

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, NOVEMBER 28, 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 Bob Ellingson, Brad Wiersum, Terry Schneider, Jan Callison, Al Thomas, Tony Wagner, and Karen Anderson were present.

4. APPROVAL OF AGENDA.

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

5. APPROVAL OF MINUTES: November 14, 2005 regular council meeting.

Wiersum moved, Callison seconded a motion to approve the minutes of the November 14, 2005 Minnetonka City Council meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Recognition of the Minnetonka Police Department traffic enforcement efforts.

Anderson introduced Suzie Palmer and Bob O'Brien, representatives from the MN Department of Public Safety, Office of Traffic Safety. Palmer recognized the great work the Minnetonka Police Department has done with the Safe and Sober Project—a program designed to encourage drivers to drive sober, wear their seatbelts, obey the speed laws, and drive attentively. Palmer noted that since the early 1960s, traffic crashes have been the leading cause of death for ages 1 to 34. Minnetonka has participated in the Safe and Sober Program for eight years, and serves as the lead agency in a project with the cities of Maple Grove and Plymouth. Palmer noted Minnetonka's participation in the May mobilization to increase seatbelt usage. In recognition of Minnetonka's work on this program, Palmer presented the police department with a speed detector.

O'Brien said that the number of registered vehicles and licensed drivers had increased significantly between 1993 and 2002. Those increases would tend to increase motor vehicle accidents. During that time period, Minnetonka reduced its number of accidents by 170. O'Brien said that the state was recognizing Minnetonka Police for their efforts to save lives, while reducing injuries and damage to vehicles. O'Brien thanked the police department's leadership, and the city council and community for their support of the program.

Officer Kelly Phillips, who is with the traffic unit, explained that the program focuses on different issues through the year to reduce crashes and raise awareness.

Anderson said that traffic safety is a council priority because it is a priority of our community as noted in every survey. She appreciated the recognition for the positive things we are doing to improve Minnetonka's statistics, and commended Police Chief Joy Rikala. She noted that the program requires a great deal of work.

B. Minnetonka Community Action Recognition Award.

Anderson said that Community Action Recognition awards are periodically given for community projects. Tonight, the award was given to a group of people, the Clear Springs Pond Association, for their five year plan to improve the quality of the pond in their neighborhood. She hoped that their project would serve as a model for other neighborhoods. Thomas provided a description of their efforts, and Anderson and Callison presented certificates to those involved. Al and Rosemary Ritchie were the catalyst for bringing this group together, and the other participants were: Jeff Becklund; Pam and Greg Bradford; Vicki Brouillette; Bette and Olivier Breton; Jill and Steve Ericson; Pip and Al Fischer; Knute and JoAnn Gilbertson; Rich and Joan Gosen; Tina and Tom Hoff; Kim, Doug, Lili and Colette Jaeger; Cynthia Jung; Jane Kennedy; Mark and Callie Kuyava; Peg and Scott Lord; Ralph and Mary Ann Mader; Ken and Mary Lou Marsh; Ron and Pat Parker; Joyce Schultenover; Carl and Beth Swaggart; and Pete and Mary Thome.

Anderson noted that the city often gets calls from neighbors who do not like their ponds and want the city to do something about them. The city has 300 ponds that are used for stormwater purposes. She encouraged other neighborhoods to work with Jo Colleran if they wanted to help their ponds. She thanked the association for their wonderful effort.

C. Receive a \$15,000 donation from the Lake Minnetonka Garden Club for the restoration and beautification of the Gray's Bay Marina and the Headwaters Park.

Wiersum recognized the Lake Minnetonka Garden Club, which raised \$15,000 for the beautification of the Gray's Bay marina and Headwaters Park because those projects aligned with the goals of their organization. Patty Williams, club president, presented the check. Williams praised this public/private partnership, and said that the project supported their efforts for lakeshore restoration and rainwater management. Williams said that they hope to continue raising funds for this project. Anderson thanked the group for its donation, and recognized those present: Ronnie Windsor, Helen Waldron, Lee Pashek, Cindy Pratt, and Kathy Coward.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Anderson welcomed Boy Scout Troop 430, which meets at Ridgewood Church, who were present to work on their communications merit badge.

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

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

Bud Wingate 4709 Eastwood Circle, presented a petition from his neighborhood in response to the city's plan to reconstruct Eastwood Circle. The group asked that the city limit the project to only resurfacing, and opposed widening the street and adding curb and gutter. He said these changes would save taxpayer dollars.

Gunyou noted that one neighborhood meeting had already occurred, and another was scheduled for January.

City Engineer Lee Gustafson reported that the first neighborhood meeting was held on November 14. He indicated that staff will try to address the concerns raised at that meeting and minimize the impacts as more detailed plans are prepared for the project. Gustafson noted the steep slopes and prominent wetlands in that area require protection. Staff is also looking for ways to eliminate existing erosion problems and ensure the quality of the water that is going into the nearby wetlands. Survey information was not available at the first meeting. A second neighborhood meeting is planned to address the concerns raised at the first meeting. Gustafson said that some concerns can be addressed, but some may not be, due to the erosion and water quality issues.

Anderson said that curb and gutter often help to correct drainage and water control problems. Gustafson agreed, and said that they are the only method that can help with the steep embankments and drop offs in this area. Anderson said that detailed information will be available at the next meeting. Gustafson said that construction will likely start in June. Anderson said that the neighbors will be notified of the January meeting.

Thomas reported that when he met with Wingate and another neighbor on Sunday, they expressed concern with erosion control and protecting the wetlands. He noted that our engineering staff is skilled at identifying all possible ways to control the flow of water. He asked that staff not only look at the project as a whole, but also look at how the various pieces fit together.

Gustafson said that staff is looking at several options, such as reducing the size of the road from the standard to minimize the loss of trees.

9. BIDS AND PURCHASES:

A. Consideration of bids for the Gray's Bay and Jidana Trail Boardwalk Project.

Gunyou provided the staff report.

Callison received a call from someone who understood that these two projects would be connected by trails, which was not her understanding. Gunyou confirmed that these were two separate projects.

Callison moved, Thomas seconded a motion to award the bid for the Gray's Bay and Jidana Trail Boardwalk Project No. 4761/4767 to Jay Brothers Inc. in the amount of \$489,420.00, including the bid alternates. All voted "yes." Motion carried.

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

A. Claims for council authorization – November 28, 2005.

Wiersum moved, Schneider seconded a motion to approve the November 28, 2005 claims including checks numbered 193131 through 193417, totaling \$1,647,429.41. All voted "yes." Motion carried.

B. Authorization to enter into an agreement with Hopkins Independent School District # 270 for junior and senior high liaison services.

Wiersum moved, Schneider seconded a motion to approve an agreement with Hopkins Independent School District #270 for junior and senior high liaison services. All voted "yes." Motion carried.

C. Authorization to enter into an agreement with the Minnetonka Independent School District # 276 for police school liaison services.

Wiersum moved, Schneider seconded a motion to approve an agreement with the Minnetonka Independent School District #276 for police school liaison services. All voted "yes." Motion carried.

D. Adoption of an ordinance regarding parking and driveways.

Wiersum moved, Schneider seconded a motion to adopt Ordinance No. 2005-19 amending City Code Sections 845.020, 930.030, 1150.060, and 1150.080 regarding parking and driveways. All voted "yes." Motion carried.

E. Approval of 2006 fee schedules for consulting engineering services.

Wiersum moved, Schneider seconded a motion to approve the revised 2006 fee schedules for consulting engineering firms, and authorized the mayor and city manager to execute the Addenda to the Agreements for Professional Services with the following firms:

Applied Ecological Services, Inc.
Kaeding and Associates, Inc.
Barr Engineering Company
SECOR International Inc.
Brauer & Associates, Ltd.
Short Elliott Hendrickson, Inc.
Braun Intertec Corporation
SRF Consulting Group
Gale-Tec Engineering, Inc.
STS Consultants, Ltd.
GME Consultants, Inc.
WSB & Associates, Inc.
Hansen Thorp Pellinen Olson, Inc.

All voted "yes." Motion carried.

F. Agreement regarding DNR Grant for the Headwaters Project.

Wiersum moved, Schneider seconded a motion to authorize an agreement regarding a DNR Grant for the Headwaters Project. All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Preliminary plat, with lot frontage variances, for a two-lot subdivision at 4232 Highview Place for Paul Vogstrom.

Wagner moved, Callison seconded a motion to give preliminary approval to the Vogue Estates plat date stamped October 4, 2005, with lot width at the setback variances from 110 feet to 107 feet and 106 feet, and a lot width at the right-of-way variance from 80 feet to 44 feet for Lot 1. Approval is based on the following findings:

- 1) The site could be developed to meet all zoning ordinance requirements, but would require construction of a cul-de-sac and removal of the Pine Trees along Highview Place.
- 2) Except for the variances, the proposal meets the required standards and ordinance for a preliminary plat.
- 3) The proposal meets the required standards for a variance, because:
 - a. There is a unique hardship caused by the existing lot width of the property and the curve in the road in front of the existing home.
 - b. The variance would meet the intent of the ordinance because:
 - (1) The two new lots have adequate lot area.
 - (2) The substandard lot width is in character with the neighborhood.
 - (3) There are lots with substandard area in the neighborhood.

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
 - a. Show the following on the final plat:
 - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven foot-wide drainage and utility easements along all other lot lines.
 - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (3) Drainage and utility easements over the 1026.5 storm water elevation, as determined by the city engineer.

- (4) Dedication of 10 feet of public right-of-way along Highview place.
 - b. Pay the city a park dedication fee of \$2,375.00.
 - c. If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
 - 2) The following items must be submitted to the city before the city releases the final plat:
 - a. An 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) A private driveway easement over Lot 2 to serve Lot 1. The easement must state the maintenance responsibilities of each owner. The minimum driveway width must be as required by the fire marshal.
 - (3) Any private utility easement that cross over Lot 2 to serve Lot 1.
 - (4) Conservation easements 12-17 feet from the south lot line for a wetland buffer, and a drawing of the easements for the approval of the city attorney. The easements and drawings must be recorded with the final plat.
 - (5) 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.
 - 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 shown on the preliminary plat 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. Minimum basement elevation of 1028.5.
 - e. The home on Lot 1 must be located to save the 24" and 14" oaks and the 24" walnut tree that are adjacent to the existing home.
 - f. There may be no fill below 1026.5
 - g. A hookup 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. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
 - i. All existing structures must be removed.
- 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.

B. Items concerning the Fetterly View Plat at 11519 Fetterly Road West for Dick and Jill Heimerl.

Wagner moved, Callison seconded a motion to:

- 1) Give preliminary approval to the Fetterly View plat, date stamped October 27, 2005, with a right-of-way variance from 50 feet to 40 feet. Approval is based on the following findings:

- a. Except for the variance, the proposal meets the required standards and ordinance for a preliminary plat.
- b. The proposal meets the required standards for a variance, because there is a unique hardship to the property caused by the large wetland located on Lot 3.
- c. The variance would meet the intent of the ordinance because there would still be 10 feet of right-of-way on the west side of the street. The additional 10 feet of right-of-way would not be used.

Approval is subject to the following conditions:

- a. Complete the following before final plat approval:
 - (1) Show the following on the final plat:
 - (a) 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.
 - (b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (c) Drainage and utility easements over wetlands, floodplains, and storm water ponds, as determined by the city engineer.
 - (2) Pay the city a park dedication fee of \$4,750.00.
 - (3) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
- b. The following items must be submitted to the city before the city releases the final plat:
 - (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 micro-station or DXF on a CD disk.
 - (4) If the developer is constructing any public improvements, the developer must submit a signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements. This agreement must include an escrow to ensure that the developer completes all public improvements and complies with all city regulations. This escrow

must be a letter of credit or cash deposit. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.

- (5) The following documents for the city attorney's approval:
- (a) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - (b) Conservation easements over the area 25-feet out from the two wetlands, including a drawing of the easements for the approval of the city attorney. The easements and drawings must be recorded with the final plat.
 - (c) Public right-of-way easement established over 30 feet of the property to the east.
 - (d) Provide declaration and restrictive covenants over all mitigated wetlands, for review by the city's environmental resources coordinator.
 - (e) 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.

- (6) Any other requirements included with final plat approval.

c. The following must be completed before the city issues a grading permit or any site work is started.

- (1) Final grading, drainage and erosion control plans must be submitted for the city engineer's approval. If the developer is building the streets and utilities, the developer must submit final street and utility plans for the city engineer's approval, including removal of the poor soils where the road is to be located. Plans must include submittal of revised storm water calculations showing compliance with the

- requirement that the post development discharge rate is at or less than the pre-development discharge rate for a 1-, 10-, and 100-year storm event.
- (2) Sanitary sewer extension must be increased to an 8-inch pipe.
 - (3) A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site must be submitted to the city. The city will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway, and grading have been completed according to the plans approved by the city.
 - (4) All trees to be preserved must be fenced and erosion control measures installed for the planning director's approval.
 - (5) A construction management plan must be submitted for the planning director's approval.
 - (6) Submit evidence of the watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
- d. The following must be submitted to the city before the city issues a building permit:
- (1) A grading and tree preservation plan for each lot, subject to the planning director's approval. The plans must be in substantial compliance with the building pads shown on the preliminary plat 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.
 - (2) A temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
 - (3) A copy of the recorded plat and any easement or covenants required to be recorded.
 - (4) Minimum low floor elevation must be at or above 914.8.

- (5) A hookup fee for sanitary sewer and water.
 - (6) Submittal of proof of compliance with MPCA regulations relating to the abandonment of the existing septic system.
 - (7) 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.
 - e. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
 - f. The width of the proposed street must be reduced from 26 feet to 24 feet to reduce impervious surface and allow more room for a wetland buffer.
 - g. 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.
 - h. 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.
- 2) Approved the wetland replacement plan and adopted Resolution No. 2005-142 approving the proposed wetland alteration permit. This resolution is based on the following findings:
- a. The wetland would ultimately have a higher function and value.
- Approval is subject to the following conditions:
- a. Obtain a grading permit as part of the wetland restoration.
 - b. Must be developed per the plans date stamped October 27, 2005.
- 3) Adopted Ordinance No. 2005-20 approving the proposed change in the wetland overlay district boundaries. This ordinance is based on the following findings:
- a. The wetland will ultimately have a higher function and value.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:**A. Ordinance regarding building permits and easements.**

Anderson explained the process for ordinance adoption. City Attorney Desyl Peterson provided the staff report.

Schneider moved, Wiersum seconded a motion to introduce an ordinance amending City Code Section 500.015 and 500.040 regarding building permits and easements. All voted "yes." Motion carried.

B. Three ordinances concerning the Glen Lake redevelopment project.

Gunyou provided a brief introduction, noting that the city has now received a formal application for this project from the developer, which triggers a detailed public review process. City Planner Geoff Olson provided background information about the project, and outlined the process and opportunities for public input. He noted that 1,200 notices were mailed to a notification area which far exceeds the city's normal mailing. He encouraged neighbors to submit comments, and to obtain current project information from the city's Web site or by calling staff.

Anderson noted that the city council has not yet seen the official submittal, but some council members attended neighborhood informational meetings.

Ellingson attended both neighborhood meetings and said there was support for parts of this project. He noted that the new grocery store was a great asset to the neighborhood and offered an opportunity for social interaction with neighbors. Part of the character of Glen Lake is its small town feel and the closeness of its neighbors. Ellingson said that one area of concern is the 50-unit condominium building. Ellingson said that a neighborhood planning group had previously looked at mixed uses in this area. It was clear that there would be a condominium building constructed on the Steeno property, but Ellingson felt that the planned structure is too big for the site. This is demonstrated by the variances required and the number of trees that would need to be removed. Ellingson noted that the west side of Glen Lake was identified as low priority open space in the past. He asked that the council keep in mind city policies that are in conflict with that big of a development on that site. He noted that this project would be reviewed by the EDA, the

planning commission, and the city council. He also noted that this property was designated for low density residential during the last comprehensive guide plan review. Ellingson wanted to raise his concerns up front to encourage thoughtful consideration.

Anderson said that there will be many future opportunities for discussion of this project.

Callison said that in addition to the affordable units planned for the project, there will be a substantial number of units in a modest or mid-market price range. Gunyou confirmed that was one of the aspects in which the council was most interested when they discussed the potential redevelopment at a previous study session.

Callison asked that staff consider any helpful lessons that have been learned through other mixed use projects in the metro area. She also asked that staff ensure that the affordable units meet community needs as to the number of bedrooms, etc. She noted that the many variances will require scrutiny.

Thomas agreed, and said that the data required to evaluate the TIF request will look at usage and unit size. Thomas and Wagner serve on the EDA, which will consider these issues closely. Thomas strongly encouraged people to get the correct information about the project, and attend the public meetings. He noted that there is a great deal of misinformation, and correct information is needed to make good decisions. With respect to the concerns about the condominiums, Thomas noted that they are a financial key to the overall success of the project. Thomas noted that the grocery store is helping to revitalize the neighborhood, and that is a goal of this project. It will be necessary to juggle the pros and cons to end up with a project that can work. He stressed that people get the correct information, participate in the meetings, and offer suggestions.

Wagner asked that staff provide information on how any transit service would integrate into parcels A and B. He also asked that staff consider the use of proof of parking to reduce some of the variances required for parking.

Wiersum asked that efforts be made to ensure that the final unit cost is close to the developer's representations. He saw an ad for an \$819,000 unit in the Sanctuary, which did not coincide with his expectations for that project.

Schneider generally supported that concept but said that it was probably beyond the council's control. He said that some control

would come from controlling the number of units and their size, because larger units tend to cost more. Wiersum agreed that the council should not get into pricing decisions, but did want the developer to understand the council's expectations.

In response to Wagner's question, Peterson said that these items only refer to land use, so they would be referred only to the planning commission. The financial aspects of the project will also be reviewed by the EDA.

Thomas moved, Callison seconded a motion to introduce the following ordinances and refer them to the planning commission:

- 1) Rezoning the Glenhaven Shopping Center and the businesses across Excelsior Boulevard from B-2, limited business to PUD, planned unit development, including the adoption of a master development plan;
- 2) Rezoning 14217 and 14301 Stewart Lane from R-1, low density residential, to R-5, high density residential; and
- 3) Changing the floodplain boundaries along Glen Lake at 14217 and 14301 Stewart Lane.

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

13. PUBLIC HEARINGS: None.

14. OTHER BUSINESS:

- A. 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.**

Gunyou introduced the item. Olson provided the staff report reviewing the changes since the past review.

Callison asked if the homeowner could add brick to the exterior in the future, without the city's approval. Olson said that they could not, because to do so would require an additional setback variance. Callison appreciated the changes that had been made to conform to the council's prior concerns.

In response to Wiersum's and Anderson's questions, Roy Lecy clarified how the reduced width was accomplished.

Anderson asked that staff pay close attention to the measurements during construction.

Callison moved, Wiersum seconded a motion to adopt the Resolution No. 2005-143 approving a flood plain setback variance from 20 feet to 12 feet for the principal structure; a flood plain setback variance from 10 feet to 9 feet for a deck/balcony; side yard setback variances from 7 feet to 4 feet and 5 feet for the principal structure; side yard setback variances from 7 feet to 4 feet and 3.5 feet for the overhangs; a front yard setback variance from 73 feet to 33 feet for the principal structure; and an impervious surface variance from 30 percent to 42 percent. Approval is based on the following findings:

- 1) Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - a. The narrow width and small size of the lot.
 - b. The small buildable area on the lot due to the narrow width, the flood plain location and the location of the structure to the south, which causes the front yard setback to be 73 feet.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The proposal is similar to other variances granted in the neighborhood.
 - b. The applicant is proposing reasonable use of the property.
 - c. The proposed two-story home is consistent with other homes on McKenzie Point Road.

Approval is subject to the following conditions:

- 1) Submit proof of having recorded this resolution with the county before the city issues a building permit.
- 2) Minimum floor elevation for the home and garage must be 933.5.
- 3) The new home must have a fire protection sprinkler system, subject to approval by the fire marshal.
- 4) A detailed grading plan must be submitted with the building permit. These plans are subject to review and approval by the city engineer.
- 5) A 10-foot buffer and conservation easement be established and maintained from the edge of the wetland.
- 6) This variance will end on December 31, 2006, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

All voted "yes." Motion carried.

Schneider left at 7:37 p.m.

B. Resolution authorizing the issuance of a hazardous building order for 15709 Excelsior Blvd.

Peterson gave the staff report. She noted that the property owner would have 30 days from service of the order to demolish the structure or lift the building to construct a new foundation. Community Development Director Ron Rankin supported the recommended action.

Thomas said that people have been looking at this eyesore for 18 months, and definite action is needed.

Peterson explained how the hazardous building statute differed from nuisance abatement. This action involves a major financial impact to the property, so the state's hazardous building process is required. Through that process, notice is given to the property owner and all lien holders, and they have an opportunity to challenge the order in district court. A challenge would stop the clock, so Peterson could not guarantee that action would occur within 30 days.

Thomas asked if there were options under the housing or city codes. Peterson said that the exterior finish and the landscaping violate the city's nuisance code. It would not make sense to require those two corrections now when the foundation is suspect.

Thomas asked if there were quicker options due to the collapsing foundation. Peterson said that there were not. The statute is designed to give people due process to protect the public's private property interest from government actions. Peterson said that the builder's attorney said that they are embarrassed that this has gone on so long. They intend to be cooperative, and she hoped that would be the case.

Thomas said that the city should do whatever it can to move this along. He said that if the rain continues, the foundation may collapse. He has received many phone calls about this structure and wanted speedy action.

Peterson has asked the owner's attorney about signing an abatement agreement, a step that was used with the last hazardous building. If an agreement is signed, action could occur after 30 days without court proceedings. Anderson noted that there were other deadlines set within the order.

Wiersum asked if the structure was salvageable and if staff concurred with the structural engineer's findings. Peterson said that the city's chief building official, Bob Manor, believes that the structure above the foundation is salvageable. The builder is also talking with deconstruction contractors, who would tear the structure apart and salvage as much as possible for reuse.

Callison was concerned about liability, and asked what action the city would take if the builder took no action. Peterson said that efforts would be made to come to agreement through the abatement agreement process. Staff prefers complete demolition of the structure.

Wiersum moved, Thomas seconded a motion to adopt Resolution 2005-144 authorizing the issuance of a hazardous building order for 15709 Excelsior Blvd. All voted "yes" (Schneider was absent). Motion carried.

Anderson noted that there were people in the audience. Patrick Tiffany, who lives next to this structure, said that this has been an eyesore, and a safety concern. The dumpster has been in place for quite some time. The property is also eroding onto adjacent properties, and has affected their shared driveway. There are no barriers to keep people out.

Anderson noted the limitations of state law. Peterson said that if they don't take action within 30 days, the city will hire contractors to demolish the structure, and will address the landscaping issues. She noted that there is no way to adequately prevent people from entering the structure. The orange fencing only provides a visual barrier.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Thomas moved, Wagner seconded a motion to adjourn the meeting 7:52 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk