

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, FEBRUARY 14, 2005**

**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, Jan Callison, Al Thomas, Tony Wagner, Brad Wiersum, and Karen Anderson were present. Council member Bob Ellingson arrived at 6:36 p.m., just prior to the consent agenda.

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou reviewed the addendum. A confidential liquor license investigative report was provided for item #13A. An email was provided for item #14B. A revised condition was provided for item #14C.

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

**5. APPROVAL OF MINUTES: January 24, 2005 regular council meeting.**

Callison moved, Thomas seconded a motion to approve the minutes of the January 24, 2005 Minnetonka City Council meeting as submitted. All voted "yes." Motion carried.

**6. SPECIAL MATTERS: None.**

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

Anderson noted that more than 500 people attended the February 13 Kids Fest. Attendance was down from last year due to the rain.

City Manager John Gunyou reviewed the upcoming council meeting and holiday schedule.

Callison noted that the governor released his budget, and asked how it would impact the city's budget. Gunyou provided background information about the state's market value credit program, and noted that Governor Pawlenty proposed to extend the provision that would require cities to pay

for that program for another two years. If adopted, the extension will cost Minnetonka about \$800,000 annually, but the city allowed for that possible shortfall when the 2005 budget was adopted so city services will not have to be cut this year.

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

No one appeared.

**9. BIDS AND PURCHASES:** None.

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

**A. Claims for council authorization – February 14, 2005.**

Wiersum moved, Wagner seconded a motion to approve the February 14, 2005 claims list, including checks numbered 187200 through 187624, totaling \$2,673,005.92. All voted “yes.” Motion carried.

**B. Amendment No. 1 to Antenna Lease Agreement with Verizon Wireless for the Ridgedale Water Tower.**

Wiersum moved, Wagner seconded a motion to approve Amendment No. 1 to Antenna Lease Agreement with Verizon Wireless for the Ridgedale Water Tower. All voted “yes.” Motion carried.

**C. Resolution receiving feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the 2005 Pavement Rehabilitation Program.**

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2005-005 receiving feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the 2005 Pavement Rehabilitation Program, Project No. 4425. All voted “yes.” Motion carried.

**D. Resolution supporting a grant application for Hennepin County Transit Oriented Development funds.**

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2005-006 supporting a grant application for Hennepin County Transit Oriented Development funds. All voted “yes.” Motion carried.

- E. Addendum to the city manager's employment agreement regarding life insurance.**

Wiersum moved, Wagner seconded a motion to approve the Third Addendum to the Employment Agreement for the City Manager concerning life insurance. All voted "yes." Motion carried.

- F. Resolution authorizing request for 2005 – 2007 Hennepin County Recycling Grant and authorizing the City Manager to execute the 2005 - 2007 Recycling Grant Agreement with Hennepin County.**

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2005-007 authorizing the request for the 2005 - 2007 Hennepin County Recycling Grant and authorizing the City Manager to execute the 2005-2007 Recycling Grant Agreement with Hennepin County. All voted "yes." Motion carried.

- G. Resolution authorizing the police department to enter into a grant agreement with the Hennepin County Emergency Preparedness Division.**

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2005-008 authorizing execution of a grant agreement with Hennepin County Emergency Preparedness Division. All voted "yes." Motion carried.

- H. Approval of a purchase agreement with Mr. and Mrs. Gregory Horn for the Nine Mile Creek Watershed District Storm Water Quality Improvement Project No. 4653.**

Wiersum moved, Wagner seconded a motion to approve a purchase agreement with Mr. and Mrs. Gregory Horn for the Nine Mile Creek Watershed District Storm Water Quality Improvement Project No. 4653. All voted "yes." Motion carried.

- I. Resolution approving a DNR Local Trail Connections Grant application for funding to assist in the installation of the boardwalk and trail at the Minnehaha Creek Headwater's Park.**

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2005-009 approving a local trail connections grant application to the Minnesota Department of Natural Resources. All voted "yes." Motion carried.

- J. Five-year extension to post temporary signs advertising multiple church events at 15915 Excelsior Boulevard for All Saints Lutheran Church.**

Wiersum moved, Wagner seconded a motion to approve a five-year extension to post temporary signs advertising multiple church events at 15915 Excelsior Boulevard for All Saints Lutheran Church. All voted "yes." Motion carried.

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

**12. INTRODUCTION OF ORDINANCES:**

- A. An ordinance amending Sections 615.050(2) and 710.005(33) regarding licensing of sexually oriented businesses.**

City Attorney Desyl Peterson provided the staff report for this item.

Thomas moved, Wiersum seconded a motion to introduce an ordinance amending Sections 615.050(2) and 710.005(33) regarding licensing of sexually oriented businesses. All voted "yes." Motion carried.

**13. PUBLIC HEARINGS:**

- A. Continued public hearing to consider an application by Kattly, Inc., for an off-sale intoxicating liquor license for Sundial Wine and Spirits, 5757 Sanibel Drive.**

Anderson noted that the public hearing for this item was opened on January 3. The council reviewed the report in the addendum. Gunyou provided the staff report. Anderson invited public comment. There were no comments, and the hearing was closed.

Callison moved, Thomas seconded a motion to approve an off-sale intoxicating liquor license for Sundial Wine and Spirits, 5757 Sanibel Drive. All voted "yes." Motion carried.

**14. OTHER BUSINESS:**

- A. Appeal of an administrative decision to issue an occupancy permit for a group home at 1708 Pondview Terrace for English Rose Suites.**

Planning Director Geoff Olson provided the staff report.

In response to Callison's question, Olson said that there are no other group homes within a quarter mile of the subject facility. The

city is only advised of group homes that will house five or six residents, because those facilities require a license from our environmental health department. The Minnesota Department of Health provides a list of locations on its Web site.

Anderson noted that this item was an appeal of a planning commission decision, and invited public comment.

Adrienne Tietz, 1709 Pondview Terrace, said that the facility would be a commercial business that will generate \$600,000 in revenue. Even if the council granted this request, she would like the city to further study this issue to protect other neighborhoods from this type of commercial use.

Peterson said that Minnetonka is a political subdivision of the state. The state can tell cities what they can and cannot do. State law requires cities to allow this type of facility and treat it just the same as any other single-family residence.

Anderson noted that the city council would generally not deal with this type of issue. Peterson explained that the council was involved because some of the neighbors requested an interpretation of the city's ordinance to say that this use would not be permitted. Peterson did not support that interpretation.

Tietz said it would be good public policy for the city to look at this issue. The neighbors believe that the city could have zoning standards.

Peterson said that there is case law that states cities cannot impose any conditions on group homes that could not be imposed on single-family homes.

Anderson said that the city's standards for commercial uses in residential zones could not apply. Peterson agreed, and said that this use must be treated like a single-family home.

Eric Galatz, the attorney for the applicant, said that their position was awkward. They were not asking for anything unusual, but had to defend themselves. He agreed with Peterson's position. He said that the applicant is aware that they are subject to the same regulations as other neighbors - noise, signs and parking. He said that there was no law to argue because the issue was very straightforward.

Callison asked for additional information regarding staffing and parking for the facility.

Brent Longtin, spoke as co-owner and co-operator. He noted that they have operated four such homes in Edina since 1997, and they provide care for older adults with Alzheimer's. The applicant's offers to meet with the neighbors have been declined. Longtin is a nurse practitioner who has 21 years experience in health. State law regulates what they do, and the state conducts surprise surveys. A February state survey of one of their Edina facilities included observations of physical safety, and interviews with families and caregivers. The survey indicated no deficiencies, 100 percent compliance, and said that facility provided a high standard of care.

Longtin said that the neighbors are concerned that lighting will be changed. They have no plans to change it or to provide other signage beyond what is already in place. Parking will comply with the city's ordinances. Longtin explained how staff shift changes would occur. Their caregiver to resident ratio of 1:3 is the highest standard in the nation. He said that residents have a choice to go to a nursing home or a facility such as theirs, and he was thankful to live in a state that supports this option.

Callison asked if there would be delivery vehicles. Longtin said that Simon Delivers will come once a week, but they would be willing to have them come every other week if necessary. A massage therapist may visit once a week. They do their own laundry.

Wiersum asked about staff training. Longtin said they provide Pathways for Growing and Learning Program training for their staff. They look at the staff's strengths and weaknesses to select the most appropriate training path. He also provided information about training requirements.

Wiersum asked if there would be licensed caregivers in the home at all times. Longtin said that there would be one home health aide for every three residents during the day, and one RN or LPN who would stay awake all night. Ucare Ever Care will visit the facility every four to six weeks so the residents don't have to go through the stress of leaving their home to visit a doctor.

In response to Anderson's question, Longtin said that the February survey included one full day in each of their facilities plus a review of their administrative policies. Anderson said that it was an amazing record to have no write-ups. She asked about the average age of the residents. Longtin said that was 85 years old. Out of 24 residents, only two are men, and this reflects the fact that men generally don't live as long as women. They do not serve Alzheimer patients with other mental disorders.

Longtin said that their last surprise survey was in 1998 or 1999. They requested that the Attorney General do more surveys because they wanted to show that they are doing good things. The Minnesota Department of Health recently hired more nurses to do more surveys.

John Rappaport, 1545 June Avenue So., Golden Valley, spoke on behalf of his mother who would like to move into the new facility. She will turn 81 tomorrow, and has had Alzheimer's for eight or nine years. She has been in her own home receiving 24/7 care. He has done a lot of research and concluded that English Rose Suites offered the best care. He said that we are privileged to have such a facility in the state. He was surprised to hear about the appeal, and said it would be a hardship if the application were not approved. He hoped that the council would reject the appeal.

Callison said that the issue is land use. Our ordinance is very straightforward, these types of facilities are permitted and must abide by the same rules. She acknowledged that the neighbors' concerns were legitimate, but pointed out that this isn't the first such facility in Minnetonka and there have not been problems with the others. She said that the city should not legislate out of fear. She hoped that the neighbors concerns would be allayed when they see the operation of the facility.

Schneider agreed with Callison. The debate is on local control versus legislative authority. This is an appropriate use of the state's powers. He was very supportive of this statewide legislation and did not wish to play games with it. The city has had a number of experiences with these types of facilities. There have been initial fears, but often the neighbors have later apologized for over-reacting. The city is obligated to facilitate these types of uses. He apologized to English Rose Suites for having to go through this process.

Thomas said he would support upholding the planning commission's decision. State law and the city's ordinance are very clear. The history with neighborhoods has been good. He did not support referring the issue back to the city attorney or the planning commission. He understood the neighbors' reluctance, but said that state law and our ordinance are both very clear.

Thomas moved, Wiersum seconded a motion to:

- 1) Uphold the planning commissions decision to deny the appeal and uphold staff's decision that the proposed residential care facility is a permitted use in the R-1 district.
- 2) Decline to undertake a study of commercial uses in residential areas or to establish a moratorium on such uses

because the city already has sufficient regulations governing commercial uses in residential areas and because the city cannot impose regulations that specifically target residential care facilities that are allowed by state law.

Anderson said that she would support the motion. She appreciated the information she received from the adjoining neighborhood. She said that much of the information could not be considered. She said that a moratorium would be a solution looking for a problem.

Anderson noted that there are problem residences in this city, but not from this type of facility. If this residence becomes problematic, the city could follow the same avenues that are used for other problem residences. Anderson thanked English Rose Suites for providing information that it did not have to supply. She said that this has been an educational experience, and appreciated the background information staff provided for the council to make its decision.

Ellingson thanked the applicant for coming to the community. He said that even if the city had a choice, he would welcome the facility.

Wiersum said that when we live in neighborhoods, we don't get to pick our neighbors. He has had neighbors he's liked, and others he's liked less. The state allows people to live with dignity in the community. English Rose Suites will be a great neighbor providing a great service.

All voted "yes." Motion carried.

**B. Appeal of the planning commission's denial of a variance to relocate a driveway at 6043 Fairwood Circle for Maria Boley.**

Olson provided the staff report for this item.

Patrick Boley, 879 Cherry Lane, Mendota Heights, provided a presentation on behalf of his mother, Maria Boley. The keys points of that presentation were:

- The planning commission did not unanimously reject his mother's variance request—two voted in favor of it.
- In 1998, the city granted a permit to move the driveway and only pulled it after a neighbor objected.
- In 1999, Ms. Boley applied for a permit to move the garage door and driveway. Staff was open to the possibility, and it was never suggested that if she moved the garage door, the request would be denied. Because of the hardship this created, they would not have moved the door if that had been known.

- Mr. Boley provided a review of the reasons he felt presented a hardship, and the problems caused by the original driveway.
- Mr. Boley reviewed the engineering firm's study, and why Option A is the most reasonable use. He also explained why Option B would not be a reasonable alternative.
- Mr. Boley reviewed the undue hardship standard.
- Mr. Boley said that the city has 380 cul-de-sacs that have non-conforming turnarounds. He provided photos of some of the cul-de-sacs they visited.
- Mr. Boley reviewed Northwestern College v. City of Arden Hills.
- Mr. Boley said that the reasons for rejecting the variance lacked substance. He said that Ms. Boley had not created the hardship so the city had no basis to deny her request.

City Engineer Lee Gustafson said that the first permit was requested by Ms. Boley to move the driveway further from the street corner. It was granted with the understanding that the driveway would not be relocated along the cul-de-sac. When the 1998 permit was pulled, it was clear that Ms. Boley went beyond the intent of the permit. The permit was not pulled because of neighborhood concerns.

Peterson noted Mr. Boley's focus on the case law cited above, and on other cul-de-sacs in the city. She noted that there have been several other cases since then that have clarified that comparisons can be made only with other applications that are contemporaneous in time. No information was provided about the facts or timing of Mr. Boley's cul-de-sac examples. The courts have generally interpreted "contemporaneous" to be a one-year period.

Callison asked why the city restricts the number of openings on the bulbs of cul-de-sacs. Gustafson said that it makes maintenance, especially snowplowing, easier. The city limits those openings whenever it can to provide additional snow storage area, and to avoid having to remove snow from cul-de-sacs. This restriction minimizes the city's costs and makes plowing easier for the drivers.

Barb Marks, 6029 Fairwood Circle, said that she could not believe this issue was still being discussed seven years later. She said that a decision needed to be made. She hoped that the city council would be as understanding of the rules in this case as it was regarding the previous item.

Mr. Boley said that there are cul-de-sacs throughout the city, and there are many other considerations that are important. As an

attorney, he disagreed with Peterson's interpretation of the case law.

Anderson said that it would not be useful to discuss that issue in detail. She understood that he disagreed with Peterson's interpretation, and said this was not the first time the council had heard her opinion.

Callison said that this cul-de-sac looks almost identical to the cul-de-sac across from her home, so she could easily visualize the situation and the options. She said that the issue before the council was not whether neighbors objected to the variance, but rather, how the variance standards should be applied. Staff said that two of the four variance standards are not met — there is no peculiar physical condition, and public safety would be affected. Callison pointed out two other alternatives that would comply with the ordinance and not require a variance. The variance standards were not met.

Schneider said he could make an argument for either side because of the orientation of the house. His concern was about the right outcome, and also honoring the ordinance. He said that the ordinance was probably overly prescriptive. The best solution would be to have more latitude in the ordinance. If the house were being built new, he would agree that the house should be straightened out and the driveway should be on Fairwood Drive. However, this is not a new house, and the existing driveway would require a variance. There is no intent to circumvent the ordinance, but there has been miscommunication and ill will. He suggested letting the driveway come out onto the cul-de-sac, but noted that the ordinance restricts this option.

Ellingson noted that 50 of the 112 cul-de-sacs in Mr. Boley's examples were on the bulbs of cul-de-sacs. He asked how this had occurred. Anderson noted that in many cases there was no other choice for the driveway. The ordinance restricts it when there is a choice. Gustafson said that staff looks at safety and maintenance issues, and tries to arrive at the best solution.

Wiersum was looking for the right answer. He said that the new location would be better than the old one. Option A provided less hardsurface than Option B. Option B meets the needs of the ordinance, but is not practical. Option A saves trees, and the council has granted variances in the past to save trees. Based on aesthetics, Wiersum thought the end load garage looked better, and made the home look nicer. Option B is more expensive. Wiersum also noted that the city does not grant variances lightly. Although there could be arguments regarding the circumstances

under which the garage door was changed, he does not like it when a resident's actions handcuff the city. Options B and C meet the ordinance. He said that the city was in a tough position on this issue, and this could be viewed as encouraging people to force the city to do things it wouldn't normally do.

Wagner agreed that this was a complex issue. He suggested taking the economics out of it, and balancing the decision with common sense. He saw Options C or A as the only options he could support. He noted that 60 out of 380 existing cul-de-sacs have a non-conforming corner lot with access onto the bulb. Option A would reduce the hard surface and protect trees. He noted that the homeowner has driven over the grass for a long time, and did not think it made sense to keep the existing driveway. He would support overturning the planning commission's decision.

Anderson noted that the city could dictate the driveway location, but asked whether the city could prevent a homeowner from driving wherever they wanted.

Peterson said that the city could regulate where people have access to the street, although the city cannot deny access. She said that the city could prohibit people from driving over grass and the curb because it could cause structural damage. The city has the right to prescribe locations for curb cuts.

Ellingson agreed with Wagner to take the economics and personality out of the mix. If there had been an innocent buyer, the city might have been more sympathetic because it was an existing situation they did not create.

Thomas said that he usually is very supportive of the city's ordinances. He noted that two of the four standards were met. When you look at it, it makes sense where the driveway should go. However, he was reluctant to grant a variance.

Callison asked what the message would be if the variance were granted. She noted that the garage door location now dictates the driveway location. She said that if the ordinance is bad, it should be changed.

Anderson noted that there were other situations where properties had two driveways. Gustafson said that he did know how many, but said that staff prefers that there not be two driveways in this case.

Anderson was aware of semi-circular driveways with another driveway to access the garage. She asked how they came to be and if the city's ordinances limit them. Gustafson said that the

ordinance does limit them, but each specific situation would need to be known.

Anderson asked if granting this variance would open the city to similar requests. Peterson said that staff was not aware of any pent up demand for such variances. She said that one driveway curb cut is allowed per single-family unit. Two cuts are allowed if the frontage is greater than 110 feet, or if the property has frontage on two streets.

Anderson said that common sense had been missing from the beginning, including moving the garage door before the driveway permit was issued. She felt blackmailed. She didn't feel that she had good information about the future impacts of either decision. She did not think the ordinance needed major changes. Anderson always tends to uphold the city ordinance. She leaned toward supporting the ordinance, but said that the decision would be difficult.

Schneider moved, Wagner seconded a motion to grant a variance to Maria Boley for a driveway described in Option A.

Schneider said that the rationale for his position was that he did not think the applicant had any intent to circumvent the ordinance when she moved the garage door. He saw three hardships: 1) the home's orientation and location, 2) the timing of the construction of the home, and 3) the possibility of saving trees. His main rationale, which would limit precedent, was removing a non-conforming, unsafe, existing driveway.

Anderson asked that the motion include removal of the existing driveway by a date certain. Schneider agreed to that amendment and said that he would leave the date up to staff. Gustafson suggested that the old driveway be removed prior to the issuance of the new permit, and the maker and seconder of the motion agreed to a friendly amendment to the motion that made it contingent on removal of the old driveway before issuance of the new driveway permit.

Schneider referred to a rendering that showed the driveway would need to curve a bit due to the lot line. Peterson asked that the rendering be part of the record. Schneider said that it was in the packet.

Callison said that she would not support the motion. She had no way of knowing the applicant's intent. Although the existing driveway is unsafe, there are other options consistent with the ordinance.

Wagner supported Schneider's rationale. His gave less weight to the intent and more on reducing the hard surface.

Anderson asked about the voting requirement to grant the variance. Peterson said that the variance is to driveway standards, and is not part of the zoning ordinance. There is no reference regarding appeals to the city council. She concluded it would take four votes to overturn the planning commission's decision.

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

**C. Applications to remodel the existing Chi Chi's restaurant into an office and build a new office building at 15550 Wayzata Boulevard for Mohagan/Hansen Architectural Group.**

Olson provided the staff report for this item. Callison noted the revised condition in the addendum, which Olson also reviewed.

Anderson noted that the existing parking lot would be a lot smaller with the second building. She was disappointed that trees would be removed, and did not see any internal trees planned for the site. Olson said that a couple of the trees in the existing lot would remain, and that a few would be removed. Anderson said that it looked like one in six of the internal trees would remain.

Todd Mohagan, 1415 E. Wayzata Boulevard, spoke as the applicant. He said that they were struggling with the number of parking spaces. They could work with staff to try for one tree per island if they eliminated four spaces. There will be four islands between Buildings A and B. There will be low shrubbery.

Schneider said that this site has been an eyesore for many years, and this project will be a huge improvement. A few more trees would be warranted. He suggested that the landscaping focus on the entryway.

Schneider moved, Wagner seconded a motion to:

- 1) Adopt Ordinance No. 2005-03 approving the master development plan and final site and building plans for the Twelve Oaks Center 2nd Addition, with a building setback variance from 50 to 25 feet. This ordinance is based on the following findings:
  - a. The proposal would meet the required standards and ordinances for a site and building plan approval.

- b. The proposal would meet the required standards for a setback variance, because:
- (1) There is a unique hardship to the property caused by proximity of the new building to the old building and the need for a driveway between the two buildings; and
  - (2) The variance would meet the intent of the ordinance because the new building would contain setbacks similar to other structures in the area, including the existing building on the lot and the adjacent building to the west.
- c. The proposal meets the required standards for a reduction in lot area, because:
- (1) There is no reasonable future possibility of assembling land parcels into an aggregate of three acres;
  - (2) The current lot size is only .3 of an acre less than the required three acres; and
  - (3) The proposed subdivision is for internal lot lines to allow individual ownership of the two buildings.

Approval of the master development plan and final site and building plans 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 December 17, 2004
  - Grading plan date-stamped December 17, 2004
  - Landscaping plan date-stamped December 17, 2004
  - Illumination plan date-stamped December 17, 2004
  - Building elevations date-stamped December 17, 2004
  - Utility plans date-stamped December 17, 2004
- b. Before starting any site work or obtaining a grading permit, complete the following work:
- (1) 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 by the city's environmental resources coordinator.
  - (2) Submit final site, grading, drainage, utility, and erosion control plans for staff approval. The applicant must work with the city engineer to channel runoff from the entrance driveway onsite toward the ponding area. The easterly four parking spaces on the southerly lot must be removed and included as green space.



- (1) An engineering/utility inspection fee.
- (2) Payment for traffic signs and installation, as required by the city engineer.
- (3) An electronic CAD file of the final plat in microstation or DXF on a CD disk.
- (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) A private driveway and parking easement between the two lots. The easement must state the maintenance responsibilities of each owner, and allow shared parking and access for each lot.
  - c) A private utility easement having sufficient width to cover utilities across Parcel B for the benefit of Parcel A.
  - d) 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.
  - e) The applicant must enter into an agreement with the property owner to the west for shared maintenance  
These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.
- c. Any other requirements included with final plat approval.
- d. 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.

**D. Ordinance adopting electric franchise fees.**

Gustafson provided the staff report for this item.

Wagner asked if there would be any negative impacts from doing all of these projects in 2005. Gustafson said that there are many projects scheduled in 2005 and 2006. Paying Xcel for the work is

typically delayed by a year, and the finance director feels that the city can balance the shortfalls.

Gunyou said that the city manages the appropriate balances over the longer term, and that these projects will be scheduled with major road construction projects.

Callison asked if there would be a danger that a future council might decide to use these funds for general fund expenditures. Gunyou said that the franchise fee couldn't be used for general fund purposes, just for underground and street lighting. If there is any excess balance, the fees have to be lowered.

Peterson said that to use the proceeds for the general fund, the franchise fee would have to apply to all energy franchises. This fee only applies to electric franchises and can be used only for the betterment of electrical facilities.

Gunyou noted that the TwinWest Chamber of Commerce is concerned about franchise fees for general use, but that they were supportive of franchise fees for these specific uses.

Wagner asked if the franchise fee would expire when the funds have been expended for specific projects. Gunyou said that no sunset date is built into the ordinance, but there are limits on the fund balance and restrictions on the types of expenses.

Schneider said that it would only be as good as the franchise agreement in place. The general intent is to fund undergrounding lines. He asked if this fee could be used if upgrades were desired for a new substation. Peterson said that it could, because that would be for betterment of electrical facilities.

Wagner asked if the funding could be used for residential street projects. Gunyou said that it could, but the previous council direction was to only use the funds on major roadways.

Wiersum moved, Callison seconded a motion to adopt Ordinance No. 2005-04 adopting an electric franchise fee. All voted "yes." Motion carried.

**E. Ordinance concerning temporary, outdoor advertising signs and sign permits.**

Olson provided an overview of the ordinance amendments.

Ellingson understood the need to limit the garage sale sign provision to weekends. He asked if the signs were advertising a

religious event a month in advance, if the signs could be left up during the week. Gunyou said that the city could not distinguish between types of events, so they would have to be treated as any other sign, like garage sales. Staff would work with organizers to make sure they understood the ordinance requirements.

Schneider agreed with that rationale. He asked how Parade of Homes directional signs would be treated. Olson said that staff has talked with the builder's association, and the signs would need to be taken down during the week. This did not seem to be a concern to the association.

Callison said that sign restrictions are difficult. She regretted this loosening of the ordinance, noting that we would see more signs. She agreed with Peterson that the city couldn't distinguish between types of signs.

Wagner noted that a separate scoreboard ordinance would come to the city council later. Gunyou said that ordinance has been referred to the planning commission.

Callison moved, Thomas seconded a motion to adopt Ordinance No. 2005-05 amending City Code Section 300.30 regarding temporary, outdoor advertising signs and sign permits.

Ellingson was concerned about being viewed as restricting religious content if the signs advertised an outside event. Peterson said that the city could distinguish between advertising and religious views.

All voted "yes." Motion carried.

## **15. APPOINTMENTS and REAPPOINTMENTS:**

### **A. Appointments to the park board and planning commission.**

Anderson moved, Schneider seconded a motion to approve the following appointments:

- Jahn Anderson, 4001 Skyview Rd., to the park board to serve a two-year term, effective February 14, 2005 and expiring on January 31, 2007.
- Denny Lambert, 13111 Homestead Ln., to the park board to serve a two-year term, effective February 14, 2005 and expiring on January 31, 2007.
- John Cheleen, 17482 Sanctuary Dr., to the planning commission to serve a two-year term, effective February 14, 2005 and expiring on January 31, 2007.

All voted "yes." Motion carried.

**B. Appointments to Hennepin County's Southwest Corridor Light Rail Transit Policy Advisory Committee.**

Anderson moved, Wiersum seconded a motion to appoint Councilmember Janis Callison as representative and Luann Tolliver as alternate for the Southwest Corridor LRT Policy Advisory Committee. All voted "yes." Motion carried.

**16. ADJOURNMENT.**

Thomas moved, Wiersum seconded a motion to adjourn the meeting at 9:40 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk