

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JANUARY 23, 2006**

1. CALL TO ORDER.

Mayor Callison 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 Al Thomas, Tony Wagner, Bob Ellingson, Brad Wiersum, Dick Allendorf, and Jan Callison were present. Councilmember Terry Schneider was excused, and arrived later at item 13E.

4. APPROVAL OF AGENDA.

City Manager John Gunyou reviewed the addendum, which included a proclamation to be added as item #6A, and information from the planning director concerning item 13E, the Glen Lake redevelopment.

Wagner moved, Thomas seconded a motion to accept the agenda with the addendum. Thomas, Wagner, Ellingson, Wiersum, Allendorf and Callison voted "yes." Schneider was excused. Motion carried.

5. APPROVAL OF MINUTES:

A. January 9, 2006 special meeting.

Allendorf moved, Wiersum seconded a motion to approve the minutes of the January 9, 2006 Minnetonka City Council special meeting. Thomas, Wagner, Ellingson, Wiersum, Allendorf and Callison voted "yes." Schneider was excused. Motion carried.

B. January 9, 2006 regular meeting.

Allendorf moved, Wiersum seconded a motion to approve the minutes of the January 9, 2006 Minnetonka City Council regular meeting. Thomas, Wagner, Ellingson, Wiersum, Allendorf and Callison voted "yes." Schneider was excused. Motion carried.

6. SPECIAL MATTERS:

A. Proclamation declaring January 25, 2006 Karen J. Anderson Day in the city of Minnetonka.

Callison read a proclamation declaring January 25, 2006 Karen J. Anderson Day in the city of Minnetonka. She noted that a reception would be held in Anderson's honor on that date.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings.

Callison attended the grand opening of Lifetime Fitness, located in the remodeled Wellspring building. She also noted that the Metropolitan Legislative Commission mayors met with Governor Pawlenty.

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

No one appeared.

9. BIDS AND PURCHASES: None.

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

A. Claims for council authorization – January 23, 2006.

Wagner moved, Thomas seconded a motion to approve the January 23, 2006 claims which includes checks numbered 194370 through 194679, totaling \$2,638,035.36. Thomas, Wagner, Ellingson, Wiersum, Allendorf and Callison voted "yes." Schneider was excused. Motion carried.

B. Approval of an agreement with Senior Community Services for the provision of a 2006 Senior Services program.

Wagner moved, Thomas seconded a motion to approve an agreement with Senior Community Services for the provision of the 2006 Senior Services program. Thomas, Wagner, Ellingson, Wiersum, Allendorf and Callison voted "yes." Schneider was excused. Motion carried.

C. Approval of an agreement with Senior Community Services for the provision of a 2006 Senior Services Outreach program.

Wagner moved, Thomas seconded a motion to approve an agreement with Senior Community Services for the provision of the 2006 Senior Services Outreach program. Thomas, Wagner, Ellingson, Wiersum, Allendorf and Callison voted "yes." Schneider was excused. Motion carried.

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

12. **INTRODUCTION OF ORDINANCES:**

A. **An ordinance amending the zoning code regarding outside sales of communication media.**

City Attorney Desyl Peterson provided the staff report.

Wiersum moved, Allendorf seconded a motion to introduce an ordinance amending the zoning code regarding outside sales of communication media and refer it to the planning commission.

Callison thought that the 60 inch height referred to in paragraphs 6 and 7 was fairly tall for a standard. Peterson said that the figure came from St. Paul's Code, which has been held out as a model. She will look at other ordinances.

Thomas, Wagner, Ellingson, Wiersum, Allendorf and Callison voted "yes." Schneider was excused. Motion carried.

13. **PUBLIC HEARINGS:**

A. **Review of Park Renewal Master Plan for Groveland Park.**

Gunyou provided a brief introduction. Parks & Trails Manager Perry Vetter provided the staff report.

In response to Wiersum's question, Vetter said that tetherball is taken down at the same time tennis nets are removed, but the pole remains in the ground.

Callison opened the hearing

Jim Gleason, 16814 Cottage Grove Avenue, asked if there would be a shelter. He also asked about having some greenery in the winter, and wanted trees preserved when the path is constructed.

Vetter said that the evergreens were mixed with other plantings to create a more natural look than a row of evergreens. The trail will be field staked to avoid major trees during construction. A shelter structure is in the budget and will be bid as an alternate. Bidding will occur in about six weeks, when the design documents are completed.

Callison closed the hearing

Wiersum said this was a good plan for this small park.

Wiersum moved, Wagner seconded a motion to approve the Master Plan for Groveland Park and direct staff to proceed with Phase II (design and construction) of Park Renewal. Thomas, Wagner, Ellingson, Wiersum, Allendorf and Callison voted "yes." Schneider was excused. Motion carried.

B. Review of Park Renewal Master Plan for Westwood Park.

Vetter gave the staff report.

Wagner asked if there was any concern that only one neighbor attended the planning meeting.

Vetter said that was somewhat of a concern, but the park is located close to Golden Valley and St. Louis Park. The neighbor who attended did talk with her neighbors. Vetter said that the plan will not change the use of the park, and it will not duplicate amenities from the nearby Oberlin Park.

Thomas asked if the neighbors were notified of the meeting. Vetter said that the mailing went to those within 1,500 feet of the park, which exceeded the city ordinance requirement to notify those within 400 feet.

Callison opened the hearing

Al Mayer, 16 Westwood Road, said that he has lived in the neighborhood for 50 years. He noted that more children are moving to the neighborhood. He was surprised to see the play area being moved to a more open area. He also asked about the surface material planned for the trail.

Vetter said that southerly portion of the internal trail will be asphalt. He said that a more northerly location for the play area would draw more mosquitoes. The planned location for the play area would cut down on through vehicle traffic. He did not have any concerns regarding playground safety.

Callison closed the hearing

Wagner noted that a couple of the neighbors had provided input about the plans.

Wagner moved, Ellingson seconded a motion to approve the Master Plan for Westwood Park and direct staff to proceed with Phase II (design and construction) of Park Renewal. Thomas, Wagner, Ellingson, Wiersum, Allendorf and Callison voted "yes." Schneider was excused. Motion carried.

C. Public hearing to consider an application by The New Cellars Liquors & Wines, Inc., for an off-sale intoxicating liquor license for US Liquor & Wine, 11333 State Highway 7.

Gunyou provided a brief staff report. Callison opened the hearing. No one spoke.

Thomas moved, Allendorf seconded a motion to continue the public hearing to consider an application by The New Cellars Liquors & Wines, Inc., for an off-sale intoxicating liquor license for US Liquor & Wine, 11333 State Highway 7. to February 27, 2006. Thomas, Wagner, Ellingson, Wiersum, Allendorf and Callison voted "yes." Schneider was excused. Motion carried.

D. Public hearing to consider a temporary on-sale wine license for the Morris Park Players, Inc. for a fundraiser on February 18, 2006.

Gunyou provided a brief staff report. Callison opened the hearing. No one spoke, and the hearing was closed.

Wagner moved, Wiersum seconded a motion to grant a temporary on-sale wine license for the Morris Park Players, Inc. for a fundraiser on February 18, 2006. Thomas, Wagner, Ellingson, Wiersum, Allendorf and Callison voted "yes." Schneider was excused. Motion carried.

E. Items concerning a three-phase redevelopment project for the easterly part of Glen Lake for Thomas Wartman.

Callison reviewed the recommended actions and the process that would be followed for this item. She noted that the planning commission and economic development authority (EDA) issues were not subject to a public hearing before the council. The planning commission meetings were well-attended, and the council had also received many letters and e-mails. Although she would allow public input, she did not want to revisit the same issues. She asked that the input be brief, and non-repetitive. If possible, a neighborhood spokesperson should be used. She reminded the

audience that they should be respectful of speakers, and no applause would be allowed.

Callison noted that Schneider had not yet arrived, and said that when he arrived, he would be given an opportunity to make comments and ask questions.

Callison said that there had been comments about what was perceived to be short notice for this project. Two months have now passed for additional comment. She suggested that tonight's comments instead focus on the project and how it fits into the neighborhood.

Gunyou gave an introductory presentation prior to the detailed staff reports. His comments included:

- There is a long history of change in the Glen Lake neighborhood.
- The city staff, the planning commission and EDA all reached a conclusion that the future viability of the Glen Lake area is dependent on this redevelopment.
- He described how the project evolved over the past year in response to the extensive public process that far exceeded a typical project review.
- Official project notification went well beyond the ordinance requirement of a 400 foot radius. Notices were sent to approximately 1,200 properties within a two square mile area.
- The planning commission held public meetings in December, 2005, and January 2006, and after hours and hours of public testimony, voted 5-1 to recommend approval of the project.
- The EDA held three public meetings during November and December, 2005, and January, 2006 to consider the financial and affordable housing components of the proposal. The EDA voted unanimously to recommend approval to the council.
- This project is particularly noteworthy in five ways:
 - It offers an innovative, cohesive plan that complements and respects the history of the Glen Lake neighborhood.
 - It provides a mix of affordable housing greater than typically required, while also maintaining a predominance of mid-range units.
 - It provides funding for needed public improvements ranging from traffic signals to streetscaping to pedestrian walkways.
 - It protects the city's interests by capping our financial exposure, incorporating a unique profit sharing arrangement.

- It honors the city's long history of responsible use of Tax Increment Financing (TIF) and eminent domain.
- Most concern has related to the Site C condominiums. The size of the building is a legitimate issue, but the interrelated nature of the project makes it impossible to consider the density of this one site in isolation. All project components are integral to the project's overall feasibility. The significant public benefits of this project are dependent on the coordinated development of all three sites.
- The amount of input and discussion reflects the fact that Glen Lake residents and businesses care deeply about their neighborhood. They may disagree on the specifics, but they all want what is best for the area.
- Today, the developer agreed to additional concessions to address two major areas of concern. The size of the Site C condominium building will be reduced from 50 units to 45. The leg closest to the new townhomes will be shortened by 18 feet so that the benefit of the size reduction will accrue to those homeowners. In exchange, the developer agreed to provide a mix of larger affordable units in Building A: 3- two-bedroom and 3 one-bedroom plus den units. Affordable units will comprise 17.5 percent of the overall project, considerably higher than typically achieved.
- Change is inevitable, and always difficult. While no project is ever perfect, this is a good project, and it provides a great opportunity to guide change in Glen Lake to make things better. Not perfect, but better.

Planning Director Geoff Olson then provided the staff report.

Wagner asked if there would be ample room for overflow parking for Glen Lake Park. Olson said that there would be with the parcel the city acquired just north of the baseball fields for parking.

Schneider arrived at 7:59 p.m.

At Wagner's request, Olson explained that there would be 20 affordable units in Site A and 11 for Site B.

Wiersum asked about a traffic signal at Woodhill Road and Excelsior Boulevard. He asked if staff was confident the city would get the signal given the TIF financing. City Engineer Lee Gustafson said that staff has had initial discussions with Hennepin County about this signal. They view consolidation of access as favorable

for the area. If the project is approved, the county wants to discuss this and other ways to further improve safety in the area.

Allendorf asked Gustafson to explain how the traffic flow will work, and what ideas are possible to solve traffic concerns. Gustafson said that the left turn movements are far from good at present. A signal would greatly enhance traffic movement and pedestrian crossings. It would also space the traffic out, creating gaps in eastbound and westbound traffic to help access Excelsior Boulevard from non-signalized access points.

Gustafson added that Woodhill Road does not currently intersect with Excelsior Boulevard at a traditional 90 degree angle. The northerly leg of Woodhill Road would be realigned to improve sight distance, and would create several options for the southerly leg.

Thomas noted that the size of the building on Site C would be reduced, and asked about the plan for management of the storm water runoff to Glen Lake. Gustafson said that all three sites meet the standards of the storm water management plan. The ponds in the area are already sized to treat runoff in a fully developed site. Ponds were recently constructed near Kinsel Park, Dickson Road and Lorence Road to ensure that water flowing into Glen Lake is of the best quality possible. Site C is lower, and will require two water quality ponds before discharge into Glen Lake.

Thomas raised concerns about lighting on Excelsior Boulevard for the retail area's sidewalks and benches. He noted the difficulty of getting from one end of the Glen Lake area to the other without walking on Excelsior Boulevard.

Community Development Director Ron Rankin said that the proposed pedestrian planning process will take a fresh look through all of Glen Lake to provide good pedestrian access. The plan will go well beyond just this project area. The fountain/plaza area will also be given a fresh look.

Thomas asked about the setbacks for Site A along Tree Street. Olson said that setbacks are officially measured to the property line, which is 11 feet, but this is misleading. There is a 10-foot boulevard area between the property line and the curb, so there is actually a 21 foot setback from the curb to the building.

Ellingson asked about a future connection between the building on Site B and Stewart Lane. Gustafson said that could happen with the realignment of Woodhill Road.

Wagner asked if there would be sidewalks just on the southern part of Site A on Excelsior Boulevard or also on the Site B side. Rankin said that the intention is for the sidewalk to follow the south side of Excelsior Boulevard from Eden Prairie Road to Woodhill Road. Gustafson added that staff will approach the pedestrian plan with a much broader perspective, including access to Glen Lake Elementary School. Callison said that the plan is still to be developed, so more public input will be sought.

Allendorf recalled that at the planning commission meeting, Olson said that there would be a large number of variances, at least half due to the new urbanism concept. He asked about the specific hardship for those variances, especially for Site C.

City Attorney Desyl Peterson referred to the addendum material, which provided the findings for the variances. She corrected the introductory statement provided in the staff report to read: "The three phases of this development are being developed as one integrated project. The proposed variances in the development are justified by the following." That statement would be followed by a revised set of findings, which she reviewed. Peterson said that the variances are needed to generate redevelopment of the Glen Lake area. There is significant concern about the deteriorated nature and economy of that area, and that hardship applies to all three sites. The second hardship is that the zoning code was developed before the new urbanism concept. This is in reality what is happening.

Schneider said that funding should help installation of a signal light, but there is still an issue of meeting warrants. He expects that the county will look for a more traditional alignment of the intersection along with more controlled access. Realignment would require part of the parcel to the east of Parcel B, which could affect the timing. We may not be in control of the county's expectation for alignment. He asked about the options for a signalized pedestrian crosswalk in lieu of a full-fledged intersection.

Gustafson said that anything is possible. The same questions were asked for CSAH 101 which, unlike Woodhill Road, met at least one warrant. The county is reluctant to use flasher type pedestrian crossing devices. On CSAH 101, the county allowed overhead signage with advanced warning signs, but no flasher devices. The county would probably oppose flashing devices, and would likely rather look at a permanent solution in Glen Lake.

Callison said that there had been comments that financing dictated the size of the building and asked if staff would support buildings of this size without the financing issues. Olson responded that our code states that density can be based on public improvements that accrue to the project. If this developer was not facilitating area redevelopment, generating TIF financing, providing affordable housing, or funding for the traffic signal or trails, staff would have negotiated for a smaller building. The council determines the density of each project based on specific public benefits, such as environmental protection, public amenities and affordable housing. When there are public benefits, the city has been willing in the past to negotiate for a larger building. Without public benefit, the council has said that a developer can only expect a smaller use. The public benefits underlie staff's support for the Site C building. All of the planning commissioners wanted a smaller building, but a majority found that it was reasonable. Given the developer's proposal today to reduce the building by another 18 feet, the Site C building becomes even more reasonable. Staff feels the public benefits justify the variances for a larger building.

Callison asked if Peterson was comfortable that the legal variance standards are met. Peterson said that she was with the revisions presented tonight.

Callison asked Peterson to talk about precedent issues for density around Glen Lake and further down Eden Prairie Road. Peterson said that variances are site specific, so it would be difficult to say that they set precedent. The Courts have said there is a year's window of time for precedent. If there was another project with the same criteria within a year, the council would be legally bound to treat it the same. She was not concerned that the council would be required to grant other variances on this lake or any other lakes in the city based on this project. The council could, but would not be required to do so.

Callison asked about the precedent regarding reguiding and rezoning. Peterson had less concern there because the council has the greatest discretion for guiding the property. With variances, the property owner has more rights. There is no precedent regarding the guide plan because that is very discretionary to the council.

Callison asked about Alano's parking constraints. Peterson said they have approximately 14 parking stalls on their property, located at the rear of their building on the Stewart Lane side. There is a public parking lot in front of their building that is owned and maintained by the city. Alano has requested 50 to 60 parking spots

for their use. When they have large evening meetings, they use the front lot and spillover into other areas, which creates conflicts for other users. Alano clearly needs more than their 14 parking spaces.

Callison heard comments at the planning commission meeting comparing this project to the Excelsior & Grand project in St. Louis Park. She asked staff to compare that project with this project, and also to share any lessons learned from that project.

Rankin said that some aspects of the Excelsior & Grand project are similar, such as the closer setbacks to the sidewalk. He noted that staff also spoke with Hopkins staff about their Marketplace Loft project. Hopkins took care to ensure that the first floor businesses did not generate noise or odor concerns for the condominiums above. The only complaint has been about noise from Mainstreet. In St. Louis Park, the only concerns have been that some of the retail space is occupied by chain businesses. The proposed Glen Lake project offers space for hometown businesses.

Callison asked for a size comparison as to mass and land. Rankin said that there are 350 rental units alone in the Excelsior & Grand project, and overall their project has close to three times the number of residential units of this project.

Ellingson noted that the ordinance refers to "hardship," but the Courts use the term "practical difficulties." Peterson said that the ordinance and state law state that the property could not be put to a reasonable use without the variance. Courts have substituted "practical difficulties" for "no reasonable use" but not for "hardship."

Wiersum asked if the Xcel substation would meet the increased demand with 170 additional residential units in the area. Olson said that staff discussed this issue with Xcel Energy. They feel that there is adequate capacity to handle the additional demand. They noted that condominiums are not major power users. Also, Xcel has made some temporary changes to provide more power to the substation, and a major power user in the Minnetonka Industrial Park left, which reduced the draw from that station.

Ellingson asked about new urbanism, as it applies to this project. He did not see a comparison to the Excelsior & Grand project because they had residential units above storefronts. The building on Site B will be setback from Excelsior Boulevard, which he supported, and the other two buildings are simply residential.

Olson said that "new urbanism" has been used as a shorthand term to explain what the architect is trying to achieve. Actually, the architect is borrowing some of those concepts, such as mixed use in Site B, and bringing the building to the street with parking in the back or underground on Sites A & B. This project is not Excelsior & Grand, and it was not intended to be. It is a unique project for Glen Lake.

Rankin then provided the staff report concerning the EDA's review of the project. In response to Schneider's question, Rankin said that all of the affordable units would be one-bedroom units, except that the developer has agreed to include 3 one-bedroom + den and 3 two-bedroom units in the mix of 20 affordable units at Site A.

Mark Ruff of Ehlers, the city's financial consultant, provided an overview of tax increment financing. TIF is intended to level the playing field between undeveloped sites and those being redeveloped. The increased taxes for a site are redirected to the project. Ruff noted that the development agreement covers the majority of the district, but not the Renneke site, Xcel substation or the Dairy Queen. The Wartman parcels (Sites A, B and C) currently only generate about \$40,000 in property taxes/year. With the redevelopment, they could generate \$730,000/year. State law ensures that school districts and certain bond issues are funded regardless of the TIF financing, so the city cannot capture the entire amount. Just under \$100,000 will go to the school district and the city for levied referendum taxes. The taxes collected for these purposes will be double those currently collected, and when the project is fully developed, \$600,000 will be available to level the playing field and pay for public benefits.

Ruff said the city has wide latitude in interpreting eligible costs. He reviewed the specifics of the budget, and how he analyzed the financial feasibility of the project. When all phases of the project have concluded, revenue bonds will be issued. The city will not pledge any of its taxing authority or take any risk for those bonds.

Ruff noted that the city is fronting some funds for the Alano relocation, the signal light, pedestrian and streetscaping improvements. This \$1 million would come from the city's development account, and it is hoped that a county grant could offset some of the costs. The city would be repaid before the developer. The project would not increase property taxes on Minnetonka residents and businesses, and could actually reduce taxes in the Glen Lake area and for the city as a whole.

Ruff reviewed the financial findings that the council has to make: 1) the project would not go forward without the use of TIF due to the area's high market values and the relocation expenses, and 2) not only would this project not happen, neither would any other project occur for this site. He felt those findings had been met. Site C would likely redevelop, but that development would not likely be the same, since there would not be the public benefits of this package so the council would not support the higher density. He did not feel that any other project of similar size and scope would develop. He noted that Site B does not generate enough revenue from its sale alone, or even with the added TIF, because of its limited size.

Ruff reviewed the nine other scenarios staff developed to test the impact of different densities on affordable housing and project feasibility. None of the options provided the number of affordable units of the proposed option 10. He felt that moving the affordable units from Site C was a reasonable tradeoff to achieve the project's goals.

Wagner said that the city always takes a conservative approach, and asked how we compare with our peer cities. He also asked if the projected shortfall could be made up by inflation. Ruff said that if the property tax system in Minnesota doesn't change, the shortfall could easily be covered. Values in Minnetonka increase, without question, and the city can capture that increase. He felt the city had a good chance to recover the shortfall. If the Legislature gives more credits to homeowners, that could reduce the TIF.

Gunyou explained that the projected shortfall results from the city's pledge to help Alano over and above what we typically would do, because of our past history with them. The development account would be tapped to make up the difference. That account is separate from the city's general fund, so taxpayers would not be subsidizing the development. If the shortfall is not recovered through TIF payments, the only risk is that the development account would not be repaid. Our expectation is that we will not only recover the shortfall, but will also be able to put additional funds into the account.

Ruff said that the city has traditionally limited its TIF districts to a short duration, although they can be established for a maximum of 20 years. On average, Minnetonka has kept them a maximum of 15 years, and has limited the duration to 10 to 12 years on occasion. In terms of the percentage of total tax base captured in TIF districts, Minnetonka's 5 percent is more conservative than peer cities: Edina

is at 7 percent, and Bloomington and St. Louis Park are at about 8 to 9 percent.

In response to Schneider's question, Ruff said that if additional funds are captured, they could be used to make additional public improvements in that area, or at either end of Glen Lake where the properties could not support TIF in and of themselves. Alternatively, the city could close the district earlier than planned.

Ellingson asked about the developer's 12 percent profit limit. Ruff explained that would be 12 percent of the construction costs, not 12 percent of the sale price for the units. Ellingson asked if it would be more appropriate to look at the return on the developer's investment. Ruff said that is often the case with long-term financing, but in the case of condominiums, which are financed in a variety of ways, the cost depends on the developer's track record.

Wiersum said residents have said they don't want tax revenue to go to the developer as profit. His understanding is that there is no way taxes will increase for a Minnetonka resident due to a TIF project. Ruff concurred. Wiersum noted that the project proforma does not include inflation, so if there is inflation and the project performs better than projected, people's taxes could down, and the bonds could be paid off sooner. Ruff said that he could not guarantee that taxes would go down, but he noted that the project will improve the city's tax base as a whole, so that is a possibility.

In response to Ellingson's question, Ruff said that the funds for Alano are relocation benefits. Ellingson asked if the \$1 million for business relocation included tenant relocation to the new Site B. Ruff said that it did. Peterson added that there is a strict federal law that governs relocation expenses. In fact, a tenant cannot waive its right to relocation expenses. The city is obligated to pay as long as the tenant was in place when the project started, and they are entitled to these benefits regardless of where they move.

Steve Bubul, Kennedy & Graven, spoke as the city's special development and bond counsel. He summarized the actions the city will take related to the redevelopment and the TIF plan, and explained the factual findings that are required. Bubul noted that these are two separate actions and there are two geographic areas. The larger project area, "Glen Lake Station redevelopment project," was established by the Minnetonka HRA and council in 1977. At that time, those groups made a finding that there was blight. As part of this project, Hoisington and Koegler have reviewed and revised those findings. The statutory definition of blight refers to

obsolescence, faulty design and arrangement, dilapidation, or other factors, such as incompatible land uses. In addition to updating those findings, the council should focus on the area where the increment will be collected, and needs to designate a housing development project. This will accomplish two missions: providing a remedy for blight, and promoting housing for people of moderate income—both HRA type powers.

Bubul noted that the Minnetonka EDA has also made findings as to what is an affordable income level, which cities have the power to do by statute. In Minnetonka, that is 115% of the median income, which is comparable to other cities in the metropolitan area. The percentage is higher for owner-occupied housing than for rentals.

Bubul said that the city must also approve the TIF plan. He noted that most of the increment will be spent in the area from which it is collected, but there might be some expenditures in the broader redevelopment area to accomplish the same types of things.

The city council will be required to make specific findings referred to as “but for.” The finding would be that this proposed development is not reasonably expected to occur “but for” the TIF as outlined in the materials and the analysis, and no other development would occur that would create as much or more market value as the proposed development after the adjustments for TIF assistance. The other development would have to be at the same level of intensity as the proposed development.

The city council must also find that the project meets the requirements for creating a TIF district. In this case, a renewal and renovation district is recommended, which has different tests than a redevelopment district. Redevelopment districts require that 50 percent of the buildings are structurally substandard. Renewal and renovation districts require that 20 percent of the buildings meet that standard, and 30 percent meet a lesser test related to obsolescence and incompatible land use. The city retained LHB architects to do the analysis for those tests, and Michael Fischer from that firm will explain those findings. LHB’s full report, which includes every building in the district, is part of the record of this hearing.

Schneider asked what would happen if the statutory definition of blight was tightened by the legislature. Bubul said it is more likely that legislation will restrict the use of eminent domain powers. He did not expect many changes related to TIF.

Schneider said that sometimes the EDA uses an affordable housing criteria of 80% of median and sometimes it uses 115%, and asked for clarification. Bubul said that the standard is different in different situations. Most of the time, the percentage is 115% for owner-occupied housing.

Rankin said that the city has used 80% in some cases, particularly those where the West Hennepin Affordable Housing Land Trust is involved. The lower percentage narrows the qualifications to obtain mortgages. The higher percentage provides for a greater range of buyers.

In response to Ellingson's question, Bubul said that in a redevelopment district, 50% of the structures must be substandard, which this project could meet. However, in this case, the findings for renewal and renovation are stricter.

Michael Fischer of LHB Architects, spoke about their findings about the structures in the district. They looked at the tax increment district to ensure it met all statutory requirements. He reviewed the credentials and expertise of the team who worked on the project, and noted the importance of that expertise as it related to the findings. Their firm has reviewed 49 TIF districts.

He explained the criteria they use, and their findings:

- In the test to ensure that the district is not green field, the district must be at least 70% buildings, streets, or paved. This district is at 72.5%.
- In the test to ensure that the structures are substandard, the district clearly met the test that at least 20% of the structures are substandard. This district is at 67%.
- All the structures met the building code deficiency criteria.
- Parcels 19 and 20 met the criteria for obsolete land uses, because they are incompatible with the surrounding higher densities.
- Parcel 20 is so narrow that another single family home could not be built on it.
- There is a very good distribution of these substandard structures throughout the district.
- LHB found that the district qualifies as a renewal and renovation district.

Ellingson asked if this area would qualify as a redevelopment district because 50% of the buildings are substandard. Fischer said that it would, but he was taking a more conservative approach so it

works better as a renewal district. Parcels 19 and 20 do not have substandard buildings.

Callison noted that eminent domain had not been discussed.

Peterson said that there are two parcels that the developer has not yet acquired or reached a purchase agreement to purchase—the Alano building, and Parcel 20, owned by Mr. Zachman. Staff is working to find Alano another location, and active discussions are in progress. Zachman has not been interested in talking with staff. If these two parcels are not acquired through voluntary acquisition, the development agreement would require the city to go forward with eminent domain on both parcels. Staff is not asking for the city council to grant that authority at this time. If it is required, staff will ask the council to authorize that in another month or so.

The council took a 15 minute break from 9:45 p.m. to 10 pm.

Tom Wartman, the developer, thanked staff for their work over the past 18 months since Kowalski's announced its closing. He is very proud of the plan. He believes that the project will bring new life and beautification to the area, and provide opportunities to increase safety.

Wartman's architect, John Hamilton of Urban Works, reviewed the design of the buildings and the materials that would be used.

Schneider said that the buildings are attractive, and the spire adds interest. For parcel B, the first level retail does not stand out, and appears to blend in. He suggested that the architect better identify the space as retail so people understand there are businesses there. Hamilton said that the retail is pushed out into the lot to make its presence stronger. Signage and lighting will also be important.

Callison asked if the height of the tower had been determined. Hamilton felt that the form that is proposed is highly appropriate. It could be changed, but the challenge is that it has an historic antecedent that sets the scale. If it changes too much, it becomes a different building.

Allendorf asked about an architectural massing model. Hamilton explained the rendering he had prepared to illustrate the Site C building as viewed from across the lake. In response to Allendorf's request, Hamilton pointed out where the 18 feet would be removed from the Site C structure.

John Herman of Faegre & Benson, 90 S. 7th Street, Minneapolis, spoke as the developer's attorney. He noted that the Site B building was pushed to the southern and eastern sides of the site to keep the residential units as far as possible away from the Xcel substation and the high voltage lines. The retail-mixed use site was a challenge because it is so narrow, and the city asked that the side facing Stewart Lane have a residential appearance at grade level.

The forces that drove the Site C design were: the site's irregular, triangular shape with the apex at the street frontage where the visitor parking needs to be located, a significant portion of site is wetland and floodplain leaving only half of the site buildable after removing the area for surface parking, and the site is fairly steeply sloped with a cup-shaped topography. These forces support the sideyard encroachments requested in the variances.

Herman said that the test is not whether you can build anything, it is whether you can reasonably develop the site for the density, and the nature of development would be allowed as part of the revised guide plan. He said that the practical problems of developing the property clearly warrant the requested variances.

In response to Schneider's question, Hamilton said that trash would be stored inside the lower level of the structure on Site B. Wartman said that trash would be enclosed, with the smells kept away from the residences and anyone outside.

Schneider noted that the current building provides the character for the Gold Nugget, but it also poses code challenges. He asked how the developer would preserve that character when the restaurant is relocated. Wartman said that they would use architectural elements of the present structure—wooden booths, wood ceilings and beams, and some cobblestones near the restrooms. The new location will be code compliant, but will keep the Gold Nugget's character alive. They plan to keep the staff and the ambience.

Allendorf noted that Site B will be constructed first so that tenants from Site A can relocate. He said some residents have told him that they have talked with current Site A tenants who said that they were approached about relocating but have no idea what the new rents will be. Allendorf asked Wartman about his conversations with the current tenants. Wartman said that he has spoken with all of his tenants. They are currently paying about \$16/square foot for space built in 1980. The projected figures are that the rents in the new building will run about \$18/square foot. Wartman is expediting some construction to meet the needs of tenants that have specific

electrical and plumbing needs. Wartman said there has been great interest by the tenants to move to the new building where there should be greater exposure and better signage.

Wagner noted that tenants in the Excelsior & Grand project complained that rents increased significantly after one year. He asked about assurances that Wartman would not do that. Wartman said that he has been a very fair landlord since he purchased Glenhaven in 1987. He has worked with the tenants on lease extensions, and has been fair as far as rent increases. He prefers longer term leases to keep the tenants in place.

Callison then asked for general project feedback from the public. She noted that a public hearing would be opened later on two specific topics: vacation of right-of-way and the TIF district. She noted that the city council members had watched the planning commission meetings, and read minutes of the EDA meetings, and understood the concerns previously expressed by residents.

Richard Urban, 5625 Eden Prairie Road, spoke for the Friends of Glen Lake. He said that they did not agree on everything, but shared a common interest and respected what is best for each other. This project presents an opportunity for economic development, and that is generally supported by the area residents and businesses. There are concerns about the traffic, and those might be worthy of more discussion, especially about pedestrian safety for the area's children and senior citizens. They were disappointed in the way Site C is bundled, because they view the structure as too large, even with the latest concessions. The group is not a radical fringe group. They support some change and understand that they have to accept higher density. They recognize staff's expertise. They used the services of accountants, realtors, architects, developers and designers to increase their understanding. They have also learned how city ordinances work hand in hand with state law, and about such things as the impact of color. Urban said they understood how the deterioration in the area affects the local businesses, and the impact of "big box" developments, such as those at CSAH 101. They have worked hard to gather as much expertise as they could using their own resources so that they could provide thoughtful, constructive input.

The area residents have been involved in their community, participating in the 1980s environmental studies of the area, the 1990s comprehensive guide plan revisions, and the group Allendorf gathered in 2003. They are disappointed that they had no input into this project. They hope that the city will take a breath and

encourage a bit more work. The plan is close and has a lot of good features. The Glen Lake area truly represents what new urbanism is about, not the façade, but the concept of people living in a community they can walk to and from, that encourages senior citizens to live in the area, where cars are not needed for everything, and where there is support for children's activities. New urbanism is not just about buildings, it's about the spirit of a place. He disagreed with the hardship finding that new urbanism did not exist as a concept, because they have been living it for decades.

Urban suggested that Minnetonka avoid what has happened in other communities where with hindsight they would have done things differently. There is a lot of good in place, and this project presents an opportunity to revitalize the local businesses, correct traffic problems, and make good on our affordable housing goals. Wartman has an opportunity to maximize the value of his properties, and this project presents an opportunity to deal with the inconveniences of the Xcel substation. The proposal has some problems. It's not perfect but could be.

Urban felt that the rezoning of Site C from R1 to R5 is more radical than it needed to be. It would put a very large building on a small site. It would be wrong to set a policy that allows variances on the basis of odd-shaped lots, because there are many of those in the city. The requested variances are not supported by true hardship.

Urban was pleased that Allendorf raised questions about traffic flow and safety, but Urban said that the answers were not satisfactory.

Urban asked how the city could balance community good with individual property rights to use eminent domain. Alano provides an intangible contribution to the community. With greater input and thinking outside the box, the city might be able to find more creative financing. The current TIF requirements are conservative, and it might be in the community's interest to take a less conservative approach.

Urban said that he was asked to speak on behalf of several hundred people but he was not speaking for everyone. They have shared their concerns with each other, the council, the planning commission, and staff. They are not unanimous on what the final plan should be, but they do agree that the major flaws require more time.

Steve Yoch, 444 Cedar Street, St. Paul, spoke for his client, Arnie Zachman, owner of 14301 Stewart Lane. He noted that he has had

much correspondence with the city attorney. On October 24, 2005, he said that Zachman would like an opportunity to compete in developing his property. He suggested that there are viable alternative developments that would make more sense than taking Zachman's property. He said that taking Zachman's property would be inappropriate. The property is not blighted or substandard. The earlier plans called for a public path on the Zachman property. The plan now shows 12 units of Wartman's project encroaching on Zachman's property. This would be choosing one land owner over another, which is what proposed legislation would not allow. He asked that eminent domain not be used and that the council delay the discussion to make sure it wants to use that power. Zachman does not want an adversarial relationship with the city but feels the use of eminent domain would not be fair or consistent.

Evan Fox, 6008 Pinewood Lane, said that the buildings don't fit and they are inconsistent with Glen Lake. The development is not really about Glen Lake, it's about the TIF district. It's a group think process. Site C would not have been included if it wasn't needed for the TIF. Even with removing 18 feet from the Site C building, the buildings are being shoehorned into a fragile area. There are floodplains, wetlands, and steep slopes on the site. This project will make other owners of property on the lake think about doing a similar high density project. Fox questioned the affordability of units when the lowest priced unit will cost \$200,000 for 800 square feet - \$235/square foot. His single family home is worth about \$130/square foot. He is a professional person with a good career, and said it is not easy to afford what he has, but he can. He questioned who could afford these units, which are roughly the size of a small trailer. Based on this, he questioned the rents for the businesses. He opposed eminent domain for taking private property, and to displace Alano, which has helped a lot of people.

Tammy Rosenthal, 5800 Lake Rose Circle, asked about the addendum deletion about tree replacement. Callison noted that the deletion was of a duplication—the matter was addressed elsewhere in the conditions. Rosenthal showed a photograph of an Edina condominium building depicting what she believed to be a reasonable setback. She estimated the setback as 40 feet to allow room for the crowns of trees. She spoke with a Spring Park council member who related the problems they had with a project. She suggested considering water contamination, and construction truck start times.

Callison asked about a construction management plan for this project. Olson said that was a standard requirement and should be in the conditions.

Ward Hertsted, 15480 Wing Lake Drive, has lived in the area for 22 years. He has been looking for an alternative to his family home. He thinks this project is terrific, because it would allow them to continue to live in the area. He was embarrassed watching the planning commission meeting on television at home, and realized that he should be at the meeting. He was impressed by the city council. He said that the staff and consultant did a great job. He felt that many residents didn't deserve such great councilmembers. Hersted said that he will buy the unit in the "witch's hat."

Michael Gross, 5635 Glenmoor Circle, concurred with the previous speaker. He was very impressed with the level of detail. The primary objection of residents is the speed and intensity at which this project is progressing. He learned of the project in November and attended a meeting hosted by the developer. He agreed that there is blight in the area, but was also concerned about the speed and intensity of the process. The city is focused on the details and the regulatory hoops. There will be an 18 percent increase in tax revenue in a very short time, which meant there would be big changes in Glen Lake. He picked this area over Maple Grove because it had a country setting with trees, low light levels, and relatively low traffic. He paid more for his house to buy what he valued. The residents of this area would not move to Excelsior & Grand, because that does not represent the community they moved to. He disagreed with the city attorney that zoning does not set a precedent. This project represents a departure from the city's guide plan. He heard another owner of property on the lake support this project, and he thought it was because he could see the value of his property go up if he did something similar. Gross favored redeveloping Glen Lake, and said that the team was very talented. They are working on hugely complicated problems and have approached it admirably.

Lonnie Anderson, 5404 Mayview Road, presented a 3D video massing model. He said that buildings A and B are large scale. Excelsior & Grand is larger in scope, but smaller in height than Site A. The development at 50th & France is larger in scope and development, but its overall height is smaller than buildings A and C. The change in the business/commercial area to PUD is a compelling argument for new urbanism for buildings A and C. Building A could have a higher density or additional retail. Building B could have taken some of the density away from Building C. The

new urbanism on Building B was masterful, but it is inappropriate for Building C. Anderson said that other sites on the lake are fraught with hardships due to their shapes and size. Although condominiums are appropriate, rezoning to R5 means that the council is willing to allow other developers offering affordable housing to do similar projects. The last seven story building in the Glen Lake area was the Glen Lake Sanatorium, and it was constructed on many acres. This project will set precedent for R5 zoning on a lake in Minnetonka, and developers will flock to the door of city hall. He questioned if that was reasonable and truly in the best interest of Glen Lake. He showed a picture of the sanatorium structure and said that was the height of what he would be viewing across the lake.

Randall Neal, 14203 Glen Lake Drive, just moved into a new townhouse in the area. He is happy with the overall project. He did note that the Vikings are looking at putting a 300 foot football field on 500 to 600 acres in Blaine. Site C is 300 feet long, minus 18 feet and will be on less than one and one-half acres of usable land. He suggested that the city take a while longer to consider all of the ramifications.

William Schuller, 5410 Highland Road, said his parents were the first on the waiting list for Presbyterian Homes. If this project goes through, he will be happy to have them next to a thriving center rather than the wasteland it looks like now. He asked about the location for signals. Callison said that the city hopes to get a signal at Woodhill Road at some point. She noted that there will be a sidewalk on the south side of Excelsior Boulevard.

Grace Sheely, 14325 Grenier Road, noted the addendum included 150 additional signatures for her petition. She welcomed redevelopment of Glen Lake, but opposed Building C due to its massive size, density, proposed zoning changes, height, and the setback variances. She opposed the use of eminent domain for private development. She had placed balloons in the Glen Lake area, and said that while they were not perfect, they give the community a sense of the height of the buildings to come. She asked which tenants would move from Building A, and if Dragon Jade would receive relocation benefits. The new buildings would not be good neighbors because their "elbows" are pushing against their neighbors. She said that each building would be the size of a football field, and she wanted the council to think about that. She had asked if there were any other R5 properties on Minnetonka lakes. Olson had told her there was one on Shady Oak Road. She found that property had lake views but not frontage. She asked who

would be responsible for clean up if the lake is damaged. She also noted that on the first page of the staff report, the neighbors were not mentioned as being part of the planning process. She also noted that the staff report set conditions for approval that the Gold Nugget and Alano be relocated, and wanted assurance that these requirements were in the conditions.

Wartman listed the tenants who are moving to Building B (spa, nails, hair salon, Curves, dance studio, dentist, and one of the restaurants). He anticipated a new restaurant, Bonsai Sushi, and he is working to relocate the gun shop, which will not move to building A. Hamilton confirmed that the buildings are about 300 feet in length. Wartman said that Dragon Jade currently has 3,250 square feet of space. The ideal restaurant size in mixed use buildings is 1,800 to 2,200 square feet, which is too small for them. He is working to relocate them to another space in Glen Lake or in the Hopkins/Minnetonka area. Peterson noted that Dragon Jade is eligible for relocation expenses.

Callison asked if there were other R5 properties on lakes in Minnetonka. Olson noted the Shady Oak property. Staff does not feel this project would set precedent because this is a unique situation.

Laura Ronbeck, 13801 Kinsel Road, supported the project. She has lived in Glen Lake since 1977. She has seen many changes in the area (Atrium, shopping center, Presbyterian Homes, Glen Lake Landing, golf course). These changes were not always popular, but they have been accepted. She has followed this project since last spring. The original proposal was for 100 condominiums and no grocery store. She did not support that proposal. She applauded Wartman and the city for continuing to work on the project, and said the current plan is good. It offers many benefits. Glen Lake has been declining for many years. In response to those who said that the existing density previously supported a grocery store, she said that was before Cubs and SuperTargets, and at a time when people didn't eat out as much. More people are needed to support the new grocery store. She heard two women talking about the project, and one mentioned that it would bring back a sense of community to the area. Ronbeck noted that when the grocery store closed, she saw only her closest neighbors. The proposal will provide additional green space where people can meet. She walks in Kinsel Park and welcomed the building being close to the park to give her a sense of safety by providing more eyes on the community. All of the pieces of the project fit together. Ronbeck was on the 1999 citizen comprehensive guide plan review committee. They created an

overlay district on the other side of Glen Lake because they did not want condominiums next to a house. They didn't do that on this side of the lake because no one anticipated Mason moving out. If this project is not approved, the area will change, but there will not be a cohesive approach. She said that she spoke for others who could not attend the meeting. The project is good economics, encourages walking, provides affordable and lifestyle housing, and presents a wonderful opportunity to address the existing pedestrian and traffic safety issues.

Mary Eckles, 4960 Suburban Drive, is the owner of Denmar Auto Body, located in part of Site D. She supported rejuvenation of the area, but felt that things were moving too fast. They have not found a new location. She said that some area businesses may be suffering but her business is thriving. Their business has doubled every month.

Lloyd Ebert, 14309 Kinsel Road, is 100 years old and has lived in Minnetonka for 50 years. He has lived on the shores of Lake Harriet and now lives on the shores of Glen Lake. He has seen so many mistakes made in Minneapolis – a few in Minnetonka: turning the sanatorium into a golf course, and building the Glen Lake fire station, only to replace it with two others. He asked that the council play it easy.

Joe Herzog, 5538 Mayview Road, questioned the height of building C. He noted that its peak is at 1,020 feet, and the lake is at 904 feet. He thinks the Glen Lake area needed renovation, and was impressed with the findings about the blight in the area. He opposed the height of Building C, and granting a variance for the building. He opposed using eminent domain for the Zachman property. He did not think the city should go out of its way to build a seven story building. He said that lots 19 and 20 are conforming, and questioned tearing those structures down. Alano provides a needed social service, the city has a duty to help them, and eminent domain should not be used to take their building. He noted Ronbeck's comments about feeling more secure with the building near the park, and said that a two story building would accomplish the same thing. He noted that the sewers were built in 1968, and his runs between his house and the lake. He was concerned that during excavation a sewer line could be damaged and run into the lake. He asked who would pay for those costs.

Callison referenced Herzog's comments about parcels 19 and 20 and clarified that eminent domain would not be used for the larger Steeno property.

Callison then opened the public hearing on the vacation of the right-of-way on Excelsior Boulevard, and modification to the Housing and Redevelopment Plan and establishing the TIF district.

Grace Sheely, said that she saw a new letter from Hennepin County that indicated there are still issues. Gustafson responded that the county asked for enough right of way for a four lane divided highway with turn lanes and boulevard, and room for utilities. Staff reviewed the county's request and feels that the right-of-way that will be retained, together with the right-of-way easements from the developer, will be sufficient for what could occur in this area. There are no potential highway expansion projects for this area in the city's or the county's long range plans. There is adequate room for upgrade improvements.

Joe Herzog, wanted assurance that the city would not be giving away land it would later need to repurchase. Gustafson said the city shared that concern, which is why the city was requiring additional easements to the curb line of the parking lot, and additional right of way on the north side against Site A. The city won't even need to purchase temporary easements. The right of way that is being kept and required should be sufficient for any construction on Excelsior Boulevard.

Michael Gross said that these things signal a major development. He thought the county would not request that land without reason. This is the first time there will be R5 units in the area. He viewed these things as a negative to the development, and said they could affect his vote in the next election.

Callison closed the public hearing and asked for council discussion. She suggested first considering the comprehensive guide plan, then narrowing the discussion to site issues. She asked for comments from council on reguiding and rezoning the property.

Schneider said that mid to high density PUD provides a comprehensive approach to tie everything together. It achieves the goals of affordable housing and safety. He was not concerned that one R5 parcel would lead to higher density on another lake in Minnetonka. Those comments generate false fears. He said there may be future requests from property owners around Glen Lake. In a year or two, the city will revisit the comprehensive guide plan and this project may be taken into account. He favored more density in this area back in 1999. He supported the general changes as outlined in the staff report.

Callison heard concerns from residents about a change in the character of Glen Lake if the density is changed.

Allendorf agreed with Schneider. He chaired the 1999 comprehensive guide plan citizen committee when they addressed potential development on the west side of Glen Lake. There was talk about two overlay zones to consider what was intended and what would have happened with higher density on that side of the lake.

Olson said that the citizen committee was concerned about piecemeal development, and discussed areas for future development on the west side of the lake with one or two developments. The committee also designated a limited number of access points on Eden Prairie Road. If those parcels developed separately, the number of driveways would be undesirable. The committee also considered height restrictions.

Allendorf said that the committee also changed the way property can achieve density by going to the middle of a lake in Minnetonka. The changes were made to protect Glen Lake and the owners of property around Glen Lake. The lake is a wonderful resource. If everyone gets together and decides to sell, properties could develop. The city's earlier actions protected the lake to a great degree. As far as a precedent, he concurred with the city attorney who said that the interwoven goals and objectives of this project are not likely to be duplicated.

Ellingson asked if the overlay district was ever adopted. Olson said that it was not formally adopted, but it is stated in the comprehensive plan. It is a finding that would have to be consistent with the plan.

Schneider noted the resident requests to slow the project down. He said that the city encourages master planning and linking parcels, which creates complex issues that happen concurrently. Although it would be nice to have another month or two to look at the options, the city must give primary attention to the goals of the comprehensive guide plan and policies to integrate things into a better package to get better results.

Thomas did not feel that this project would set a precedent for other lake property in Minnetonka. This situation is unique. He agreed with Schneider's comments about the timing of the project review. He noted that the developer submits plans to the city, and we then

notify people. We are required to notify people within 400 feet, but we provided far greater notice in this case. The project has been in the local papers, in the *Minnetonka Memo*, and on the city's Web site for months. In a perfect world, he would have liked to tinker with the project a little more, but state law does not allow for a greater time period. He supported the guide plan changes. He did not want to see these parcels develop piecemeal. This project provides an opportunity to make improvements in an area that needs improvement, and he did not want to miss that opportunity

Wagner said that the proposed land uses are critical to the project. Last fall, the council said that the developer needed to do certain things: address relocation of the businesses, look at a larger scale, and address the land use issues on Site B. These steps requested were for the greater good of the community, and would target affordable housing and walkability. He supported the guide plan change, and said that the density is appropriate.

Callison looked at the guiding and zoning as the conceptual vision for the Glen Lake area. She thought it was very appropriate to accept the change in guiding and zoning for density. The criteria relating to the amenities of the area are consistent with the guide plan, and the changes are very legitimate. There will be minimal impact to the natural environment. All three sites are consistent with the city's vision. She noted that there has already been a change in the character of Glen Lake with the townhomes, the commercial area and affordable housing, and those changes were appropriate.

Wiersum agreed that the changes were appropriate and he viewed them as part of a comprehensive change. If he looked at each parcel independently, he would not have the same opinion. But tied together, there is a greater rationale. The need in Glen Lake is great, and this project overrides those concerns. Most people who spoke want change - the trade off is those changes cannot occur without the other parts. The project is a unit. He supported the guide plan change.

Ellingson disagreed. The current guide plan designation is for R1, based on the 1999 guide plan change, which was approved by the council with neighborhood involvement. There were differences of opinions three years ago when there was a discussion about a condominium building on Site C, and people are still divided on that issue. The three sites have different histories. The lake is predominately surrounded by single family homes, the park, and the county use. Each parcel is different and merits separate consideration. Unfortunately, economic consideration generates the

TIF. He said that Olson admitted that if he looked at Site C by itself, he would view it differently. He read the criteria in the guide plan for review. He said that the changes to Site A and B would not be dramatic, but they would be for Site C. That site is incredibly increased in terms of density and mass. He said the guide plan said that the change should provide a transition from one use to another. That argument was used for the townhouses on the Mason property. Here there is no transition. The criteria cut both ways, and we are ignoring the planning related criteria in favor of economic considerations.

Thomas moved, and Wagner seconded a motion to extend the council meeting to 12:45 a.m. All voted "yes." Motion carried.

Callison moved the discussion to traffic, pedestrian and building size issues.

Thomas said that when the Woodhill Road signal is considered, the county should also address the long wait to make a left turn onto Williston Road from eastbound Excelsior Boulevard during rush hour.

Allendorf said that turning onto Woodhill Road from Excelsior Boulevard is terrible from either direction. He did not want to wait for this project to address that problem. He said that we have talked to the county about the traffic issues, and there is the potential to fix that problem with geometric changes and a signal. There is also talk of making a cul de sac on Stewart Lane. He has faith that the traffic issues can be addressed.

Allendorf also was concerned about the massing of the project. At the first planning commission meeting, there were no graphics, but one has now been provided. He is going to take the developer and his team at their word that they would not defraud the city about the true height of the building. The balloons are inconsistent with the rendering. With 18 feet cut off the Site C building, he is not concerned about massing.

Allendorf was also concerned about Alano. The city is offering \$500,000, and the developer an additional \$400,000 to \$500,000 to find them a new location. He noted that their site at the sanatorium was not ideal, and neither is their current location due to parking issues. Parking on Stewart Lane is an issue. Staff is doing a good job on this relocation, and the project is contingent upon their relocation. Those contingencies give him comfort, and he will support the project.

Wagner had concerns about traffic and the walkability of the area. He felt there was still room for improvement in that area. He does not want the trail to be a private trail. He wants to encourage the public's usage of it through signage. He was glad that the ballfields would be addressed, because the Woodhill Road area is difficult to travel.

Wiersum said that this was a tough issue with lots of trade offs. If he viewed the parcels independently, he could critique Site C heavily, because there are things he doesn't like about it. He noted the higher density, and was troubled by the setback on the north side. He wondered if the building could be pushed further to the south. However, this is not a piecemeal project; it offers solutions. The Glen Lake area sorely needs revitalization. The commercial areas are not very attractive. If a piecemeal approach were taken, it wouldn't work. Building B is needed for the tenants in Building A to move to, and Building B would not be economically feasible without other parts of the project. Abandoning the businesses to redevelop Glen Lake would not be acceptable. The package is not perfect. The developer is working in good faith, and has offered affordable housing to residents that otherwise couldn't have afforded to live here. The project protects our businesses and revitalizes the area so the businesses can survive, thrive, and even attract more businesses. There is potential to revitalize more of the Glen Lake area and make it a showcase. Viewing the parcels together, the project makes sense. He will support it knowing that there are tradeoffs. He wishes Building C could shrink, and that Alano didn't have to move, but we are working on that. The city is putting considerable resources toward helping everyone reach a win-win solution. It will not be perfect, but the project is something that Glen Lake needs. The vitality of the Glen Lake area will improve as a result of this development.

Thomas said that the sidewalks, benches and green spaces will make the area more family and resident friendly. He suggested that the two ward council people and some Glen Lake residents come together to work on the pedestrian plans. He stressed the importance of improving the ability to traverse through the Glen Lake area from east to west.

Wagner said that Site C gave him the most concern, especially at the northeast corner. It comes down to tradeoffs. The city was not happy with the affordable housing proposed. The city met with the developers, and they made concessions. Wagner reluctantly supported Site C given the overall project. He was always

comfortable with Sites A and B. He thanked the city for sticking it out, and the residents for providing focus. He walked the area yesterday to get a perspective of the mass of the building, especially the northeast corner. The whole project worked together.

Callison listed the project's benefits: revitalizing the commercial area, retaining local retail, eliminating unsightly buildings, providing affordable housing, upgrading public amenities, and traffic solutions. The downsides are: traffic (although the development is smaller), Alano (although the project will provide a longer term parking solution), and eminent domain. She said that the area will clearly redevelop at some point, so perhaps this project will be a blessing in that Alano will find a long term solution.

The real issue for her was the need to relax the ordinance standards for the variances and to change expectations. As she read the ordinances, the letters, and other documents related to the project, she struggled with the rationale for decreasing the setbacks and granting fairly substantial variances. She appreciated the work done by the city attorney and the applicant's attorney. She understood people's comments about the building being too large for Site C, which is almost always the case. The variance standards look not just at the physical features of the site or the financial issues, but the benefits the project brings with it. She thought these variances were appropriate, although she would have been more comfortable without them. She did not think the Site C building would be as visible from Excelsior Boulevard, and certainly not as visible as Buildings A and B, so the larger mass would not have much impact.

Schneider suggested that all the motions be combined. Callison agreed, but asked for comment about the TIF district and the use of eminent domain.

Thomas was hopeful that something could be worked out with Alano, and noted they are being offered twice the value of their property. He said that the Alano program is about the people in the program, not the building. The program calls for unity and moving on. He was hopeful they could remain in the Glen Lake area. Some residents oppose the use of eminent domain for private development, but he did not see this as strictly private development. There are many public improvements that help the city achieve its goals. There are negotiating requirements that the city placed on the developer. One person is holding out. Zachman's attorney said that he wanted an opportunity to develop his property, but that would be difficult to do because he only has one property. There will

be a public trail through that property, and that is a public use. That site is used for a rental property, and no one is living in the home. The developer has made offers to Zachman, which he refused. Thomas wondered if Zachman bought the property for speculation. He saw the use of eminent domain in this case differently from other cities where they moved a family. He supported using eminent domain in this case for the public benefits that the community will get from it.

Schneider said that the council has been very restrained in its use of eminent domain. Over the past 20 years, it has been used only two or three times, and once was at the request of the property owner who needed that action for tax benefits. If the statutes are made more restrictive, the city would abide by them. He considered whether the use would be moral or ethical in this situation. When he first saw Zachman's narrow strip of land, he thought it would be shortsighted not to integrate it into the project. The Alano parcel is essential, otherwise he would not support it. After analysis, he concluded that it is essential that both parcels be included in this combined package for the project to work. He doesn't like to use eminent domain, but it makes the most sense in this case.

Wagner noted that the other nine project options would not work. We want affordable housing. He would have liked to see 20% affordability, but will settle for 17.5%. He recognized that there is a risk that property tax laws will change, and he favored taking a more conservative approach with the TIF. He noted that something may happen on the west end with the substation, or east of this project. He assumed the TIF would go back to the EDA, but he supported its use.

Schneider said that eliminating five units of affordable housing from Site C gives more flexibility for Building A and with the remaining 31 units of affordable housing. He saw that as critical. Minnetonka has maintained a conservative approach to the use of TIF to allow for future uncertainties. He would have liked to have taken into account inflation, and downsized the building by another 18 feet, but that might not be prudent in the long term. There will likely be future legislative changes in the property tax laws, and he does not think they will benefit single family property owners. He supported the end result of the project.

Wagner said that the EDA had a hard time dealing with 36 affordable units at 800 square feet each. He explained how he was able to move into Minnetonka because of affordable housing. He supported flexibility in the size of the affordable units, and

appreciated the efforts of staff and the developer to achieve that compromise.

Wiersum said that the TIF is conservative and that makes sense. The TIF is needed to make this project work. It is hard to contemplate the use of eminent domain, and this city doesn't use it lightly. We haven't moved people from their homes. Alano will be better off. Even though the project might have been easier and better if we took the Renneke property, we refused to do that because there's a homeowner living there. He would question the morals of requiring a homeowner to move simply because it would make the project better. He noted that the council would not be approving eminent domain use tonight. But if the project is approved, the threat of eminent domain is there, and Alano and Zachman will have a choice about how they want to proceed.

Thomas supported the TIF. He also wished the affordable housing could have been 20%, but 17.5% is still reasonable. The city put lots of demands on the developer, and he has done a pretty good job of meeting them. Thomas suggested that the staff and EDA review the possibility of tying affordability to the square footage of units. He also suggested reviewing the Metropolitan Council's pricing for other metro area communities.

Wagner saw the mid-range housing as another positive, because land in Minnetonka is so expensive.

Schneider noted that there were 36 affordable bedrooms, and now there would be 40. He thought that might be better.

Callison responded to the comments that the process was not responsive to the public. She noted Gunyou's explanation about the efforts to broadly disseminate the information. Some felt it was hard to get the notice around Thanksgiving. She noted that the city sent the notice to properties within two square miles of the project. The alternative to a quicker notice was providing notice to a smaller area. There were a number of neighborhood meetings, and there have been many changes to the project, some as late as tonight. Not everyone wants the project. There are concerns about the size of Building C. Early in the process, she asked that the building design reflect the local area, and the architect attempted to do that. She liked the change to include two bedroom affordable units. She thought \$200,000 for an affordable unit was the market reality in Minnetonka. She said that it may seem excessive with the square footage, but it may actually be a pretty good deal. This project is

attractive, because it offers both affordable housing and also mid-range housing.

There was discussion about the motion, to ensure that the addendum changes were included. It was agreed that the motion would reflect those changes. Olson verified that the conditions require a construction management plan.

Schneider moved, Allendorf seconded a motion to:

1) Adopt Resolution No. 2006-003 approving the following guide plan changes of the Glen Lake redevelopment project:

- Site A: commercial to high density residential for the northerly half of the site;
- Site B: commercial to mixed use
- Site C: residential low density to residential high density

Approval is based on the following findings:

Site A

- a. The guide plan change is consistent with adjacent land uses to the north and west.
- b. The site is next to a commercial area, which would provide services such as supermarkets, drugstores, restaurants, cleaners etc. Metro Transit bus service is also available on Excelsior Boulevard.
- c. The guide plan change would be consistent with the public health, safety, and welfare.

Site B

- a. The guide plan change would provide additional residential opportunities to support the surrounding commercial area.
- b. The residential uses would be consistent with the high density land use to the south.
- c. The guide plan change would be consistent with the public health, safety, and welfare.

Site C

- a. The guide plan change is consistent with adjacent land use to the west.
- b. The site is next to a commercial area, which would provide retail services such as restaurants, coffee shops, video rental, cleaners etc. Metro Transit bus service is also available on Excelsior Boulevard.
- c. The guide plan change would be consistent with the public health, safety, and welfare.

2) Adopt Ordinance No. 2006-02 approving the following zoning changes:

Site A: B-2 limited business, to PUD, planned unit development, including a master development plan, with the following variances:

- a. building setback variances from 35 feet to 23 feet from the east lot line; from 35 feet to 7 feet for both buildings from the north lot line; and from 61 feet to 14 feet from the west lot line;
- b. drive-aisle width variances from 24 feet to 22 feet; and
- c. parking lot setback variance from 20 feet to 9 feet from the east lot line and from 20 feet to 6 feet from the westerly property line.

Site B: B-2 limited business, to PUD, planned unit development, including a master development plan, with the following variances:

- a. building setback variance from 35 feet to 9 feet from the south lot line; from 61 feet to 20 feet from the east lot line;
- b. parking lot setback variances from 20 feet to 4 feet from the south lot line; from 10 to 0 feet from west lot line and from 20 feet to 2 feet from the north and east lot lines;
- c. drive-aisle width variances from 26 feet to 24 feet; and

Site C: R-1, low density residential, to R-5, high density residential

This ordinance is based on the following findings:

Site A

- a. The rezoning is consistent with adjacent land uses to the north and west.
- b. The site is next to a commercial area, which would provide services such as supermarkets, drugstores, restaurants, cleaners etc. Metro Transit bus service is also available on Excelsior Boulevard.
- c. The rezoning would be consistent with the public health, safety, and welfare.
- d. The rezoning would be consistent with the proposed guide plan designation;
- e. The proposed development would not have an adverse impact on neighborhood traffic or property values.
- f. The proposed development is consistent with the purposes of the PUD district, particularly the provision of affordable housing, the more efficient and effective use of land and public facilities through mixing land

uses and assembly and development of land in larger parcels, and the high quality of design.

g. The three phases of this development are being developed as one integrated project. The proposed variances in the development are justified by the following:

- (1) The unique hardship to these properties is the deteriorated nature of the Glen lake commercial area.
- (2) An additional hardship is that the zoning code was developed before the "new urbanism" concept became prominent and therefore does not accommodate the reduced setbacks and missed uses inherent in that planning technique. The Glen Lake area has been identified by the Economic Development Authority as an area where more dense development is appropriate to encourage affordable housing. The planning concept of "new urbanism" is one way to implement more dense development.
- (3) Neither of these hardships was created by the landowner.
- (4) The variances would meet the intent of the ordinance and would not alter the essential character of the neighborhood because they allow reasonable development that is creative and attractive and that is similar to other high density developments in the area.
- (5) The variances on Site A are further justified by the fact that the west side of the property is adjacent to a parking lot resulting in minimal impact, and the east side of the property is across the street from a park, also resulting in minimal impact.
- (6) Economic consideration is not the sole basis for the variances. Although the sizes of the buildings are generated by the financial needs of the tax increment district, there are significant public benefits that result from the coordinated development of the three sites and that serve as justification and trade-offs for the variances. These public benefits are discussed in the staff report. The economic impact on the developer is only one consideration in the analysis.

- a. The rezoning would provide additional residential opportunities to support the surrounding commercial area.
- b. The residential uses would be consistent with the high density land use to the south.
- c. The rezoning would be consistent with the public health, safety, and welfare.
- d. The rezoning would be consistent with the proposed guide plan designation;
- e. The proposed development would not have an adverse impact on neighborhood traffic or property values.
- f. The proposed development is consistent with the purposes of the PUD district, particularly the provision of affordable housing, the more efficient and effective use of land and public facilities through mixing land uses and assembly and development of land in larger parcels, and the high quality of design.
- g. The three phases of this development are being developed as one integrated project. The proposed variances in the development are justified by the following:
 - (1) The unique hardship to these properties is the deteriorated nature of the Glen lake commercial area.
 - (2) An additional hardship is that the zoning code was developed before the "new urbanism" concept became prominent and therefore does not accommodate the reduced setbacks and missed uses inherent in that planning technique. The Glen Lake area has been identified by the Economic Development Authority as an area where more dense development is appropriate to encourage affordable housing. The planning concept of "new urbanism" is one way to implement more dense development.
 - (3) Neither of these hardships was created by the landowner.
 - (4) The variances would meet the intent of the ordinance and would not alter the essential character of the neighborhood because they allow reasonable development that is creative and attractive and that is similar to other high density developments in the area.
 - (5) The variances on Site B are further justified by

- (a) The east side of the property is adjacent to a single family home that is guided for future commercial redevelopment and the landscaping on that side will be an improvement over existing conditions;
 - (b) The west side of the property is adjacent to an electrical substation that will suffer little or no impact from the variance;
 - (c) Moving the building to the east helps minimize the detrimental effect that the substation has on the property; and
 - (d) The property is shallow in depth and double-fronted on the north and south by public streets. To avoid commercial parking directly across from the residences on the Stewart Lane side, the commercial parking was placed on the north side, causing the building to be moved further to the south.
- (6) Economic consideration is not the sole basis for the variances. Although the sizes of the buildings are generated by the financial needs of the tax increment district, there are significant public benefits that result from the coordinated development of the three sites and that serve as justification and trade-offs for the variances. These public benefits are discussed in the staff report. The economic impact on the developer is only one consideration in the analysis.

Site C

- a. The rezoning is consistent with adjacent land use to the west.
- b. The site is next to a commercial area, which would provide retail services such as restaurants, coffee shops, video rental, cleaners etc. Metro Transit bus service is also available on Excelsior Boulevard.
- c. The rezoning would be consistent with the public health, safety, and welfare.
- d. The rezoning would be consistent with the proposed guide plan designation;
- e. The proposed development would not have an adverse impact on neighborhood traffic or property values.

These rezonings, master development plan, and final site and building plans for sites A and B are subject to the following conditions:

Site A

- a. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
- o Site plan dated November 1, 2005, with plan showing proof-of parking date-stamped November 30, 2005
 - o Grading plan date-stamped November 1, 2005
 - o Landscaping plan date-stamped November 18, 2005
 - o Building elevations date-stamped November 1, 2005
 - o Utility plan date-stamped November 1, 2005
Stormwater Pollution Prevention Plan date-stamped November 1, 2005
- (1) The driveway locations onto Woodhill Road may need to be moved and are subject to staff approval.
- (2) Move the easterly building 10 feet to the west.
- b. Before starting any site work or obtaining a grading or demolition permit, complete the following work:
- (1) The installation and maintenance of a temporary rock driveways, tree-protection fencing, and erosion control fencing must be installed, subject to review by the city's natural resources manager. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
- (2) Complete an on-site pre-construction meeting with city staff.
- (3) Submit final site, grading, drainage, utility and erosion control plans for staff approval, including any required drainage calculations. There should not be any construction activity within 10 feet of the northerly 60 feet of the westerly property line to avoid impacts to the adjacent white pines.
- (4) Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading and demolition permit requirements and restore the site. 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.
- (5) Submit copies of the watershed district permit. The city may require revisions to the approved plans to meet the district's requirements.
 - (6) Submit a construction management plan for staff approval.
 - (7) Submit copies of county driveway and utility permits, if applicable.
- c. The following must be submitted to the city before the city issues a building permit:
- (1) A final landscape and irrigation plan for staff approval. The dollar value of landscaping must meet the minimum requirement in the zoning ordinance. 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. Replace Colorado spruce with the following: Black Hills spruce, Norway pine, Austrian pine, or Norway spruce. All new trees must be at least 2 ½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees.
 - (2) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping
 - (3) An illumination plan for staff approval
 - (4) All required hook-up fees
 - (5) Record this ordinance with the county.
 - (6) A recycling/garbage plan, showing where recycling and garbage will be stored and the impact on parking.
- d. The property owner is responsible for replacing any required landscaping that dies.
- e. 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.
- f. Approval does not include the signs shown on the drawings. Separate permits are required from staff.

- g. Construction must begin by December 31, 2006, unless the planning commission grants a time extension.
- h. Provide fire hydrant spacing and water flow requirements as required by the fire marshal. Hydrants must be located at drive entrances to parking lots as well as those required for minimum spacing on islands in the parking lot. The buildings must have fire sprinklers, as approved by the fire marshal, including attic spaces.
- i. Provide stop signs at all drives entering a public street.
- j. Pay toward the actual cost, up to \$12,000, for removing water services in Tree Street and patching and paving the excavations.

Site B

- a. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - o Site plan date-stamped November 18, 2005, with the 12-1-05 city staff revision that moves the underground parking entrance to the west side of the building and redesigns the westerly parking lot spaces.
 - o Grading plan date-stamped November 18, 2005
 - o Landscaping plan date-stamped November 18, 2005
 - o Building elevations date-stamped January 19, 2006
 - o Utility plan date-stamped November 18, 2005
 - Stormwater Pollution Prevention Plan date-stamped November 18, 2005
- (1) Widen all compact parking stalls to at least 8.5 feet.
- b. Before starting any site work or obtaining a grading or demolition permit, complete the following work:
 - (1) The installation of temporary rock driveways and erosion control fencing must be installed, subject to review by the city's natural resources manager. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
 - (2) Complete an on-site pre-construction meeting with city staff.

- (3) Submit final site, grading, drainage, utility and erosion control plans for staff approval, including any required drainage calculations.
 - (4) Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading and demolition permit requirements and restore the site. 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.
 - (5) Submit copies of the watershed district permit. The city may require revisions to the approved plans to meet the district's requirements.
 - (6) Submit a construction management plan for staff approval.
 - (7) Submit copies of county driveway and utility permits, if applicable.
- c. The following must be completed and/or submitted to the city before the city issues a building permit:
- (1) A final landscape and irrigation plan for staff approval. The dollar value of landscaping must meet the minimum requirement in the zoning ordinance. New trees must be primarily species native to the area. Replace Colorado spruce with the following: Black Hills spruce, Norway pine, Austrian pine, or Norway spruce. All new trees must be at least 2 ½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees.
 - (2) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping
 - (3) An illumination plan for staff approval
 - (4) All required hook-up fees
 - (5) Record this ordinance with the county.
 - (6) City approval of zoning permits to relocate the Alano and Gold Nugget uses. The Gold Nugget must be relocated in the area.
 - (7) Written approval from Xcel Energy to start construction within their easement.
 - (8) A recycling/garbage plan, showing where recycling and garbage will be stored and the impact on parking.
 - (9) If Woodhill Road is extended south to Stewart Lane, access to the commercial parking lot

must be reoriented from Excelsior Boulevard to the new Woodhill extension. Provide a plan for this connection before a building permit is issued. Also, provide an assessment waiver and right-of-entry for the potential driveway reorientation.

- d. The property owner is responsible for replacing any required landscaping that dies.
 - e. 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.
 - f. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
 - g. Construction must begin by December 31, 2006, unless the planning commission grants a time extension.
 - h. Provide fire hydrant spacing and water flow requirements as required by the fire marshal. Hydrants must be located at drive entrances to parking lots as well as those required for minimum spacing on islands in the parking lot. The buildings must have fire sprinklers, as approved by the fire marshal, including attic spaces.
 - i. Provide stop signs at all drives as they enter a public street.
 - j. All commercial deliveries must be from Excelsior Boulevard. No commercial deliveries are allowed from Stewart Lane.
- 3) Adopt Resolution No. 2006-004 approving a conditional use permit for outdoor seating for two restaurants on site B of the Glen Lake redevelopment project, with the following variances:
- a. setback variance from 200 feet to 0 feet from a residential parcel; and
 - b. setback variance from 35 feet to 8 feet from the easterly property line.

This resolution is based on the following findings:

- a. The hardship is caused by the small lot size, and the narrow depth of the lot. Given that residential land uses are proposed on this lot and an outdoor eating area could not be located on the site to meet the required setbacks.

- b. The outdoor eating area would be adjacent to a single family home that is guided for future commercial development. The proposed landscaping around the perimeter of the outdoor eating area would be an improvement over the existing condition of the site.
- c. The proposal meets the standards outlined in the city code, Section 300.21.2, regarding general standards for conditional use permits for business zoning districts.
- d. With the exception of the setback variance, the proposal meets the standards outlined in the city code, Section 300.21.4. r., regarding accessory sidewalk cafes and outdoor eating areas.

Approval is subject to the following conditions:

- a. Record this resolution with the county within one year from the date of city council approval.
 - b. In order to serve liquor within the outdoor eating area, a liquor license must be obtained.
 - c. The outdoor eating area must be enclosed with an uninterrupted enclosure. Access may only be through the principal building, subject to the conditions of a liquor license.
 - d. The outdoor eating area must be equipped with refuse containers and periodically patrolled for litter pick-up.
 - e. The outdoor eating area must not have speakers or audio equipment.
 - f. The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - g. 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.
 - h. The applicant must agree to the above conditions in writing.
- 4) Adopt Resolution No. 2006-005 approving a conditional use permit to relocate an electric transmission line at Site B. Approval includes a variance to the normal application requirements, which includes a multi-phase review process and task force review.
- Approval of the variance is based on the findings that:
- a. The proposed realignment is relatively minor, and does not justify a full scale review of alternative alignments; and

- b. Removing transmission lines from local streets is one of the goals of the ordinance.
Approval is based on the findings that the proposal meets the required conditional use permit standards and is subject to the following conditions:
 - a. Record this resolution with the county before the city issues a building permit.
 - b. The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - c. Staff approval of final alignment and pole location and color.
 - d. Deeding of any needed easements to Xcel Energy for the relocation.
 - e. The applicant must agree to the above conditions in writing.
- 5) Adopt Resolution No. 2006-006 vacating part of County Road No. 3 (Excelsior Boulevard) in conjunction with the Glen Lake redevelopment project. Approval is subject to the following conditions:
 - a. retaining a utility easement over the entire area; and
 - b. revising the legal description to show the north line of the vacation as the northerly curb line.This resolution is based on the following findings:
 - a. The petitioners are owners of the land abutting said easement, and therefore are proper petitioners.
 - b. The city no longer needs said easement.
 - c. Vacating said easement is in the public interest.
- 6) Approve the final site and building plans for Site C, with the following variances:
 - a. building setback variances from 100 feet to 33 feet from the north property line, 100 feet to 40 feet from the southwest property line, and 100 feet to 34 feet from Kinsel Park; and
 - b. parking lot setback variances from 20 feet to 8 feet from the north lot line, from 20 feet to 15 feet from the northwest property line, and 20 feet to 10 feet from the southwest property line.Approval is subject to the following findings:
 - a. The proposal would meet the required standards and ordinances for a site and building plan approval.
 - b. The three phases of this development are being developed as one integrated project. The proposed variances in the development are justified by the following:

- (1) The unique hardship to these properties is the deteriorated nature of the Glen lake commercial area.
- (2) An additional hardship is that the zoning code was developed before the "new urbanism" concept became prominent and therefore does not accommodate the reduced setbacks and missed uses inherent in that planning technique. The Glen Lake area has been identified by the Economic Development Authority as an area where more dense development is appropriate to encourage affordable housing. The planning concept of "new urbanism" is one way to implement more dense development.
- (3) Neither of these hardships was created by the landowner.
- (4) The variances would meet the intent of the ordinance and would not alter the essential character of the neighborhood because they allow reasonable development that is creative and attractive and that is similar to other high density developments in the area.
- (5) The variances on Site C are further justified by:
 - (a) The parking lot setback variances are for minor point intrusions into the required setback area;
 - (b) The reduced setback toward the park is appropriate because there are not buildings that would be affected and it is consistent with the variances granted to the adjacent townhomes;
 - (c) The property is triangular in shape with the apex of the triangle at the street frontage. The visitor parking needs to be adjacent to the street, so this forces the parking across the front and closer to the boundaries;
 - (d) There are significant wetlands and floodplains on the property forcing the building to be built across the property closer to the side lot lines rather than extending the building further to the back; and
 - (e) To preserve the steep slope on the property, the building must be located on the higher ground, again reducing the ability to extend the building further to the back.
- (6) Economic consideration is not the sole basis for the variances. Although the sizes of the buildings are generated by the financial needs of the tax

increment district, there are significant public benefits that result from the coordinated development of the three sites and that serve as justification and trade-offs for the variances. These public benefits are discussed in the staff report. The economic impact on the developer is only one consideration in the analysis..

Approval of the site and building plans is subject to the following conditions:

- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
- Site plan date-stamped January 19, 2006* , **
 - Grading plan date-stamped January 5, 2006
 - Landscaping plan date-stamped November 18, 2005
 - Building elevations date-stamped December 1, 2005**
 - Utility plan date-stamped November 30, 2005
 - Stormwater Pollution Prevention plan date-stamped November 30, 2005

* Approval of the site plan includes the option of a second trail along the north side of the property. The location and design of all trails is subject to staff approval.

** The revised grading plan will expose an additional seven feet of lake-side building elevation than is shown on the proposed elevation drawing and will change the trail design shown on the site plan.

All applicable plans for Site C be changed to show the removal of the easterly 18 feet of the building.

- b. Before starting any site work or obtaining a grading or demolition permit, complete the following work:
- (1) The installation and maintenance of temporary rock driveways, erosion control, tree protection and wetland protection fencing must be installed, subject to review by the city's natural resources manager. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
 - (2) Submit final site, grading, drainage, utility and erosion control plans for staff approval, including any required drainage calculations.

Staff may require that parts of the westerly trail be moved further back from the Glen Lake Shores property line to protect the basswood and oak trees on that property. The trail between the lake and westerly pond should be graded in, but not paved. Hard cover should be minimized by considering the use of permeable pavers, porous concrete, or other infiltration techniques.

- (3) Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading or demolition permit requirements and restore the site. 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) Submit copies of the watershed district permit. The city may require revisions to the approved plans to meet the district's requirements.
- (5) Submit a construction management plan for staff approval.
- (6) Complete an on-site pre-construction meeting with city staff.

c. The following must be submitted to the city before the city issues a building permit:

- (1) A final landscape and irrigation plan for staff approval. The landscape plan must be revised to provide a more natural look, as stated in the applicant's narrative. The dollar value of landscaping must meet the minimum requirement in the zoning ordinance. A natural buffer must be maintained within 25 feet of the wetland. The buffer should keep as much existing vegetation as possible and control the buckthorn. The sediment ponds should have natural vegetation or "no mow" grass mix to minimize lawn care around these areas. 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. Replace Colorado spruce with the following: Black Hills spruce, Norway pine, Austrian pine, or Norway spruce. 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. Additional landscaping must be provided along the lakeside of the buildings to screen the lower elevations of the building.
- (2) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping.
 - (3) An illumination plan for staff approval
 - (4) All required hook-up fees
 - (5) A recycling/garbage plan, showing where recycling and garbage will be stored and the impact on parking.
- d. The property owner is responsible for replacing any required landscaping that dies.
 - e. 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.
 - f. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
 - g. Conservation easements over 25 feet from the wetland edge and a drawing of the easements for the approval of the city attorney. The easements and drawing must be recorded with the county.
 - h. Construction must begin by December 31, 2006, unless the planning commission grants a time extension.
 - i. Provide fire hydrant spacing and water flow requirements as required by the fire marshal. Hydrants must be located at drive entrances to parking lots as well as those required for minimum spacing on islands in the parking lot. The buildings must have fire sprinklers, as approved by the fire marshal, including attic spaces.
 - j. Provide a stop sign at the drive entering Stewart Lane.
- 7) Approve the preliminary plats for Site A date-stamped November 1, 2005; Site B date stamped November 16, 2005; and Site C date-stamped November 1, 2005. Approval

is based on the finding that the plats meet the required standards and ordinances.

Site A

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 public storm water ponds, as determined by the city engineer.
 - (d) Dedicating ten feet of right-of-way along Excelsior Boulevard and ten feet of right-of-way along the Woodhill right-of-way from the southerly entrance drive to the north line of Excelsior Boulevard right-of-way.
 - (2) 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 electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - (2) 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.
 - (3) 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) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas, common drives, the required drainage pond and any other required drainage improvements approved by the city. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.
 - (c) Common access easements for each lot.
 - (d) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.
 - (e) Easements over all trails or common spaces that will be open to the public, as determined by staff. This may include the courtyard or on-site trails. These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.
- (4) Any other requirements included with final plat approval.
- c. The following must be submitted to the city before the city issues a building permit:
- (1) A copy of the recorded plat and any easement or covenants required to be recorded.
 - (2) A park dedication fee of \$55,550 (park fee less the value of public trails or trail easements and less a credit for affordable housing).

- (3) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
- d. 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.

Site B

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 storm water ponds, as determined by the city engineer.
- (d) Dedicate another 3 feet of right-of-way on Stewart Lane to include the on-street parking spaces and curb in the public right-of-way.
- (e) Show the north line of the plat as the northerly curb line.
- (2) 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 electronic CAD file of the final plat in microstation or DXF on a CD disk.
- (2) 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 of must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.

(3) 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 o the final plat.

(b) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas, common drives, the required drainage pond and any other required drainage improvements approved by the city. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.

(c) Common access easements.

(d) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.

(e) Easements over all trails or common spaces that will be open to the public, as determined by staff. This may include on-site trails.

These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.

(4) Any other requirements included with final plat approval.

c. The following must be submitted to the city before the city issues a building permit:

- (1) A copy of the recorded plat and any easement or covenants required to be recorded.
 - (2) A park dedication fee of \$17,778 (park fee less the value of public trails or trail easements and less a credit for affordable housing).
 - (3) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
- d. 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.

Site C

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 the floodplain and wetland, as determined by the city engineer.
 - (2) 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 electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - (2) 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.

(3) 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) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas, common drives, the required drainage pond and any other required drainage improvements approved by the city. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.

(c) Provide restrictive covenants to be recorded against the 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.

(d) Easements over all trails or common spaces that will be open to the public, as determined by staff. This may include the courtyard or on-site trails.

These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.

(4) Any other requirements included with final plat approval.

c. The following must be submitted to the city before the city issues a building permit:

(1) A copy of the recorded plat and any easement or covenants required to be recorded.

- (2) A park dedication fee of \$26,672 (park fee less the value of any trails or trail easements and less a credit for affordable housing).
- (3) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
- d. 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.
- 8) Adopt the following resolutions:
- a. Resolution No. 2006-007 resolution adopting a modification to the Housing Development and Redevelopment Plan for the Glen Lake Station Housing Development and Redevelopment Project and establishing the Glenhaven Tax Increment Financing District.
- b. Resolution No. 2006-008 approving a Contract for Private Redevelopment between the City of Minnetonka, the Minnetonka Economic Development Authority, and Glen Lake Redevelopment LLC.
- c. Resolution No. 2006-009 authorizing an interfund loan for advance of certain costs in connection with the Glenhaven Tax Increment Financing District.

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

Callison thanked everyone for their efforts.

14. **OTHER BUSINESS:** None.

15. **APPOINTMENTS and REAPPOINTMENTS:**

A. **Reappointments to Minnetonka Boards, Commissions and Committees.**

Callison moved, Wiersum seconded a motion to approve the following reappointments to the Minnetonka Boards, Commissions and Committees:

- Joan George, to the community heritage commission, to serve another two-year term, effective February 1, 2006 and expiring on January 31, 2008.

- Bunny Robinson, to the economic development authority, to serve another six-year term, effective February 1, 2006 and expiring on January 31, 2012.
- Peter St. Peter, to the economic development authority, to serve another six-year term, effective February 1, 2006 and expiring on January 31, 2012.
- Bruce Gefvert, to the park board, to serve another two-year term, effective February 1, 2006 and expiring on January 31, 2008.
- Tim Goodyear, to the park board, to serve another two-year term, effective February 1, 2006 and expiring on January 31, 2008.
- Cathy Rude, to the park board, to serve another two-year term, effective February 1, 2006 and expiring on January 31, 2008.
- Sarah Frisque, to the planning commission, to serve another two-year term, effective February 1, 2006 and expiring on January 31, 2008.
- Sandal Hart, to the planning commission, to serve another two-year term, effective February 1, 2006 and expiring on January 31, 2008.

All voted "yes." Motion carried.

B. Revision to the appointments of council member representatives to various advisory boards, commissions and committees.

Callison moved, Thomas seconded a motion to approve the following appointments:

- Dave Johnson as the Minnetonka City Council's appointed representative to the Minnetonka School District Community Education Advisory Council.
- Elise Souders as the Minnetonka City Council's appointed representative to the Wayzata Schools Community Collaboration Council.

All voted "yes." Motion carried.

16. ADJOURNMENT.

Allendorf moved, Wiersum seconded a motion to adjourn the meeting 12:45 a.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk