

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, SEPTEMBER 26, 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, Bob Ellingson, Brad Wiersum, and Karen Anderson were present.

4. APPROVAL OF AGENDA.

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

5. APPROVAL OF MINUTES:

A. September 12, 2005 regular council meeting.

Wagner moved, Thomas seconded a motion to approve the minutes of the September 12, 2005 Minnetonka City Council meeting. All voted "yes." Motion carried.

B. September 15, 2005 special council meeting.

Callison moved, Wiersum seconded a motion to approve the minutes of the September 15, 2005 Special Minnetonka City Council meeting. Schneider, Callison, Thomas, and Wiersum voted "yes." Wagner, Ellingson and Anderson abstained. Motion carried.

6. SPECIAL MATTERS: None.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

City Manager John Gunyou reported on the schedule for upcoming council meetings.

Callison distributed flyers to the other council members about an October 9, 2005 Minnetonka School District Town Hall meeting regarding a program to address illegal substance abuse in the district.

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

Keith Weigel, 14209 Glen Lake Drive, said that in February, he and his wife were the first people to move into the Glen Lake Townhomes. They love the area, but are concerned about the redevelopment proposal for Glen Lake. They did not anticipate condominiums going in based on the council's action last year. Weigel asked that the "Glen Lake Task Force" reconvene so the neighbors could discuss the plans with the city council.

Anderson said that the city council had reviewed concept plans and given a general go ahead, but there had been no council approval of specific portions of the plans except for those related to the grocery store. There will be ample opportunities for public input through the planning commission's public hearing.

Gunyou noted that there was never a formal task force convened by the city. Residents in the Glen Lake neighborhood were invited to participate in a planning study for the area undertaken in anticipation of possible future development. That effort had a master planning focus, rather than considering a specific development proposal. There is now a developer who has proposed a multi-phased project. Gunyou said that these initial stages have included several public meetings, as well as various briefings in the Glen Lake area. If and when a specific proposal is received, there will be an extensive public involvement process. He could not see a purpose for a task force at this point.

Anderson said that the city is held to statutory timing requirements once a specific project request is received. The city encourages developers to meet with neighbors ahead of time. She asked what might help these neighbors to be aware of the specific proposals. She noted that staff would be glad to provide information for the neighbors if they held meetings.

Gunyou suggested that Weigel give his contact information to City Planner Geoff Olson, so that he could be placed on the email mailing list.

Schneider said that during a typical rezoning process, the city would receive neighborhood input from individuals or through organized efforts. The neighbors may want to get together on their own to review the plans and discuss them. Cohesive neighborhood feedback about neighborhood concerns fits into the process.

Weigel said that the city's Web site provided a link to a report that he thought came from a task force. He will ask to be added to the mailing list.

Anderson said that city staff could attend neighborhood meetings, but until the city gets a definite proposal, it would be difficult for the council to react or speculate.

Weigel said that the newspaper coverage seemed to indicate there was a specific project. It said that the developer had met with staff and the council. Staff had directed Weigel to the Web site.

Anderson said that the city council, planning commission and EDA have had several public meetings to look at concepts for Glen Lake. There were about 30 people from the Glen Lake area in attendance.

Weigel said that he did not attend that meeting, and had not been notified of it. He only heard rumors at his barber shop.

Anderson encouraged him to get on the email notice list.

9. BIDS AND PURCHASES:

A. Award bid to contractor for relocating public safety radio equipment.

Gunyou provided the staff report.

Thomas asked if staff was comfortable that the bid was accurate because only one bid was received.

Gunyou said that the city can legally accept a sole bid. In this case, staff is familiar with the contractor's past work, and has checked the pricing to make sure it was fair.

Captain Mark Raquet said that Ancom has been the sole radio service contractor for the city for more than 10 years. A consultant reviewed the bid line by line, and made some corrections. He was very comfortable with Ancom's ability to provide the service.

In response to Callison's question, Raquet said that this project was budgeted in the 2004-2005 Capital Improvement Program and this project fell within that budget. Gunyou added that the police department has also successfully obtained grant funds to help with the project.

Schneider moved, Thomas seconded a motion to award the bid for relocation the public safety radio equipment to the sole bidder, ANCOM Communications, Inc. with a bid of \$153,711.20. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Claims for council authorization – September 26, 2005.**

Wiersum moved, Callison seconded a motion to approve the September 26, 2005 claims list, including checks numbered 191887 through 192176, totaling \$3,527,775.23. All voted “yes.” Motion carried.

B. Preliminary plat for a two-lot subdivision at 4701 Highland Road for Eric Bull.

This item was pulled from the consent agenda by Anderson. During her site visit, she noted that the driveway to the existing property is difficult, and this is a blind driveway. Trimming the brush could help. The existing site has quite a steep slope. There was a discrepancy in the council packet. At one point, the report said that there would be a shared driveway, but in the recommended council action, it indicates that staff must approve the driveway. She asked for more information about access, and expressed concern about safety. She did not want to create another unsafe driveway. She also asked why the steep slope ordinance would not apply.

Olson said that the original planning commission report called for a common driveway. The applicant later said she no longer wanted a shared driveway due to concerns about its affect on the title to the property. The change was made at the planning commission, and condition #7 as proposed is correct. The driveway location will be determined by the city engineer.

As to the steep slope requirements, Olson said that the property does not qualify for the ordinance because there is only 21 feet from its base to the top of the slope—25 feet is required for the steep slope ordinance to apply. The property meets all the other requirements of that ordinance.

Anderson noted that there is no specific location identified for the house—only a buildable area was delineated. Olson explained the buildable area, and said that surveyors include them for illustrative purposes. Unless the city council specifies the house location, it can be built within the buildable area. The ordinance gives staff discretion to require the house location be moved to save trees. If the lot is wooded, the house is usually sited in the best location for the grades. Anderson noted that this lot is wooded with no open area. She felt that the location of the house would have bearing as

to whether there should be another driveway. If the home is built in the southwest corner, it would make sense to have an adjoining driveway. If the house were built in the northeast area, the existing driveway might be the most logical location. Olson said that these lots will be sold to builders so the house location is not yet known.

Eric Bull, an attorney with Mulligan and Bjornes, 401 Groveland Avenue, Minneapolis, spoke as a representative of the current owner, Marsha Chall. She is moving and will wait to sell until she has a decision on the subdivision. She did not designate the home site or the driveway location to give the developer more flexibility and greater opportunity to work with the city once the house site is known. Bull said that Chall was not opposed to a driveway easement, and he felt there might be better locations for it. He noted that the existing driveway is grandfathered in, but there are several options. They were trying to keep it as simple as possible.

Callison said that they might consider closing the existing driveway and making a new driveway access point. Bull said they would prefer to keep their options open to help with the resale of the lot.

Anderson asked if the council had any right or ability to require the two lots to share a driveway, not necessarily at the site of the existing driveway. She noted that there is a curve and this is a busy road. She would like to see one driveway in the best location identified by the staff and the developer. Olson said that could be done if the applicant agreed to it.

Callison asked if the approval language would provide enough flexibility for various driveway options. Olson said that the language would allow staff to determine where a second driveway would access the main public road. It might be difficult to require a common driveway if the owner said no. Olson noted that there are no variances requested, and the subdivision meets all ordinances, so a common driveway could not be required.

Anderson felt strongly about this issue. She is familiar with Highland Road and had difficulty navigating it during her site visit. But for three to four feet, the steep slope ordinance would have applied and the city could have imposed requirements. She asked if the applicant would object to the city requiring a shared driveway.

Bull said they wouldn't object, but that would not be their most favorable outcome. He did not think that the city council could force the relocation of the existing driveway. He thought that his client, who was not at the meeting, might approve, and thought that sliding

the driveway to the property line might improve visibility for both driveways. He agreed that there were detriments to the existing driveway.

Anderson noted that it would be difficult for the city to require the relocation at this point.

Wagner asked that this discussion be part of the record if additional city approvals are required for the property.

Anderson noted that staff was aware of the council's sentiment to work for safe access.

Olson said that staff will work with the future homeowners when the lot is sold to try to get a common driveway. Anderson said that was the best we could do.

Schneider moved, Wagner seconded a motion to approve the preliminary plat of WILSON-CHALL date-stamped August 30, 2005. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
 - a. Show the following on the final plat:
 - (1) A ten-foot wide drainage and utility easement next to the Highland Road right-of-way and 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.
 - b. Pay the city a park dedication fee of \$2,375.
- 2) The following items must be submitted to the city before the city releases the final plat:
 - a. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - b. 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) 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 easement must be attached to the easement deed.

- c. Any other requirements included with final plat approval.
 - d. The existing well and septic system must be closed and documented and the property connected to municipal water and sewer per all city and state requirements.
- 3) The following must be submitted to the city before the city issues a building permit:
- a. A grading and tree preservation plan, subject to the planning director's approval. The city may require adjustments in the house pad location to maximize tree preservation. The sewer and water services must be shown to minimize impact to any significant trees.
 - b. 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. Cash escrow, in an amount determined by the environmental resources coordinator, to ensure adequate erosion control throughout the course of construction.
 - d. A copy of the recorded plat and any easement or covenants required to be recorded.
 - e. A hookup fee for sanitary sewer and water.
 - 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.
- 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 ½ 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) 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.
- 7) The driveway on Lot 1 must access Highland Road in a location to be determined by the city engineer.

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

C. Conditional use permit for an outdoor eating area at 14400 Excelsior Boulevard for Glen Haven Center LLC.

Anderson said that sharing the parking is a terrific idea for both properties, and it will work well.

Wiersum moved, Callison seconded a motion to adopt Resolution No. 2005-120 approving the proposed conditional use permit for the outdoor eating area at 14400 Excelsior Boulevard. 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 before the city issues a building permit.
- 2) The outdoor eating area must be physically separated from the adjacent walkway.
- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 5) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

D. Amendment to redevelopment agreement for The Sanctuary residential project.

Wiersum moved, Callison seconded a motion to approve an amendment to the redevelopment agreement for The Sanctuary residential project. All voted "yes." Motion carried.

E. Resolution for Minnehaha Creek Watershed District visioning plan.

Wiersum moved, Callison seconded a motion to adopt Resolution No. 2005-121 adopting the Minnehaha Creek Watershed District visioning plan. All voted "yes." Motion carried.

- F. Resolution receiving feasibility report, ordering the improvements in, authorizing the preparation of plans and specifications, and authorizing easement acquisition for the Plymouth Road Storm Sewer Improvement Project No. 5615.**

Wiersum moved, Callison seconded a motion to adopt Resolution No. 2005-122 receiving the feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the Plymouth Road Storm Sewer Improvements Project No. 5615. All voted "yes." Motion carried.

- G. Designation of voting and alternate voting delegates for the annual Congress of Cities Conference.**

Wiersum moved, Callison seconded a motion to designate Mayor Karen Anderson as Voting Delegate #1 and Council Member Brad Wiersum as Voting Delegate #2 for the 2005 Congress of Cities Conference. All voted "yes." Motion carried.

- H. 2005-2006 Workers' Compensation Insurance.**

Wiersum moved, Callison seconded a motion to authorize renewal of the LMCIT worker's compensation policy with managed care and a \$10,000 deductible. All voted "yes." Motion carried.

- I. Resolutions ordering the abatement of nuisance conditions.**

Wiersum moved, Callison seconded a motion to adopt the following resolutions ordering the abatement of the nuisance conditions:

- 1) Resolution No. 2005-123 ordering the abatement of nuisance conditions existing at 1509 and 1515 Archwood Road.
- 2) Resolution No. 2005-124 ordering the abatement of nuisance conditions existing at 10702 Crestridge Drive.

All voted "yes." Motion carried.

11. Items requiring Five Votes:

- A. Items concerning a two-story commercial building at 3432 County Road 101 for Jay Lindsay.**

Schneider moved, Thomas seconded a motion to:

- 1) Approve the site and building plans, with variances, for a two-story building at 3432 County Road 101. Approval is based on the following findings:
 - a. The proposal meets general site and building plan standards.
 - b. The proposal would meet the required standards for a variance, because:
 - (1) SETBACKS
 - (a) The property has a width of 100 feet. This results in a buildable area just 30 feet wide. This is a unique situation not common to every B-2 zoned property in the city.
 - (b) The proposed setbacks are reasonable. The only encroachments into required setbacks would be toward existing right-of-way and parking lots. The proposal would meet all setbacks from the residential properties to the west.
 - (2) DRIVE-AISLE WIDTH
 - (a) The proposed drive-aisle width on the east side of the building is reasonable. The aisle would meet the requirement for a "low-turnover" use. The spaces on the east side would be available to both retail customers and office clients.
 - (3) PARKING SPACES
 - (a) The proposed number of parking stalls is reasonable. A parking study conducted for the proposal concluded that the shared parking arrangement and number of parking stalls would be adequate to support the needs of the proposed development.
 - (4) The proposed setbacks and parking variances would not alter the essential character of the area. Rather, they would reflect existing development.

Approval of the site and building plans, with variances, 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 July 28, 2005.
 - Grading plan date stamped July 28, 2005.
 - Landscaping plan date stamped July 28, 2005.
 - Illumination plan date stamped July 28, 2005.
 - Building elevations date stamped July 28, 2005.
- b. Before starting any site work or issuance of a building permit:
- (1) Submit the following items for staff review and approval:
 - (a) Final site, grading, drainage, and utility plans.
 - (i) A 4-foot sump catch basin must be added as required by the city engineer.
 - (ii) A fire hydrant must be added as required by the fire marshal.
 - (b) Final landscaping, irrigation, and erosion control plans. Landscaping must meet the minimum value requirements outlined in city code.
 - (c) A construction management plan.
 - (2) Submit a letter of credit or cash escrow for 150% of an estimated cost or 125% of a bid cost to comply with grading and erosion control requirements and restore the site.
 - (3) Submit a letter of credit or cash escrow for 150% of an estimated cost or 125% of a bid cost to comply with landscaping requirements.
 - (4) Submit a copy of the watershed district permit. The city may require revisions to the approved plans to meet the district's requirements.
 - (5) Submit a copy of county access permit.
 - (6) Install a temporary rock driveway and erosion control fencing, subject to inspection by environmental staff. The driveway and fencing must be maintained throughout the course of construction.
 - (7) All required hook-up fees
- c. Coordinate driveway relocation with county road construction.
- d. Snow must be removed from the property. It may not be stored on the site.
- e. The property owner is responsible for replacing any required landscaping that dies.
- f. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage

- areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- g. Approval does not include any signs shown on the drawings. Separate permits are required from staff.
 - h. Spaces shown as proof-of-parking may not be paved, unless approved by the city upon showing of a demonstrated need for these spaces.
 - i. The building must be sprinklered as required by the fire marshal.
 - j. Construction must begin by December 31, 2006, unless the planning commission grants a time extension.
 - k. The basement must remain as storage space only. It may not be converted to any other use.
- 2) Adopt Resolution No. 2005-125 approving a conditional use permit, with variances, for a coffee shop at 3432 County Road 101. Approval is based on the following findings:
- a. The proposal meets general and specific conditional use permit requirements.
 - b. The proposal would meet the required standards for a variance, because:
 - (1) ACCESS
 - (a) It is reasonable for a service-commercial use, such as a coffee shop, to be located in a commercial area at the intersection of two well-traveled roads.
 - (2) SETBACK
 - (a) The property has a width of just 100 feet. This results in a buildable area just 30 feet wide. This is a unique situation not common to every B-2 zoned property in the city.
 - (b) The proposed aisle would be located next to an existing parking lot to the south. It would have little to no impact on surrounding land uses.
 - (3) STACKING
 - (a) It is unlikely that, at any one time, six vehicles would be in line at the coffee shop drive-up window.
 - (b) Peak hours for a coffee shop use are different than those for retail and offices uses. Therefore, the stacking area is

unlikely to negatively impact parking on the site.

- (4) The property is located in a commercial area and is zoned and guided for commercial development. The proposed access, setback, and stacking area variances would not alter the essential character of the area.

Approval is subject to the following conditions:

- a. Any public address systems cannot be audible from any residential parcel.
- b. If more than four vehicles are regularly in the drive-up aisle, parking spaces nearest the drive-up aisles must be designated "Employee Only."
- c. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- d. 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.
- e. Before the city issues a building permit, the applicant must agree to the above conditions in writing and record this resolution with the county.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance amending the zoning code definition of "accessory structure."

Gunyou reported that this was a housekeeping ordinance to clear up an inconsistency.

Wagner moved, Wiersum seconded a motion to introduce an ordinance amending the zoning code definition of "accessory structure" and refer it to the planning commission. All voted "yes." Motion carried.

B. Ordinance amending the Tonkawoods Office Building master development plan, with variances, at 16200 State Highway 7 for Bremcon Inc./Davern Inc.

Schneider asked that as this project moves forward, that the problems with turning movements into and out of the site be addressed.

Schneider moved, Callison seconded a motion to introduce an ordinance amending the Tonkawoods Office Building master development plan, with variances, at 16200 State Highway 7 for Bremcon Inc./Davern Inc. and refer it to the planning commission.

Anderson thought the applicant was expecting access off of TH 7. Callison thought it was for entrance only. Anderson asked that staff look at that carefully. She noted that MnDOT is working to reduce access points to TH 7.

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

13. PUBLIC HEARINGS:

A. Issuance of revenue bonds by the Minneapolis Community Development Agency for the Ridgedale YMCA.

Gunyou provided the staff report, and noted that this project would not create any financial obligation for the city of Minnetonka.

Anderson opened the hearing at 7:10 p.m. No one spoke, and the hearing was closed.

Callison moved, Thomas seconded a motion to adopt Resolution No. 2005-126 giving host approval to the issuance of a revenue bond to finance a project for the Young Men's Christian Association of Metropolitan Minneapolis and located in part in the city of Minnetonka, under Minnesota Statutes, 469.152 through 469.165
All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Approval of Park Renewal concept plans for Reich Park.

Gunyou provided a brief introduction, noting that staff is more regularly updating the city's park renewal Web site at the request of Thomas. Vetter reviewed the concept plan.

Anderson noted that this item called for the council to give staff direction to continue with the plans. It was not intended to be a public hearing, but she would invite comments later.

In response to Callison's questions, Vetter said that there would not be an ice skating rink. The neighborhood instead opted for better

turf for summer activities. Grills will no longer be provided, but could be brought to the site upon request. Picnic tables and benches will be provided throughout the site.

Rebecca Reich, 3108 Willette St., Bellingham, WA, spoke. She noted previous discussions about reducing the asphalt coverage. She asked about the planned width for trails. She noted her family's interest in encouraging natural habitat and access to the wooded area, and asked about a wood chip trail that had been planned for the southwest section of the park. She said that bike racks would be good, and thought that better access along South Lane might help people who have difficulty walking to access the flatter portion of the park.

Anderson said that she's always accessed the park via South Lane and thought there was off-street parking in that area.

Vetter said that the main trails through parks are typically six to eight feet wide. Staff tries to minimize the trail width as it passes through trees. Staff field stakes trails to minimize tree loss. In the rest of the park, the trails will be narrower—no more than six feet in width. Narrower trails cost more to construct because custom equipment is required. Six feet is a good width for two people walking side-by-side. A wood chipped natural trail was on one plan, but did not make it through the master planning process. People can still walk through the wooded area, but the property line won't be evident. Vetter noted that there is a lot of privately-owned property that abuts park property throughout the city.

Vetter said that bike racks, trash containers, fountains and benches will be near the play area. Parking was not indicated on the plan for South Lane, but the street is not signed to prohibit it. South Lane is very narrow. The turnaround at the end is used by service and utility vehicles, and it will remain.

Pat Rasmussen, 18516 South Lane, thanked the park board and Vetter for their efforts for this park. She said that everyone was listened to, and the plan closely represented what the neighbors who attended the meetings wanted. The neighbors like the park and only wanted a little improvement, and the plan reflects that. This has never been a busy park.

Anderson thanked Rasmussen for her comments. She noted that the park renewal process has been used for many city parks. The city council's approach has been to send the master plan back through the process rather than to intervene. Anderson

acknowledged the city's gratitude to the Reich family for the park. The plan leaves the natural resources intact in most cases, and most of Rebecca Reich's concerns have been satisfied. The increased asphalt will make the park accessible and more usable.

Anderson said that the city would use caution when laying the trails so as not to disturb trees. People can walk through the woods with or without wood chips. Although skating was discussed, the neighbors wanted green space. There is little traffic on South Lane—it is essentially a dead end—so the narrowness of the street should not be a concern. Anderson supported and honored the process.

Thomas moved, Callison seconded a motion to approve the master plan for Reich Park and directed staff to proceed with plans and specifications. All voted "yes." Motion carried.

B. Appeal of the planning commission's approval of variances to tear down and rebuild a home at 2813 McKenzie Point Road for Lecy Bros. Homes, on behalf of Larry and Betty Kochevar.

Olson gave the staff report.

Anderson explained the process for the discussion.

In response to Thomas' question, Olson said that the 10 foot buffer to the lakeshore would be a natural, vegetative buffer, rather than grass to the lakeshore. It would serve to filter runoff. Olson said that the council will be asked to consider a shoreland ordinance this winter, and that ordinance would require a mandatory buffer for all developments on the lakeshore. Thomas said that was the type of buffer he wanted.

Ellingson asked if the city was bound in any way by precedent. Anderson noted that Steve Bubul was substituting for the city attorney. Bubul suggested using the word "precedent" cautiously in terms of variances. He said that it was more appropriate to look at the statutory requirements for undue hardships. The council must use a great deal of judgment with variances. A pattern of granting or denying variances would be a factor, but he encouraged looking at the elements of undue hardship for each specific case.

Wiersum noted Olson's comments that the types of variances requested are consistent with the types of variances granted in the past on McKenzie Point Road. He asked if other impervious surface variances had been granted on that road. Olson said that there

were two granted, just north of the subject property—one for the Hans Hagen home, and the other for the vacant lot. In both cases, the planning commission approved impervious surface variances to 42%. The ordinance requires 30% or less.

Scott Sorenson, 2815 McKenzie Point Road, spoke. He wanted to help the applicant build a new house and keep the neighborhood friendly. The comments from the neighborhood indicated that the proposed house was too big. He did not think there would be any problem if the proposed house was moved back by 1.5 feet. He asked the council to look at the proposal from his perspective—Hans Hagen has 30 feet between the two homes, but he will have 3 feet. He suggested that the size of the dining room of the proposed home could be reduced. Without a change, he will have a 23 foot high brick wall for 100 feet right next to his home.

Sorenson said that to qualify for a hardship, the applicant should have to have no alternative. He thought the applicant could use a different design. He noted the discussions about past decisions, but noted that this would be new construction.

Sorenson said that Hans Hagen asked for a sideyard setback for two lots, and was first denied. Anderson said it would not be helpful to use that for comparison. She had previously checked with Olson, who told her what really happened.

Sorenson noted that Hagen moved the existing footprint away from the lakeshore to get the variance. Sorenson said that when his home was built, he was required to have 11 foot sideyard setbacks. He didn't think there would be much damage done by reducing the proposed home by 1.5 feet. Sorenson said that he will want to build a new home on his property someday, and is hoping for a five foot setback. Anderson said that issue was not before the council.

Roy Lecy, Lecy Construction Homes, spoke as the designer and prospective builder of the proposed home. He thanked staff for its work, and said that they met with Cary Teague early in the process to find out what they could do with the property. Teague said that staff could not specifically say what would be approved, but gave him information about the Hans Hagen home. They went through several designs. This lot is larger than the lot for the Hans Hagen home, and the setback from the lake is almost identical. The sideyard setbacks are similar, as is the hard surface coverage. That was the criteria they considered. The people who will own the home want a master bedroom on the main level due to their age and personal wishes. The house will not have a basement, so it was

necessary to have a trophy room on the second floor. It will not be a typical two-story house.

Lecy noted that Sorenson has said that if he could get the same variances for his property, he would have no objection to these variances. Anderson repeated that issue was not before the council.

Anderson noted that bedrooms were planned for the second floor, so it is a two-story home. Lecy said that if they could have a basement, they could do more. The livable space of the home will be about 4,700 square, 2,324 on the main level and the rest upstairs.

At 7:55 p.m., Schneider said that he had to leave for another commitment. He did not know how he would have voted, but said that his preference was for a five foot setback if that was possible.

Callison noted the references to precedent, and said that without an examination of what has happened and what's reasonable for this lot, the term could be misused. She reviewed the previous requests for this road and noted some distinctions. If the past trend for new homes on the road continued, the new homes will become larger. She noted Olson's statements in past minutes that new construction provides an opportunity to improve things, and the council has previously embraced that view. In some cases, homes were demolished and rebuilt, and the situation improved, because the original homes were closer to the lot lines. In those cases, the setbacks from the lake increased.

Callison said this request has a different feeling. If the same formulas were consistently applied, it would lead to larger homes. The last lot on the road is over 10,000 square feet in size, and she did not think the council wanted to go in the direction of having that home proportionally that much larger. The council has clearly recognized that variances are appropriate for this neighborhood - the question is what the variance should be. She argued that it should make things better. She suggested considering a five foot setback, given the house that is proposed, the lot size, what currently exists, and the consequences of the new proposal.

Anderson thanked Callison for her research, and noted that this has been a confusing situation.

Wagner agreed with Callison, and said that the goal is to improve situations. This proposal encroaches further into the neighbor's

property, so the situation is not improved. He agreed that a five foot setback would be more reasonable and would not handcuff the property owner. He would support giving this feedback to the planning commission, or having the property go back to the drawing board.

Anderson asked about the council's options. She noted that the council could uphold the planning commission's decision for the 3.5 foot variance, or consider something else. Upholding the planning commission's decision would require four votes, and five votes would be needed to overturn the commission. She said that it might not be necessary for the developer to go back to the drawing board.

Gunyou advised that the council could elect to send the project back to the planning commission. Anderson said that was an option, but not a requirement. Gunyou agreed.

Wiersum observed that in this neighborhood, someone building a conforming home might need a variance because it would be so out of character with the neighborhood. He supported Callison's analysis. The 42% hard surface coverage concerned him, because it would put more stormwater into the lake. The larger hard surface coverage would be bad for the neighborhood and the lake. This would put a very large house on a relatively small lot.

Wiersum looked at the issue from Sorenson's perspective—he would end up in a tunnel with two large homes on either side. Wiersum did not see a five foot setback as unreasonable. He did see one benefit of the proposal—moving the house further from the lake. He encouraged the developer to maintain that setback through any revisions, because it would be in the best interest of the lake's health. He would like to keep improving this unusual neighborhood.

Anderson supported Callison's comments and was most concerned about precedent in this area. Bubul's comments encouraged her. She did not see a hardship in not being able to build a 4,500 square foot house on this lot. She understands individual circumstances, but noted that her home has no basement and is half the size of the proposed home. She wondered about the character of the neighborhood as the homes get larger and larger. She was also concerned about the impervious surface. She was tempted to require a seven foot setback on both sides for new construction but thought that might not be reasonable or fit the character of the neighborhood. She was willing to support a five foot setback on the southern boundary to make this home a better fit.

Thomas agreed with the other council members. Callison's research convinced him, especially her comments about the lots getting larger and the size of the homes if the same standards are used. A five foot setback would be a small change, but it would be an improvement over what was proposed. He likes to look at projects like these and feel that he has made even a small improvement. He wished he could have had even more of an impact. He supported the five foot setback.

Callison noted the October 24, 2005 deadline for a decision on this proposal. She asked if there was time for the applicant to revise the plan or if a vote was required tonight.

Anderson asked if the council could overturn the planning commission on this one element.

Gunyou said that one option would be for the council to overturn the planning commission decision, and then adopt a new resolution changing the conditions the council wanted to modify. Bubul and Olson agreed. Gunyou advised that the applicant should be asked to agree to an extension if the council refers the matter back to the planning commission.

Anderson asked for input from other council members. She said that the council could overturn the planning commission and put its own requirements in tonight. Callison was uncertain of the correct percentage to be applied for the impervious surface variance, and the exact number for the sideyard setback. She noted that the overhang figures would also change.

Anderson asked Lecy what the applicant would like to do. Lecy said that they would have to redesign the home completely. He said that the council was absolutely wrong on its hardcover analysis, because their lot is larger. Their hard surface percentage would match the lot next door. He said that if they had to redesign the home, they will likely move it closer to the lake. He asked the council to approve or disapprove the request, and not set new conditions line-by-line. They will either build this home, or come back with a new proposal.

Anderson noted that the council has the right to reject specific elements of the request. Anderson was willing to give an extension to allow for redesign, and council and planning commission consideration. She said the applicant would have to agree to an

extension. Lecy said he could not answer without consulting with his clients.

Wiersum noted that the applicant would have to pay another fee if they reapply, which would increase their costs. Olson agreed. He said that if significant changes were made, as Lecy was suggesting, the variances would change and a new application would be required. This would be true if the house were moved closer to the lake.

Anderson asked if the applicant would grant a time extension. Lecy said that if this proposal was denied, they would redesign the home and would not need an extension. She asked if the applicant understood that they would have to pay a new application fee. Lecy said that they understood this.

Gunyou noted that findings would be needed for a vote to deny. He recommended that the council's motion should direct staff to prepare those findings.

Wiersum moved, Callison seconded a motion to overturn the planning commission's approval of variances to tear down and rebuild a home at 2813 McKenzie Point Road for Lecy Bros. Homes, on behalf of Larry and Betty Kochevar, and directed staff to prepare findings of fact for the next city council meeting.

Anderson noted that staff and the applicant had direction about what the council would consider acceptable in the future.

Callison, Thomas, Wagner, Ellingson, Wiersum and Anderson voted "yes." Schneider was absent. Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Thomas moved, Wiersum seconded a motion to adjourn the formal meeting at 8:18 p.m. All voted "yes." Motion carried.

The council then adjourned to the City Hall Parking lot where they viewed a demonstration of the proposed outdoor lighting plan for the Civic Center Campus. The demonstration was presented by Alex Friend of Emphasis Lighting Group, Inc. Council members agreed with the proposed plan.

Respectfully submitted,

Kathleen Magrew
City Clerk