

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, FEBRUARY 27, 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 Terry Schneider, Bob Ellingson, Brad Wiersum, Al Thomas, Tony Wagner, Dick Allendorf, and Jan Callison were present.

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou reviewed the addendum. Revised language was provided for one of the conditions for item 14B, the Tonkawood Office Building. For item 14D, the Glen Lake Redevelopment project, additional feedback communications were provided, and there were language changes for section 2.04 of the resolution.

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

**5. APPROVAL OF MINUTES:**

**A. February 6, 2006 regular council meeting.**

Wagner moved, Wiersum seconded a motion to approve the minutes of the February 6, 2006 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

**6. SPECIAL MATTERS:**

**A. 50th anniversary update.**

David Hakensen, a member of the community heritage commission who is also chair of the 50<sup>th</sup> anniversary committee, provided an overview of the anniversary events. He noted that in most cases, planned activities linked to existing city events. The anniversary was featured at this year's Kid Fest where the Minnetonka Reads event was launched, and there was a coloring contest. A graphic artist donated a logo. Still to come are a poster and the official event on August 22. The Lakeshore Weekly News has been a

generous supporter of the event. Hakensen thanked the city council for their support of the event. Callison thanked Hakensen and the committee for their comprehensive list of activities. She has read "The Quilt" and is reading it to elementary classrooms.

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

Gunyou reported on the schedule for upcoming council meetings. He also noted the March 18 Eco Fair.

Callison noted the first listening session will be held on March 15. Information about the listening sessions is on the city's Web site.

Wagner attended an Early Childhood legislation session at the Hopkins School District where the benefits of the programs they provide for parents and children were featured.

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

No one appeared.

**9. BIDS AND PURCHASES:**

**A. Consideration of bids for tree removal.**

Gunyou provided the staff report. In response to Wagner's question, Gunyou said that we are over budget this and last year due to growing problems with tree disease. After adjustments were made, he thought we should be closer to budget this year.

Wiersum moved, Wagner seconded a motion to award bid for tree removal services to S & S Tree & Horticultural Specialists, Inc. for \$241,721.25. All voted "yes." Motion carried.

**B. Consideration of bids for miscellaneous stump removal.**

Wagner moved, Wiersum seconded a motion to award bid for miscellaneous stump removal to K. R. Landscaping/Stump Removal for \$24,894.58. All voted "yes." Motion carried.

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

**A. Claims for council authorization – February 13, 2006.**

Allendorf moved, Ellingson seconded a motion to approve the February 13, 2006 claims which includes checks numbered 194680

through 195054, totaling \$1,803,325.68. All voted "yes." Motion carried.

**B. Claims for council authorization – February 27, 2006.**

Allendorf moved, Ellingson seconded a motion to approve the February 27, 2006 claims which includes checks numbered 195055 through 195368, totaling \$1,069,202.53. All voted "yes." Motion carried.

**C. Authorization for the mayor and city manager to execute agreements with Xcel Energy to provide overhead utility line burial as part of the CSAH 101 Improvement Project No. 4423.**

Allendorf moved, Ellingson seconded a motion to authorize the mayor and city manager to execute agreements with Xcel Energy in the amount of \$557,009 to provide burial of overhead utility lines as part of the CSAH 101 Improvement Project No. 4423. All voted "yes." Motion carried.

**D. Approval of an encroachment agreement with T-Mobile Central LLC.**

Allendorf moved, Ellingson seconded a motion to authorize the mayor and city manager to execute an encroachment agreement with T-Mobile Central LLC, for the purpose of installing telecommunications within the right-of-way of Hillside Lane. All voted "yes." Motion carried.

**E. Resolution pertaining to the 2006 Street Rehabilitation Program, Phase 3, Project No. 4429.**

Allendorf moved, Ellingson seconded a motion to adopt Resolution No. 2006-017 pertaining to the 2006 Street Rehabilitation Program, Phase 3, Project No. 4429. All voted "yes." Motion carried.

**F. Amendment to Joint Powers Agreement for CDBG services.**

Allendorf moved, Ellingson seconded a motion to approve Amendment No. 1 to the Joint Powers Agreement for CDBG Services with Eden Prairie. All voted "yes." Motion carried.

**G. Conditional use permit for an existing detached garage at 2915 Fairchild Avenue for Branko Babcic.**

Allendorf moved, Ellingson seconded a motion to adopt Resolution No. 2006-018 approving a conditional use permit. This resolution is based on the finding that the garage meets all conditional use permit and site and building plan review standards. Approval is subject to the following conditions:

- 1) Record this resolution with the county before final building inspection.
- 2) No additional curb cuts to specifically access the garage are allowed.
- 3) The building cannot be used for commercial activities.
- 4) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 5) 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.
- 6) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

**H. Final approval of the VOGUE ESTATES plat at 4232 Highview Place for Paul Vogstom.**

Allendorf moved, Ellingson seconded a motion to approve the VOGUE ESTATES final plat that was received on February 14, 2006, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat; and
- 2) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

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

**12. INTRODUCTION OF ORDINANCES:**

**A. Ordinance allowing certain recreational uses as principal uses on R-1, low density residential lots.**

Olson provided the staff report.

Wiersum moved, Schneider seconded a motion to introduce an ordinance amending City Code Section 300.10, subdivision 2, to allow certain recreational uses as principal uses on R-1, low density

residential lots and refer it to the planning commission. All voted "yes." Motion carried.

### 13. PUBLIC HEARINGS:

#### A. **Public hearing to consider an application by C & R Partners, LLC, for an off-sale intoxicating liquor license for The Wine Shop, 17523 Minnetonka Boulevard.**

Community Development Director Ron Rankin provided the staff report.

Allendorf asked if state law dictated the maximum number of liquor establishments. City Attorney Desyl Peterson said that state law does not set that limit, the limit is left to the discretion of city councils.

Callison opened the hearing.

Tim Bevins, 17616 Minnetonka Boulevard, spoke as owner of the Tonka Bottle Shop, which is kitty-corner from the new site. Bevins said that he had reviewed state law. The law says that no off-sale license may be issued under certain circumstances, and gives the city total control to determine if an establishment meets the needs of the city. The council can control over-saturations.

Gerald Greene, 5409 Highland Road, has resided in Minnetonka for 48 years. He did not see a need for a second liquor store. He owns the jewelry store near Lakewinds, and suggested that Lakewinds' former site should be used for a restaurant. He has several grandchildren who attend Groveland School, and he did not want them exposed to a liquor store.

Ty Abel, 3551 Lilac Lane, said he was "mayor" of Minnetonka Boulevard and CSAH 101 for over 60 years. He provided the history of the corner. The liquor store was started by Arnie Palmer, who sold to Tim Bevins, a Hopkins High School graduate. Bevins was a gifted athlete in several sports, but was paralyzed in a serious accident after high school. Bevins has run a good business without any violations. He married a woman from Hopkins, who later died leaving Bevins with lots of hospital bills. He has finally paid them off. Abel said that the area doesn't need another liquor store. There were two liquor stores in the past, but that only lasted for two or three years because the area couldn't support two liquor stores.

Chris Eriksson, 12251 Orono Oaks Drive and Ryan Sadowski, 19020 Minnetonka Boulevard, spoke as the owners. Ericson grew up in Minnetonka. Their project will have two stages, a wine store and a full service restaurant that will start at a later date. It would be a place where gourmet food and wine would meet. He wanted to apply for the liquor license first. The restaurant would serve organic foods paired with wines. They don't intend to be a liquor store. Theirs would be an upscale experience with organic and kosher wines. There will be 1,000 varieties of wine. He did not feel that they would be competing directly with Tonka Bottle. He has received favorable feedback on the restaurant concept.

Arnold Palmer, 6700 Dashwood Circle, Rockford, said that Bevins purchased the business from him 30 years ago, and Palmer still owns the building. Bevins is a marvelous tenant. There were two liquor stores in the past, and Palmer predicted that if that happened again, only one would survive. He is not aware of any area where there are two liquor stores. Palmer has watched Bevins go through adversities, and said he has worked hard. The new store would take about one-third of Bevins business. He encouraged the council to deny the license.

Drew Madsen, 15708 Willowood Drive, said that he enjoys Lakewinds, Great Harvest, and Lifetime. A liquor store doesn't seem consistent. He would like an upbeat, fun restaurant, and suggested that the feel of the area be re-evaluated.

Tom Hanson, 5289 St. Alban's Bay Circle, Shorewood, said that he owned a coffee shop at this corner for six years, so he knows the difficulties of that corner. Diversity is needed. He supported a restaurant, and encouraged the council to deny this request.

Callison noted that the public hearing will remain open until March 27, 2006.

Molly Sikorski, 18570 Azure Road, Deephaven, is an 18-year resident of the area. She used to work for Tonka Bottle. She encouraged the council to deny the request, and said that it would be reprehensible to approve it.

Callison asked that staff provide a history of past liquor license approvals and disapprovals to see if there is any link between the number of licenses and underage drinking incidents.

Wiersum asked if Minnetonka is a city of the first class, and if we are near our threshold. Peterson said that Minnetonka is a Class B

city, and there is no limit on the number of off-sale licenses in a Class B city.

Wagner asked that the next agenda include an overlay map with locations of liquor stores.

Wagner moved, Thomas seconded a motion to continue the hearing to consider an application by C & R Partners, LLC, for an off-sale intoxicating liquor license for The Wine Shop, 17523 Minnetonka Boulevard to March 27, 2006. All voted "yes." Motion carried.

**B. Continued 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.**

Callison noted that the public hearing was previously opened.

Rankin provided the staff report.

Callison invited comments. There were none and the hearing was closed.

Schneider moved, Allendorf seconded a motion to approve the license for an off-sale intoxicating liquor license for US Liquor & Wine, 11333 State Highway 7. All voted "yes." Motion carried.

**14. OTHER BUSINESS:**

**A. Resolution supporting the constitutional amendment for motor vehicle sales tax dedication to transportation.**

Gunyou introduced the item, and Rankin provided the staff report.

Allendorf said that he and Rankin are on the I-494 Corridor Commission. In the last legislative session, Representative Erhardt introduced a bill that would have generated \$900 million annually for roads and transit. The bill passed, but was vetoed by the governor. A portion of that bill called for a constitutional referendum to make all motor vehicle sales tax revenue available for transportation and transit—currently, about 54% goes to transit and roads and the rest to the general fund. This would have been phased-in over five years. If it had passed, by 2011 there would be an additional \$300 million available annually for transit and roads. These are taxes that are already collected, but half of them currently go to the general fund. Allendorf said that a referendum

would require 50% of the people voting in that election to vote yes. The item would be at the bottom of the ballot. If people don't vote on the referendum question, that would count as a no vote. He wanted people to be aware of the issue.

In response to Thomas' question, Gunyou confirmed that 46% of the motor vehicle sales tax revenue is used for other state purposes. Thomas said that the wording is deceptive. Callison said that's the reason for the constitutional amendment - so the funds could no longer be diverted. Thomas said that a portion of the gaming funds are also diverted from natural resource projects.

Schneider said that some of the money that goes to the general fund supports the State Patrol, which is transit and road related. If the funds are diverted from the general fund, care will be needed to ensure those other programs are funded without a huge tax increase.

Wagner supported the proposal. He suggested including a reference to future transportation funding. Callison said that supporters of the resolution requested that all cities adopt uniform resolutions. She said that there is recognition that this measure will not be sufficient to meet all the future needs, but it is a step in the right direction.

Allendorf said that the commission recognized that this would not address all the funding needs, but it would provide an additional \$300,000 in funding by 2011.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2006-019 supporting a constitutional amendment for motor vehicle sales tax dedication to transportation. All voted "yes."  
Motion carried.

**B. Items concerning three, two-story office condominiums at 16200 Highway 7 for Bremcon, Inc./DaVern, Inc.**

Planning Director Geoff Olson provided the staff report.

Wiersum noted the comments from the neighbors with concerns about increased noise from TH 7. He thought that the building might also act as a noise wall. Olson said that the planning commission thought there would be as much or more of a sound barrier. The buildings will rise above the grade.

Wiersum asked if staff was confident that the state would approve the in and out turns. Olson said that the Minnesota Department of Transportation has assured staff that it will honor their previous agreement and issue a permit.

Callison invited public comment.

Kathleen O'Connell, MFRA, 14800 28<sup>th</sup> Avenue, Plymouth, spoke as the developer. She said this was a great example of a project where all the stakeholders came together. The development plan meets the previous PUD approvals.

Ted Engler, 16121 Highwood Drive, owns the property abutting this development. He realizes that there is a right to develop the property, and said that the proposal is within the 1998 plan. His major concerns are environmental. He anticipates that the lighting, landscaping and noise will be acceptable. He asked that pre and post development noise studies be done.

Callison said that the lighting plan requires approval. The city will work with the neighbors on the landscaping. Olson said that pre and post project noise studies are required.

Schneider agreed with the proof of parking approach. His didn't see provisions for a trash enclosure on the site. O'Connell said that she would be happy to indicate one. Callison suggested that the trash enclosure not be close to the neighbors. O'Connell said that the southwest corner was a possibility, and she will work with staff. Schneider would support using two to three parking spaces for a trash enclosure rather than removing trees.

Thomas did not support the project eight years ago, and did not support this proposal. His vision of Highway 7 is to protect the residents and provide an environmental buffer. There will be some encroachment on slopes, even with conservation easements there will be some tree loss. Traffic cannot be kept away and there will be more u-turns. He was concerned about grading the hill and drainage.

Callison noted the discussion at the planning commission meeting about the city's attempts to acquire the property. Gunyou reviewed the history of those discussions. He said that there was a considerable disconnect between the city's budget and what the owners wanted. They provided an appraisal with a value of \$1.2 million, which our city assessor found to be flawed. Staff did try to

preserve as much as possible in conservation easements over half of the property.

Allendorf noted that the motion should include the addendum changes.

Callison said that this is the best development we could get for the site, and was pleased that the impact would be reduced. She supported the project.

Wagner asked if the proof of parking needed to be referenced in the motion. Gunyou said that the requirement was subject to staff approval, and the proof of parking was noted.

Allendorf moved, Schneider seconded a motion to:

- 1) Adopt Ordinance No. 2006-03 approving an amendment to the master development plan at 16200 State Highway 7 for Bremcon, Inc./DaVern, Inc. Approval is based on the following findings:
  - a. The proposal is consistent with the previously approved office building plan for this site.
  - b. Access to and from the site is reasonable, and consistent with the previously approved plan.
  - c. The proposal would have a lesser impact on the steep slope area than the previously approved plan.
  - d. The existing and proposed landscaping would provide adequate screening from the adjacent single-family homes.

The project 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 19, 2006.
  - Landscaping plan date stamped January 19, 2006.
  - Utility plan date stamped January 19, 2006.
  - Building elevations date stamped August 17, 2005.
- b. Before starting any site work or obtaining a grading permit, complete the following work:
  - (1) The installation and maintenance of temporary rock driveways, erosion control, tree protection, and wetland protection fencing for each lot must be installed, subject to review by the city's natural resources manager.

- (2) Submit final site, grading, drainage, utility, and erosion control plans for staff approval. Stormwater calculations for the pond and downstream storm sewer must also be submitted. Final plans are subject to staff approval.
  - (3) If downstream storm sewer improvements are needed, the developer is responsible for the costs, including any easements that may be required. If downstream improvements are needed, they must be completed prior to issuance of a grading permit.
  - (4) Verification if a wetland exists where the stormwater pond is proposed.
  - (5) Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
  - (6) If required, submit copies of the watershed district permit. The city may require revisions to the approved plans to meet the district's requirements.
  - (7) Submit a construction management plan for staff approval.
  - (8) All utilities routed through steep slope areas must be directional bored or installed by other methods approved by the city engineer to minimize tree loss.
- 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 applicant must work with staff and the neighbors to provide adequate screening while minimizing root disturbance to existing trees. Planting on adjacent properties may be required.
  - (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. The maximum height of the parking lot lights shall be 16 feet.
  - (4) All required hook-up fees.
  - (5) Record this ordinance with the county.
  - (6) Detailed HVAC and trash/recycling enclosure plans, subject to staff approval.

- (7) Submit evidence of MnDOT approval of the driveway access permit off Highway 7. The city may require revisions to the plan to meet MnDOT's requirements.
- d. The property owner and/or office-owners' association are 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. Spaces shown as proof-of-parking may not be paved, unless approved by the city upon showing of a demonstrated need for these spaces. If proof-of-parking is required, additional screening of the new parking lot may be required if city staff deems it necessary.
- h. Conservation easement over the applicant's property that is west of the westerly grading limits for the buildings, excluding the stormwater pond and a drawing of the easement for the approval of the city attorney. The easement and drawing must be recorded with the county.
- i. A west bound right turn lane must be added to Highway 7 to access the site.
- j. Submittal of pre- and post-noise measurements to determine noise impacts. If significant increase is determined, additional landscaping may be required.
- k. Construction must begin by December 31, 2007, unless the planning commission grants a time extension.

The above plans are hereby adopted as the master development plan and as final site and building plans.

- 2) Give preliminary approval to the Tonkawoods Office Park plat, date stamped January 19, 2006. Approval is based on the finding that the plat meets the required standards and ordinances. 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.
    - (b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
    - (c) Drainage and utility easements over wetlands, floodplains, and public storm water ponds, 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) The following documents for the city attorney's approval:
    - (a) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
    - (b) Conservation easement over the applicant's property that is west of the westerly grading limits for the buildings, excluding the stormwater pond and a drawing of the easement for the approval of the city attorney. The easement and drawing must be recorded with the final plat.
    - (c) Documents establishing an office-owners' 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. Document must also include a stipulation of no medical offices.

(d) Common access easements for each lot.

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

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

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

c. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.

d. Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 ½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.

e. 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.

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

**C. Preliminary plat with variances for LEWIS ADDITION plat at 15616 Highwood Drive.**

Olson provided the staff report.

Wagner said that the council had previously discussed greater setbacks for lots without frontage. Olson said that the applicants have agreed to a 40 foot setback.

Schneider moved, Thomas seconded a motion to give preliminary approval to the Lewis Addition, date stamped January 4, 2006, with

a lot width at the right-of-way variance from 80 feet to 0 feet and a lot width at the setback variance from 110 feet to 106 feet. Approval is based on the following findings:

- 1) The proposal meets the required standards and ordinances for a preliminary plat.
- 2) The proposal meets the required standards for a lot width at the right-of-way variance in Section 300.10, Subdivision 5(h)(2)(b).

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
  - a. Show the following on the final plat:
    - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven foot-wide drainage and utility easements along all other lot lines.
    - (2) Provide a 10-foot drainage and utility easement along the west lot line to cover the existing storm sewer.
    - (3) Utility easements over existing or proposed public utilities, as determined by the city engineer. This would include a verification of the location of the storm sewer along the west lot line. The easement over it may need to be larger, depending on its location.
    - (4) Drainage and utility easements over wetlands, floodplains, and public storm water ponds, as determined by the city engineer.
  - b. Pay the city a park dedication fee of \$2,375.
- 2) The following items must be submitted to the city before the city releases the final plat:
  - a. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
  - b. The following documents for the city attorney's approval:
    - (1) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
    - (2) Provide a 34-foot private driveway easement between the street right-of-way and Lot 2 that is acceptable to the city attorney. This easement shall be located along the west lot line of Lot 1. The easement shall state the maintenance responsibilities of each owner. The minimum driveway width shall be as required by the fire marshal.

- (3) A private utility easement across Lot 1 to provide services to Lot 2.
- (4) Conservation easement and buffer must be established over the area 25 feet out from the wetland or the 966 elevation. The easement, including a drawing of the easement, must be reviewed and approved by the city attorney. The easements and drawing must be recorded with the county.
- (5) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.

These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.
- c. Any other requirements included with final plat approval.
- 3) The following must be completed before the city issues a building permit:

  - a. City approval of a grading and tree preservation plan for each lot. The plans must be in substantial compliance with the building pads shown on the preliminary plat and must preserve trees designated for preservation at the time of preliminary plat approval. The city may require adjustments in the house pad location and driveway to maximize tree preservation. The sewer and water services must be shown to minimize impact to any significant trees.
  - b. City approval of the installation of a temporary rock driveway, erosion control, tree protection, and wetland protection fencing for each lot.
  - c. Submit a copy of the recorded plat and any easement or covenants required to be recorded.
  - d. Minimum low floor elevation must be 986.1.
  - e. The home on Lot 2 must have a 40-foot setback from the south lot line.
  - f. Pay a hookup fee for sanitary sewer and water.
  - g. The new home would have to be constructed with a sprinkler system.
  - h. Submit a letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed

streets has not been completed, the planning director may approve a time extension to this requirement.

- 4) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
- 5) Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 ½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
- 6) Before the city makes a final inspection of the house, the drive must be paved from the street to the house on Lot 2. A driveway setback of at least seven feet must be maintained from the side lot lines. The city may approve a time extension if weather prevents paving of the drive.
- 7) The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

All voted "yes." Motion carried.

**D. Items related to the Glen Lake Redevelopment Project:**

- 1) **Purchase agreement for 5235 Woodhill Road**
- 2) **Agreement for joint exercise of eminent domain**
- 3) **Resolution authorizing eminent domain**

Gunyou provided the staff report, including the following key points:

- The council previously approved the Glen Lake redevelopment project on January 23, 2006 to help ensure the future viability of the Glen Lake neighborhood. The most controversial aspect of the project is the proposed density near the lake. The council concluded that higher density was an acceptable tradeoff to achieve the substantial public benefits of the project, including:
  - An innovative, cohesive plan that complements and respects the history of the Glen Lake neighborhood;
  - A mix of affordable housing greater than typically achieved, while also maintaining a predominance of mid-range units; and
  - Funding for needed public improvements, ranging from traffic signals to streetscaping to pedestrian walkways.
- The redevelopment agreement that the council approved requires the city and the economic development authority to use eminent domain if the developer cannot acquire all parcels for the redevelopment. The developer has requested that

assistance, which would require the city to initiate the procedural steps and authorize the use of eminent domain should it become necessary.

- The Supreme Court's Kelo ruling unleashed a heated national debate on the use of eminent domain. That ruling changed nothing in Minnesota. There is a long history of the city's limited and responsible use of that authority, which has only been used for one community redevelopment project in the last 20 years and then only as a last resort when the majority of the council determined that the benefits to the community as a whole outweighed any possible negatives. There are numerous legal safeguards to ensure that property owners are treated fairly. He assured our residents that they were in no danger of losing their homes, and in fact, the city required that one home be left out of the redevelopment area out of respect for the wishes of a long-term resident.
- The two parcels that the developer has been unable to purchase are the West Suburban Alano building and a property owned by developer Arnie Zachman. The city has taken responsibility for negotiations with Alano due to our history with them and their current building. Staff recently negotiated a purchase agreement to buy the single-family home at 5235 Woodhill Road, which could be remodeled and expanded for Alano. Adjacent city property would be used for parking – both for Alano and the park. This would keep Alano in the Glen lake area, and give them far more parking than they currently have. The Alano Board is amenable to this solution but their membership must make the final decision at a meeting to be held in mid-March. The city expects the eminent domain procedure for the Alano site to be dismissed when that agreement is approved.
- Zachman owns property at 14301 Stewart Lane. He acquired this property along with other parcels on Excelsior Boulevard, and is now redeveloping that property as Lakeside Estates. The subject parcel is a long narrow strip of land on which there is an unoccupied rental house. This property is needed for the Glen Lake redevelopment project to provide a public trail to connect neighborhood parks and for a small portion of the new redevelopment. The parcel is isolated and sandwiched between higher density residential developments. The property would be extremely difficult to redevelop on its own, and needs to be part of the Glen Lake redevelopment area.
- Zachman previously tried to acquire the larger Steeno property, which is located between his new townhome project and the narrow strip of land that remained. That landowner chose instead to sell to Tom Wartman, the Glen Lake developer.

Zachman's attorney subsequently asked the city to condemn the Steeno property and give it to him, which would have meant condemning land that was two to three times the size of Zachman's own parcel. This did not meet the city's historical requirement that a developer acquire most of the land needed for the redevelopment before approaching the city for assistance.

- Wartman has offered Zachman \$400,000 for the land, which is about 30 percent higher than the property's appraised value. The higher offer was made to avoid litigation and achieve a voluntary acquisition. The purchase offer also included an offer to mediate the purchase price, but mediation has not been requested.
- The redevelopment potential for the Zachman property is extremely limited. The property could continue to be used as a residential unit, but the 65 year old house is not large. It could not be subdivided into additional residential lots because of its nonconforming width and lack of street frontage. Redevelopment as multi-family housing would be difficult, if not impossible, due to the narrowness of the lot, and the need to meet required setbacks. Also, a significant portion of the lot is protected wetlands. These factors contribute to a much lower property value for this site than other sites with comparable acreage.
- The city tries to avoid using eminent domain, but it is sometimes unavoidable. Negotiations continue in the hope that a satisfactory resolution can be reached.

Peterson then reviewed the eminent domain process. It is the most awesome power that the city has, and it must be used very wisely. The power of eminent domain has existed in the state's constitution since Minnesota became a state in 1858. It can be used as long as just compensation is paid (the fair market value of the property). The Zachman property will be used primarily for a public trail which is a public use. In the late 1940s and early 1950s there was a movement in the country for rehabilitation of communities. In 1947, the state legislature adopted the state statute which allows the creation of housing and redevelopment authorities - this ushered in urban renewal. Both state and federal Supreme Courts in the 1950s recognized that redevelopment and urban renewal were public purposes that fit within the definition of public use. The city council is being asked to approve the EDA's authorization of eminent domain for the purpose of redevelopment and housing, and also to authorize the use of eminent domain for the direct public use of the trail.

Peterson then discussed the Kelo case, which took place in Connecticut. The situation was far different—there was no blight, rather, there was a

decline in economic vitality of the community. A major government establishment had closed, which resulted in a significant loss of the community's employment base. The project was purely for economic development, and people were forced from their homes. In Minnetonka, the request is to use eminent domain for a public trail, and the city has a right to use eminent domain for that purpose. The city also has the right to use eminent domain for redevelopment and affordable housing.

Peterson noted that the purchase agreement for the Woodhill property calls for a purchase price of \$320,000. The property is slightly less than an acre in size, which is a good indication of an appropriate market values in the area.

Peterson said that the council was also being asked to approve an agreement for the joint exercise of eminent domain with the EDA, as required by state law. The city would acquire the trail. The EDA would acquire the parcels for the redevelopment purposes. The resolution gives the authorization to proceed, and for the city to deposit funds in court.

Peterson then explained the eminent domain process. The city must first file a petition in District Court, asking for a determination that there is a public use and that the acquisition of the property is needed. The court must find that the use is a public use and that it is reasonably necessary. There is a full hearing with an opportunity for testimony on this issue. If the court does not make that finding, the action would not proceed. If the court makes the finding, the court would appoint a commission that would include a real estate attorney, a real estate appraiser, and a real estate broker. That commission would hold hearings to determine the value of the property being taken. The property owner would have an opportunity to present evidence and to get his own appraisal, for which the city would pay. If the city or the landowner do not accept the commission's value, the value can be appealed to the district court where a jury would decide the value.

Peterson noted that the city is seeking a "quick take" which would allow title to automatically transfer to the city after giving the property owner 90 days notice. The hearings as to value would take place later. In cases where there is an occupant, relocation assistance is also required.

Ellingson asked if the city would take title to the Zachman property and then subdivide it so we retain the trail portion. Peterson said that the agreement between the city and EDA provides for that. We would agree to the property line, likely the westerly 40 feet for the trail and also some property closer to the road for part of the redevelopment.

Wagner asked what would happen to the Woodhill property should Alano not approve that site. Peterson said that the purchase agreement is not contingent upon Alano's acceptance. We are confident Alano will approve it. If not, the site could be used for the adjacent park.

Wiersum noted that Wartman offered Zachman \$400,000 for the property. He asked about the value of the Zachman property on a square foot basis. He asked if a higher price would still work with the development.

Peterson said that the attorneys for Zachman and Wartman are negotiating based on the square foot price paid for the Steeno property. Peterson said that the two properties are not the same—the Steeno site is far more developable, and the Zachman property far more constrained.

Allendorf noted that parking has been an issue at the ballfields, and asked about the impact of the Alano parcel. Peterson said that the new proposal would add about eight more parking spaces for the park than originally planned. She said that Alano is reluctant to put a cross-easement on their parcel due to concerns about wear on the lot that they must maintain. The park parking lot would be available on a first come, first served basis to our park users, and Alano guests would use their lot first. Alano only has larger meetings two nights each week.

Allendorf suggested that each party would have similar concerns about the wear on their parking lots. He noted the safety concerns that have been raised about parking on Woodhill. He asked if there could be some parking restrictions placed on Woodhill Road, except for special events at the ballfield. He noted that parents are concerned about children darting out into Woodhill Road between parked vehicles. He suggested "no parking" from the entryway to the flagpole.

City Engineer Lee Gustafson said that the city has used such parking restrictions in similar circumstances. The police department works with the event coordinator to bag the "no parking" signs for events.

Allendorf would like staff to make sure we have picked up enough parking spaces so that we could limit parking on the east side of Woodhill Road. Peterson said that with the new plan, there is an opportunity for additional parking on the site.

Callison said that Alano members would get first chance at the parking if they get there earlier. She asked about the parking expectations for park users. Peterson said that the offer letter to Alano provided that they would not use more than 15 of the parking spaces for the park.

Schneider understood Alano's concerns, and assumed there would be an access easement through the Alano lot to the city's lot in the back. That agreement would provide for plowing and maintenance. Peterson said that there would be such an agreement.

Callison invited public comments.

Ivan Fox, 6008 Highwood Lane, received a letter inviting him to serve on the citizen pedestrian plan. The letter said that there would be ample opportunity for input. Fox questioned the previous opportunities for input during the Glen Lake project. He attended three meetings, but felt that if he had more opportunities to give input, he could have helped the council avoid making a mistake. He noted that the council votes on this project had all been six to one. In November, Wartman gave a presentation that said that the project would happen whether or not the residents wanted it, which he felt was arrogant. Wartman said then that he would request eminent domain if needed. He said that the project offers unaffordable affordable housing, and beautification through high density development blight. He called this "Gunnyoufication," the blind siding of an entire community by means of secrecy, subterfuge and hypocrisy. Fox felt that Gunyou ramrodded the whole project through. The only "no" vote was by Ellingson, who has been a successful politician for years. Ellingson is the only one with integrity and the empathy to care about the community and its needs. They don't want an overblown project on their lake. Ellingson learned something early - that government is by the people, for the people. It is not about the developer, the city planner, or tax money. He did not understand six council members voting to kick back \$1 million to the developer, Tom Wartman. He felt that the developer should pay the city because he will make millions on the project.

Fox attended a Robbinsdale council meeting where that city is considering acquiring homes that are owned by residents for a street widening project. Similar discussions are happening in Edina and Eagan, and dumb mistakes are rampant. Some Robbinsdale residents were present tonight as a show of solidarity.

Fox said that the neighbors attended a meeting of the Nine Mile Creek Watershed District. The district said that they were never advised that an R-5 development was being considered for Glen Lake. They were shocked and stunned. The holding ponds were built for R-1 density. He asked who would pay for the needed changes. He said that the city had made its decision on this project six months ago, and the public meetings were a sham, a ruse to make it appear that the residents actually had a choice when in fact they did not. Fox said that there was not a single homeowner or taxpayer in our city, in the Twin Cities area or in the whole state who agrees with what the city council is about to do. The state

legislature does not agree. If Minnetonka votes to use eminent domain, it will become the poster child for economic development, and the city will be committing political suicide. Fox said that eminent should never be used to take property for private development.

Callison said that the city works hard to create a respectful atmosphere. She asked that other speakers not make personal attacks on people.

In response to Allendorf's question, Gustafson said that staff had advised the watershed's engineers of the project. He said that the Glen Lake project would not drain to the water quality ponds Fox referenced—they have their own water quality ponds.

Garrett Gardner, 2953 Fairchild, doesn't live near the project. This type of policy precedes Gunyou. He has heard complaints that the Minnetonka City Council made up its mind before this matter came to the public. The council takes on little neighborhoods. He hopes that the neighborhoods take on the council. It seems unfathomable to use eminent domain for bike trails. He feels that the threshold should be much higher.

Joanne Murphy, 12507 Pioneer Road, lives about a mile away from the project. She said that it is fair and right that Mrs. Renneke can stay as long as she wants. It is good that Alano will be relocated because they are an asset to the community. She acknowledged that the Zachman property is narrow and occupied by a vacant rental home, and that no other houses could be built there. However, she said that it is Zachman's property and the developer should buy this property on his own without the threat of eminent domain lurking in the background. She said that the communications to the city are driven by people's fears that this could also happen to them. She said that the city talked about responsible use of eminent domain, but said that was in the eye of the beholder. If Zachman wants to keep the property, that should be allowed. The public purpose is a stretch, and its use would be wrong.

Drew Madsen, 15708 Willowwood Drive, is a student at St. John's University. He asked about the importance of the bike trail and thought it was odd to be such a critical part of the project.

Tammy Rosenthal, 5800 Lake Rose Circle, asked about the width of the trail and how much room there would be for trees on either side of the trail. She asked if the city would be responsible for snow removal, and who would pay for the removal as well as what would happen if someone slipped.

Olson said that the trail would be 40 feet from the property line to the building. There is a sharp grade drop, so the trail would need to meander.

The exact design is not ready, but width is needed to allow for switchbacks to make the trail more accessible. The trail would be 8' wide.

Callison asked about landscaping and trees. Olson said that one of the conditions for Site C was final staff approval of the landscaping plan once the trail location has been determined. Callison said that the city will maintain the trail as it does many others. Rosenthal said that meandering trails would take more time to plow.

Linda Barrows, 14220 Brunsvold Road, said that this has been a sham from the very beginning. The citizens and Senator Hahn disagree with the city on the use of eminent domain. It is totally wrong to use eminent domain to take private land to give to a private developer. Senator Hahn informed her today that he would call each council member to ask that the vote be postponed until a new statute is in effect. Hahn told her that the current law is unjust and unethical. She said that if the council approved this, there would be an unwanted backlash with the state using this case to make an even more restrictive bill. She asked that the council postpone voting on eminent domain.

Barrows then read a letter she received from U.S. Congressman Jim Ramstad. Ramstad said that the Kelo decision was outrageous, and that he strongly opposed it. It was a devastating blow to property rights and a resounding defeat for homeowners and ordinary landowners. He said that the decision must be overturned. Ramstad's letter continued to say that in taking this on, the court expanded eminent domain powers beyond highways and urban renewal to allow private corporations to maximize profits at the public expense in the name of public use. Ramstad is cosponsoring the private property right protection act that would prevent government using economic development as justification for exercising its power of eminent domain. This important legislation overwhelmingly passed the House, and is being reviewed by the Senate. Barrows urged the council to follow the state recommendation and postpone the vote. She felt it was unethical to condemn property for a path.

Gunyou said that the representations of Senator Hahn's position were misleading. As an area legislator, Hahn met with the city council prior to the beginning of the session. The specifics of this issue were discussed with the representatives, who were all comfortable that Minnetonka was being responsible in its approach. Gunyou also spoke with Senator Hahn at a previous town meeting and again earlier today. Hahn did not request that the city delay the vote, nor did he say that the city was abusing its powers. Callison noted that Hahn was not present.

Maureen Hackett, 4919 Arlington Drive, thought the project was great, but said that the plans lacked details. She said that another plan was rejected

several years ago. Although the Zachman parcel is small, a delay might allow time for a better plan to evolve. She acknowledged that Wartman does good work. A delay might allow market forces to resolve things. She said that this is an ethical issue and we are looking for the greater good. She did not think the means would justify the end. She was concerned about a two story underground garage, and the Nine Mile Creek's involvement.

Keith Weigel, 14209 Glen Lake Drive, said that this was his first time to speak before the council on this project. His wife had previously testified, and asked that the council delete the wording about eminent domain when this project was discussed in October. The city attorney did not support that recommendation. The Weigels oppose the use of eminent domain for taking from one private person and giving to another. Its use is good for public uses. He said that if this is a good idea today, it will be a good idea tomorrow, and asked the city council to postpone its decision under after the legislature deals with it. He has been assured that the local representatives will deal with eminent domain. If this project is a proper and prudent use of eminent domain, it should meet the tests the legislature sets. He said that eminent domain is a serious power and its use should be seriously monitored. Weigel said that the Metropolitan Council recently passed a new policy on eminent domain that would preclude its use for livable community grants. The Glen Lake area is not blighted—it's Americana, if you add a picket fence. This is residential property. The justification is for affordable housing, but there will not be any affordable units in the high rise on the lake.

Grace Sheely, 14325 Grenier Road, was embarrassed by the potential eminent domain vote. She paid to put up signs against its use in Minnetonka. A lot of people are very upset. She noted a previous speaker said that matters had already been decided when they came to the city council. She said that the city works against small communities to give them things they don't really want and there is no opportunity for input. People are coming to her to try to stop this. Her group, the Friends of Glen Lake, now has a Web site, and that is the tool they will use to organize. She said that residents go through torture when they ask for a garage addition. Neighbors are not consulted about big projects, and this project calls for 18 variances, a zoning change and the use of eminent domain. The people in this community are upset that there are rules and they all seem to be broken. Sheely said she would be afraid if the threat of eminent domain was made to her, and she would cave in. Sheely referenced Mike Malmquist's letter in the StarTribune, in which he said that the threat is the same as doing it. Malmquist had to move for the Presbyterian Home project, another private development in Glen Lake. It is not a good situation when a person doesn't want to move, and the city makes them. Sheely said that people still bring up the WillHop, and they

felt that eminent domain was used in that case. There is a lack of clarity about when eminent domain is being used, and the threats cause fear. Sheely spoke with an Edina realtor who told her that a client would not buy in Minnetonka until that person knew how the city would use eminent domain. Sheely felt that the state law would change, and offered two alternatives—wait for the new law and meet the standards, or redesign Site C omitting Zachman's property. Sheely felt the public had a right to know how much Steeno was paid for his property, and said that it was rumored that they received over \$1.8 million. She said that Zachman was offered \$300,000 for his property. She owns three acres on Glen Lake, and she would sell it if she would get that for her property. She said it would be fair to offer Zachman the same amount that Steeno received. She guessed that with the loss of the Zachman and Steeno houses, there would be 10 fewer affordable bedrooms on Glen Lake, and there would be 11 affordable bedrooms on Site B. For one more bedroom, there would be a lot of housing taken from Glen Lake. Sheely challenged an EDA member because she does not believe that Site A will be built, so there are many opportunities for the developer to get out of building the affordable housing. She also received a call from someone who would have offered his residential property for Alano. She has heard that Alano is not all that happy, and said only the city's side was being presented. She wants Alano to be happy and the city should give them more time to find a home. She did not want to lose Alano.

In response to Allendorf's question, Peterson said that the Holiday Company purchased the WillHop property and terminated the WillHop's lease. It was a private agreement and the city had nothing to do with it.

Ken Steeno, lives at 14217 Stewart Lane, with his wife and their children. He asked how Sheely would know how many bedrooms were in his home. Steeno said that their property is beautiful and they have good friends in the neighborhood. He commended his neighbors for their hard efforts for and against the project. His family is sensitive to the high emotions. They would have preferred only a three-story building, but understood the economic needs. Steeno and his wife oppose the use of eminent domain, especially owner-occupied properties, except where there is a definable public good. Steeno has lived on his property since 1978. Lucille Renneke has lived in her home since 1951. Steeno said that he would leave it to the council to decide if the path is for the public good. Zachman has not lived on his property for even one hour. He has owned it for two years, and inherited it as part of the Mason property. The Zachman property has been held for rent and speculation since 1983. Zachman is a developer who had pursued Steeno for three years, until about a year ago. They never negotiated a deal. If Zachman is paid the same amount per square foot that he offered Steeno, then Zachman's property is worth about \$250,000. Steeno learned that Zachman asked the city to condemn

Steen's property for his project. Now Zachman and the neighbors are complaining about the city council considering the use of eminent domain for the Zachman parcel. Steeno told the council to, "have at it." He was irritated and said that he is entitled to adequate compensation. He said that there is someone in this city, in this county and in this state who says "yes" to the use of condemnation. He had little sympathy for Zachman—Zachman is a developer, not a person who lives on the land. Steeno said that it is nobody's business but his and the developer what he was paid for his property, but he said that the speculated numbers are way off. A letter in the local paper said that he got three times the property's appraised value, and a free condominium. Steeno said that there is not an appraisal for his property, and he did not get a free condominium. Steeno took issue with a comment in the paper that Mrs. Renneke's property was not condemned because her late husband served on the city council. Steeno said that Mrs. Renneke has lived in her home since 1951, she's paid property taxes during that time and has kept the home in beautiful condition. Doc Renneke passed away four years ago. Mrs. Renneke is a beautiful person, a good friend, and a great cook. Steeno referred to the adage that a paper never refuses ink. He hoped that most of his neighbors would continue to be his friend. He said that there were inaccuracies in their comments. He said that the council had a difficult job.

Dr. Vern Drilling, 13717 Bellevue Drive, said that there is a place for eminent domain. He said that the input at hearings is not against development, but rather against intrusiveness and decisions that are not based on the likes and dislikes of residents. The council does not pay attention to that. A vote now would say that the city needs to do this quickly before the state sets guidelines.

B.J. Novotny, has lived at 14319 Stewart Lane for 24 years. He took exception to Gunyou using his official position to influence the citizens through a letter in the paper. He said that Wartman thinks big, and he applauded that and his foresight to build the American dream. He resented the assertion that he lives in a blighted area. Glen Lake Shores was built in 1982 and is meticulously maintained inside and out. The only blight in the area is the Xcel substation. The units in his development are valued below the affordable rate, which is about \$200,000. He wondered if he should worry that he would be classified as blighted versus affordable. Opportunistic investments are common in real estate. The need for a path could be accommodated with variances. He was not eager to see a four story building next to his building. Novotny said that he and a partner built a nursing home in 1972 using money they borrowed without tax increment financing. They paid their property taxes, and that property had public benefits. Public benefits should include paved, well-kept city streets, city water systems, adequate storm water and sanitary sewers, parks, playing fields, transit systems, police and fire departments, museums, libraries

and public access to lakes. Novotny said that most, if not all, apartments are brought to fruition in a proprietary manner and are not set up like a private home with altruism a vague and distant vision. Novotny admires the project. He said that in 1980, the city of New Prague condemned property he owned for a state/county aid road. He said that people who have faced losing property to eminent domain never forget it. Property should only be taken through plain real estate deals.

Callison asked for clarification about Novotny's comment about blight in the Glen Lake area. Community Development Director Ron Rankin said that Glen Lake Shores is part of the overall Glen Lake Redevelopment area, but it is not part of the TIF district so it was not included in the blight findings.

Wynette Kniesz, 4346 Toledo, Robbinsdale, said that they stand with the threat of eminent domain hanging over their heads. She opposed tearing down homes to build homes valued at \$300,000 to \$400,000 for people who have money. She also opposed taking someone's home for a path to give to a developer. She said that people in the Twin Cities area are getting together in opposition. She said that Glen Lake is not an isolated instance, and she asked the city council to postpone its vote until the legislature acts.

No other people indicated a desire to speak, and Callison closed the public comments.

Schneider commented on some of the questions and statements made by speakers. There is no affordable housing in Site C, but that decision was part of the bigger package that allowed for a downsizing of the building on Site C and greater flexibility in the type, size and number of bedrooms in the affordable units. The density in Site C was critical to making the project happen.

As to the trail segment, Schneider saw it as a plus but not an integral part of the project. The true public purpose for the overall development was affordable housing and redevelopment of the Glen Lake area. The trail is an asset, but not critical. He did not weigh the trail heavily in his individual decision-making process, but it did come with the overall project.

Callison agreed that the trail is one public purpose. The other public purposes include removal of blight, and providing affordable housing.

Schneider said there were several comments that the council is not listening and is working contrary to the neighbors. He has been on the council for 14 years and has gone through lots of decision-making. He goes through the information, and weighs what is best. The neighborhood

feedback may not always carry the day, and the city may make a decision contrary to what some people wanted. He's heard those complaints on and off over the years, and said that he has gotten somewhat thick skinned. He listens, but does not always agree. The city council has done a good job of providing for adequate public input. In this case, the expectations of the neighborhood group were out of sync with reality. The decision was made a couple of weeks ago and he didn't see having the latitude to unravel the entire project. It would not make prudent sense to change direction. We made a commitment to proceed. If the council waited, it would subject the fate of the project to the whims of the legislature. Speakers said that the legislature established the statutes, and the city should listen to them. Schneider agreed, and said that cities would not exist without the state, and the state granted the authority for zoning and eminent domain to cities. If the council acts tonight, it would be in full compliance with the statutes. Schneider speculated that the legislature would react to the paranoia and misinformation about eminent domain, so the pendulum may swing and eminent domain will no longer be available for redevelopment. In 10 to 15 years, the pendulum may swing back when it is found that redevelopment cannot occur without it. Waiting would risk what we have determined is a valuable project. Schneider was not willing to put this project at risk because the state is overreacting at this time. Schneider said that criticism comes with the territory. If there is an uprising of the neighborhood and they vote the council out, that is part of the democratic process. If he ever made a decision based on whether he would be re-elected, he would resign. Those threats carry no weight with him. He said the argument that there is not one person in the state who supports the use of eminent domain was hogwash. He received many calls in support of it. He knows what the facts are and does not get upset by the hype. The supporters may not come to the meetings, but they have consistently provided feedback to the council since project planning started. The elements are there to continue on this path and we should take positive action tonight.

Wiersum appreciated Schneider's comments, and takes the neighborhood comments to heart. The people are passionate, but not always accurate. He understood their perspective. He had a call over the weekend from a person who saw the issue as very black and white—in reality, there is a lot of grey. Wiersum noted Peterson's statement that the use of eminent domain is an awesome responsibility, and he agreed. The city is not talking about the use of eminent domain for the sheer joy of using it. It is for a development to improve the quality of life in Minnetonka and to provide affordable housing to people who don't have it. A good solution has been found for Alano. The real question is the Zachman property, and that issue is about money. Zachman has the right to maximize his profit. Wiersum wants to make sure the city is fair with him. We would not take his property and not give him anything for it. Zachman is in a fortunate

position of advantage due to the location of his property. That property might not be worth as much elsewhere, but it is worth more being adjacent to the Steeno property. Wiersum's goal is to ensure that Zachman is fairly compensated. He noted that Zachman is not interested in mediation, which would be about doing what is fair. For Zachman, it is about the money. He doesn't live on his property, and doesn't want to live there. Zachman should do very well in terms of his return. The city should not allow Zachman to extort more than his property is worth. He should be fairly reimbursed for his property. Zachman is a developer and the city needs developers. Wiersum said that his affirmative vote would ensure that Zachman gets a fair value.

Wagner thanked staff for their efforts to respond to council direction about Alano and come up with a good solution. He said that his skin is not as thick as others, and that he was hurt when people said that the council does not listen. He took extreme pains to listen and visit with people to get feedback on every aspect of this project. This is an awesome responsibility. Wagner grew up on a farm, so he knows the value of property. He does not take that lightly. If this was an owner-occupied property, he would not kick someone out. He would support legislation to create a higher test for eminent domain. This decision is about balancing the greater project with a single developer who has not wanted to negotiate. He has not wanted to go to mediation, and this is not an owner-occupied property. For those reasons, and based on the discussion and evaluation in January, Wagner supported the action and would not want to wait to see what happens in the future.

Thomas agreed with the points made by the other council members. He would be uncomfortable waiting for the legislature to make a decision. He agreed that they likely will go overboard and then have to go back. There will be difficulty doing redevelopment within cities depending on how far they go. If they remove the language for blighted areas, then redevelopment can't be done. The Zachman property will be treated fairly through the court process, and it is all about the money. He is sure Zachman will be fairly compensated. He would not support moving someone out of a single family home for development, but this situation is different. Thomas lives at the west end of Glen Lake. He talks to a lot of people, and has received emails from people who shop at the businesses in Glen Lake, and they think the project is good and want it to proceed. He said that the statements about "no one" or "everyone" were vague. The council hears from people with other opinions. At one meeting, one of the supporters said that they are the silent majority, but they do contact their council members. He has received countless calls at home, at work, and in his car, about the project. He's gone to people's homes, met with business owners, and gone to neighborhood and business meetings. He has taken the feedback to heart. The council really does listen to what

people have to say, but they must draw a conclusion based on what is best for the city of Minnetonka. He was pleased that staff negotiated something that looks like it will work for Alano. He suggested that the city might look more at retaining properties in the future. He said that staff will look into the comments about making the area environmentally safe. He said that the plantings and switchbacks for the trail should stop the erosion and reduce water going into the lake. He is comfortable with the project, and views it as something positive that must happen to redevelop the area.

Allendorf said that purchasing the Woodhill site for Alano provided a double benefit—Alano can stay in the area and get the parking they never had at their current site, and the ballfield will gain parking spaces, and staff will look at safety enhancements through limiting parking on Woodhill. He realized that staff had not promised that could occur. The tough decision for him was on the project, and he saw it as having three flaws which had been resolved. He did not want to condemn Alano, and a solution had been found. The stoplight and left turns at Woodhill and Excelsior, and the mass of the building had been flaws, but they also had been addressed. Money is in the budget and the county is now willing to do a study. The developer reduced part of the building's mass, but not as much as Allendorf would have liked. Allendorf did not know if he would have voted for the project in January, but because of the negotiations with the developer, he did vote to approve.

Allendorf said that we are now looking at a developer who bought a sliver of land where he never intended to live. When he couldn't make a deal with the contiguous landowner, he asked the city for the very same power to which he is now objecting. That is the definition of why eminent domain power was given to cities in the first place. It is exactly the right power and this is exactly the right case. He said that the people who often complain about the dysfunction of the state legislature are now asking the city to delay its decision until that dysfunctional body makes some decision. We have no idea what decision they will make. Minnetonka is using this power in this situation for its intended purpose. Allendorf said that this will be a great project for Glen Lake and for Minnetonka.

Ellingson didn't vote for the project in January, and will not support tonight's resolution because the buildings are too big for each site and the variances are unreasonable. A smaller scale project would have fit Glen Lake better and accommodated the concerns of the people about traffic congestion, pedestrian safety, and the environmental impact on the lake.

Callison noted that the comments tonight were more about the project, rather than about eminent domain. She said that the use of eminent domain in this case was reasonable. She said that the council functions as

a legislative body. It looks at the facts, and then makes a decision if the facts justify action. We need to look at the public benefit of the project, not just the trail. The public benefit is removal of blight, and that standard is met even with a conservative definition of blight. Affordable housing had not been discussed tonight, but that would be part of the assessment report later in the evening. The facts are that in 2002, Minnetonka had 88 homes that sold for less than \$200,000. In 2005, that figure had shrunk to six. Between 1998 and 2005, the median house price increased by 90%, from \$178,000 to \$339,000. The project demands that the Zachman parcel be included, and there is substantial public benefit. It is important to note that eminent domain is being used as a last resort after the developer had unsuccessfully negotiated with the property owner. Eminent domain is a tool that permits the negotiations to continue. It changes the playing field so a third party determines the value. Zachman's interest in the property is financial, and eminent domain is a financial tool. Zachman bought the property to develop. He does not reside in it, and does not have a residential interest in it. He is fortunate, because his property by itself and not included in this project, would have a reduced value. Zachman will receive an appropriate financial compensation from this action.

Callison takes seriously the comments about the council not listening. She has spoken with people about eminent domain for weeks. She has encouraged those discussions, and has not waited for people to come to her. She understood that people can be fearful that their properties may be taken, but suggested that they look at the facts. There is a residential property in this project that was not included. We did not ask a long term resident of this city to move out of her home so the project could go forward. She suggested that people look at how the city has used eminent domain, and draw conclusions from those facts. Minnetonka has used it appropriately in the past and she supported its use tonight as well.

Schneider moved, Allendorf seconded a motion to approve the following documents:

- 1) Purchase agreement for 5235 Woodhill Road
- 2) Agreement for joint exercise of eminent domain
- 3) Resolution No. 2006-020 authorizing eminent domain proceedings to acquire certain property for trail and redevelopment purposes and establishing just compensation, as amended in the addendum.

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

**E. Presentation of 2006 Assessment Report and property tax information.**

Gunyou introduced this item. He said this informational piece was in response to council's request for a property tax primer. Finance Director Merrill King will present the big picture, and City Assessor Richard Toy will provide the traditional assessment report. Gunyou said that staff is working with the Senior Federation in cooperation with the Minnetonka school district to share the information.

King said that property tax valuations and 2006 property tax notices will be mailed over the next two weeks. People are often confused about the connection between the property valuation notices and property taxes. The assessor establishes market values based on an objective reflection of the economy and changes in real estate values. Residential values in Minnetonka have been increasing much faster than commercial values, which have reflected the recession of the past few years. Commercial values have stayed fairly flat, increasing at a rate of about 6 % during recent years, while residential properties have increased about 41% over that same time period. The result is that residential properties now bear more of the tax burden than commercial properties.

King said that the primary base used to establish property taxes is the tax capacity of properties, which is controlled by state tax law. State programs impacting limited market value and fiscal disparities. The state also has economic development policies that affect the tax capacity values of commercial properties. During the Ventura administration, a residential recreational designation was created, which altered the tax capacity base of many cities.

The result of these state programs is that Minnetonka's tax capacity reflects just a small portion of actual the market value. In 1996, the tax capacity was 2% of market value as a whole, on average. In 2005, that is now 1.1%. This drastic change is a result of changes to state laws. The cumulative change means that the tax capacity base is much lower, so the city has to adjust its tax rate to produce the same amount of revenue.

The state controls tax capacity, and local government has no input into this factor. Budget revenue is the piece of the property tax formula where residents can influence their local officials. The city has to analyze all its sources of revenue, and increase its levy as appropriate to provide for programs, such as road reconstruction. The state also imposes unfunded mandates, such as the market value credit program, which the city must fund as well. Minnesota cities also have to pay sales taxes on our purchases, unlike the cities in many other states.

Minnetonka's tax capacity has increased over the past four years, but we have not increased our city tax levy at the same rate, which means that the tax rate has actually gone down. King noted that the city's taxes are

one-fourth of the entire tax bill. If residents want to change those taxes, they need to visit the other levels of government as well.

The primary tax rate is based on the tax capacity base as determined by state law. A secondary base is the market rate, and a smaller portion is levied against that secondary base. Minnetonka's market value base supports our general obligation debt for the park and open space referendum bonds. School district referendums use the secondary tax base as well.

King then reviewed examples of tax bills for the three school districts in Minnetonka.

Allendorf asked why the effective tax rate increases as the value of the house increases. King said that is based on the state's laws. A higher rate is used for homes valued over \$500,000.

Schneider suggested emphasizing how tax capacities work, the differential between residential and commercial, and the dynamics of what that does to shift the burden. He thought business owners might be interested in that information. It could be enlightening, because Minnetonka has a good commercial tax base. He suggested that the arrow in the first graph go up instead of down.

King noted that there is an income-based property tax refund program that operates as a circuit breaker. People with an income less than \$87,000 may apply for a property tax refund. There is also a refund available when values increase by more than 12% from the past year.

Ellingson noted that the county's tax statement reflects a higher tax, and then reduces it.

Toy then presented the 2006 property assessment report. He reviewed the assessment and budget cycle timelines, and the process for calculating the market value. The total estimated market value of the city in 2005 was \$7.50 billion. That value increased by 9%, to \$8.15 billion in 2006. He reviewed the average adjustments by property type. The median sale price in Minnetonka has increase by 90% from 1998 to 2005.

Toy said that only 22% of Minnetonka's parcels are now tied to the limited market value law. Calls will begin after the notices are received. The Minnetonka Local Board of Review will meet on April 10 and 26. The Hennepin County Board of Review will take place on June 13, 2006. Tax Court will be on April 30, 2006. Toy then reviewed the answers to commonly asked questions.

Callison thanked staff for their work. She noted that the city has 28,204 parcels. Last year, there were 900 calls, and 295 of those resulted in staff review, and 60 values were changed. She appreciated staff's responsiveness to residents.

Thomas suggested using a property tax statement with explanations to make it easier for people to visualize. Toy said that property tax refund applications must be submitted by August. Statements will be mailed around March 1.

In response to Thomas' question, Toy said that the whole city is assessed at the same time electronically. State law requires that 20% of the properties be physically assessed each year.

Callison noted that the appeal deadline is March 31, and that no council action was required for this item.

## 15. APPOINTMENTS and REAPPOINTMENTS:

### A. Appointments to the community heritage commission.

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

- DeeAnn Bloom, to the community heritage commission, to serve a two-year term, effective February 27, 2006 and expiring on January 31, 2008.
- Jenna Burfeind, to the community heritage commission, to serve a two-year term, effective February 27, 2006 and expiring on January 31, 2008.
- Fred Clark, to the community heritage commission, to serve a two-year term, effective February 27, 2006 and expiring on January 31, 2008.

All voted "yes." Motion carried.

## 16. ADJOURNMENT.

Wagner moved, Wiersum seconded a motion to adjourn the meeting 10:53 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk