

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, OCTOBER 24, 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.**

Council members Al Thomas, Tony Wagner, Bob Ellingson, Brad Wiersum, Jan Callison, and Karen Anderson were present. Council member Terry Schneider arrived at 6:51 p.m. (item #11A).

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou reviewed the addendum, which provided a revised resolution for item #14c, a hazardous building at 10604 Crestridge Drive.

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

**5. APPROVAL OF MINUTES: October 10, 2005 regular council meeting.**

Wiersum moved, Thomas seconded a motion to approve the minutes of the October 10, 2005 Minnetonka City Council meeting. Wagner had previously provided some changes to the city manager. Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

**6. SPECIAL MATTERS:**

**A. Proclamation designating October 2005 as Toastmasters Month.**

Wiersum read a proclamation designating October 2005 as Toastmasters Month in the city of Minnetonka. Ava Tamis accepted the proclamation on behalf of Toastmasters. She expressed the organization's appreciation and encouraged people to participate in one of the nine Toastmaster Clubs in Minnetonka.

**B. Proclamation designating November 12-19, 2005 as Housing Awareness Week.**

Wagner read a proclamation designating November 12-19, 2005 as Housing Awareness Week. Anderson noted that ICA is hosting a housing event on November 14, 2005, and encouraged people to attend.

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

Gunyou reported on the schedule for upcoming council meetings. He noted the upcoming city and school elections on November 8. He also noted that the city's offices would be closed on November 11, 2005 in observance of Veteran's Day.

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

No one appeared.

**9. BIDS AND PURCHASES:**

**A. Architectural and engineering services for Fire Station #1 locker room renovations.**

Gunyou provided the staff report.

Callison moved, Wiersum seconded a motion to award the bid for architectural and engineering services for Fire Station #1 locker room renovations to Miller Dunwiddie Architecture in the maximum amount of \$46,870. Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

**B. Consideration of quotes for painting of the Ice Arena A exterior.**

Gunyou provided the staff report.

Wiersum moved, Thomas seconded a motion to award the project for painting the exterior of Ice Arena A to Berg Exteriors, Inc. in the amount of \$40,115. Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

**C. Consideration of quotes for repairs to the Ice Arena A stucco exterior and facade.**

Gunyou provided the staff report.

Wiersum moved, Thomas seconded a motion to award the project for repairs to the Ice Arena A stucco exterior and façade to Berg Exteriors, Inc. in the amount of \$30,990. Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

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

**A. Claims for council authorization – October 24, 2005.**

Wagner moved, Callison seconded a motion to approve the October 24, 2005 claims list. Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

**B. Final approval of the Hedlund Shady Acres plat at 3564 Shady Oak Road.**

Wagner moved, Callison seconded a motion to approve the Hedlund Shady Acres final plat, date stamped September 12, 2005, 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.

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

**C. Agreement for prosecution services with the cities of Minnetrista and St. Bonifacius.**

Wagner moved, Callison seconded a motion to approve an additional one-year contract for prosecution services with the cities of Minnetrista and St. Bonifacius. Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

**D. Approval of an agreement with Hart Howerton for Minnehaha Creek planning services.**

Wagner moved, Callison seconded a motion to approve an agreement with Hart Howerton for Minnehahaha Creek planning services. Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

**E. Lot division to divide an existing lot into two lots at 14708 Woodhaven Road for Scott Willis.**

Wagner moved, Callison seconded a motion to adopt Resolution No. 2005-130 approving the proposed lot division at 14708 Woodhaven Road. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:

- 1) The following items must be submitted to the city before the city releases this resolution:
  - a. If applicable, evidence of watershed district approval
  - b. The following documents for the city attorney's approval:
    - (1) Ten-foot-wide drainage and utility easements next to any public street right-of-way and seven-foot-wide drainage and utility easements along all other lot lines
    - (2) Drainage easements over wetlands and storm water ponds
    - (3) Drainage and utility easements over the 949.6 elevation.These documents must be recorded with the lot split resolution, and a drawing of any easements must be attached to the easement deed.
  - c. A park dedication fee of \$2,375.00.
  - d. Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the lot split resolution.
  - e. Restrictive covenants to be recorded against the individual lots with the lot split resolution. The covenants must include the conditions that have not been met as of the release of the resolution. These covenants must first be submitted for the approval of the city attorney.
- 2) The following must be completed before the city issues a building permit:
  - a. A grading and tree preservation plan for each lot, subject to staff 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. The applicant must work with staff to minimize impacts to the critical root zones of the white pine and oak trees on Parcel A.
  - c. Minimum low floor elevation must be at least 951.6.

- d. The existing driveway culvert must be extended as part of a building permit for Parcel A.
  - e. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing must be installed subject to review and approval of the city's environmental resources coordinator.
  - f. A copy of the recorded resolution and a copy of any easements or restrictive covenants required to be recorded must be submitted to the city.
  - g. A hook-up fee for sanitary sewer and water.
  - h. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
- 3) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
  - 4) 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.
  - 5) This resolution must be recorded by the county within one year, unless the city council approves a time extension. If the council does not approve the extension, the lot division approval will be void.

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

**F. Items related to Headwaters Park:**

- 1) **Amendment no. 1 to cooperative agreement with Minnehaha Creek Watershed District**
- 2) **Consent to easement amendment**

Wagner moved, Callison seconded a motion to approve the amendment no. 1 to the cooperative agreement with Minnehaha Creek Watershed District and to approve an amendment to the consent to easement. Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

**G. Resolution ordering the abatement of nuisance conditions existing at 14311 McGinty Rd W.**

Wagner moved, Callison seconded a motion to adopt Resolution No. 2005-131 ordering the abatement of nuisance conditions existing at 14311 McGinty Rd W. Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

**H. Authorization of 2005/2006 general liability insurance renewal.**

Wagner moved, Callison seconded a motion to authorize the 2005/2006 general liability insurance renewal as recommended. Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

**I. Final approval of the Clark Kent Addition plat at 5700 Whited Avenue.**

Wagner moved, Callison seconded a motion to approve the Clark Kent Addition final plat, date-stamped October 7, 2005, 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.

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

**J. Resolutions ordering the abatement of nuisance conditions.**

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

- 3440 Therese Street. – pulled, in compliance
- 10600 Wayzata Boulevard – pulled, in compliance
- 2005-132 for 16609 Devon Drive.

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

**K. Resolution authorizing an amendment to the city's employee Flexible Spending Account Plan.**

Wagner moved, Callison seconded a motion to adopt Resolution No. 2005-133 authorizing an amendment to the city's employee Flexible Spending Account Plan. Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

**L. Resolutions authorizing applications for grant funds for environmental clean-up work at 10600 Wayzata Boulevard.**

Wagner moved, Callison seconded a motion to adopt the following resolutions related to environmental clean-up work at 10600 Wayzata Boulevard:

- Resolution No. 2005-134 supporting an environmental grant application to Hennepin County.
- Resolution No. 2005-135 authorizing an application to the Metropolitan Council for a tax base revitalization account.
- Resolution No. 2005-136 authorizing a contamination clean-up grant application.

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

**M. Resolution appointing election judges for the November 1, 2005 Special Primary Election (if needed) and for the November 22 Special Election (for Senate District 43).**

Wagner moved, Callison seconded a motion to adopt Resolution No. 2005-137 appointing election judges for the November 1, 2005 Special Primary Election (if needed) and for the November 22 Special Election (for Senate District 43). Thomas, Wagner, Ellingson, Wiersum, Callison and Anderson voted "yes." Schneider was absent. Motion carried.

**11. Items requiring Five Votes:**

**A. Preliminary plat, with a variance, for a two-lot subdivision at 4848 Valley Road for Steven and Mark Leatherman.**

Schneider arrived.

Callison moved, Thomas seconded a motion to approve the preliminary plat for the Leatherman Valley Addition, date stamped September 15, 2005, with a front yard setback variance from 35 feet to 22 feet for Lot 2, based on the following findings:

- 1) Except for the variance, the proposal meets the required standards and ordinance 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 location of slopes, and wetland in relation to the area required to be dedicated for future street improvements.
  - b. The variance would meet the intent of the ordinance because the home could be built on the site without variances, and the home to the north has a similar front yard setback at 22 feet.

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) A drainage and utility easement must be established over the 100-year stormwater elevation of 891.5.
    - (3) A 20-foot drainage and utility easement, centered on the lot line between Lots 1 and 2 to accommodate a future storm sewer line.
    - (4) A 20-foot drainage and utility easement, centered on the existing water line located on Lot 1.
    - (5) An additional 12 feet of right-of-way be added to the cul-de-sac, per approval of 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 30y days before release of the final plat.
    - (2) A 3-foot to 20-foot wetland buffer easement must be established and maintained from the

- Manage 1 Wetland located to the west. The existing vegetation must be simply maintained.
- (3) 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 easement must be attached to the easement deed.
- c. Any other requirements included with final plat approval.
- 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 the planning director's approval. The plans must be in substantial compliance with the building pads and must preserve trees designated for preservation at the time of preliminary plat 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. A copy of the recorded plat and any easement or covenants required to be recorded.
- d. A hookup fee for sanitary sewer and water.
- e. 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.
- f. Minimum low floor elevation is 922.00.
- 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 approval will be void.

All voted "yes." Motion carried.

## 12. INTRODUCTION OF ORDINANCES:

### A. Ordinance regarding certain license and permit fees.

Community Development Director Ron Rankin gave the staff report.

Wiersum asked for an explanation for the significant increase in the fees for school kitchens. Rankin said that the USDA increased the required inspections for school kitchens to twice a year instead of annual inspections. Rankin said that the city's fees cover the city's associated costs.

In response to Anderson's question, Rankin said that a license is required for each school, but the districts do batch them.

Wiersum moved, Wagner seconded a motion to introduce an ordinance regarding certain license and permit fee changes. All voted "yes." Motion carried.

### B. Ordinance regarding parking and driveways.

Gunyou introduced the item, and asked for council feedback. City Attorney Desyl Peterson gave the staff report, reviewing the recommended ordinance changes. She also noted that the ordinance would direct driveway variances to the city council instead of the planning commission.

Anderson asked if people who want something different from the ordinance would have to come to the city council. Peterson said they would. She noted a case this year where a driveway variance went to the planning commission, then to the city council.

Anderson asked if the ordinance would prohibit driving over the curb just once, such as to remove debris from a yard, or would only prohibit repeated driving over the curb. Peterson said that any single instance of driving over the curb would be prohibited, even to remove debris. Staff response is based on complaints, which generally occur when there are repeat violations.

Anderson asked if the continuous driveway provisions would apply only to new driveways. Peterson said the provisions would apply to future driveways, or if other improvements were made to the garage. The provisions would not be retroactive.

Anderson asked about lower driveways used for storage. Peterson said that the driveway curb cuts would need to connect, or a storage building would need to be built.

Ellingson asked how the change would impact people who park boats on driveways at a lower level. He suggested that the change apply to existing driveways. Peterson said that there could be property rights issues if the changes were retroactive because this involves improvements to real property.

Callison was not sure about the extent of the problems created by access to the street, and was not interested in regulating grassy ruts. She felt that outside storage was the real issue, but addressing the issue through driveway requirements seemed circuitous. She asked if the city could regulate storage. Peterson asked Rankin about the extent of the problem. Rankin said that the existing ordinance has been fairly effective for most, but not all, situations.

Callison asked for an example where outside storage was not addressed by the nuisance ordinance. Rankin said that would occur where a separate driveway was used to store vehicles, and when items overflow into the street causing sight obstructions.

Callison asked what would happen to driveways that are already a problem. Rankin said that the ordinance would not address current driveways but is intended to prevent the creation of future problems.

Anderson asked if the continuous driveway provisions would prevent people from storing vehicles on a driveway. Peterson said that rather than having a continuous driveway, they would have to provide a storage building. Anderson said that would open up loopholes. Peterson said that four vehicles are currently allowed to be stored on a property. A property owner could have two cars on an upper driveway and a boat and a recreational vehicles on a lower driveway. That type of scenario has caused problems with neighbors.

Callison asked if a storage building could be built but the property owner not use the structure to store a boat, for example. Peterson said that could happen. Callison was concerned that the proposed ordinance would not solve the problems.

Wiersum asked if a boat trailer that was not attached to a vehicle would be an object or a vehicle. Peterson reviewed the definitions, and said that the boat trailer would not be motorized and would not be allowed to be parked in the street without a special permit.

Wiersum asked if the requirement for vehicles to be 10 feet off the road would only apply to vehicles for sale, and noted that they can create a sight hazard. Anderson said that the provision referred to recreation vehicles and vehicles for sale.

Schneider struggled with continuous driveways. Most communities that have gone to restrictions have smaller lots than Minnetonka. Other than the view, he did not think Minnetonka should regulate this due to our larger lots. He asked if screening to adjacent neighbors could be required if a vehicle was not parked in a regular driveway. Peterson said that could be done but it might be difficult to define where vehicles are and are not allowed. She asked if he was concerned about screening the view for other neighbors if a vehicle was not parked in the front of the house. Schneider said that was his concern, and noted that recreational vehicles are most visible. Peterson said that staff has received complaints about boats as well.

Anderson asked if the current nuisance ordinance would apply to existing conditions. Peterson said that it would.

Wagner would hate to limit access to one point for lots that are greater than one-half acre in size. He would support something to address larger vehicles and boats. He noted that most of the complaints relate to vehicles that are licensed but never moved. Peterson said that a vehicle with a current license is not considered an abandoned or junk vehicle. The only way to address the number of vehicles is if there are more than four on the property.

Wagner supported provision #2, but was challenged by provisions #1 and #4. He noted the difficulty in policing signs, and did not see this as a great use of city staff time.

Wiersum did not have much concern about a small car posted for sale closer than 10 feet to the road if no one complained. If a recreational vehicle was parked for sale next to the street, it would

create a sight obstruction. In that case, a 10 foot setback made sense. He noted that someone who doesn't like for sale signs might excessively complain.

Thomas said that people have the right to sell a vehicle off their property as long as that is done safely. He noted that access may be needed in another part of the lot for activities, such as tree removal. Thomas noted that items other than vehicles are advertised for sale along the street.

Thomas noted that he uses his boat in the summer and has to put it someplace. He tries to put it where it's not a nuisance for others. On larger lots, property owners should be able to use the lot without being offensive to their neighbors. He did not want to infringe on the rights of property owners.

Anderson asked about the scope of the problem. She has not received a complaint for many years. Most property owners meet the current community standard.

Schneider said that people are used to seeing boats and recreational vehicles in neighborhoods. Usually there are other problems when complaints start. He suggested focusing on the issue of visibility and safety (the distance from the curb).

Peterson asked if the council wanted screening if an item was not parked in the front. She also asked what kind of notice would be given to residents. She noted that there has been lots of controversy on this issue in the past.

Anderson did not support screening. She thought it would be onerous and difficult to enforce. It would only be enforced when a neighbor was offended. She also had problems with the continuous driveway provisions.

Callison agreed. She asked if staff could look at placement so items are kept away from the property line. She suggested that staff look at the scope of the problem.

Gunyou thanked the council for their input, and said that staff would draft revisions accordingly.

Ellingson moved, Wiersum seconded a motion to introduce an ordinance regarding parking and driveways regulations. The motion was withdrawn and the ordinance was not introduced.

Anderson suggested that staff bring the proposed ordinance back to the city council at another time.

**13. PUBLIC HEARINGS:** None.

**14. OTHER BUSINESS:**

**A. Resolution approving various permits to construct a trail from the civic center campus to Jidana Park for the city of Minnetonka.**

Planning Director Geoff Olson introduced the item, and Assistant City Manager Geralyn Barone provided the staff report.

Anderson asked, and no one from the public wished to speak.

Callison said she was pleased with this project and supported it.

Callison moved, Thomas seconded a motion to adopt Resolution No. 2005-138 approving a conditional use permit for a paved trail within floodplain and wetland buffer areas, and approving a floodplain alteration permit for the city to build a trail from the civic center campus to Jidana Park.

Anderson said she also supported the project. She was on the Minnehaha Creek Corridor Task Force, and said that the trail will provide open access to Jidana Park away from vehicular traffic. She asked that the trail meet ADA standards due to its close proximity to the Senior Center.

All voted "yes." Motion carried.

**B. Glen Lake redevelopment proposal schedule and resolution approving a Letter of Intent between the Minnetonka Economic Development Authority and the Glen Lake Redevelopment, LLC.**

Gunyou explained the nature of the resolution, and noted the many upcoming opportunities for public input on this project. He said that the council's action tonight would not commit the city, but would commit the developer to pay for the city's expenses for studies needed to evaluate the project. Rankin provided the staff report.

Schneider did not have concerns about the letter of intent. He was concerned that the timeframe would not allow for additional meetings within the 120 days required for the city to take action.

Schneider noted the January 31 termination date if a development agreement was not in place, and suggested that it be extended.

Gunyou said the dates outlined would be the quickest that anything could proceed, but the project could take longer and the agreement could be extended at that time.

Schneider thought the schedule was too aggressive given the complexity of the project.

Rankin said that the developer is willing to go with the timetable but that was not to say that it could not be extended if circumstances warranted.

Peterson said that the letter doesn't say that the city will or must take action by January 31. It says that the agreement to reimburse the city's costs will terminate on January 31, and the developer will cover the costs to that date. She said that the letter of intent is just a cost recovery agreement. If the time is crunched, all the parties will need to discuss how to proceed. Nothing is cast in concrete one way or the other. Schneider said that would help.

Anderson noted that this was not a public hearing but she asked if members of the audience had questions.

Steve Yoch represented Arnie Zachmann, owner of GV Development and Three View Holdings, 13100 10<sup>th</sup> Avenue North., Plymouth. Yoch said that Zachmann owns a portion of an involved property, adjacent to land owned by Steeno. Zachmann has been working with the city for three years to develop his property into condominiums. Yoch said his appearance was to ask why the city would only work with Wartman, when there are other possible developers. His client did not receive notice of today's meeting. He noted that Wartman does not own Zachmann's property. Wartman has raised the possibility of using eminent domain to acquire properties he does not own. Zachmann's property is not blighted property. Yoch said that a realistic alternative would be to work with somebody who has experience developing in this city and who owns the land. His client successfully developed the Glen Lake Townhomes. He noted that his client has been a good corporate citizen, and suggested that his client sign the letter of intent. That would provide a more appropriate approach and would allow his client to make his proposal while encouraging competition – a win:win for the city. This would solve the issues related to eminent domain and result in a more successful project.

Yoch felt that the timetable was ambitious, especially given the issues related to his client's ownership of the property. He suggested tabling the letter of intent, and allowing his client to submit an alternate proposal.

Anderson pointed out that Wartman also owns property in the city and is a successful developer in the city.

Peterson explained that Zachmann owns a long, thin, narrow strip of property. The adjacent, larger property is owned by Steeno, who has entered into a purchase agreement with Wartman. In addition, Wartman owns the Glenhaven Shopping Center, and has purchase agreements for all but one of the parcels on Excelsior Blvd. This gives Wartman a substantial stake in the project.

Peterson said that the agreement would require Wartman to reimburse the city for fees incurred during the review of the project. If Zachmann would like to make a separate proposal, he may do so and a letter of intent could be done to recover the city's cost. Nothing in tonight's item says that Wartman will do the project, nor is the city committed to working with him on it. All that is being said is that the city will review Wartman's project, and the city will be reimbursed for its associated costs.

Anderson said that Yoch's client could bring in his proposal and the city would also ask him about recovering costs.

Peterson said a developer has to have a certain ownership interest in the project before coming forward. Zachmann only has ownership in one piece.

Anderson asked if Wartman's proposal could be limited to only his property. Peterson said he has interests in most of the properties. The financing is integral in terms of the project fitting together. It would be much more problematic for Zachmann to purchase the other properties since there are purchase agreements pending.

Yoch said his client is only interested in the east piece. His client's concern is not reimbursement to the city but rather preference being given to one developer. Anderson said that is not true. Peterson agreed that it is not preference. A developer has come in with a proposal. The city is willing to look at that proposal, and the city wants the developer to pay the city's fees. If Zachmann wants to come in with a proposal and do a letter of intent, the city would do the same thing with him.

Yoch said they would like that opportunity.

Schneider said that the shape, narrowness and size of the Zachmann property make it difficult to develop without coordinating that piece with the Steeno property. He did not see the Zachmann property developing to high density in and of itself.

Yoch said that they are seeking to develop it as a larger parcel.

Wendy Weigel, 14209 Glen Lake Drive, Minnetonka, spoke on behalf of herself and her husband, Keith. She urged the council to reject the letter of intent, and asked that the Steeno/Zachmann property remain as residential. She felt that the council's vote tonight would allow a private developer to take other private property. Her greater concern was that would set a precedent that developers could get subsidies and use eminent domain to turn residential properties into high density condominiums. This would be only the third time eminent domain would be used for private gain in Minnetonka, and she encouraged more scrutiny of the project on the city's part, and more public input. Weigel referred to a Supreme Court decision in favor of cities using eminent domain. She believes that most Minnesotans oppose this, and said that Congressman Ramstad said that the Supreme Court's decision was bad.

Peterson felt there was a misunderstanding about what was proposed tonight. The city council would not be making a decision on use of eminent domain tonight. They would simply be reviewing an agreement to cover the costs. The language of the letter of intent is clear that there is no other decision being made at this point.

Weigel felt that paragraph 4 said that the city would begin the process to use eminent domain. She recommended that the language be amended or stricken.

Peterson did not recommend changing the language. The language refers to the work needed to prepare for a decision. It does not say that the city will use eminent domain. Anderson said that the letter directs the developer to acquire all of the properties in the project area.

Gunyou acknowledged that eminent domain is a volatile issue, and unfortunately, it has been blown out of proportion. He encouraged residents with questions about eminent domain to contact him or the city attorney.

Thomas said that he and Wagner serve on the EDA. The EDA has devoted significant time to scrutinizing the letter of intent. They asked many of the same questions residents asked. The letter of intent just protects the city. If the project does not proceed, the city would recover its costs, which is prudent. He said that we don't know what will happen with this project because no plans have been submitted, and there have not been public hearings at the planning commission. All of those processes need to occur. He supported protecting the city in this way.

Thomas moved, Wagner seconded a motion to adopt Resolution No. 2005-139 approving a Letter of Intent between the Minnetonka Economic Development Authority and Glen Lake Redevelopment, LLC.

Ellingson suggested that the update be amended to refer to the council adopting the letter of intent with a specific developer. Gunyou emphasized that the letter of intent does not commit the city to anything, and it does not give preference to any developer at this point. He felt it would be misleading to change the language. He stressed that the council has not approved anything yet. The letter of intent merely provides for the city's reimbursement. The city has not expressed preference to any developer, and in fact, has invited Zachmann to submit a proposal.

Callison suggested that the proposed update to be sent to residents simply say that no plans have been approved to avoid confusion.

Ellingson shared an analogy about when he became engaged 30 years ago, noting that a date was selected before he proposed. He suggested that the letter of intent was like an engagement.

Schneider would agree with that analogy if the letter of intent granted any exclusive rights, but it does not. It is only a cost recovery agreement, which is different from a preliminary development agreement that would give an exclusive right.

Ellingson said that Wartman has a certain standing because of his property interests. Zachmann could only submit a proposal for his property.

Callison said that if the council did not approve the letter of intent, the developer could still make his proposal. In that case, the city would do the same work and not be paid for it. This action would protect the city's financial interest.

Wagner questioned how much more time the city would put into this project without knowing if it had financial merit. The developer is seeking tax increment financing, and the city needs to have a good sense if that will work.

Wiersum said that the council needs to take this action to make sure its expenses are reimbursed. The letter of intent guarantees that. He noted the confusion with the title of the letter of intent.

Thomas said that the attorney may want to change the title for future uses to refer to cost recovery. This developer has a right to make his proposal. This action would protect the city if the project doesn't succeed. It would not be appropriate for the taxpayers of the city to absorb those costs.

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

**C. Resolution authorizing the issuance of a hazardous building order for 10604 Crestridge Drive.**

Peterson provided the staff report. After the agenda was prepared, the house and garage sustained extensive damage from a fire. The property owner was previously reluctant to agree to an abatement order, but has since agreed that the buildings need to be demolished. She provided information from the fire marshal explaining why total demolition was required. The property owner has agreed to sign the abatement agreement on Friday. Peterson asked that the city council approve the resolution in the addendum in case the property owner does not do that. She reviewed the changes from the original resolution.

Anderson asked about the cause of the fire. Peterson said that the fire department said that the fire was suspicious.

Callison asked how quickly the property would be fenced. Peterson said that the property owner has told staff that he is purchasing the fencing material. A contractor has been scheduled to install the fencing if the property owner does not install the fence tomorrow.

Wagner thanked staff for their efforts. He drives by this property daily, and it has been an eyesore and presents health issues. He suggested that erosion fencing be used if the foundation cannot be immediately filled.

Wiersum asked about the cost. Rankin said that the demolition and restoration of the site would cost about \$20,000.

Wagner moved, Wiersum seconded a motion to adopt the amended Resolution No. 2005-140 authorizing the issuance of a hazardous building order for 10604 Crestridge Drive. All voted "yes." Motion carried.

**D. Presentation on the results of a planning project follow-up study.**

Gunyou introduced this item, noting that Tim Stendahl was a planning intern. Stendahl worked on a project suggested by Callison to follow up about concerns raised during controversial development projects. With few exceptions, Stendahl found that the concerns did not prove to be as significant as originally feared.

Stendahl then gave his presentation, reviewing the issues associated with five projects: Sojourner, Williston water tower, Waterplace Place apartments, Pagel Ice Arena, and the Minnetonka High School sports dome.

Thomas asked if Stendahl had determined if those who raised concerns about Sojourner had moved. Stendahl said that none of the relocations could be directly attributed to the project.

Anderson hoped that this type of review could be done occasionally with other developments, such as the Sanctuary. Stendahl said that planning staff is preparing for that. Gunyou said that staff plans to make this a regular activity, allowing an adequate period of time after a project is completed.

Callison suggested that these results be shared with the planning commission. She and Thomas expressed appreciation for Stendahl's work. Thomas said that three of the five projects were in his ward. He was very surprised by the comments and would like to see the comments from the Williston tower project. These results made him feel better about doing what he thought was best at the time.

Stendahl said that some residents were concerned about the lack of communication between residents and the city. There was a feeling that the water tower and an adjacent development project was a "done deal" when in reality, they were two separate projects.

Thomas said that he learned lessons from that project. The city has changed its notification process, and there are more public meetings. These changes were best in the long run. He was pleased to see so few concerns after these projects were completed.

Anderson felt that way about Sojourner. There has been no impact on property values and no crime impact.

Wiersum commended staff and Stendahl. He said that people often fail to take a look back and learn. People are afraid of change and it takes leadership and discipline. The city's credibility increases when we look back and learn, which can help us in the future. It may be worth spending city funds in the future to do post analysis.

Schneider said that the Urban Land Institute started doing this about 18 months ago.

Planning Director Geoff Olson said that Stendahl looked at the Sensible Land Use information. It has been suggested that Stendahl's information be shared with them.

Anderson suggested looking at the Alzheimer's home on Pondview, and Wiersum suggested looking at Crosby Cove.

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

**16. ADJOURNMENT.**

Thomas moved, Wagner seconded a motion to adjourn the meeting 9:14 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk