

**STAFF SUMMARY  
CITY OF MINNETONKA  
CITY COUNCIL STUDY SESSION  
MONDAY, JUNE 7, 2004  
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- Council Present:** Jan Callison, Bob Ellingson, Terry Schneider, Tony Wagner (arrived @ 6:45), Brad Wiersum and Mayor Karen Anderson. Thomas was excused
- Staff:** John Gunyou, Geralyn Barone, Geoff Olson, Desyl Peterson, Jennifer Posma, and Jo Colleran
- Others:** Eleanor Berscheit, Mike Wyatt (Minnehaha Creek Watershed District planner), Jim Calkins (Minnehaha Creek Watershed District board member and Minnetonka park board member)

Anderson called the study session to order at 6:30 p.m.

**1. Report from City Manager**

Gunyou reported that the July 19 study session had been cancelled.

**2. Minnehaha Creek Watershed District planning process**

Wyatt provided a report from the Minnehaha Creek Watershed District. Bids are being solicited for their headwaters shoreline project. Construction should occur this fall.

MCWD is revising its 509 (comprehensive) Plan. This includes a feasibility study with the Corps of Engineer to share project costs with MCWD. As part of their stakeholder process, MCWD plans to convene a group to vision what the creek will look like in the future. This process will not supersede Minnetonka's creek corridor plan, but MCWD wants something similar for the entire creek.

Wyatt then gave a slide presentation, reviewing why the district is undertaking this process, the goals for the public process, and the projected outcome. The district would like representation from Minnetonka to include: one elected official, one staff member, and two residents who live within MCWD. The ultimate goal is to create an action plan based on the public input.

In response to Anderson's question, Wyatt said that there are many interest groups involved in the process, even though that is not required. Wyatt said that there are five cities along the creek. MCWD controls Gray's Bay dam. There are 178 inlets to the creek, and MCWD cannot control them. MCWD can either re-evaluate how they operate the dam, or they can look at the flow inlets. They want to evaluate how the creek is managed.

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Wyatt said that the district first needs to create a vision of how the creek should look. They want to find out how people use the creek so they know how to manage it.

Wyatt said that there would be two to three meetings with the elected official representatives. There would be 12 meetings of the citizens group, which would include 23 total members.

Wagner arrived at this time.

Wyatt said that the technical committee would meet four to five times. He described the format for the meetings for the citizens group, which would include education, scenarios, and plan development. Wyatt said that the process would begin in mid-August. The conceptual scenarios would include:

- Business as usual
- Maintenance of status quo (with examples)
- Maximization of recreational benefits (with examples)
- Ecosystem restoration (the Corps of Engineers is interested in these types of projects)

He then reviewed the desired outcomes for the public process and provided a draft resolution.

Schneider asked how the process would relate to emerging federal regulations on stormwater management. Wyatt said that the process would provide an opportunity to identify areas of joint interest to alleviate some of the discharges into the creek. There are a few of these points within Minnetonka. The master plan for the creek provides an opportunity to determine which plan to implement in the next 10 years, and also to determine cost sharing.

Gunyou said that over the next year, the city will update the segment of the city's creek plan from I-494 to Big Willow Park, with greater emphasis on usage. Wyatt said that would provide another opportunity, and noted that the district is not committed to any one plan at this point. They would be willing to look at amendments Minnetonka might make to the plan.

Anderson noted that the timing could be good related to the natural resources stewardship plan.

Gunyou said that the city has a fairly structured communication process that

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provides for open hearings for citizens. He asked how the district's plan would allow for citizen input.

Wyatt said that all meetings would be open to the public with comment periods at each meeting so that concerns could be voiced.

Schneider said that might be counterproductive. He thought the process could be better served with a couple of public hearings or open houses.

Anderson said open houses typically offer stations throughout the room where people can give their comments and get answers to their questions.

Callison thought that the work of the elected official group would be fairly limited. She suggested that they respond to the work of the citizens group, but said that they could also direct the work of that group. Wyatt said that they tried to find a way to involve citizens while incorporating politically sensitive issues. The district wants to limit the time required for busy elected officials. He said that the meetings would be open to the public. Wyatt said that they hope to present a polished report to the elected officials and receive comments on that report.

Ellingson asked if the district has any specific projects it hoped to implement out of the process. Wyatt said that there are a number of items on the district's radar, such as Lake Hiawatha. They don't necessarily have projects in mind to implement. They do want to learn how people value the creek and what they want it to look like in the future.

Ellingson noted that Minnehaha Creek is in better shape than other creeks in the Twin Cities, such as Bassett Creek and Shingle Creek. Wyatt said that the healthiest portion of the creek is in Minnetonka. In general, Minnehaha Creek is in good shape. It is now at a point where it could degrade unless proactive steps are taken.

In response to Anderson's question, Wyatt said that the district would prefer that elected official representatives live within MCWD.

Wiersum said that ecosystem improvements might help secure federal funding. He asked about the likelihood of projects qualifying for federal funds. Wyatt said that would depend on the outcome of the process, such as the use preferences. The Corps of Engineers has indicated that federal funding opportunities exist.

Wiersum said that the creek is a tremendous amenity for the community. There is a need to ensure that the quality of the creek remains and to improve it if possible.

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Schneider said that there is a likelihood that there will be an either/or choice between public access and the ecosystem. Wyatt said that the conceptual scenarios would not necessarily be mutually exclusive. Most likely, the final recommendation will represent a hybrid of all the scenarios.

Ellingson asked if it would help to have MnDOT involved due to the number of streets that cross the creek. Wyatt said that had not been considered, and agreed that highway projects could affect the creek.

Ellingson asked if removal of the dams had been considered. Wyatt said that there are four major impoundments and minor ones as well, some of which have historic value. The district will look at them.

Wyatt said that the district would like the city council to adopt the resolution. Anderson noted a general consensus from the city council to move forward with the resolution, and to look at membership from Minnetonka. She asked the council to think about possible representatives.

Calkins said that there are no pre-conceived ideas about the outcomes. They have good information about what they can do that will have an effect, but they have never had a long-term vision. He has always been concerned about splitting the upper and lower watershed. The revised 509 plan will bring both sections into one plan.

Anderson thanked Wyatt for his presentation and said that the city council will try to move on the resolution in a timely manner.

**2. Natural resource protection standards**

Gunyou provided the staff report for this item. He summarized the council's previous discussions, and noted the evolution from philosophical to specifics. This next step involves recommendations of specific standards, short of an ordinance. Based on council input, staff will then draft ordinances for referral to the planning commission and solicitation of public input.

Gunyou said that the intent and general standards section is straightforward. The basic approach was to encourage designing with the land according to city standards.

Schneider was concerned about the last line of the first paragraph (In addition, the grading plan must avoid woodland preservation areas, high priority trees, water recourses, and steep slopes.). He felt it set the wrong tone. He thought that the city

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was looking for a mechanism to enhance the existing standards for steep slopes, wetlands, etc. Schneider felt that this statement indicated that the city would protect everything, and that is not what the ordinances require now. This language would swing the pendulum to avoid doing anything that had any impact. He compared that with looking for ways to minimize the impact through better planning and development while still allowing development. He felt the city should look at ways to do a better job of protecting high priority trees and being sensitive to slopes, noting that not every slope should be protected. He disagreed with an approach that sought to protect everything.

Anderson read the language differently, and thought that it would provide specific standards in specific areas (woodland preservation areas, high priority trees, water resources, and steep slopes, for example). She thought the language would allow the city to be more specific than it has been in the past. Anderson noted that the city has not always been able to enforce its ordinances to the city's wishes.

Gunyou said that staff did not see the problem as grading, per se, but rather what was being graded. He said that staff's intent was consistent with the issues raised by both Schneider and Anderson, and suggested that the language could be better written.

Schneider said that there is a fundamental philosophical decision when looking at developable land in Minnetonka. There are scattered resources we'd like to protect, and some of those are easy to protect. He felt there was a difference between avoiding those resources versus minimizing impacts to the greatest extent possible.

Wiersum thought that the first sentence referenced minimizing grading and did not prohibit grading. The language allowed for variances, which the city council routinely reviews. The standards would provide opportunities for properties with exceptional circumstances to apply for a variance. He said it was a matter of finding a happy medium

Schneider objected to the phrase "must avoid" and said it would be viewed as fighting words by the development community. Gunyou suggested substituting "must be consistent with the standards." Schneider agreed because the council will establish standards and provide definitions. He suggested that the council was trying to improve the process, but wanted a higher standard.

Callison said that the existing ordinance language is "must" language. The ordinance states that no woodland resources may be removed and high priority trees must be preserved. Schneider objected to that language also.

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Callison liked the general standards language, and did not want to change it.

Anderson wanted to be consistent and balanced. She noted that for many years, the city did not use "must avoid." In those days, there were sufficient resources so the city wasn't as firm. She felt a greater need to be more firm now.

In response to Schneider's inquiry, Colleran provided an example of reconnecting greenways through ecosystems that do not stop at property lines. She has a map that depicts remaining ecosystems, and that could be used to determine gaps. Evaluations would be done on an individual basis.

Gunyou noted that the biggest recommended change was in the tree ordinance, where the language shifts from replacement to preservation, and establishes specific minimum standards. The language explains what would happen if variances were requested from the tree preservation plan. This process is not too different from the existing review practice, and would primarily formalize that process. The standards would define the types of preservation areas, and define them using professional forestry standards. The standards refer to significant counts of trees, rather than individual trees, but would also allow for high priority major trees that are significant to the site.

Callison asked if the language would set false expectations. Peterson responded that she pressed for more objective standards while planning staff wanted more case-by-case analysis. The language reflects staff's compromise. The criteria goes to size and species type.

In response to Anderson's question, Olson said that the tree standards would apply to single-family homes within subdivisions and for additions that would require variances. Anderson asked that this language be clarified.

Gunyou said that staff felt there should be a limit to the city's authority to require preservation. To address that concern, staff arbitrarily said that tree preservation limits could not exceed one-third of the units that could be constructed on a site. A landowner would not lose more than one-third of his or her land, no matter how valuable the trees were. Wagner clarified that if there were nine potential lots, this ordinance would not take more than three lots.

Colleran said that in the case of raw land, a developer could see the woodland preservation areas, and try to fit the development around those areas. It would be possible that in some cases, the preservation areas could be fit into the site plan so no lots were lost. If not, an applicant could apply for a variance or a PUD. Peterson

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said that staff could not require a PUD, and Gunyou noted that the new requirements might encourage it. Anderson noted that under PUD, lot sizes could be smaller.

Schneider said that the city needs to be clear on how this would work. He could not figure out what a developer would be allowed to do.

Wiersum hoped that staff could work together with developers about using PUD. Olson said that staff was aiming at establishing fairly restrictive standards. Planning would like objective standards. He noted that variances could be allowed with the proper legal basis.

Callison said that the variance process could be complicated. Peterson said that the standards might force an applicant to go to PUD, instead of a variance, if they wished to do something other than what is in the ordinance. The language would set the standard high, but would allow for negotiating with PUD. This could result in a more reasonable outcome from both the developer's and the city's perspectives.

Schneider said that if the bar was set too high and was too onerous, it would become a case study for the builders association and the legislature, and the city's authority might be taken away. He thought the standards had been drafted in reaction to one builder, and said the city shouldn't overreact to one instance. If the standards are too onerous, good builders won't build in Minnetonka, and Minnetonka will end up with developers willing to push the limits. This could result in less creative developments. Schneider thought the standards should be reasonable and practical instead of in essence condemning property to save every tree on a site.

Wagner noted the council's previous discussion about the public process before the council approves the standards. He suggested running the standards by some key people before a formal public meeting. He noted that the changes were fairly significant, and suggested the possibility of a task force.

Peterson said that staff could survey other cities and counties to see how Minnetonka compares. She noted a recent article in the *Minneapolis StarTribune*, indicating that lots of cities are now requiring conservation development.

Callison did not support such a survey. She said that this ordinance is very specific to this community. It is about Minnetonka's development expectations, not how we compare to other cities. She did not think this language responded to one instance, but rather codified what the city has been doing through negotiation. It gives staff tools to use if negotiations don't work. It is fairer to developers because they know the expectations and are not surprised by them. Callison said that there are many

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reasons that local authority could be limited, this was one, but she did not think that likely. This language is the next step regarding tree preservation, and it has the promise to deliver what the city wants. Anderson agreed.

Ellingson said that developers need to know the expectations up front. He noted that developers complain about what staff asks of them, but usually go along.

Schneider agreed that firm criteria and clear expectations were needed. He questioned how far the city could push its protection rights or authority before it crosses the line of being unreasonable. The language in the proposal crossed that line, for him. He said it would be easy to mark off a nice stand of oaks. It would be more difficult if the trees were spaced throughout the site. He was not sure what the city would get if the standards were applied. He suggested spending more time defining what the city really wants to preserve. He noted that the proposed standards would increase the cost of the remaining lots. He was not sure the language would save the trees the city wants to save.

Gunyou said that staff strongly recommended setting the bar high to encourage negotiation, as the council directed during their previous council discussion.

Wiersum said that the standards would provide tools for the council, and would increase the city's ability to negotiate. He felt that was needed. He noted that with the Crosby Cove project, the city didn't have the power or authority to negotiate to get something better, and felt the city should have been able to do more. Wiersum didn't want to overreact to one development, but said that project provided the impetus.

Gunyou said that staff applied the standards to some recent projects to determine possible impacts. Crosby Cove would have had to drop two or three lots if the new language were in place. Staff's experience on Crosby Cove helped in drafting the language. In the case of Lakeside Estates in Glen Lake, the second standard would have been triggered, because there were high quality trees eight inches or more in diameter scattered throughout the site.

Colleran said that there was some flexibility on setting the diameter bar--Eden Prairie uses 12 inches, other cities use 10 inches. The figures do not reflect science, but rather the time needed to get a tree that large. Eight inches is the standard in the existing ordinance.

Anderson used the example of the Paragon development, where there were a number of high quality trees, and a stand of trees through the center that were of

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lesser quality. She noted the degenerated evergreens on that site. Anderson felt the standards would have allowed more creativity to save other trees.

Wiersum liked the high standard but wanted the standards to be reasonable.

Wagner did not want to require variances for everything.

Gunyou said that in looking at the possible impacts on recent developments, he felt the standards were reasonable.

Schneider said that many cities exclude Box Elder and Cottonwood trees as high quality trees. Colleran said that in a wetland preservation area, those trees tolerate flooding, and could be desirable. Gunyou noted that most of the council concerns had to do with the high priority tree standard.

Schneider suggested a standard similar to the park dedication standard where only a percent of the land would be preserved. Peterson said that was the intent of the one-third limit on preservation. Schneider suggested an option of allowing different development, like townhomes, on another part of the property to save wooded areas.

Gunyou said that the standards would set an absolute floor for negotiation purposes. He noted that the standards were not drafted as an overreact to a bad developer, but would ensure that a developer would have to negotiate.

Callison asked if the health of trees or affordable housing would be reasons to grant a variance. Peterson said that the council could consider a requirement that failure to comply with the standards could only be addressed by a PUD rather than a variance. Ellingson said that the changes would make PUD more enforceable. Gunyou said that the intent was to offer and encourage PUD as a reasonable option.

Schneider thought that eight inches was too small a standard for high priority trees. If a tree was not in a wooded area and was less than 15", it would be just a tree. Anderson said that 20 inches would be too large, and 8 inches perhaps too small. Gunyou noted that Eden Prairie uses 12 inches. Colleran said that some cities use 10 inches, and some use six inches.

Gunyou suggested that staff look at the options based on the council's feedback. He heard direction that eight inches might be too small, and noted that Schneider was leaning toward a 12 to 14 inch range. Anderson noted Colleran's concerns about

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Box Elder, Cottonwoods in wet areas. She also noted that trees must be healthy as part of the definition.

Gunyou then turned the discussion toward tree replacement -- trees that are in potential tree removal areas. He noted that the replacement standards would not change significantly. Rather than replacing tree for tree, if a developer removed a 20-inch tree, 20 inches worth of tree must be planted. Olson said that in the past, staff thought bigger trees were better, but staff has learned from Colleran that smaller trees grow more quickly and are healthier.

Schneider agreed, but worried that it might provide the wrong incentive. He suggesting giving a range of values to encourage planting smaller trees.

Anderson supported requiring the replacement to be inch-for-inch.

Wiersum suggested that a range be required with inch-for-inch replacement with stipulations regarding the size of the replacement trees. He agreed that smaller trees are better. Olson said that a variety of tree sizes provides an aesthetic advantage.

Gunyou said that the concept of the "ghost tree" was recommended to avoid premature cutting, but enforcement could be difficult. Staff thought that aerial photographs could be used to determine if major areas had been removed. The language provides for a two year "reachback."

Schneider thought the tree preservation ordinance already addressed this issue. Callison said that the city had not used that provision. Gunyou said that staff would check on that issue. Anderson supported the provision, but questioned the enforceability.

Wagner questioned if the language would cover a case where a developer bought six single-family homes and removed the trees. Gunyou said that staff would look back two years on the property. Olson said that a homeowner could take a tree down, but if the developer owned the property, the ghost tree provision would apply. Callison supported the requirement because it establishes expectations.

Wiersum said that developers like to move quickly. He thought two years made sense and supported the provision because it would give notice.

Gunyou said that the wetland overlay district and shoreland overlay district did not reflect much difference from the previous discussion. He noted that a number of DNR requirements set a statewide shoreland standard. In a few instances, it makes

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sense for the city to be more restrictive than the DNR requirements. An example of this would be setbacks for boathouses due to possible pollutants.

Anderson said that the wetland overlay district would loosen the restrictions. Gunyou said that loosening some requirements would encourage people to do the right thing. Anderson asked why people would check with the city if permits were not required. Colleran said that the city's ordinances are well known, and she receives frequent calls about them. This process would streamline the process so people can do the right thing. Staff review could occur quickly, while city council and planning commission review would take 60 days.

Schneider agreed with the incidental wetland definition. He asked about the requirements for Type 1 wetlands. Colleran reviewed the requirements, and said that buffers would be required for Type 1 wetlands. They could be filled or removed because they are not protected—only types 2 through 8 are protected.

Schneider opposed wetland buffers for Type 1 wetlands, because they are so difficult to identify. He thought that buffers would be out of character with them.

Colleran said that buffers would be appropriate if vegetation alteration is allowed.

The discussion then moved to shoreland buffers. Anderson asked about the effect of the hard cover requirements in commercial areas, such as in Glen Lake or near Crane Lake. Colleran explained the DNR standards regarding shoreland in commercial areas. In the example of Crane Lake, the maximum impervious surface would be 75 percent.

Schneider suggested that there might be room from some deviation from the DNR requirements. Colleran said that the DNR has been strict in their interpretation, and view any drainage to a water body as direct drainage.

Schneider suggested that there were other ways to achieve water quality. He thought the 30% standard was very strict. He suggested that the city adopt conditions that fit, and let the DNR challenge those standards. Gunyou suggested including the DNR requirements, but allowing exceptions by variance. Schneider said that enforcement would be difficult.

Anderson was not as worried about challenging the DNR on this issue, and did not want to look for ways to get around those standards. She said that variances could be requested. Schneider asked if the implications could be shown on an overlay map or flood zone map.

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The discussion then moved to the DNR standards. Schneider said that urban cities have difficulty complying with these standards, and some deviation is allowed if the intent is met.

Ellingson asked if the Ridgedale parking ramp were placed in an area that is already paved, if the impervious percentage would change. Anderson said that Ridgedale probably already exceeds the standard. Gunyou said there were discussions to move the ramp to the Penney's side, but Anderson said that would still be within 300 feet.

Wagner asked if this would result in the taking of lands. Olson said that there are no restrictions in commercial areas, so negotiation would be needed. Staff would try to negotiate to the 35-foot setback required of residential properties. The goal is to keep tall buildings further back from the shoreline.

Peterson said that cities are supposed to adopt an ordinance substantially consistent with the model DNR ordinance. If they don't, the DNR can adopt the ordinance for them.

Ellingson noted the tall buildings near water in Europe, which is not allowed in Minnesota. He asked if it would make sense to have greater restrictions on taller buildings close to water. Colleran said that some separation in excess of the standard setback would be needed. The DNR doesn't want tall buildings right on water's edge, and suggests a tiered design. She said that it is an aesthetic argument.

Ellingson ask why the city should not adopt the DNR standards. Schneider said those standards have lots of unintended consequences and the city could lose control of land use. He said that it is one thing to protect the environment and water quality. He felt that local authority should set the standard for hard surface coverage and land use, and did not feel that the city necessarily had to follow the DNR's requirements.

Gunyou said this related to performance standards. The question is if hard surface coverage is the right restriction to ensure water quality—perhaps that could be better accomplished through ponding and filtering.

Colleran said that the DNR ordinance was written for the entire state in 1988-89. It looks at land uses on raw land in a natural state. We may have progressed beyond that, and the ordinance might not meet the needs of Minnetonka. Minnetonka needs to take what it thinks fits, and request flexibility where it doesn't.

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In response to Schneider's question, Olson said that there are bluffs in Minnetonka (north end of Glen Lake), and this would be a case where the DNR standards are both more and less restrictive than Minnetonka. Staff is concerned about the erosion of steep slopes so close to lakes. Schneider was concerned that the requirements would prohibit building a walkout residence on a slope. He felt the DNR ordinance was over-reaching.

Anderson questioned how erosion could be prevented without the standard. Wagner agreed with Schneider. Schneider suggested wording that would allow a walkout to the lower level of a residence within the 20-foot area.

Colleran reviewed the current steep slope ordinance. She said that her field observations indicate that the provisions are not working. Once the slope is cut into, it's hard to prevent erosion. She supported keeping development off the top of hills. Anderson noted the example of Creekview Terrace in Ward 4.

Schneider suggested looking at the broader spectrum. He said that over a 20-year period, an area could revegetate. Colleran said that construction has the biggest impact on wetland. Gunyou suggested that staff bring the language forward for a council discussion and vote. Schneider asked for some options, and Gunyou said that staff would provide them.

Anderson asked that the language in #4 be clarified. In response to Wiersum, Olson said that #6 was a change from the ordinance that was added in the comprehensive plan.

Gunyou noted the earlier discussion and the preference to encourage PUD, and Anderson concurred. Gunyou said that the language would encourage people to do the right thing through simplified administrative procedures that were educational-similar to the wetlands. Staff proposed two changes regarding density bonuses, which Olson reviewed. Developers would only receive credit for what they do over and above the requirements.

Schneider said that Minnetonka is scoffed at in the greater development community. It is the only city that says that you might get what you're entitled to but no more. Nobody values that as an incentive. A developer would get no more than it would have gotten in the first place, so it provides no value.

Olson said that the standards do help during negotiations with developers for affordable housing. A developer won't get a density increase without affordable housing or saving resources. Schneider felt they were merely reacting to politics.

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Gunyou said that it is not a direct quid pro quo formula. By providing public benefits, the city would be more favorable to a development, rather than giving a one-for-one trade off. The council has not supported direct trade offs in the past. Anderson did not want to play games and did not care about the development community's opinion.

Wiersum said that the bonus isn't the best term. Anderson said that it is what the city has been doing already.

Gunyou said that staff incorporated the council's preference not to use public street standards to increase the number of lots and setbacks for lots behind lots. He said it was difficult to find standards for the neighborhood character criteria, so staff suggested that each case be treated individually. The council could look at the project to see if the mass and height seemed appropriate. Height restrictions could be added. Olson noted that this is a subjective part of the variance process.

Wiersum asked if maximum floor area would be based on the norm for homes in the neighborhood. Peterson said that would be up to council.

Anderson asked staff to explain floor area ratio versus finished square footage. Olson said that the floor area ratio is the total of all square footage of all floors of a house, divided by the lot size. This gives a three dimensional concept of the mass of the structure. Anderson said that height might still need to be part of the discussion, because the changes often occur in 1950s or 1960s neighborhoods with ramblers. She said that larger setbacks might force height. Height may need to be considered, but Anderson did not want to put a number on it.

Schneider suggested clarifying that house design did not refer to architectural style, but rather the house footprint envelope. The purpose is to define how the mass fits into the neighborhood.

Anderson said the city asks for a site plan and footprint. Gunyou said this establishes the box within which they can build. This approach addresses height concerns and helps define the mass. Anderson would like something that allows the city to look at height. Gunyou said that this language does that because it defines a three-dimensional box.

Gunyou concluded by indicating that staff will prepare specific ordinances for council review.

**3. Adjournment**

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The study session adjourned at 9:27 p.m.

Respectfully submitted,

Kathleen Magrew  
City Clerk