

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MAY 10, 2004**

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.

Councilmembers Bob Ellingson, Brad Wiersum, Jan Callison, Terry Schneider, Al Thomas, Tony Wagner, and Karen Anderson were present.

4. APPROVAL OF AGENDA.

City Manager John Gunyou reviewed the addendum. The planning director asked that condition (4) for item #14E, the Fretham plat, be deleted because it was redundant.

Anderson said that item #6C, an update on the Lake Minnetonka Conservation District, would be postponed to a future meeting at the request of the district.

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

5. APPROVAL OF MINUTES.

A. April 26, 2004 regular council meeting.

Callison moved, Wiersum seconded a motion to approve the minutes of the April 26, 2004 Minnetonka City Council meeting as submitted. All voted "yes." Motion carried.

B. April 28, 2004 board of review meeting.

Callison moved, Wiersum seconded a motion to approve the minutes of the April 28, 2004 Minnetonka Board of Review meeting. Ellingson, Wiersum, Callison, Thomas and Anderson voted "yes." Schneider and Wagner abstained, and noted they were not at that meeting. Motion carried.

6. SPECIAL MATTERS:

A. Recognition of Sharon MacDonald, Coordinator for Reduce the Use program for Hopkins School District 270.

Anderson recognized McDonald for her 36-year career with the Hopkins School District, especially the past five years in which she coordinated the Reduce the Use Community Coalition. Anderson noted the success of that program, and McDonald's close work with the Minnetonka Police Department. Anderson presented a paperweight to McDonald.

McDonald thanked the city for its courage and willingness to openly look at the issue of youth alcohol and tobacco use.

B. Proclamation declaring May 9 through May 15, 2004 as National Police Week.

Police Chief Joy Rikala, Captains Mike Olson and Mark Raquet, and Sergeants Chuck Schauss and Jeff Sebenaler, were called forward as Wiersum read a proclamation naming May 9 through 15, 2004 as National Police Week. Rikala reminded residents that flags would be flown at half-staff on Saturday, May 15th in honor of peace officers who have given their lives in the line of duty.

C. LMCD Update.

This item was pulled from the agenda.

D. Community Survey Results.

Dr. Bill Morris of Decision Resources presented the results of the 2004 Minnetonka community survey. He noted that Minnetonka has consistently been rated among the top cities in the metropolitan area. Morris provided the following information about the survey results:

The city is very well regarded by residents. In comparison with the rest of the metro area, Minnetonka remains among the top two or three suburbs in terms of overall quality of life and city service ratings.

A pattern that is unique to Minnetonka since 2000 continued; excellent ratings tend to increase in even numbered years, and good ratings tend to increase in odd numbered years.

97% of those surveyed rated the quality of life in Minnetonka as excellent or good, with 55% percent ranking it as excellent. Those figures are well above the norm for other suburban communities. The 55% excellent rating is second in the metro area of 35 surveys

done over the past 18 months--only Edina ranked slightly higher. The norm for excellent ratings in metro suburbs is 32%. Minnetonka's consistent 50 to 55 % ranking also runs against the norm for metro suburbs. There has been a trend toward a decrease in the quality of life ranking in other suburbs.

Minnetonka has an outstanding rating for citizen awareness of its programs, such as Minnetonka Mike, special drop-offs, and curbside recycling. The participation rate is also among the highest, especially for Minnetonka Mike, which is over twice as high as the metro average.

To evaluate city services, Morris looks at positive versus critical ratings. Minnetonka consistently received very positive ratings, with one exception: pavement and street repairs. Street repairs are generally regarded very critically throughout suburbs. However, Minnetonka's 63% positive ranking, compared to 33% negative ranking, is the opposite of the norm. Most communities are seeing a 66% dissatisfaction rating in this category.

Most residents are very happy with fire, water and sewer, recreation, recycling, senior and snowplowing services. Fewer residents were aware of the senior program, but those who were rated it overwhelmingly positive.

The increase in excellent ratings for services indicates that residents are very, very happy in Minnetonka. City services were overwhelmingly rated positively, especially in comparison with other suburban cities. Minnetonka's ratings for police, fire, recycling, recreation and snowplowing services were among the highest in the metropolitan area.

Residents who expressed dissatisfaction with services were asked what changes they would like. Of those who wanted improvements, 13% wanted faster road repairs, and 10% wanted faster snowplowing.

For the first time in Minnetonka, a majority (52%) indicated a willingness to increase taxes to maintain city services at the current level. The opposition was 38% and this ranking is counter to most other suburbs. Over the past two years, support to increase taxes, even to maintain services, has been dropping in other cities.

Residents were asked about their priorities if the budget increased by one percent. In 2003, 35% would have allocated the increase to police and fire, and 29% would have allocated it to street repair and maintenance. That reversed in 2004, with 36% opting for streets,

and 30% opting for police and fire. These results are consistent with the comments in the service satisfaction questions.

About 80% of the responders rated the value they received for their tax dollars as good or excellent. This is a stunningly high rating in comparison with other suburban communities, and is a favorable endorsement of the service Minnetonka residents receive.

Residents overwhelmingly felt that the level of environmental protection by the city was about right, with 77% rating it favorably. 17% thought the city took too little action, and only 2% thought the city took too much action. The suburban norm for too much action is 10%, and the western Hennepin County area is seeing norms of about 25 to 30%.

About 80% would favor additional regulations regarding trees and forested areas, with only 13% opposing. For open space, 81% would support stronger regulations, with 14% opposing. This is also an overwhelming endorsement.

79% percent believed that the city was successful in maintaining a balance between environmental protection and property rights. It was noteworthy that only 8% felt that the city had been unsuccessful in this area--in the west metro area, that figure has reached 15 to 20%.

74% felt they had an adequate opportunity for input - the highest rating in the metro area. This rating increased from 65% last year. Only 14% rated this unfavorable, and that number in many suburbs runs from 30 to 40%. In Minnetonka, residents feel that they have an opportunity to have their say.

With respect to the park renewal process, 32% said that they received a notice about their neighborhood park. Among those notified, 61% said that they returned the survey and participated in the process, and 14% said they attended the meetings. The 61% figure was an amazing response rate. Attendance levels in six other communities ranked only at 3% compared to Minnetonka's 14%.

In general, Minnetonka's staff ranks at the top of the metro area. 75% percent ranked Minnetonka's staff as excellent or good, with only 11% rating staff as fair or poor. Minnetonka's 7:1 ranking was the best in the metropolitan area.

Minnetonka's residents have far more contact with city hall than citizens in other communities. Their evaluation of these contacts is overwhelmingly favorable, with service, courtesy, ease of reaching staff, and efficiency ranking 89% excellent or good. In customer

service norms, 80% is the threshold for top-notch customer service in the private sector, and 70% is the norm in the public sector. Minnetonka has consistently been above these norms.

Minnetonka residents have not had issues about unsafe areas, and only 8% said they felt unsafe. Areas of concern were parks and trails, and the Ridgedale parking lot. The Ridgedale ranking increased from 14% to 33% over the past year, which was significant.

Speeding and traffic violations were the greatest public safety issues, but 25% had no concerns about safety. 65% said that speeding on residential streets was a concern, which was up from 48% last year. About a third of those people thought it was a high level of concern, while only 60% had a moderate level of concern.

Minnetonka's information system has always been the most effective in the metro area. The city's linkage with its citizens qualifies as a best practice for the metro area. When asked the open-ended question about their preferred primary source of information, 62% said it was the *Minnetonka Memo*. The *Sun Sailor* was mentioned, but did not rank as highly as it did in other communities. Word of mouth ranked low, which is one-third to one-quarter of what is normally seen in other suburbs.

The Internet is increasing as a preferred source to receive information, especially among those 55 years of age or younger. The Internet is even starting to replace mailings as a source. 86% of Minnetonka residents have access to the Internet, with 50% having access at both home and at work. It is a major means of communication, and a source that will grow.

71% percent subscribe to cable. Of those, 10% frequently and 22% occasionally watch council meetings on cable. That 32% rating is staggering, particularly in comparison to ratings across the metro areas where viewership has been rapidly declining. The highpoint used to be in Brooklyn Park where 58% watched while Jesse Ventura was mayor. Minnetonka's rating is three times higher than the core watchers across the metro area.

Of those who have access to the Internet, 36% have accessed the city's Web site. This is down slightly from 2003. The evaluations are generally quite good, with 64% ranking it positive and 14% as negative. Those who gave it a negative ranking were primarily those who use it as their primary information source, and they would like more in-depth information on the council meetings. The ease of navigation ratings were down, with 80% giving it a positive rating in 2003, and 69% giving it a positive rating in 2004.

Morris summarized the survey results as excellent. Residents are very happy with the quality of life in Minnetonka, and the city uniformly receives outstanding ratings for its services. Minnetonka's communications with its residents are exemplary. The one area of concern, residential speeding, is becoming a metropolitan issue. There was some criticism of navigation of the Web site. These were very minor flaws in the entire tapestry. In general, Minnetonka residents rank their city at the top.

Anderson gave credit to the staff for their emphasis on customer service and communications, and noted that the city council helps with communications. She said that people are treated respectfully.

Anderson said that it is good to get the positive feedback, but noted that there is room for improvement with regard to streets and speeding. She found it interesting that the concerns regarding road work increased since last year, and noted that this is an area where service was reduced in response to budget cutbacks. She will watch to see if returning to a full complement of street projects this year reduces the concerns next year. She stressed the importance of maintaining Minnetonka's public safety services (police, fire and roads).

In response to Callison's question, Morris said that the question about residential speeding was specific and not open ended. Callison noted an increase in vehicles running red lights.

Anderson said the report was comprehensive and easy to understand. Morris said that his staff likes to do Minnetonka's surveys because our residents tend to be friendly, cooperative and thoughtful.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reviewed the schedule of upcoming city council meetings.

Anderson noted the 35th anniversary for Relate Counseling, and their close connection with the city. She also recognized two Boy Scouts from Troop 207 at St. David's Church, who were at the meeting for their citizenship in the community badges.

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

No one spoke.

9. BIDS AND PURCHASES:

A. Consideration of bids for the Park Renewal project at Libbs Lake Beach.

Gunyou provided the staff report for this item.

Schneider moved, Wiersum seconded a motion to award the bid for the park renewal project at Libbs Lake Beach to Odesa Construction, Inc. with a base bid of \$319,900 and alternative bid in the amount of \$3,800 for a total bid award of \$323,700. All voted "yes." Motion carried.

B. Consideration of bids for the Park Renewal architectural improvements at McKenzie and Gro Tonka Parks.

Gunyou provided the staff report for this item.

Callison moved, Wagner seconded a motion to award the bid for the park renewal architectural improvements at McKenzie and Gro Tonka Parks to Construction Results for \$221,900. All voted "yes." Motion carried.

C. Consideration of bids for the Park Renewal site work project at McKenzie and Gro Tonka Parks.

Gunyou provided the staff report for this item.

Schneider moved, Callison seconded a motion to award the bid for park renewal site work at McKenzie and Gro Tonka Parks to Sunram Construction for \$624,286.76. All voted "yes." Motion carried.

D. Consideration of bids for the 2004 Pavement Rehabilitation Program.

Gunyou provided the staff report for this item.

Callison moved, Wiersum seconded a motion to award the bid for the 2004 Pavement Rehabilitation Program, Project No. 4424, to Hardrives, Inc. in the amount of \$1,909,384.57.

Anderson noted that neighborhood meetings had been held for most of these projects. Staff will continue to work with the neighbors. She invited public comments, but there were none. She noted that information on these projects would be available to residents in the *Minnetonka Memo*, and through special emails and phone messages.

All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Claims for council authorization – May 10, 2004.**

Wiersum moved, Schneider seconded a motion to approve the May 10, 2004 claims list, including checks numbered 181820 through 182073 totaling \$554,430.01. All voted “yes.” Motion carried.

B. Resolution supporting legislation to provide improved funding for I-494 Corridor improvements.

Wiersum moved, Schneider seconded a motion to adopt Resolution No. 2004-041 supporting legislation to provide improved funding for I-494 Corridor improvements. All voted “yes.” Motion carried.

C. Resolution receiving feasibility report, ordering improvements in, and authorizing the preparation of plans and specifications for the Woodland Curve Storm Sewer Improvement Project No. 5612.

Wiersum moved, Schneider seconded a motion to adopt Resolution No. 2004-042 receiving the feasibility report, ordering the improvements in, and authorizing preparation of plans and specifications for the Woodland Curve Storm Sewer Improvement Project No. 5612. All voted “yes.” Motion carried.

D. Resolution establishing just compensation for the partial acquisition of land for CSAH 60/CSAH 3 intersection improvements.

Wiersum moved, Schneider seconded a motion to adopt Resolution No. 2004-043 authorizing the partial acquisition of land and establishing just compensation thereof for the CSAH 60 /CSAH 3 Intersection Improvement Project No. 4422. All voted “yes.” Motion carried.

E. Approval of an encroachment agreement granting Time Warner Telecom of Minnesota, LLC a permit to install telecommunications cable.

Wiersum moved, Schneider seconded a motion to approve the encroachment agreement granting Time Warner Telecom of Minnesota, LLC a permit to install telecommunications cable. All voted “yes.” Motion carried.

F. Final approval of the BIG WILLOW TOWNHOMES plat at 11907 Minnetonka Boulevard for Cross Country Design Build, LLC.

Wiersum moved, Schneider seconded a motion to approve the BIG WILLOW TOWNHOMES final plat that was received on April 28, 2004, subject to the following conditions:

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

11. Items requiring Five Votes:

A. Resolution approving a conditional use permit for a medical clinic, with variance, at 12455 Ridgedale Drive for the Rotenberg Companies, Inc.

Schneider moved, Thomas seconded a motion to adopt Resolution No. 2004-044 approving a conditional use permit for a medical clinic, with variance, at 12455 Ridgedale Drive for the Rotenberg Companies, Inc. Approval is based on the following findings:

- 1) With the exception of a medical clinic located adjacent to residential property, the proposal meets the required conditional use permit standards.
- 2) The proposal meets the required standards for a variance, because:
 - a. The applicant is proposing to use the property in a reasonable manner.
 - b. The variance would meet the intent of the ordinance because the existing building is located nearly 300 feet from the nearest single-family home, and is screened by mature trees.
 - c. There would be no impact on the adjacent residential property.

Approval is subject to the following conditions:

- 1) Record this resolution with the county before the city issues a building permit.
- 2) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 3) If parking becomes a significant problem, the 10 "proof of parking stalls" must be constructed.
- 4) 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.
- 5) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:

- A. Ordinance rezoning 5621 Smetana Drive from B-2, limited business, to R-5, high density residential, and approving final site and building plans.**

Wiersum moved, Wagner seconded a motion to introduce an ordinance rezoning 5621 Smetana Drive from B-2, limited business, to R-5, high density residential, and approving final site and building plans and refer it to the planning commission. All voted "yes." Motion carried.

- B. Ordinance rezoning 14600 Minnetonka Drive from R-1, low density residential, to B-1, office, for a landscape design studio for Keenan & Sveiven, Inc.**

Anderson noted that introduction of an ordinance did not indicate that the ordinance would be approved. This project would require a number of variances. The planning commission will discuss the project.

Callison moved, Wiersum seconded a motion to introduce an ordinance rezoning from R-1, low density residential, to B-1, office at 14600 Minnetonka Drive and refer it to the planning commission. All voted "yes." Motion carried.

- C. Ordinance regarding a limit on kitchens in boarding houses and rental units.**

City Attorney Desyl Peterson provided a brief staff report for this ordinance. She said that the ordinance clarifies in writing staff's past practice. In response to a concern raised by Anderson about small kitchenettes in family room bars, Peterson will better define "second kitchens" prior to the ordinance's second reading.

Schneider moved, Thomas seconded a motion to introduce an ordinance amending City Code sections 300.02(13) and 200.10(6) regarding boarding houses and rental units. All voted "yes." Motion carried.

- D. Ordinance changing the floodplain district boundary at 3505 Elmo Road**

Wiersum moved, Wagner seconded a motion to introduce an ordinance changing the floodplain district boundary at 3505 Elmo Road and refer it to the planning commission. All voted "yes." Motion carried.

13. PUBLIC HEARINGS:

A. Public hearing to consider applications by Pomodoro, Inc., for on-sale and Sunday on-sale intoxicating liquor licenses for The Big Buck Roadhouse, an American Grille, 17805 State Highway 7.

Community Development Director Ron Rankin provided the staff report for this item.

Anderson opened the public hearing at 7:42 p.m.

Jim Holm, Senior Property Manager for Park Nicollet, expressed concern about parking in the area. He noted that the Tiramisu Restaurant was only open in the evenings and on weekends. The clinic feels that expanded use of the restaurant site will increase the parking burden in an area where parking is already an issue.

Anderson said that the item will be continued to June 14 for the council's decision. She suggested that Park Nicollet talk with staff and the applicant to work out the parking issues. Rankin agreed to provide information about the applicant's intended hours to Holm.

Planning Director Geoff Olson said that staff shared the concerns about parking, and has been discussing this issue with the applicant. Olson noted that outdoor eating areas are not considered in parking calculations due to their limited season, and restaurant business generally decreases during the summer. Olson said that the planning commission will discuss parking. Anderson encouraged Holm to attend that meeting.

Thomas said that the issues related to parking are well noted, but said that the council's consideration tonight related to the liquor license.

Schneider moved, Callison seconded a motion to continue the public hearing to consider applications by Pomodoro, Inc., for on-sale and Sunday on-sale intoxicating liquor licenses for The Big Buck Roadhouse, an American Grille at 17805 State Highway 7 to June 14, 2004. All voted "yes." Motion carried.

B. Items concerning 801 Sunset Drive and 12701 Fairfield Road:

- 1) Public hearing to consider a resolution vacating obsolete drainage and utility easements; and**
- 2) Final plat.**

Olson presented the staff report.

Anderson noted the council's previous discussions about including affordable housing in phases two or three of this development. Olson said that the council's action on this item would give approval to the final plat. The council will be asked to approve the building and site plans for phases two and three in the future. For now, the project only includes rental units.

Anderson opened the public hearing at 7:52 p.m. There were no comments, and the hearing was closed.

Callison moved, Wagner seconded a motion to

- 1) Adopt Resolution No. 2004-045 vacating drainage and utility easements at 801 Sunset Drive and 12701 Fairfield Road (Fairfield Rolling Estates), subject to the conditions in the resolution
- 2) Approve the FAIRFIELD ROLLING ESTATES final plat that was received on December 18, 2003, subject to the following conditions:
 - a. Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat; and
 - b. Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Approval of Park Renewal Concept Plans for Boulder Creek Park.

Recreation Services Project and Event Manager Perry Vetter provided the staff report for this item.

Anderson invited public comment.

Susan Scribner, a representative of the Riley-Purgatory Creek Watershed District, said that the district is excited that the project will allow for water quality improvements in the retaining pond. Accomplishing that work in conjunction with the park renewal project will reduce costs. The project can be coordinated with the district's timetable, and the district has stated its intent to support the project. Anderson appreciated the district's support.

Thomas moved, Wiersum seconded a motion to approve the Master Plan for Boulder Creek Park and direct staff to proceed with plans and specifications. All voted "yes." Motion carried.

B. Approval of Park Renewal Concept Plans for Junction Park.

Vetter provided the staff report.

Anderson referenced the parking that would be eliminated along Excelsior Boulevard, and said that it seemed to be used by families with small children using the play area. She asked if those people could access the park by parking on Junction Road. Vetter said they could. He said that trails for shortcuts would be placed in the park once the use patterns are determined.

Wiersum moved, Callison seconded a motion to approve the Master Plan for Junction Park and direct staff to proceed with plans and specifications. All voted "yes." Motion carried.

C. Approval of Park Renewal Concept Plans for Woodgate Park.

Vetter provided the staff report for this item.

In response to Anderson's question, he said that staff had begun discussions with the Riley-Purgatory Creek Watershed District to consider ponding improvements for this project as well. Those discussions would continue after the council approved the concept plans.

Wagner moved, Thomas seconded a motion to approve the Master Plan for Woodgate Park and direct staff to proceed with plans and specifications. All voted "yes." Motion carried.

D. Items concerning a five-lot subdivision at 4701 and 4717 Williston Road for Michael J. Leuer:

- 1) **Ordinance rezoning from R-1, low-density residential to PUD, planned unit development.**
- 2) **Preliminary plat.**

Gunyou noted that this proposal is similar to the CoPar development where staff worked with the developer on a planned unit development that would save additional trees.

Olson provided the staff report.

Charlie Melcher of Quality Site Design, commented on drainage on behalf of the applicant.

In response to Thomas' question, Melcher said that the home was built in the mid 1930s.

Schneider moved, Callison seconded a motion to

- 1) Adopt Ordinance No. 2004-17 rezoning 4701 and 4717 Williston Road from R-1, low-density residential to PUD, planned unit development for Michael J. Leuer. This ordinance is based on the following findings:
 - a. The rezoning would be consistent with the city's guide plan.
 - b. The rezoning would be consistent with the public health, safety, and welfare.
 - c. The rezoning would result in development of a PUD plat that would save more significant trees than a plat meeting R-1 standards.

The rezoning 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:
 - Preliminary Plat, dated March 22, 2004
 - Grading and Drainage Plan, dated March 22, 2004
 - Utility Plan, dated March 22, 2004
 - Tree Plan, dated March 22, 2004The above plans are hereby adopted as the master development plan.
- 2) Give preliminary approval to the Williston Glen plat, dated March 22, 2004. Approval is based on the following findings:
 - a. The proposal meets the required standards and ordinances for a preliminary plat.
 - b. The proposal meets the required standards and ordinances for a planned unit development.

Approval is subject to the following conditions:

- a. Complete the following before final plat approval:
 - (1) Show the following on the final plat:
 - a) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street right-of ways and at least seven-foot-wide drainage and utility easements along all other lot lines.
 - b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - c) Drainage and utility easements over storm water ponds, as determined by the city.
 - (2) Pay the city a park dedication fee of \$7,125.
 - (3) Submit evidence of watershed district approval.The city may require revisions to the preliminary plat to meet the district's requirements.

- (4) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
- b. The following items must be submitted to the City of Minnetonka before the city releases the final plat:
 - (1) An engineering/utility inspection fee.
 - (2) An electronic CAD file of the final plat in micro station or DXF.
 - (3) 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.
 - (4) The following documents for the city attorney's approval:
 - a) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - b) Conservation easements over the tree protection areas, including a drawing of the easements for the approval of the city attorney.
 - c) 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 covenants must first be submitted for the city attorney's approval.

These documents must be recorded with the final plat, and a drawing of any easements must be attached to the easement deed.
- c. The following must be completed before the City of Minnetonka issues a grading permit or any site work is started:
 - (1) A construction management plan must be submitted for staff approval. The plan must include installation and maintenance of a temporary rock driveway, erosion control, and

- tree protection fencing for each lot. The plan is subject to review by the city's environmental resources coordinator.
- (2) The items listed in the construction management plan must be installed and inspected by the city's environmental resources coordinator.
- (3) 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.
- (4) A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and to 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, road, and grading have been completed according to the plans approved by the city.
- d. The following must be submitted to the city before the city issues a building permit:
- (1) A grading and tree preservation plan for each lot subject to staff approval.
- (2) The installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
- (3) A copy of the recorded plat and any easements, covenants, and any other homeowners' document required to be recorded for the development.
- (4) All required hookup fees for sewer and water.
- (5) 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.
- e. The floor area ratio and hard surface coverage each may not exceed 50% of the site area.
- f. The conservation easements must be maintained in accordance with a conservation plan approved by the city.

- g. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
- h. All existing structures must be removed from the site.
- i. All driveways must access the new street.
- j. 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.
- k. 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.
- l. The applicant must arrange for the city to have access to the site prior to any site disruption to photograph the house.

All voted "yes." Motion carried.

- E. Items concerning a proposed development of 6 single-family homes on the vacant property at the end of 34th Circle West for Curt Fretham:**
- 1) **Rezoning from PURD, planned unit residential district to PUD, planned unit development, with a master development plan; and**
 - 2) **Preliminary plat.**

Olson provided the staff report for this item, noting the change requested in the addendum.

In response to Anderson's question, Peterson said that staff was of the opinion that five homes would be a reasonable use based on the changed conditions since the original application. Peterson clarified a change that resulted from the EDA discussion that would require the developer to provide a \$200,000 letter of credit. Certificates of occupancy would be issued for the homes on the developer's lots except for the lot reserved for affordable housing. If an affordable unit is provided elsewhere in the city, the developer could construct the sixth home in the development. If the developer failed to provide an off-site affordable unit, the city could build one on the sixth lot.

In response to Schneider's question, Peterson said that the sales price of the affordable home would be capped by the Metropolitan

Council's affordable housing standard. The cost of constructing the affordable home would be covered by the developer.

In response to Callison's question, Peterson clarified that the city would only construct the affordable unit if the developer failed to do so. In staff's opinion, that option provided the most certainty that the affordable home would be built.

Anderson clarified that if the affordable unit is built elsewhere in the city within two years, the city would turn back the sixth lot to the developer.

Dan Kelly, an attorney representing the developer, noted the following:

- This property could have been developed without any affordable units under the prior PURD. The PURD development would not have been ideal for the developer, the neighborhood or the city. The prior PURD did not have any conservation easements, and it had no affordable housing aspect.
- Kelly noted the council's prior discussions about trying to find creative ways to provide affordable housing. The off-site option of this project would pioneer a new option. The option provided security to the city that the off-site unit will be built. The lot would be provided, a \$200,000 letter of credit would be provided to construct the home, and the city would receive a five percent fee for its costs. These securities would ensure that Fretham lives up to his obligations. Kelly noted that there would be financial disincentives to his client if he failed to construct the affordable unit.
- The applicant would prefer to designate Lot 3, Block 2 for the affordable unit, because a basement could not be built on that lot. If that change occurred, the square footage of the affordable unit would be increased to make up for the lack of a basement.
- The development is a win: win for all. It provides an affordable housing unit, a conservation easement, and solves drainage issues. The city would be certain that an additional, new affordable unit would be constructed in the city within two years.

Callison questioned why the developer was not willing to construct the affordable unit within this development. Kelly said that it wasn't a matter of not being willing. The developer felt that the affordable unit could be built elsewhere at a lower cost in a development where it would fit better. The developer was certain that he could find an appropriate site in Minnetonka.

Anderson asked if a lower value limit had been set for the affordable unit. Rankin said that the city attorney added a stipulation to the approval requiring the home to have three bedrooms, a garage, and a basement.

Staff would approve the plans and specifications prior to the unit being built.

Callison did not support the off-site affordable unit. She disagreed that the affordable unit would not fit into this development because a \$193,000 home would not be atypical for the neighborhood. She felt that the underlying message of an off-site unit would be that "those people" are not appropriate to this neighborhood. That position reminded her of the cases where wetlands are mitigated off-site. Placing affordable units elsewhere increases the stigma and makes neighbors question why the unit was placed in their neighborhood. Callison would not support placing the affordable unit elsewhere with the location outside the city's control.

Wagner said that the issue of on-site versus off-site for the affordable unit was discussed at the EDA. He was more comfortable with the off-site concept because of the number of affordable units already in the area of the proposed development. The neighbors felt that the new development would improve their area.

Schneider said that while the proposal was not ideal, he would support it due to the history of the property and the conservation easement. He thought it would be going too far for the city to require the affordable unit and also specify its location. He felt the city should be flexible and reasonable.

Peterson clarified that the language provided in the agenda packet did not specify that the affordable unit would require a garage. The council would need to add that language if it wished to require a garage. Anderson said that the city does not require garages, but suggested that the requirement be added to the motion.

Anderson noted Planning Commissioner Dick Allendorf's comments during their hearing on project, questioning the incentive for the developer to make the affordable unit of an appropriate quality and character if it is not constructed within the development. Anderson supported this proposal as a test case for the off-site affordable unit option. She suggested that no further off-site units be approved until this project is evaluated. She did not support designating a lot other than Lot 2, Block 2 recommended by staff for the affordable unit. She said that the lot designated was part of the incentive for the developer to make the affordable unit happen.

Wiersum was torn. He said this might provide a good test case and supported Anderson's thoughts on that. He was also concerned about the quality and style of the affordable unit. He suggested a stipulation with greater detail on that issue.

Peterson said that staff was also hesitant in pursuing the off-site option, but decided it would be appropriate because this developer already had

approval to build on this site. Those circumstances made this project different, so allowing the off-site affordable unit would not set a precedent.

Wagner moved, Schneider seconded a motion to

1) Adopt Ordinance No. 2004-18 rezoning 10413, 10405, 10401, and 10402 34th Circle West (vacant lots at the end of 34th Circle West), from PURD, planned unit residential district to PUD, planned unit development, and adopting a master development plan This ordinance is based on the following findings:

- a. The proposed use is consistent with the existing land uses on adjacent properties.
- b. The rezoning is consistent with the guide plan designation.
- c. Under specific conditions the plans protect wetlands on the site, and would provide tree protection through permanent conservation easements.
- d. The proposed development would not have an adverse impact on neighborhood traffic or property values.

This rezoning and master development plan is subject to the following conditions:

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

- Site plan date-stamped December 23, 2003
- Grading plan date-stamped December 23, 2003
- Utility plan date-stamped December 23, 2003
- Preliminary Plat date-stamped December 23, 2003

b. The following must be completed before the city issues a grading permit or before starting any site work:

- (1) The installation and maintenance of a temporary rock driveway, erosion control, and tree and wetland protection fencing for each lot, subject to review by the city's environmental resources coordinator.
- (2) Final site, grading, drainage, utility and erosion control plans must be approved by city staff. Final plans must include the following revisions:
 - a) Building pads must be outside the required conservation easements to protect the trees along the west lot line.
 - b) The driveways relocated on Lots 1 and 2 of Block 2 to avoid the large oak tree in the front yard. This tree must be preserved and protected during construction.
 - c) Low floor elevation must be 2 feet above the high water elevation.
 - d) A swale with its centerline a minimum of 10 feet away from each of the three homes west of 34th Circle, to direct drainage along the rear

and side yards into the stormwater retention areas.

- (3) Submit stormwater calculations, and revise plans accordingly, to provide adequate water quality treatment in the stormwater retention areas per the requirements of the Water Resources Management Plan.
 - (4) Submit a letter of credit, cash escrow, or other form acceptable to the city attorney for the estimated cost to comply with grading permit requirements. 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 grading has been completed according to the plans approved by the city. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
 - (5) Submit a letter of credit or cash escrow, or other form acceptable to the city attorney for the estimated cost to maintain or restore the wetlands buffer. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
 - (6) Fence all trees and vegetation to be preserved and install erosion control measures for staff approval.
 - (7) Submit a construction management plan for staff approval.
 - (8) If required, submit copies of the watershed district permit, NPDES permit, and county permits for driveways and utility connections. The city may require revisions to the approved plans to meet these agencies' requirements.
 - (9) All delinquent utility bills must be paid.
 - (10) Submittal of the wetland delineation report, subject to review and approval of staff.
- c. The following must be completed before the city issues a building permit:
- (1) The installation and maintenance of a temporary rock driveway, erosion control, and tree and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
 - (2) A hookup fee for sanitary sewer and water.
 - (3) 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) A copy of the recorded plat and any easements or covenants required to be recorded.
- d. A restrictive covenant in a form acceptable to the city attorney providing that one housing unit, to be located within the City of Minnetonka, must be built and offered for sale to the city or an affordable housing organization designated by the city. The affordable unit must not replace a housing unit that exists on the date of this approval. The unit must be sold at a cost not to exceed the Metropolitan Council's definition of affordable housing, as it exists at the time of offering. If the unit is not purchased by the city or affordable housing organization within 60 days after the receipt of a written offer, it must be offered for sale to the public at a price not to exceed the Metropolitan Council's definition of affordable housing and subject to resale indexing covenants approved by the city council. Before any building permit is issued for this development, a letter of credit in the amount of \$200,000 must be deposited with the city to ensure completion of construction of the affordable unit. This unit must be built and offered for sale within 2 years from the date of final plat approval, or if not, Lot 2, Block 2 within this development will be automatically transferred to city ownership and the city may draw against the letter of credit for its actual costs incurred to complete construction of the affordable housing unit meeting the specifications described below. Upon the city's sale of the affordable unit, the city must pay to the developer the sales proceeds minus 5% to cover the city's overhead and administration. The specifications for the construction of the affordable unit must be approved by the city before construction and must include a minimum of a basement plus 1200 square feet of livable area including three bedrooms and a garage. No building permit will be issued for Lot 2, Block 2 within this development until the off-site affordable unit is built and offered for sale to the city or an affordable housing organization designated by the city.
- e. Minimum floor elevations must be 2 feet above the high water elevation.
- f. The floor area ratio and hard surface coverage each may not exceed 50% of the site area.
- g. Construction must begin by December 31, 2005, unless the planning commission grants a time extension.
- h. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
- 2) Give preliminary approval to the Curt Fretham plat, date-stamped December 23, 2003.
Approval is subject to the following conditions:
- a. Complete the following before final plat approval:

- (1) Show the following on the final plat:
 - a) 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.
 - b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (2) The applicant must either make an application to vacate the right of-way at the end of 34th Circle, or adjust the lot lines on the final plat to include the right-of-way.
 - (3) Submit evidence of watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
 - (4) All delinquent utility bills must be paid.
 - (5) Submittal of the wetland delineation report, subject to review and approval of staff.
- b. The following items must be submitted to the city before the city releases the final plat:
- (1) An engineering/utility inspection fee.
 - (2) An electronic CAD file of the final plat in microstation or DXF.
 - (3) The following documents for the city attorney's approval:
 - a) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - b) 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 covenants must first be submitted for the city attorney's approval.
 - c) Conservation easements must be recorded over the area identified on the planning staff report. This easement would prevent trees along the west lot lines from being removed, unless they are dead or diseased. With the exception of the trees circled on the planning staff report; Lot 1 may remove 3 additional trees within the easement; Lot 2 may remove 2 additional trees within the easement; and Lot 3 may remove 3 additional trees within the easement. Property owners must contact city staff before removal of any tree within the conservation easement area; this will enable

staff to keep track of the number of trees removed.

- d) Conservation easements must also be recorded over the wetland buffer area 25 feet out from the wetland on Lot 3, Block 2. The easement must require this area to be left in the natural condition; lawns would not be permitted in this area.

These documents must be recorded with the final plat, and a drawing of any easements must be attached to the easement deed.

- c. 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.

Anderson noted that the motion did not reference Wiersum's suggestion for additional requirements as to quality and style of the affordable unit. Schneider said that staff understood the city council's concern. He was comfortable with staff's review of the plans, because the design might change depending on the lot chosen. Wiersum concurred.

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

F. Items concerning 12918, 12910, and an unaddressed property on Rutledge Circle for Thomas and Patricia Harris:

- 1) **Request to relocate an existing sanitary sewer line; and**
- 2) **Preliminary plat with multiple variances.**

Olson provided the staff report. The applicant was not present.

Schneider moved, Callison seconded a motion to:

- 1) Deny the request to relocate an existing sanitary sewer line. Denial is based on the following findings:
 - a. The grading necessary to relocate the sewer line would result in tree and vegetation removal.
 - b. The proposed relocation would move the utility line closer to the site's wetland. Soil correction to accommodate the line may negatively affect the hydrology of the wetland.
 - c. The proposed bends in a utility line would create potential maintenance problems and would increase overall maintenance costs.
 - d. Allowing the relocation of a public utility may establish a precedent for future similar requests.

- 2) Deny the preliminary plat with variances at 12918, 12910, and an unaddressed property south of 12910 Rutledge Circle. Denial is based on the following:
- a. The requested variances do not meet the hardship standards.
- (1) Denial of the variances would not deny reasonable use of the property. The existing buildable lot with the existing house constitutes reasonable use.
- (2) The requested variances are self-created. They are based on an attempt to distribute existing buildable area between two lots
- (3) There is a relatively consistent development pattern in the Rutledge Circle neighborhood. The applicants' proposal would change this pattern, placing an additional home site between existing development and the area wetland.

All voted "yes." Motion carried.

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

16. **ADJOURNMENT.**

Wiersum moved, Thomas seconded a motion to adjourn the meeting at 9:21 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk