

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MARCH 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 Al Thomas, Tony Wagner, Dick Allendorf, Terry Schneider, Bob Ellingson, and Jan Callison were present. Council member Brad Wiersum was excused.

4. APPROVAL OF AGENDA.

City Manager John reviewed the addendum, which included:

- A wording correction for item 10G, Jimmy's Grill.
- Additional information for item 13B, the Wine Shop.
- Postponing item 14C, a preliminary plat request for Earl Fischer, to April 10.

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

5. APPROVAL OF MINUTES:

A. February 27, 2006 regular council meeting.

Schneider moved, Thomas seconded a motion to approve the minutes of the February 27, 2006 Minnetonka City Council regular meeting. Callison asked that staff check on the correct spelling of Mr. Weigel's name. All voted "yes." Motion carried.

B. March 20, 2006 special council meeting.

Schneider moved, Thomas seconded a motion to approve the minutes of the March 20, 2006 Minnetonka City Council special meeting. Thomas, Schneider, Ellingson, and Callison voted "yes." Wagner and Allendorf abstained. Motion carried.

6. SPECIAL MATTERS:

A. Recognition of 2006 Citizenship Academy graduates

Callison explained the Citizenship Academy. Wagner presented certificates to the 2006 graduates: Kelly Benner, Cheryl Bischof, Ron Campbell, Gladys Coltrane, Jeanette Cope, Kristine Crossman, Valentina Eyres, Wanda Griep, Michael Happe, Janet Hustad, Harriet Katz, Allan Kind, Betty Kriedberg, Larry Kriedberg, Carrie Leaf, Bill Lurth, Sandra Palumbo, Lyudmila Pavlova, Raymond Russell, Nancy Scheel and Kim Stark.

B. Minnetonka Community Action Recognition awards for Minnetonka Police Reserve members Billy Girard and Tom Heater.

Thomas presented a CAR award to Billy Girard, who has volunteered 8,500 hours since 1980, and issued 1,700 handicapped parking warnings and citations over the past three years. Gerard has been a leader in the reserve program.

Allendorf presented Tom Heater with a CAR award. Since 1998, Heater has processed 2,000 sets of fingerprints, and also helped with patrol support, vehicle impounds and house checks.

C. Recognition of the Minnetonka Police Reserves.

Schneider recognized the Minnetonka Police Reserves, a program that began in 1975. In 2005, reservists volunteered 4,600 hours to the community assisting with traffic direction, handicapped parking education and enforcement, tours of the police department, public fingerprinting, house checks, impound vehicle assistance, scene backup and park patrol. Their efforts allow sworn officers to respond to more serious calls. Reservists attend 40 hours of training and attend monthly meetings. Schneider thanked them for their contributions.

Callison congratulated the staff who support the program, Sergeant Kevin Anderson, and Officers Chris Mack and Scott Reis, and the reservists: Steve Anfinson, Darrell Ansel, Judd England, Renee Garpestad, Billy Gerard, Jim Goldfarb, Evelyn Graupman, Merle Hanson, Tom Heater, Ryan Hodge, Sara Johnstone, Kenn Larson, Ted Nearman, Don Reiersen, Steven Tomasko and John Trangsrud.

D. Special recognition of the Minnetonka Police Department for MADD award.

Callison noted that the Minnetonka Police Department received an Underage Prevent Award from Mothers Against Drunk Driving (MADD). The award was based on Minnetonka's training and enforcement, underage party patrols, educational efforts, and work with businesses. Lieutenant Jeff Sebenaler said that education and cooperation go a long way. Minnetonka takes this issue seriously and the patrol officers do a wonderful job.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings.

Callison reported on a number of items:

- She congratulated the Hopkins High School Girls and Boys basketball teams for their state championships, and the Minnetonka High School Boys hockey team for their consolation trophy.
- She attended an event where Intermediate School District 287 received an award from Senator Mark Dayton as a School of Excellence.
- This past week, Minnetonka participated in the presentation of Caring Youth Awards to 24 recipients. She thanked Gunyou and Jacque Larson for their contributions to that program.
- There will be a listening session for Ward 1 on April 1, and for Ward 2 on April 8.
- Friday is the last day to appeal property valuations.
- She and Schneider attended the NLC Conference. She noted the potential effect of the federal budget deficit on the Community Development Block Grant Program.

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

No one appeared.

9. BIDS AND PURCHASES:

A. Consideration of bids for the Minnehaha Creek Headwaters Pedestrian Bridge Project.

Gunyou gave the staff report.

Wagner moved, Thomas seconded a motion to award the bid for the Minnehaha Creek Headwaters Pedestrian Bridge Project No. 4761 to Anderson Bridges, LLC in the amount of \$27,000.00. All voted "yes." Motion carried.

B. Consideration of awarding the contract for the remodeling of the Fire Station 1 locker room.

Gunyou gave the staff report.

Allendorf moved, Thomas seconded a motion to award the contract for the remodeling of the Station 1 locker room to TDJ Construction Incorporated, in the amount of \$116,850. All voted "yes." Motion carried.

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

A. Claims for council authorization – March 27, 2006.

Wagner moved, Allendorf seconded a motion to approve the March 27, 2006 claims which includes checks numbered 195639 through 195967, totaling \$1,340,613.26. All voted "yes." Motion carried.

B. Authorization for the mayor and city manager to enter into an agreement with the city of Plymouth for the use of the city's GPS tower.

Wagner moved, Allendorf seconded a motion to authorize the mayor and city manager to enter into an agreement with the city of Plymouth for the use of the city's GPS tower. All voted "yes." Motion carried.

C. Resolution accepting plans and specifications and authorizing the advertisement for bids for the Wentworth Trail Pond Improvement Project No. 5613.

Wagner moved, Allendorf seconded a motion to adopt Resolution No. 2006-022 resolution accepting plans and specifications and authorizing the advertisement for bids for the Wentworth Trail Pond Improvement Project No. 5613. All voted "yes." Motion carried.

D. Resolutions pertaining to tax-forfeited land within the city of Minnetonka.

Wagner moved, Allendorf seconded a motion to adopt the following resolutions:

- 1) Resolution No. 2006-023 authorizing the reconveyance of certain tax-forfeited land to the state of Minnesota.
- 2) Resolution No. 2006-024 requesting the conveyance of certain tax-forfeited land to the city of Minnetonka for drainage purposes.

- 3) Resolution No. 2006-025 requesting a change of use for certain tax-forfeited land.

All voted "yes." Motion carried.

E. Resolution amending the council policy regarding antennas on city water towers.

Wagner moved, Allendorf seconded a motion to adopt Resolution No. 2006-026 amending the council policy regarding antennas on city water towers. All voted "yes." Motion carried.

F. Request for a one-year time extension for the GAGNERS 2ND ADDITION preliminary plat at 18724 Ridgewood Drive.

Wagner moved, Allendorf seconded a motion to approve a one-year time extension for the GAGNERS 2ND ADDITION preliminary plat at 18724 Ridgewood Drive. All voted "yes." Motion carried.

G. Items concerning the addition of two outdoor eating areas for Jimmy's American Grill at 11000 Red Circle Drive for Michael J. Jennings:

- 1) **Ordinance amending an existing master development plan, with final site and building plans.**
- 2) **Conditional use permit for two outdoor seating areas.**
- 3) **Amended liquor licenses for two outdoor seating areas.**

Wagner moved, Allendorf seconded a motion to:

- 1) Adopt the Ordinance No. 2006-04 amending the existing master development plan for a restaurant at 11000 Red Circle Drive. Approval is based on the finding that the proposal would meet the required standards and ordinances for a site and building plan approval and is subject to the following conditions:
 - a. The site must be developed and maintained in substantial conformance with the following plans unless modified by the conditions below:
 - Boundary and topographic survey dated October 9, 1986.
 - Grading, drainage, and utility plan dated June 25, 1987
 - Site and Parking Plan drafted by city staff and dated February 9, 2006
 - Revised outdoor seating plan dated March 10, 2006
 - Building Elevations date stamped January 13, 2006

- Floor plans date stamped January 13, 2006
 - b. This ordinance replaces PUD agreement 87075A.
 - c. Submit the following before the city issues a building permit for any exterior work not related to the interior improvements:
 - 1. A final landscape plan. The plan must be in substantial conformance with PUD agreement 87075A.
 - d. Before the city issues a certificate of occupancy, the following must be completed:
 - 1. The parking lot must be re-striped to comply with the parking plan drafted by city staff and dated February 9, 2006; and
 - 2. Provide a parking and access easement for the city attorney's approval. This easement must be recorded against the 11000 Red Circle Drive property and a copy of the recorded easement returned to the city.
 - e. Compact spaces shown as proof-of-parking may not be striped unless approved by the city upon a demonstrated need for these spaces.
 - f. All parking areas must be surrounded with concrete curb and gutter.
 - g. Construction must begin by December 31, 2007, unless the planning commission grants a time extension.
- 2) Adopted Resolution No. 2006-027 approving a conditional use permit for two outdoor seating areas at 11000 Red Circle Drive. Approval is based on the finding that the proposal meets all conditional use permit standards and is subject to the following conditions:
- a. Outdoor seating areas must be surrounded by an uninterrupted enclosure, except as required by the building code. The proposed walls and gates must be approved by the fire marshal prior to issuance of a building permit.
 - b. Seating areas located under canopies must be equipped with automatic fire sprinklers as required by the fire marshal.
 - c. The outdoor seating area must remain as seasonal seating. It may not be fully enclosed or converted to year-round usable space. This condition prohibits any type of enclosure, including screening or plastic.
 - d. A refuse container must be available to each outdoor eating space.

- e. Any speaker or audio equipment cannot be audible from adjacent properties.
 - f. Record this resolution with the county before the city issues a building permit for any exterior work not related to the interior improvements.
 - g. The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - h. 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.
 - i. The applicant must agree to the above conditions in writing.
- 3) Amended liquor licenses to allow liquor service at the two outdoor seating areas, subject to the conditions listed below:
- a. Any outdoor sound system is to have the volume regulated to a moderate level. The city, at its sole discretion, may require any outdoor sound system to be removed.
 - b. The west-side seating area must close by 10 p.m. Sundays through Thursdays, and by 11 p.m. Fridays and Saturdays. The south-side seating area may be open the same hours as the restaurant.

All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Conditional use permit, with variance, for transient sales at the southwest corner of Westwind Plaza for Craig J. Gilb.

Allendorf moved, Thomas seconded a motion to adopt Resolution No. 2006-028 approving a conditional use permit with a variance for a vegetable and pumpkin stand in the Westwind Plaza parking lot for Craig J. Gilb of Untiedt's Garden Market. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Record this resolution with the county.
- 2) The vegetable sales may be operated from June 23rd through August 13th; and the pumpkin sales from September 23rd through October 31st.
- 3) Display of items must be arranged in as compact a manner as reasonably practicable.
- 4) Any change in the person, location, or items sold at the stand renders this permit invalid.

- 5) This approval does not approve any signs at the site. A sign permit application must be submitted for staff review and approval. Any proposed sign must meet requirements outlined in city code.
- 6) Violation of any conditional use permit standards outlined in city code will result in immediate revocation of the conditional use permit.
- 7) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 8) 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.
- 9) The site must be cleaned of any leftover merchandise and debris within 3 days of the last day of operation.
- 10) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance amending city code §115.010 regarding ethics.

City Attorney Desyl Peterson gave the staff report.

Schneider moved, Thomas seconded a motion to introduce an ordinance amending city code §115.010 regarding ethics. All voted "yes." Motion carried.

B. Ordinance amending the previously approved master plan for an addition to the building at 10700 Bren Road for American Medical Systems, Inc.

Planning Director Geoff Olson gave the staff report.

Thomas moved, Allendorf seconded a motion to introduce an ordinance amending the previously approved master plan for an addition to the building at 10700 Bren Road for American Medical Systems, Inc., and refer it to the planning commission. All voted "yes." Motion carried.

13. PUBLIC HEARINGS:

A. Ordinance amending the city charter regarding street vacations and charter enforcement.

Peterson gave the staff report. Callison opened the hearing. No one spoke.

Schneider moved, Thomas seconded a motion to introduce an ordinance amending the city charter regarding street vacations and charter enforcement, and continue the public hearing to April 10, 2006. All voted "yes." Motion carried.

B. Continued 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.

Gunyou explained that staff recommended the hearing be continued to allow a greater time for public comment, since this is the week of the Minnetonka School District's Spring Break.

Community Development Director Ron Rankin provided an overview of this item. Staff received a large number of public comments, with 59 opposed, 25 in favor, and one neutral. There was no information in the police investigation that would warrant denial of the licenses.

Rankin referred to the criteria in council policy for issuance of liquor licenses. In staff's opinion, only one criteria was pertinent, and that was the proximity of the proposed store to schools, churches, or youth-oriented facilities. The only similar situation is the Liquor Barrel, which is 950 feet from Hopkins North Junior High School.

Rankin related past council discussions about two off-sale stores in close proximity. In 2002, CostPlus World Market was opposed by Broviak, and council approved the license. The 7-Hi Liquor store, which is no longer in existence, opposed an application by Star Liquor for a shop in Westwind. In that case, the license was denied on a 4:3 vote.

Rankin noted that at the previous hearing, Timothy Bevins suggested that the city use the state law limits for off sale liquor licenses in first class cities – one store for every 5,000 residents, which would translate to 10 or 11 establishments for Minnetonka. Granting this license would result in 11 stores.

Rankin responded to Callison's request at the previous hearing for information about any possible relationship between the number of liquor licenses and underaged drinking. Rankin said that staff could find no link. He noted that while establishments have changed over the years in terms of location and ownership, the total number has

remained at about nine or ten off-sale licenses in the city for the past 30 years. Rankin noted that the city attorney has said the city council has broad latitude in approving liquor licenses.

In response to Allendorf's question about why Star's license was not approved, Rankin said that the two issues discussed were the Seven Hi Liquor store owner's concern that the market would not support two liquor stores in such close proximity, and that Star was a chain liquor operation when all other Minnetonka establishments were single proprietor operations.

In response to Callison's question, Rankin said that the restaurant proposal was not before the council now—only the off-sale license. The applicants plan to apply for the on-sale license this fall. The on-sale area would be required to meet the city's requirement that 50 percent of the sales come from food.

Callison invited public comment.

John Kasprick, 4029 Hubbard Avenue North, Robbinsdale, read a statement from Steve Summers, owner of Barrel & Wine Spirits, 15400 TH 7, who could not be at the hearing. Summers opened his store in 2004 in a renovated Holiday Station. It is a vibrant, clean and well-managed wine and spirits store. The first year of operation was a struggle due to the impacts of road construction and the closing of the adjacent McDonald's. Summers, who also works for Jerry's Food and Cub Foods, did due diligence before opening his store. He expects more prosperity when the developer finishes his plan. Another liquor store in that area would place a burden on Summers' business, and he cannot afford to lose any business. He questioned opening a business that would close another. Summers said that when his license was granted, he was led to believe that his would be the last license approved in Minnetonka. Summers recommended that the city abide by the state law for first class cities of one license per 5,000 residents, and Minnetonka currently has 10 stores. Too many stores in close proximity will not be healthy. If that area could not support two grocery stores, it cannot support two liquor stores. Summers said that his business has not sold to minors and has been a good business. He asked that the council not allow another liquor store into Minnetonka so the existing stores could survive. Summers would be glad to share his numbers with the city.

Jack Spillane, 3645 Northome Road, Deephaven, applauded the city's efforts in schools, and its MADD award. He felt that it would

be counterproductive to place the wine bar next to Snuffy's, an establishment frequented by youth.

Harlan Blumenthal, 3440 Lowell Street, asked how the proposed store would benefit him as a Minnetonka taxpayer, and his nine-year old daughter who attends Groveland Elementary School. He supports capitalism.

Chris Eriksson and Ryan Sadowski are the partners proposing this project. Their partnership is located at 12250 Orono Oaks Drive. Eriksson spoke for them. He related the food and wine trends in the Twin Cities and the country. According to a March 19, 2006 article in the *Star Tribune*, eight specialty wine stores opened in the Twin Cities in 2005, and many restaurants call themselves wine bars, offering expanded wine lists. There are 18 wineries in Minnesota, and a new one will open in the spring. A 2005 Gallup poll indicated that more Americans select wine as their favored beverage, and the demand for organic cuisine is rapidly increasing as demonstrated by the success of Lakewinds. Eriksson said that this application is for an off-sale license, but they will soon follow up with an on-sale application for their full service restaurant. They have a verbal agreement with Lakewinds to provide their entrees, salads, side dishes, and desserts, which will allow them to take advantage of two major trends happening in the Twin Cities—the increased popularity of wine and organic foods.

Eriksson said that the improvements to the CSAH 5/101 area with walking trails and green spaces have set the stage for a specialty wine shop. He said that the wine shop requires an off-sale liquor license which comes with the stereotype of a traditional liquor store. They will be a specialty wine store with 85% of their inventory in organic, non-alcoholic, kosher, hard-to-find, value-priced and local wines. About 7.5% of their inventory will come from imported beers, high end liquors and gift items. He attributed the negative feedback to the black and white sign that refers to a liquor license, and a local liquor merchant who is soliciting negative feedback. Eriksson said they should have been more proactive in providing information. Theirs will be a warm, inviting atmosphere with excellent food and hopefully, the largest selection of wines in Minnesota. Eriksson said they would offer another choice to people who now have to travel two miles to Sidney's, or three miles to Big Buck's for fine dining.

In response to the comments about the close proximity to another store, Eriksson noted the proximity of Haskell's and Byerly's, and Cellars which is near MGM Liquors on County Road 73. There are many examples in Minnesota of liquor establishments operating in

close proximity. He did not feel the issues about competition were valid. His establishment will compete for some of the wine sales, but not for beer, kegs, or liquor sales—they don't want that clientele. Eriksson said that competition is the cornerstone of American economy.

Eriksson said that he attended Groveland Elementary School and has two young children. He lives at 19500 Ridgewood Road in Deephaven. He noted that Ty Abel referred to the previous Shaver's Liquor Store at 15016 Minnetonka Boulevard. That store was closer to the school than they will be. The Tonka Bottle Shop is 1,370 feet from St. Therese School and his establishment will be 1,800 from that school. They will comply with all the standards and will not sell to underage children. He did not think it would be realistic that an underage child would try to buy a bottle of wine. If Tonka Bottle is not having problem with underage purchases, they will not either.

Eriksson said that it would be unfair to deny their license to protect another proprietor. Bevins has a loyal clientele and owns more than one store. If they succeed, there was a demand, and if they fail, there wasn't a demand. That would be their loss—not the city's nor the taxpayer's. Eriksson said that they do not need Tonka Bottle to fail for them to succeed because they are looking for an entirely different clientele.

Allendorf asked if there was a model of their store in the Twin Cities area that the council could visit. Eriksson said that there is a small wine shop in St. Paul that almost exclusively sells wine. Callison thanked him for agreeing to postpone this item.

Michael Kelly, 1945 Lake Avenue, Deephaven, asked what the average percentage of wine sales is for other liquor stores compared to this proposal. He asked if there would be on-premise food preparation, and questioned bringing food pre-made from Lakewinds. He did not have any concerns about the wine bar, just the store. He said that a liquor store is not needed in the neighborhood.

Eriksson said that most off-sales are 50% wine and 50% beer and liquor, but they expect 85% wine sales. He said that the wine bar will have its own kitchen, and a relationship with Lakewinds to bridge the gap to local and organic foods. Some desserts and other items would be pre-prepared, but most items would be prepared in their kitchen using ingredients and recipes from Lakewinds.

Rick Stellmach, 11100 Cedar Hills Blvd., #122, Minnetonka, has been employed by Tonka Bottle Shop for 13 years. He opposed the proposal. The liquor industry is regulated at the federal, state and local levels. Minnetonka still requires an 8 p.m. closing, and did not opt for 10 p.m. closings as allowed by state law. He noted that there is far more traffic through the area where Haskell's and Byerly's coexist. He asked that the city follow the state guidelines for first class cities. He said that the current license holders should be considered.

Schneider moved, Thomas seconded a motion to continue the 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 to April 10, 2006. All voted "yes." Motion carried.

Wagner asked that staff provide an overlay showing school buildings and liquor licenses for the April 10 agenda.

14. OTHER BUSINESS:

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

Olson gave the staff report.

Allendorf moved, Thomas seconded a motion to adopt Ordinance No. 2006-05 amending City Code Section 300.10, Subdivision 2, to allow certain recreational uses as principal uses on R-1, low density residential lots. All voted "yes." Motion carried.

B. Items concerning grade changes and a pervious patio on the lake access lot at 17024 Gray's Bay Boulevard for Lakewest Landscape.

Olson gave the staff report.

In response to Wagner's question, Olson said that shoreland buffers are excluded from Gray's Bay due to the character of that area.

Thomas asked if the setback variance was reasonable, and wondered if the patio could be moved back to comply and protect the shoreline. Olson said that this is not a "natural environment" lake, so the variance would be acceptable here. Thomas said that

those types of uses could have made the bay an area that is not a natural environment.

Callison was not concerned about the proposed use, but questioned the practical difficulty that would warrant the variance—she did not see a practical difficulty. Olson suggested looking at the adjacent properties for frontyard setbacks as an example of what is reasonable and, therefore, a practical difficulty. The applicant is trying to maximize the recreational use of his parcel. Callison said that we'll never get the uses pushed back if we continue to use them as justification to develop close to the lakeshore.

Schneider said that pervious pavers will allow moisture to go through but they are not grass. He asked if an analysis had been done about how this use compared to the 30% required in the shoreline ordinance. Olson said this use would meet the impervious requirement. Pervious pavers don't allow all the water to pass through. They can become clogged with sand, but even impervious pavers would meet the requirements.

Thomas noted that any grading would result in an alteration of the existing floodplain, and asked how that would affect the floodplain. Olson said that it's a hydraulic issue for flood storage. They will fill and excavate to create more area to hold floodwater, so there will be no impact in terms of the floodplain compensation or alteration, no net loss or gain.

Wagner asked if there was any reason staff would oppose moving the patio back to the setback line, other than the owner would like a patio closer to the lake. Olson did not know of any reason other than it would reduce the recreational use of their lot by another 11 feet.

Jim Fretham, Lakewest Landscape, spoke for the applicant. He said that they want to be close to the lake to watch their children swimming. Fretham said that they discussed these issues with the planning staff. He noted that one neighboring lot has a 0 setback and the other an eight foot setback.

Scott Yonke, Schoell & Madson, provided graphics. He said that the hardship is the current water drainage. During heavy rains, much of this lot is soggy, which makes it unusable for recreational purposes. The pervious pavers and grading in the floodplain to meet the net fill will be balanced with an infiltration area that wraps around the left and rear of the patio to create proper drainage. A tiny swale on the left side will pick up water flow, and drain tile

throughout the lot will permit drainage to the infiltration area. The water will soak into the soil and will not run into the lake. In response to Callison's question, he said that the drainage issue was not the cause of the patio location.

Schneider noted that the adjacent decks and patios are non-conforming. He could not see a practical difficulty in this case, and thought it was a matter of personal preference. The setback and use may be appropriate. If this is not an unreasonable use, the city should change the ordinance to allow pervious pavers closer to the lake.

Wagner could not see a practical difficulty to complying with the ordinance and could not support the variance. He could only support the request if it complied with the 25 foot setback.

Thomas said that a practical difficulty did not exist, and did not want to compare this request to nonconforming structures that would not be allowed. He said that at some point, the city has to stop if it ever wants to talk about shoreland quality. He said that the city needs to be more supportive of these issues.

Allendorf questioned if water drainage was the hardship in staff's opinion, to support the location of the pavers. Olson said that was not one of the hardships they considered for the variance.

Tom Kasbohm, 17025 Grays Bay Boulevard, is the applicant. He said they have 8 and 5 year old daughters, and have lived in that neighborhood for 8 years. He viewed them having to walk through two to four inches of water to get to the lake as a hardship. They have to walk through neighbors' properties. The neighbors have asked him to address the eyesore. The pervious pavers would provide environmental benefits. Shifting the patio to meet the setback requirement would eliminate the possibility for the gravel area. Their proposal would provide a dry walking path for them to walk to the lake and watch their children swim. As a layperson, he had a hard time understanding the 0 and 5 foot setbacks of his neighbors, when his would be further back. He noted that no neighbors have complained, and most are looking forward to the improvements. Their project would have no net effect on the lake. Their intent is to make the property usable.

Callison said that Kasbohm would have to deal with the drainage issues no matter what he does with the lot.

Kasbohm said that the depression proposed in the back would take care of the drainage issues. He noted that the neighbor with the 0 clearance has resodded so that more drainage flows onto his lot. When the water comes in, it has to go somewhere. If the patio is moved back by 11 feet, the gravel would push into the area they use for play. Kasbohm did not think that his request was unreasonable.

In response to Schneider, Kasbohm said that he has a dock. Schneider asked if the deck could be modified to provide the viewing area they seek. Kasbohm said that would not allow for a gravel walk for his young children.

Callison said that the neighboring lots were closer to the shoreline because they were built before any standards. Schneider noted that they might be illegal.

Yonke said that the neighbor's stone patio drains to the lake without protection. The other neighbor has a wood deck that is five feet from the lake. This site gets lots of drainage from surrounding properties, and the water sits on the lot or drains into Gray's Bay. They are promoting a recreational area, and pushing the patio back would reduce that. They are also directing the drainage to the infiltration area so it would not drain to the lake, and this would be a tenfold improvement to the current situation.

Callison understood the improvements to drainage, but did not see how the positioning of the patio would help solve the drainage problem. The placement of the patio is related to watching the children and not to solving the drainage issue.

Schneider offered a suggestion that the patio could be 10' x 10', rather than 18' x 18', so the holding area could be wider and not have to infringe on the recreational area.

Callison noted the council's concerns with the proposal, and asked if it would make sense to postpone the decision for staff to work with the applicant.

Schneider supported that. He asked if decks and boardwalks would qualify as structures or if they would be exempt from the setback. Olson said that the setback applies to structures on the ground. Structures do not have to be buildings. He did not know if there was an ordinance provision about paths to a dock.

Schneider suggested creativity to find a solution that meets the needs without granting a variance.

Callison said that a decision was needed tonight unless the applicant would agree to an extension. Her sense was the request would not be approved.

Kasbohm said he would like to conclude this process that started last year. They have spent considerable time and funds on the project which they felt met staff's approval. Callison said that the staff and planning commission make recommendations, but it is the council that decides. Kasbohm was concerned that another summer would pass, and Callison said that the item could be continued to April 10.

Peterson asked if he would agree to continue the item to April 10. Kasbohm said he would, but asked for clarification. Callison said that she was hearing the council wanted to see the patio pushed back either through changes in size, type of structure, or a further exploration of the drainage issue and whether or not that was a hardship or a personal preference. Kasbohm said he would not be interested in a 25 foot setback because he would be giving up a lot of green area. Callison said that this was the council's first view of the project, and the council needed time to get answers to its questions.

Schneider clarified that he did not want the patio to be closer than 25 feet to the lake. He was suggesting a smaller seating area to watch the children swim, with the patio located further back. He said that might be accomplished by consolidation and moving, so the engineering costs would not be lost.

Callison noted that all councilmembers would be present on April 10.

Wagner noted that the applicant was only being asked to move the patio back 10 feet. Kasbohm was not interested.

Schneider said that a wooden or elevated dock with slats would allow water to pass through. The floodplain could be under that dock and protect the back playground area. Kasbohm said that this was not their first proposal, and that they had gone out of their way to address the concerns of staff. He felt that the variance request was reasonable, and the neighbors agree.

Callison asked how Kasbohm could address the drainage issues without coming back through the planning process. Olson said that floodplain alternation requires a permit. Kasbohm said that he would have to consider if he wants to give up part of the lot to improve the drainage. In heavy rain conditions, drainage flows to the lake. His proposal offers an environmentally sound option.

Allendorf moved, Wagner seconded a motion to deny the shoreline setback variance request, and approve the conditional use permit and the floodplain alteration permit.

Peterson asked the council to state its reasons for denial for the record. Based on their comments, she said that she wrote down for the record that the council denied the shoreline setback variance because there are no practical difficulties or hardship to justify the variance. The land is vacant and the patio could be moved. Council members agreed with those statements.

Fretham said that moving the patio further back would mean that drainage would go uncontrolled and directly into the lake. The proposal builds a buffer in front of it with dirt and sod that would direct the drainage back. If the infiltration area is moved back, the children would have to walk through the water and rock.

Callison supported the use of the lot and the improvements, but could not find a practical difficulty. She said that the city must support its ordinances. She stated that Fretham pointed to drainage as a justification but that their consultant had stated an opposite conclusion.

Kasbohm said that after talking with his landscaper, he would agree to postpone the decision to April 10. He stated his understanding that he would likely get approval of the floodplain alternation and the conditional use permit, and there may or may not be a way to have the patio work.

Callison said that two councilmembers were very concerned about the 25 feet. She said that waiting for April 10 would give more time to consider Fretham's information about drainage. Kasbohm said that he would be out of town on the 10th. He signed a statement agreeing to continue the item to April 10, 2006. He wants a patio, whatever it takes.

Allendorf and Wagner withdrew their motion to deny the variance and approve the conditional use permit and floodplain alternation permit, and moved to continue the request by Lakewest Landscape

for grade changes and a pervious patio on the lake access lot at 17024 Gray's Bay Boulevard to April 10, 2006. All voted "yes."
Motion carried.

C. Preliminary plat for a three-lot subdivision at 13533 Wentworth Trail for Earl Fischer.

This item was pulled from the agenda.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Student appointments to the EDA and park board.

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

- Elizabeth Bayer, to the EDA as a non-voting student representative for a one-year term, effective March 27, 2006 and expiring on January 31, 2007.
- Cody Dick, to the park board as an alternate voting student representative for a one-year term, effective March 27, 2006 and expiring on January 31, 2007.

All voted "yes." Motion carried.

B. Appointments and reappointments to the Arts Center on 7 advisory committee.

Callison moved, Allendorf seconded a motion to approve the following appointments and reappointments to the Arts Center on 7 advisory committee:

Appointments

- Joel Gotz, to the Arts Center on 7 advisory committee, to serve the 2 months remaining in the term vacated by Annie Paul, plus an additional three years, effective March 27, 2006 and expiring on May 31, 2009.
- Maureen Kvam, to the Arts Center on 7 advisory committee, to serve the remainder of the term vacated by Bob Gilbertson, effective March 27, 2006 and expiring on May 31, 2007
- Joan Nelson, to the Arts Center on 7 advisory committee, to serve the remainder of the term vacated by Kelly Denzer, effective March 27, 2006 and expiring on May 31, 2007.
- Paul Rosen, to the Arts Center on 7 advisory committee, to serve the remainder of the term vacated by Miles Mortenson, effective March 27, 2006 and expiring on May 31, 2007.

- Luke Schlangen, to the Arts Center on 7 advisory committee, to serve the remainder of the student representative term vacated by Ann Reason, effective March 27, 2006 and expiring on May 31, 2007.

Reappointments

- Lester Hughes-Seamans, to the Arts Center on 7 advisory committee, to serve another three-year term, effective June 1, 2006 and expiring on May 31, 2009.
- Sandy Ryan, to the Arts Center on 7 advisory committee, to serve another three-year term, effective June 1, 2006 and expiring on May 31, 2009.
- Perry Schwartz, to the Arts Center on 7 advisory committee, to serve another three-year term, effective June 1, 2006 and expiring on May 31, 2009.

All voted "yes." Motion carried.

C. Appointment of advisors for the 2006 Board of Review.

Schneider moved, Thomas seconded a motion to appoint Tom Selseth, Joel Shields, Terry Hullsiek, Larry Kriedberg, Holly Dahlen, and Herb Bacal as advisors for 2006. All voted "yes." Motion carried.

16. ADJOURNMENT.

Allendorf moved, Schneider seconded a motion to adjourn the meeting 9 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk