

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, OCTOBER 4, 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 Terry Schneider, Al Thomas, Tony Wagner, Brad Wiersum, Jan Callison and Anderson were present. Bob Ellingson was excused.

4. APPROVAL OF AGENDA.

City Manager John Gunyou reviewed the addendum. Item #10G, Cedar Cove Villas, was pulled from the agenda at the request of the homeowners association. The planning director recommended several changes to conditions for item #13A, Deephaven Cove.

Callison asked if the delay of item #10G would adversely impact the opportunity to plant trees yet this season. Olson said that all parties now agree that trees should be planted. The remaining issue is the number of trees, and that issue should be resolved shortly.

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

Gunyou noted that an item related to placement of a public safety antenna on the Civic Center campus had been postponed from the agenda. The neighbors will be notified when a new date has been set for this item.

5. APPROVAL OF MINUTES: None.

6. SPECIAL MATTERS: None.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou invited the public to attend the Fire and City-wide Open House scheduled for Tuesday, October 5. He also reported on the schedule for upcoming council meetings.

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

Ulrich Bonne, 4936 Shady Oak Road, reported that he represented some of the Shady Oak Lake neighbors of the Shady Oak Road reconstruction project. He advised the council that the neighbors were considering additional options to those provided by City Engineer Lee Gustafson at the public informational meeting because they felt safety issues were not being adequately addressed. The neighbors he polled expressed a preference for what they call option B-Plus, and they will present their information at the October 18 council meeting.

Anderson noted that there were several road projects currently in process, and the city council had not yet received the plans for this portion of Shady Oak Road. She said that would occur at the October 18 meeting, and she would provide an opportunity for public input at that meeting. Bonne said that he did not want to surprise the council with the neighbors' option on the 18th. Gunyou suggested that Bonne arrange a meeting with Gustafson as soon as possible to share the neighbors' new option. He noted that staff was not aware of these plans. Anderson asked that this information be provided in the October 18 council packet.

9. BIDS AND PURCHASES: None.

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

A. Ordinance authorizing the sale of city-owned property in the vicinity of 34th Circle West.

Wiersum moved, Thomas seconded a motion to adopt Ordinance No. 2004-31 authorizing the sale of city-owned property in the vicinity of 34th Circle West to Curt Fretham. All voted "yes." Motion carried.

B. Resolution appointing election judges for the November 2, 2004 General Election.

Wiersum moved, Thomas seconded a motion to adopt Resolution No. 2004-123 appointing election judges for the November 2, 2004 General Election. All voted "yes." Motion carried.

C. Resolutions ordering the abatement of nuisance conditions.

Wiersum moved, Thomas seconded a motion to adopt the following resolutions:

- 1) Resolution No. 2004-124 ordering the abatement of nuisance conditions existing at 2976 Tonkaha Drive.
- 2) Resolution No. 2004-125 ordering the abatement of nuisance conditions existing at 11517 Minnetonka Boulevard.

- 3) Resolution No. 2004–126 ordering the abatement of nuisance conditions existing at 16512 Excelsior Boulevard.
- 4) Resolution No. 2004–127 ordering the abatement of nuisance conditions existing at 15216 Highwood Drive.
- 5) Resolution No. 2004–128 ordering the abatement of nuisance conditions existing at 11934 Hilloway Road West.

All voted “yes.” Motion carried.

D. Conditional use permit for a farmer’s market at the southwest corner of the Westwind Plaza shopping center for Craig Gilb.

Wiersum moved, Thomas seconded a motion to adopt Resolution No. 2004-129 approving a conditional use permit for a vegetable stand in the Westwind Plaza parking lot for Craig J. Gilb of Untiedt’s Garden Market. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Record this resolution with the county.
- 2) The Halloween Farmer’s Market may be operated at the earliest October 4 through October 31.
- 3) Display of items must be arranged in as compact a manner as reasonably practicable.
- 4) Any change in the person, location, or items sold at the stand renders this permit invalid.
- 5) This approval does not approve any signs at the site. A sign permit application must be submitted for staff review and approval. Any proposed sign must meet requirements outlined in city code.
- 6) Violation of any conditional use permit standards outlined in city code will result in immediate revocation of the conditional use permit.
- 7) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 8) 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.
- 9) The site must be cleaned of any leftover merchandise and debris by November 1, 2004.
- 10) The applicant must agree to the above conditions in writing.

All voted “yes.” Motion carried.

E. Authorization of 2004/2005 Insurance Renewal.

Wiersum moved, Thomas seconded a motion to authorize the 2004/2005 insurance renewal of the city’s policies through LMCIT for package policies with the following options:

- \$25,000/\$100,000 deductible for the package policies
- 80/20 Open Meeting law coverage
- No waiver of statutory limits
- Workers' compensation with a \$10,000 deductible, and a managed care credit

All voted "yes." Motion carried.

F. Designation of voting and alternate voting delegates for the annual Congress of Cities Conference.

This item was pulled by Anderson for an amendment to the motion.

Anderson moved, Callison seconded a motion to designate the following voting delegates for the 2004 Congress of Cities Conference:

Voting Delegate #1: Mayor Karen Anderson

Voting Delegate #2: Council member Brad Wiersum

Alternate Voting Delegate: Council member Tony Wagner

All voted "yes." Motion carried.

G. Resolution ordering the abatement of nuisance conditions regarding tree plantings at 9800–9820 Cove Drive, Cedar Cove Villas.

This item was pulled from the agenda at the request of the Cedar Cove Homeowners Association.

H. Final plat for a three-lot subdivision at 15815 Minnetonka Boulevard

Wiersum moved, Thomas seconded a motion to approve the Registered Land Survey that was received on September 14, 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.

I. Revisions to the final plat for CITY VIEW HEIGHTS at 600 Sunnyvale Lane and 665 City View Drive for Tom Gonyea.

Thomas moved, Wagner seconded a motion to approve the final plat of CITY VIEW HEIGHTS, with revisions, date stamped

September 24, 2004. Approval is 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; and
- 3) The resolution vacating part of City View Drive must be recorded with the plat.

All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Conditional use permit, with variances, for a medical use in the Ridgehill Professional Building at 2000 Plymouth Road for Now Care Medical Center

Wiersum moved, Thomas moved, seconded a motion to adopt Resolution No. 2004-130 approving a conditional use permit, with variance, for medical use of the Ridgehill Professional Building at 2000 Plymouth Road for Now Care Medical Center. This resolution is based on the following findings:

- 1) Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - a. The discrepancy between the zoning and the guide plan for the property, together with the historical medical use of the building, present a practical difficulty.
 - b. The city previously allowed medical use of this building. New medical use in the building would be permitted by conditional use permit, without variance, with the future higher-density development of the property to the south. However, the use is not currently allowed without a variance. This is a unique circumstance, not common to every similarly zoned property.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The proposed medical use of the building is reasonable. The city has received no complaints regarding the previous medical uses in the building.
 - b. The building has been completely or partially occupied by medical uses since its construction. The current conditional use permit request would not alter the character of the neighborhood

Approval is subject to the following conditions:

- 1) Submit proof of having recorded this resolution with the county before the city issues a building permit.
- 2) Exterior trash and recycling storage must be placed in a masonry enclosure compatible with the principle structure.
- 3) Spaces shown as proof-of-parking may not be paved, unless approved by the city upon showing a demonstrated need for these spaces. Staff may require additional landscaping adjacent to the new parking area at that time.

All voted "yes." Motion carried.

12. **INTRODUCTION OF ORDINANCES:** None.

13. **PUBLIC HEARINGS:**

A. **Applications to build 28 townhomes (Deephaven Cove) at 3600 County Road 101 for Steven Scott Development:**

- 1) **Guide plan amendment.**
- 2) **Rezoning, including a master development plan and final site and building plans.**
- 3) **Preliminary plat.**
- 4) **Detachment and annexation agreement.**
- 5) **Resolution petitioning for concurrent detachment and annexation.**

Gunyou noted that on August 23, 2004, the city council voted to delay its consideration of this project, expressing concerns related to increased density without the inclusion of affordable housing, as well as the source of water for the project. Since that meeting, staff has met with the various parties, and is recommending several changes to the original proposals.

Planning Direction Geoff Olson provided the staff report. He reviewed the changes to the project and the items in the addendum.

In response to Anderson's question, Olson said that only six of the buildings would be constructed immediately. The last building would not be built until after the storm sewer improvements are in place. This would allow for water retention within the site until the storm sewer is constructed as part of the Susan Lane project next year.

Anderson noted that Minnetonka sometimes provides water service to properties just beyond Minnetonka's border, at a cost that is usually 125% of the city's water rate. Gustafson said that was correct. In this case, the units in Minnetonka would pay Minnetonka's rates, and the units in Deephaven would pay the

higher rate. Anderson wanted to make sure the developer was aware of that. Gunyou noted that the agreement with Deephaven about water rates is long-standing and these recommendations are consistent with past practices.

In response to Wagner's question, Gustafson clarified that the intent for this project is to ensure that all units, whether they are in Minnetonka or Deephaven, have public sewer and water and that they do not have private wells. The intent is to allow the connections to Minnetonka's sewer and water to occur at CSAH 101. There is a watermain on the far west side of the property, and this provides a loop connection. The Minnetonka City Council must approve new connections to its system, even though the system is in place. Basically, Minnetonka is extending a watermain owned by Deephaven and being served by Minnetonka. This approach is similar to the approach used in other projects in Deephaven.

Callison noted a reference in the staff report that indicated the applicant has revised his plan to save more trees. Gunyou clarified that more trees would not be saved, but that additional landscaping would be added. Olson concurred, and said that more trees were not being saved from the previous plan. The developer was referring to changes from the original plan. Olson said that there would be new trees added since the previous council meeting.

Wiersum noted the neighbors' concerns about the project's impact on stormwater. Gustafson said that the neighbors to the south should see no impact with the development. After the outlet is installed, there will be a series of ponds that outlet into Deephaven to ensure the pond maintains a consistent water level, and to eliminate the build up that currently occurs with heavy rains.

Wiersum also noted that the neighbors questioned inclusion of the steep slope area in the developable area. They felt that only 3 to 3-1/2 acres were developable. Wiersum asked for comparable situations in Minnetonka. Olson said that there are other areas in Minnetonka where development has occurred on steep slopes—particularly those in the 20 to 30 percent range. This is allowed under Minnetonka's ordinances. The city requires retaining walls that are structurally stable, and the city must be satisfied with the integrity of the slopes. The neighbors preferred that the density be based on the flat or buildable acres, which is about 3.1 acres in size. Olson said that the ordinance is not written that way. It is based on the gross area of the property, and does not exclude ponds or steep slopes from the calculations.

The developer, Scott Bader of Steven Scott Development, was present with Dean Dovolis of DJR Architects, and Mark Gronberg of

Gronberg Associates, Civil Engineers. He thanked the city council for the time extension, and was available for questions.

In response to Callison's question, Dovolis said that the gross number of trees had increased from 30 originally to 98. He said that the trees would be concentrated around the southern boundary and at the top of the hill, where there is a gap in vegetation.

Anderson opened the public hearing at 7:16 p.m. Olson noted that the public hearing was being held to address various aspects of the project: rezoning, a guide plan amendment, a master development plan, and the preliminary plat. He noted that the guide plan amendment would require five affirmative votes for approval.

Dan Duffy, 17900 Susan Lane, represented a neighborhood organization (North Neighborhood Organization for Responsible Development), and clarified that he was not speaking as a member of a city commission. His group appreciated the work the developer and staff have done on this project. The group is in favor of redevelopment, but had some remaining issues:

- Density. The current site is just over three acres without serious compromises. His group would support five buildings, with the buildings moved toward the center of the site.
- Screening/retaining walls. The developer is pushing the retaining walls into the hill as far as possible to avoid potential buyers looking directly into the retaining walls. Duffy's group felt this created safety concerns for neighbors to the north. The neighbors to the north would be overlooking the retaining wall, and the neighbors to the south would lose trees.
- Drainage. Duffy noted the drainage problems that occurred in 1995 when a temporary berm burst. He said that it looked, on paper, like the drainage would work. He noted that everything would go into the retention pond, and said that something would have to give--the trees or the drainage. He felt that the true extent of the tree loss was not yet known. The neighbors did not want to sign off on the screening plan yet, and requested that the developer continue the discussions with the neighbors.
- Traffic. The neighbors believe that this project will compound the traffic problems along CSAH 101 at Susan Lane and at Bennett Park. They suggested a more scientific study, and the addition of a flashing caution sign during Bennett's season.
- Building mass. The neighbors did not feel that the screening was adequate for the building.

- Annexation. The neighbors felt that the more property that remained in Minnetonka, the better. He suggested that the new retention pond to the north of the home at Susan Lane and CSAH 101 be moved to the west, directly across from existing pond. That home has a pond on the west side, will have one on the north side, and will lose part of their property to the CSAH 101 project. The neighbors suggested that the city not approve the seventh building to allow for more green space at the corner.

Duffy said that the neighbors appreciated the efforts made by all parties. They felt their requests were reasonable and prudent. The neighbors support the request for affordable housing and are pleased Minnetonka will provide sewer and water to the site.

Anderson closed the public hearing 7:29 p.m.

Anderson asked staff to respond to Duffy's drainage concerns. Gustafson said that erosion will be an issue with the significant cut required for this project, especially if there are heavy rains during excavation. That risk is greater for the homes to the north, in Deephaven. In the 1995 situation, a temporary berm failed. This project does not require a temporary berm. The soil adjacent to the property to the south will not be disturbed, and it is well compacted. Any erosion or sedimentation that occurs would be directed to the holding area and could be excavated. The ponds would have to be fully operational at the time of any excavation.

Anderson noted that there is an existing cautionary crosswalk sign near the entrance to Bennett Park. She asked if that would remain after the CSAH 101 reconstruction. Gustafson said that staff worked with Hennepin County to get an improved cautionary sign as part of the reconstruction. The sign will be an overhead crosswalk sign installed for north and south bound traffic. Hennepin County would not install a flashing light, but the overhead cautionary sign will be a huge improvement. Gustafson noted that overhead signs are more visible to motorists, especially when traffic backs up.

Anderson asked about the basis for the traffic study, noting that there are abandoned vehicles currently on the property. Olson said that the traffic information was based on the number of employees and customers. The number of trips was based on four trips for full-time employees, two trips for part-time employees, and two trips each for 47 customers per day, for a total of 432 trips per day for the current operation. The calculation is for 224 trips per day for the 28-unit development. Olson said that figure could be a little low, but said that even if the actual traffic is double the projection, staff is

very comfortable with the traffic situation, especially considering the upcoming improvements.

Callison said that the major issue in the discussion a month earlier was density. She noted the benefits of cleaning up the site, and said that there was support for higher density due to the site's proximity to CSAH 5/101. She said that those factors remain. The issue is the appropriate density for the site. She did not hear the neighbors say that more density was not appropriate, but that they wanted fewer units. Duffy's points all related to density. She thought that presuming fewer units would result in less usage of the site was questionable. She noted that the size of the affordable units shrank, but the size of the other units increased.

Callison recalled that years ago the city's philosophy was not to provide screening for residential properties from other residential properties. She acknowledged that townhomes are a bit different. People's expectations may have changed from 10 or 15 years ago, but they should not expect to only see trees from their homes. Callison also noted that the height of the townhomes would not exceed the height of single-family residential units.

Callison said that the major issue for density is the environment. She was not sure that a lower density would reduce environmental impacts, and thought that the city had controlled the impacts in a reasonable manner. Traffic is a concern, but there are a lot of vehicles that come and go from the current use. Callison felt that the impact from this development would not be noticed on CSAH 101, particularly when the highway improvements are in place. She supported the project with the addition of affordable housing and landscaping, and the changes to the annexation/detachment agreement.

Schneider agreed. The density issue was debated during the previous discussion. There was concern about the number of units, and whether or not affordable housing could be achieved. He was pleased that five affordable units were proposed, and especially that those units would be blended with the others. Schneider supported the project, and said that the staff and consulting firms could resolve issues related to the slopes and retaining walls.

Wagner noted the previous council discussion about the city giving up a lot and not getting much in return. With the new proposal, the city would be getting quite a bit in return: affordable housing, reduced building size, water and sewer system improvements, and keeping property on the Minnetonka property tax rolls. Wagner appreciated the developer working with staff.

Thomas agreed with the comments made by the other council members. He noted that the project's density would be at the low end of the medium density range. He said that the city would be getting affordable housing units, which is an important goal for the council. The changes that were made were good, and addressed the council's concerns. He hoped the neighborhood group would continue to work with the developer on the smaller issues. He agreed with Callison's comments that due to its proximity to bus transportation, this site was a good spot for more density. He supported the project.

Wiersum said his question during the previous discussion was why Minnetonka should treat this property any differently even though it was proposed to be de-annexed to Deephaven. He now supports the project due to the affordable housing and density consistent with past developments. This project is a dramatic improvement over current conditions and is good for the City of Minnetonka.

Wiersum moved, Thomas seconded a motion to:

- 1) Adopt Resolution No. 2004-131 approving a guide plan amendment from RL, residential low density to RM, medium density residential at 3600 County Road 101.
- 2) Adopt Ordinance No. 2004-32 rezoning from R-1, low density residential to PUD, planned unit development, and adopting a master development plan and approving final site and building plans for the Deephaven Cove project at 3600 County Road 101. Approval is subject to the following conditions:
 - a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - site plan date-stamped September 23, 2004.
 - grading and drainage plans date-stamped September 23, 2004.
 - landscaping plan date-stamped September 30, 2004.
 - preliminary plat date-stamped September 23, 2004.
 - interior building elevations date-stamped September 23, 2004 and the rear building elevations of the southerly and northerly buildings date stamped September 30, 2004.
 - sign plan date-stamped August 5, 2004.The above plans are hereby adopted as the master development plan and as final site and building plans.
 - b. The following must be completed before the city issues a grading permit or any site work is started:

- (1) Final street, utility, grading, drainage and erosion control plans must be submitted for staff approval. The properties must be built and maintained according to these staff-approved plans under both the temporary and final ponding situations. Maintenance must include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of swales or culverts that may impede the drainage of the site that was approved.
- (2) Final landscaping plans must be submitted for Minnetonka staff approval before any development work starts. Before the city approves the plan, the developer must offer to meet with neighborhood representatives from Deephaven and Minnetonka to get their input on the landscaping. The Colorado spruce trees shown on the plans must be replaced with Black Hills spruce, Austrian pine, or Norway pine trees.
- (3) A letter of credit or cash escrow for 150% of the estimated cost to comply with grading and landscaping 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.
- (4) All trees to be preserved must be fenced and erosion control measures must be installed for staff approval.
- (5) A construction management plan must be submitted for staff approval.
- (6) If required, submit evidence of the watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
- (7) An engineering/utility inspection fee.
- (8) Payment for traffic signs and installation, as required by the city engineer.
- (9) A signed agreement with the city that guarantees 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.
- c. 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. 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.
 - (2) 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.
 - (3) A copy of the recorded plat and any easements or covenants required to be recorded.
 - (4) A park dedication fee of \$2,375 per unit.
 - (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.
- d. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
- e. 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.
- f. The south half of the ponding area must remain in a natural state. The south side may not be mowed to the water's edge.
- g. Deephaven, Owner, and Developers must pay a part of Minnetonka costs to implement the downstream storm sewer improvements within Minnetonka.

including engineering, easement acquisition, and administration costs. The amount will be based on the contributing area of the Deephaven part of the site, but not to exceed \$78,475. When the final costs are tabulated, Minnetonka will bill Deephaven for the Properties' share of the costs, and Deephaven must pay within 35 days after the date of the invoice. Deephaven may choose to charge by assessment or other means the costs back to the Owner and Developers. On behalf of themselves and all future owners of the Properties, Owner and Developers waive all rights to notice and hearing for the proposed assessment and all rights to appeal assessment of this amount.

- h. Deephaven, Owner, and Developers must defend and indemnify Minnetonka from any damages or liability associated with the pond to be constructed on the Properties, either in a temporary or permanent configuration.
- i. The downstream storm sewer improvements planned by Minnetonka may impact property in Deephaven where the storm water is discharged across municipal boundaries from Minnetonka into Deephaven. Deephaven must defend and indemnify Minnetonka from all damage and liability within Deephaven's boundaries caused by these improvements.
- j. Before any development work commences on the Properties, the following must be provided to Minnetonka: copies of public drainage and utility easements covering areas of permanent and temporary ponding on the Properties, a county driveway permit, and a watershed district permit, if applicable.
- k. Conservation easements must be placed over the mature trees along the south lot lines subject to review and approval of the Minnetonka city staff. The intent of the easement is to protect those trees intended to be saved on the approved grading plan. The conservation easement must be written to allow either city to enforce the terms of the conservation easement.
- l. Five of the residential units must be sold to Minnetonka or an affordable housing entity designated by Minnetonka for no more than \$193,700 each. The plans and specifications for the five units must be reviewed and approved by Minnetonka city staff before construction begins.

- 3) Approve the Deephaven Cove preliminary plat, date-stamped September 23, 2004, subject to the following conditions:
- a. Show the following on the final plat before final plat 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 exterior lot lines
 - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer
 - (3) Drainage and utility easements over wetlands and storm water ponds, as determined by the city engineer
- b. The following items must be submitted to the city before the city releases the final plat:
- (1) An electronic CAD file of the final plat in microstation or DXF.
 - (2) 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 areas as shown on page A49 of the October 4, 2004, staff report and a drawing of the easements for the approval of the city attorney. The easements and drawing must be recorded with the final plat.
 - (c) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas, common drives, the required drainage pond and any other required drainage improvements approved by the City. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.

- the five units must be reviewed and approved by Minnetonka before construction begins.
- d. If Deephaven fails to comply or to require compliance with the requirements in paragraph 3, or if Owner or Developers fail to comply with the requirements in paragraph 3, Minnetonka may bring an action at law or in equity against one or more of Deephaven, Owner, and Developers to enforce these requirements and will be entitled to recover from those parties its costs and reasonable attorneys fees for such an action.
- e. The street on the Subject Property must remain a private street, and neither Deephaven nor Minnetonka will provide construction, maintenance, or repair to the street. All sanitary sewer and water main laterals to the west of their connection with Minnetonka utilities in the CSAH 101 right-of-way are to be owned and maintained by the city of Deephaven.
- f. Minnetonka will supply, at utility connections in CSAH 101, potable water and sanitary sewer continuously to all of the Subject Property, except for temporary interruptions for repairs and maintenance. This service will be in an amount required to service the needs of the Subject Property and in compliance with applicable state and federal regulations, subject to the following conditions:
- (1) Deephaven or Developers must pay to Minnetonka a lump sum fee of \$87,900.49 to cover trunk and lateral sewer and water fees for the Minnetonka and Deephaven properties. This fee must be paid to Minnetonka before the final execution of the annexation agreement.
 - (2) Deephaven or Developers must at its own expense construct the necessary systems in Deephaven and make the connections to the Minnetonka systems, in accordance with plans and specifications approved by the Minnetonka city engineer and public works director. Deephaven and Developers must provide as-built plans and the necessary measurement to all valves and service connections upon completion of construction. All portions of the system in Deephaven, including hydrants, pipe, and meters, must meet the construction and maintenance requirements of the Minnetonka city engineer and public works director.
 - (3) Only the Subject Property may be connected to the Minnetonka service, and the water and

- sanitary sewer services may be used on for customary residential uses consistent with the plans approved for development.
- (4) Minnetonka will at least quarterly read the meters for the Subject Property and supply to Deephaven a reading and the dollar amount charged by Minnetonka for the water usage in Deephaven. Deephaven must pay to Minnetonka the total amount of the charges within 30 days. Charges will be billed at the rate of 125% of the rate charged in Minnetonka for the same services. Deephaven will receive no deductions for billing or other administrative functions performed by it. Deephaven must require that properties served by Minnetonka have street numbers on the buildings. Minnetonka will have the authority to enter properties served by Minnetonka to read meters.
- (5) Minnetonka will not charge for sanitary sewer as long as the metropolitan agency responsible for the regional sewer system subtracts the Deephaven units from the charges that it bills to Minnetonka. If Minnetonka does not receive this credit, then it may charge for sanitary sewer in the same manner as for water.
- (6) Unless an emergency situation arises, valves may not be shut off without first notifying the Minnetonka public works department. Hydrants may not be used or operated by anyone except fire department personnel or personnel of the Deephaven or Minnetonka public works department. Minnetonka will not be responsible for, and Deephaven indemnifies Minnetonka against, all costs, including attorneys' fees, arising out of failures, freeze ups or leaks in that portion of the system located in Deephaven, unless caused by actions of Minnetonka within Minnetonka. If Minnetonka is to make repairs to the portions of the systems located in Deephaven, it shall be done on a time-and-material basis if requested by Deephaven. Minnetonka will not be responsible for settlements in the road surface over the sewer and water mains or services.
- (7) DeePhaven will abide by and enforce against the users of the Minnetonka systems in Deephaven all reasonable, nondiscriminatory

- rules and regulations imposed by Minnetonka on its own sewer and water users, including sprinkling restrictions. Minnetonka will have the right to turn off the mains for reasonable lengths of time to repair or service the mains and, if practicable, will notify affected users before the shutoff.
- (8) Minnetonka is not obligated to approve future extensions of the Minnetonka sewer or water systems within Deephaven.
- (9) If Deephaven constructs systems capable of serving the Deephaven portion of the Subject Property in the same manner as the Minnetonka systems, either party may terminate the provisions of paragraph 6 of this agreement by a written notice mailed to the other at least six months before the intended date of termination.
- (10) Deephaven agrees to indemnify and hold harmless Minnetonka, its officers and employees, against all damages and costs, including attorneys' fees, resulting from any claims or litigation arising out of this agreement, except for damages and costs related to the acts or omissions of Minnetonka, its officers or employees, in operating, maintaining or administering the Minnetonka sewer and water systems within Minnetonka's municipal boundaries.
- 5) Adopt Resolution No. 2004-132 petitioning the State of Minnesota for concurrent detachment and annexation of property currently located in the City of Minnetonka. Approval is subject to meeting the conditions of the detachment/annexation agreement.

Anderson commended the developer for not requesting an increase in the total number of units in exchange for affordable housing. She agreed with the city's approach for calculating the density, and said that the portion of the slope and the fairly large wetland will provide a visual representation of open space. She said that the concentrated open space would provide a visual amenity.

Anderson agreed with Callison's comments about the expectations for screening. She said that the project would have been more intrusive had it developed with 14 to 16 single family homes. While the view to the neighbors will change, it won't be unattractive.

All voted "yes." Motion carried.

Anderson encouraged the developer and neighbors to continue their discussions.

Anderson introduced Corrine Thomson, who was filling in for City Attorney Desyl Peterson.

14. OTHER BUSINESS:

A. Preliminary plat for a three-lot subdivision, with lot width at the right-of-way variances for two lots, at 2637 Plymouth Road for Curt Fretham.

Olson provided staff report.

The developer, Curt Fretham, 12716 Cedar Lake Road, was present to respond to questions.

Wagner asked about the possibility of the remaining home also having access through the future road extension. Fretham said that might be possible, but he did not think that would be the best route. Anderson asked if there might be a better access location for the existing house. Olson did not recall discussions about moving that driveway. When the street to the north is built, the plan anticipates that the three new homeowners will remove the long bottleneck drive and have access from the new street. Olson said that if Fretham was agreeable, that option could be considered. The existing home is not part of this plat, so there are issues about how far that idea could be pursued.

Anderson commented on the beauty of the property. She was pleased that only three homes were proposed, and said that they would fit the site well. She did not think the project would impact existing homes.

Callison moved, Wiersum seconded a motion to give preliminary approval to Fretham 2nd Addition, date-stamped June 18, 2004, with lot width at the right-of-way variances from 80 to 0 feet for Lots 2 and 3. Approval is based on the following findings:

- 1) Except for the variances, the proposal meets the required standards and ordinances for a preliminary plat.
- 2) The proposal meets the required standards for a variance, because:
 - a. There is a unique hardship to the property caused by the mature trees on the property, and the existing home is setback over 300 feet from Plymouth Road.
 - b. The variance would meet the intent of the ordinance because the applicant could develop this property

with a public street and meet all minimum zoning ordinance requirements. In doing so, over 30 mature trees would have to be removed from the site, and the existing home would have to be removed.

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

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
- a. Show the following on the final plat:
 - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven foot-wide drainage and utility easements along all other lot lines.
 - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer. This would include extending the water line to the north property line along Lots 1 and 2 for future looping of the water main.
 - b. Pay the city a park dedication fee of \$4,750.00.
 - 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 plat:
- a. An engineering/utility inspection fee.
 - b. An electronic CAD file of the final plat 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 plat.
 - (2) Conservation easements over the mature trees and extended 16.5 feet from the wetland. A drawing of the easements must be included for

the approval of the city attorney. The easements and drawing must be recorded with the final plat.

- (3) A 34-foot wide private driveway easement between the street right of way extended to the north lot line between Lots 1 and 2, to allow for later connection to a public street. The easement must state the maintenance responsibilities of each owner. The minimum driveway width must be as required by the fire marshal. The easement must include language regarding the requirement to connect to the street to the north when and if it is constructed, and the removal of the existing driveway when and if the street to the north is constructed.
- (4) A private utility easement across Lots 1 and 3 to provide services to Lots 2 and 3.
- (5) Submit a special assessment waiver, in recordable form acceptable to the city attorney, agreeing to pay 100% of the cost for removing and restoring the existing driveway when the public street to the north is constructed, and the cost to extend the public street 90 feet to the south. The total costs not to exceed 125% of the city's current estimate (\$2,000 for the driveway and \$13,500 for the street), which will be increased annually for inflation. The waiver will bind all parcels in the subdivision, and the special assessments will be spread equally on each of them.
- (6) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions 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.

- 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. The installation and maintenance of a temporary rock driveway, erosion control, tree protection, and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
 - c. A copy of the recorded plat and any easements or covenants required to be recorded.
 - d. A hookup fee for sanitary sewer and water.
 - e. The minimum low floor elevation must be at least 992.0 f. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
 - g. The homes must be constructed in substantial compliance with the building pad locations shown on the grading plans date stamped June 18, 2004. That would include the garage opening on Lot 1 facing east, and the garage on Lot 2 facing north or west.
 - h. The two new homes must be constructed with an automatic fire sprinkler system.
- 4) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
 - 5) 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.
 - 6) Before the city makes a final inspection of the homes on Lots 2 or 3, the drive must be paved from the street to the houses on these lots. A driveway setback of at least seven feet must be maintained from the side lot lines. The driveway must be constructed per the recommendation of the city engineer, including construction of a bituminous curb along the south side of the driveway to direct drainage towards Plymouth Road. The city may approve a time extension if weather prevents paving of the drive.
 - 7) All three homes must connect to the public street along the north lot line if and when the street has been constructed.
 - 8) 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.

B. Review of the city's Emergency Management Plan.

Fire Chief Joe Wallin provided an overview of the city's Emergency Management Plan. When the plan was originally developed during the Cold War, it was based on single hazard plans, with cookbook responses to events such as a nuclear holocaust. After the Cold War ended, there was a realization that there were far more threats to society. Emergency plans, including Minnetonka's, became all hazard plans. There are two basic parts to the plans: the basic plan with annexes and the resource materials manual.

The purpose of the basic plan is to maximize the protection of life and property, ensure the continuity of government, sustain survivors, and repair essential facilities and utilities. There are four major types of emergencies or disasters: natural, technological, civil emergencies and national security events. An integral part of the plan is how the city would interact with the county, state and federal governments. Wallin then reviewed the annexes:

- A – Warning and notification
- B – Direction and control
- C – Emergency public information
- D – Search and rescue
- E – Health and medical
- F – Security, evacuation and traffic control
- G – Fire protection
- H – Damage assessment
- I – Sheltering and congregate care
- J – Debris management
- K – Utilities restoration and health issues
- L – Radiological, hazardous materials and weapons of mass destruction
- M – Incident/unified command
- N – Emergency operations plan checklists

The resource manual provides staff home addresses and phone numbers, ordinances regarding emergency management, emergency repair references, and the mutual aid agreements.

Wallin outlined the council's role in the emergency plan:

- Policy direction to staff
- Mayor may act as public information officer
- Invoking a state of emergency.

A state of emergency may be declared when an event endangers life and property and Minnetonka's resources are inadequate. A state of emergency may also be declared by the state or federal

government. It may be necessary to declare a state of emergency to obtain federal funding.

Wallin noted that there is now a closer working relationship with the state and federal offices of homeland security. The state has been diligent in getting information to the local level, and helping local governments understand their roles and responsibilities with training. Minnetonka has improved its infrastructures—the water system has not only been improved, but security for the system has been upgraded as well. Police and fire departments are receiving training regarding weapons of mass destruction, and this has aided special police units. There has been additional training on police incident command. The biggest change has been in the area of mutual aid agreements. The issue is not so much how to handle a large fire, but how one city can help another city if that city is no longer able to respond.

Anderson acknowledged Police Chief Joy Rikala, who was present. She noted that the police staff plays a large role in emergency preparedness. Anderson said that Minnetonka is noticed throughout the country because of its mutual aid agreements and partnerships with other local police and fire departments, and other levels of government. Anderson thanked our police and fire staff for their willingness to be leaders in forming those partnerships. Minnetonka has also been a leader in the area of training.

Anderson noted that there is now a national incident management system (NIMS), and every local government will be required to adopt and implement new standards within two years. Compliance will be required in order to receive any federal funding for emergency preparedness beginning in 2007. She asked if that would cause any problems for Minnetonka. Wallin said that Minnetonka is waiting for the state to adopt the new standards first. Cities are currently required by state statute to follow the state's standards. The state needs to match its plan with the federal plan, and then provide training. Once that occurs, Minnetonka will not have a problem complying with the federal standards.

Anderson commended and thanked our department for being more prepared and capable than they were three years ago. She noted that people feel safe in the Midwest, but are still susceptible to floods and tornadoes. The city's emergency plan will serve it in any type of emergency.

Schneider asked if Wallin felt there would be significant budgetary pressures due to the training and infrastructure requirements. Wallin did not think those pressures would increase. Historically, there has not been much monetary assistance for emergency

preparedness, and the responsibility has fallen to local governments. The change he has seen is that more training is being provided. Training poses some problem for Minnetonka because it uses paid-on-call firefighters, who have some difficulty squeezing the training into their schedules. So far, the department has not had significant problems.

Schneider asked if the extra training demands could affect recruitment and retention. Wallin said that has not yet occurred. The department is currently hiring, and has more applicants than openings. However, it is an area to watch.

Anderson said that people in the community may not be aware that Minnetonka uses paid-on-call firefighters, who used to be called volunteer firefighters. This system is very cost-effective and has not harmed the fire service in anyway—Minnetonka continues to have one of the highest ratings in the state. She thanked Wallin for sustaining that system and noted its importance to the well-being of the city.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Wiersum moved, Thomas seconded a motion to adjourn the meeting at 8:43 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk