditions below that have not been met as of the release of the RLS. These covenants must first be submitted for the city attorney's approval. These documents must be recorded with the final RLS, and a drawing of any easements must be attached to the easement deed.
 - 3) The following must be completed before the city issues a grading permit or any site work is started:

- a. Final grading, drainage and erosion control plans must be submitted for staff approval. If the developer is building the streets and utilities, the developer must submit final street and utility plans 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. The city will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway and grading have been completed according to the plans approved by 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. The existing hedge that extends along Wood Knoll Lane must be trimmed back so as not to overhang the paved surface of the street.
- 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 RLS. The sewer and water services must be shown to minimize impact to the significant trees.
 - 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 RLS 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.
- 5) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
- 6) 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.
- 7) The minimum low floor elevation of new homes on Tracts B and C must be at least 948.1, unless a piped outlet from adjacent landlocked low areas has been installed. If an outlet is built, the low floor must be a minimum of two feet above the 100-year flood elevation, as determined by the city engineer.
- 8) The city must approve the final RLS 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.

B. Preliminary plat, with variances, for a three-lot subdivision at 14593/14629 Lake Street Extension for Ruth Murman.

Olson explained the changes to this application since the last council discussion.

Wagner appreciated staff and the applicant working on these changes.

Wiersum said that at the last meeting, he thought there was room to improve this application. The changes go a long way toward concerns about the character of the neighborhood. The project will be much more attractive and the changes are in the best interest of the project.

Wagner moved, Wiersum seconded a motion to approve the three-lot preliminary plat, with a lot width at the right-of-way variance from 80 feet to 0 feet and a lot width at the required setback variance from 110 feet to 109 feet for Lot 3. 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. A 10-foot drainage and utility easement must be established over the east lot lines for Lots 2 and 3 for a future storm sewer outlet.
 - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - 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.
 - 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 city attorney. Title evidence must be current within thirty days before release of the final plat.
 - (2) Provide a 34-foot private driveway easement between the street right-of-way and Lot 3 that is acceptable to the city attorney. The easement shall state the maintenance responsibilities of each owner. The minimum driveway width shall be as required by the fire marshal.
 - (3) A private utility easement across Lot 1 to provide services to Lot 3.
 - b. All buildings on proposed Lots 1 and 3 must be removed.
 - c. All junk vehicles and debris must be removed from the site, subject to review and approval of the community development department.
 - 3) 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.
 - b. Grading plans must show that the existing drainage pattern running east to west across Lot 1 would be

- maintained. This would include a culvert under the driveway for Lot 3. Grading plans would be subject to review and approval of the city engineer.
- c. All trees to be preserved must be fenced and erosion control measures must be installed for staff approval.
 - d. No grading or storage of dirt may occur on the northern 70 feet of Lot 1 to preserve the mature trees.
 - e. Hook up fee estimated at \$12,174.22
 - f. 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.
 - g. A copy of the recorded plat and any easements or covenants required to be recorded.
 - h. 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.
 - i. A new home on Lot 3 must be provided with a fire protection sprinklering system, subject to the fire marshal's approval.
 - j. The new home on Lot 3 must maintain at least a 40-foot setback from the south lot line, 115-foot setback from the east lot line, and 25 feet from the west and north lot lines.
 - k. The new home on Lot 1 must maintain at least a 90-foot front yard setback.
 - l. The driveway serving Lot 3 must be located on the east half of the driveway easement to help preserve mature oaks on Lot 1.
 - m. There must be only one driveway curb cut for all three lots.
 - n. A building permit application for a house on each lot must also show the planned or actual location of the new houses on the other two lots. Staff may issue a building permit only if the location and orientation of the proposed house is complementary with the other two houses and the three together create the appearance of a coordinated neighborhood.
- 4) The home on Lot 2 must be removed before the city will issue a certificate of occupancy for any home constructed on Lot 1 or Lot 3.
- 5) Before the city makes a final inspection of the house on Lot 3, 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. 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.

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS.

A. Appointments to the Minnetonka Boards, Commissions and Committees.

Anderson moved, Callison seconded a motion that:

- Councilmember Tony Wagner's appointment to the EDA as a city council representative on January 5, 2004, has a term ending date of January 31, 2009.
- Dick Allendorf, 4624 Mounthall Terrace, be appointed to the planning commission for a two-year term effective February 1, 2004 and expiring January 31, 2006.
- Councilmember Brad Wiersum, 16370 Eagle Ridge Drive, be appointed to the police advisory committee for a three-year term as a city council representative, effective January 26, 2004 and expiring October 1, 2006.
- Sasha Shahidi, 11705 Live Oak Drive, be appointed to the police advisory committee for a two-year term as a student representative, effective January 26, 2004 and expiring October 1, 2005.

All voted "yes." Motion carried.

B. Reappointments to the Minnetonka Boards, Commissions and Committees.

Anderson moved, Callison seconded a motion that:

- Heidi Erm, 4943 Birchwood Lane, be reappointed to the community heritage commission for another two-year term, effective February 1, 2004 and expiring on January 31, 2006.
- Paula Chatterjee, 13588 Westernesse, be reappointed to the EDA for another one-year term as a youth representative, effective February 1, 2004 and expiring on January 31, 2005.
- Robert Walker, 4553 Ellerdale Road, be reappointed to the EDA to serve another six-year term of office, effective February 1, 2004 and expiring on January 31, 2010.
- Bruce Gefvert, 11610 Vista Drive, be reappointed to the park board to serve another two-year term, effective February 1, 2004 and expiring on January 31, 2006.
- Sandal Hart, 5450 Sanibel Drive, be reappointed to the planning commission to serve another two-year term, effective February 1, 2004 and expiring on January 31, 2006.
- Lorraine Clugg, 5709 Lake Rose Drive, be reappointed to the police advisory committee to serve another three-year term, effective January 26, 2004 and expiring on October 1, 2006.
- Melissa Hill, 11100 Cedar Lake Road #325, be reappointed to the police advisory committee to serve another three-year term, effective January 26, 2004 and expiring on October 1, 2006.

All voted "yes." Motion carried.

C. Resolution designating Commissioner and Technical Advisory Committee Members to the Bassett Creek Water Management Commission.

Anderson moved, Wiersum seconded a motion to adopt Resolution No. 2004-010 designating Bill Yaeger as Commissioner for the Bassett Creek Water Management Commission to serve a term of office beginning February 1, 2004 and ending on January 31, 2006, and appointing Lee Gustafson as member and Jennifer Posma as alternate member to the Bassett Creek Technical Advisory Committee. All voted "yes." Motion carried.

16. ADJOURNMENT.

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 9:30 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk