

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, APRIL 10, 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, Brad Wiersum, and Jan Callison were present.

4. APPROVAL OF AGENDA.

City Manager John Gunyou reviewed the addendum, which related to:

- Item 5, the March 27, 2006 regular meeting minutes, were inadvertently excluded from the council packet.
- Item 13 A, The Wine Shop, additional letters received from the public are enclosed.
- Item 14A, ICA Center at St. David's Church, included additional letters received from the public and revisions to the variance findings, conditions of the conditional use permit, and the site plan and drainage plan.

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

5. APPROVAL OF MINUTES:

A. March 27, 2006 regular council meeting.

Thomas moved, Allendorf seconded a motion to approve the minutes of the March 27, 2006 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Proclamation designating the week of April 23-30 as Days of Remembrance.

Wiersum read the proclamation designating the week of April 23-30 as Days of Remembrance.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings.

Callison testified before a Minnesota House subcommittee and a Senate subcommittee in support of a bill to restore market value credit. Both bills moved forward.

Wagner apologized to residents of Ward 2 for missing the Listening Session due to the passing of his father. He will contact each person individually.

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

No one appeared.

9. BIDS AND PURCHASES: None.**10. CONSENT AGENDA (Items Requiring a Majority Vote):****A. Claims for council authorization – April 10, 2006.**

Allendorf moved, Wiersum seconded a motion to approve the April 10, 2006 claims which includes checks numbered 195968 through 196205, totaling \$1,049,958.14. All voted “yes.” Motion carried.

B. 2006 grant request by Homes Within Reach.

Allendorf moved, Wiersum seconded a motion to approve the additional \$10,000 in operations funding for Homes Within Reach. All voted “yes.” Motion carried.

C. Ordinance amending the city code regarding ethics.

Allendorf moved, Wiersum seconded a motion to adopt Ordinance No. 2006-06 amending the city code §115.010 regarding ethics. All voted “yes.” Motion carried.

D. Approval of an encroachment agreement with Access Communications, Inc.

Allendorf moved, Wiersum seconded a motion to approve an encroachment agreement with Access Communications, Inc. for the

purpose of installing telecommunications within the right-of-way of Hillside Lane. All voted "yes." Motion carried.

E. Resolution regarding a fire sprinkler retrofit at 14525 Highway 7.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2006-029 receiving a petition and waiver of rights to a public hearing, ordering the improvement, and declaring the cost to be assessed for the construction of a fire sprinkler system retrofit and related improvements to serve the office building at 14525 Highway 7. All voted "yes." Motion carried.

F. Items concerning an office addition to the existing building at 10700 Bren Road West.

Allendorf moved, Wiersum seconded a motion to adopt Ordinance No. 2006-07 approving the proposed amended Master Development Plan for American Medical Systems with final site and building plan review at 10700 Bren Road West. Approval is based on the following findings:

- 1) The proposed plans are generally consistent with the existing master development plan.
- 2) The size of the Phase II office expansion would be reduced from 120,000 square feet to 50,000 square feet.
- 3) The proposal meets all minimum zoning ordinance requirements.
- 4) The addition could be supported by the existing roadway system.

This amendment is subject to the following conditions:

- 1) 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 February 28, 2006.
 - Grading plan date stamped February 28, 2006.
 - Utility plan date stamped February 28, 2006.
 - Landscaping plan date stamped February 28, 2006.
 - Building elevations date stamped February 28, 2006.

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

- 2) Before starting any site work or obtaining a grading permit, complete the following work:
 - a. 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 environment resources staff.
- b. Submit final site, grading, drainage, utility, and erosion control plans for staff approval. Plans must include the following:
 - (1) Re-submittal of drainage calculations showing both ponds meet rate control to existing conditions for a 1-year, 10-year, and 100-year storm event.
 - (2) An emergency overflow must be added to the north pond.
 - c. Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
 - d. If required, submit copies of the watershed district permit. The city may require revisions to the approved plans to meet the district's requirements.
 - e. Submit a construction management plan for staff approval.
- 3) The following must be submitted to the city before the city issues a building permit:
- a. A final landscape and irrigation plan for staff approval.
 - b. A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping
 - c. An illumination plan for staff approval
 - d. All required hook-up fees
 - e. Record this ordinance with the county.
- 4) The property owner is responsible for replacing any required landscaping that dies.
- 5) 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.
- 6) Approval does not include the signs shown on the drawings. Separate permits are required from staff.
- 7) 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.
- 8) A stop sign must be installed at the new driveway outlet.
- 9) Construction must begin by December 31, 2007, unless the planning commission grants a time extension.

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

11. ITEMS REQUIRING FIVE VOTES: None.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance changing the definition of lot to exclude land under lakes or streams.

Gunyou provided a brief staff report.

Callison noted that the ordinance's impact would be greatest around Glen Lake. She observed that if the ordinance had been on the books before the Glen Lake redevelopment, it would not have changed the result. Gunyou agreed that the calculations would have been done in the same manner.

Schneider moved, Thomas seconded a motion to introduce an ordinance amending City Code Section 300.02, Subdivision 71, concerning the definition of lot and referred it to the planning commission. All voted "yes." Motion carried.

13. PUBLIC HEARINGS:

A. 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.

Community Development Director Rankin provided the staff report. The public hearing had been continued from the February 27, 2006 and March 27, 2006 city council meetings to allow more time for public comments.

Rankin reviewed the location of schools and on-sale and off-sale liquor establishments throughout the city. He discussed the idea of limiting the number of off-sale liquor licenses allowed in the city. If the standard used by the cities of Minneapolis and St. Paul was applied, 10 or 11 off-sale liquor licenses would be allowed in Minnetonka. The city currently has 10 off-sale liquor licenses.

Wiersum asked the city attorney to explain the meaning of "broad authority" when used to describe the city's discretion regarding issuance of an off-sale liquor license. City Attorney Desyl Peterson explained that the council's action has to be reasonable; not based

on a whim. If the council has a reason that appears fairly rational, it can issue or deny the off-sale liquor license.

Callison noted that the number of off-sale liquor licenses has held fairly constant since the city had 9 off-sale liquor licenses in 1974. Rankin stated that Minnetonka's population was 35,776 in 1970 and 38,683 in 1980.

Callison noted the council's policy that discourages granting a liquor license for a location in close proximity to a school. She asked how that was weighed by staff when the recommendation to approve the application was determined. Rankin explained that, historically, there had been much greater focus on on-sale liquor establishments to prevent under age drinking. The police department reports no issues with off-sale liquor establishments in the past or present regardless of their location to schools.

Callison opened the continued public hearing.

Ken Ryan, 322 13th Avenue North, Hopkins, who previously lived in Minnetonka 21 years, was present to express his opposition to the proposal. His reasons were listed in an e-mail included in the council packet. He was present to answer questions.

Laurie Stoltenberg, 3900 Skyview Road, has lived in Minnetonka for 13 years and has owned a business on County Road 101 and Minnetonka Boulevard for 4 years. She opposes the liquor license. She has 3 children and preferred the area be used for something more family friendly. The location is very visible and she does not want to see a liquor store at that site. It would be too close to Groveland School and increase the traffic. She also opposes a future on-sale liquor license.

Greg Bruhn, 9110 County Road 11, Independence, is opposed to the liquor license because there would be no benefit to the community. It would be a duplication of efforts. He works in the alcohol industry. The city already has a complete selection and competitive pricing. It would provide no real added value.

Jim Bisek, 4700 Sparrow Road, supported approval of the liquor license. He stated that the Wine Shop is a specialty store, and the knowledgeable staff and selection of services and products offered would be beneficial. He currently drives to Surdyk's in Minneapolis to purchase wine. He preferred to spend his money in Minnetonka. He encouraged the city council to approve the liquor license.

Timothy Bevins, 17616 Minnetonka Boulevard, Tonka Bottle Shop owner, provided examples of businesses that went out of business because they were located near similar businesses. These included Country Village Liquor, Broviak, Coopers, and Wellspring. The city has limited control over the location of grocery stores and health clubs, but it can do something regarding the proximity of liquor stores to each other. He received his license in 1977. He was available to answer questions.

Steve Erickson, 5142 Woodridge Road, supports The Wine Shop. He stated that councilmembers had probably already "made up your minds" on how each would vote. He hopes to hear yes votes. The Wine Shop will bring patrons from all over the area. He has children in Minnetonka schools and has no problem with the proposal.

Schneider responded that councilmembers do not come to a meeting with predetermined decisions. Each member waits to hear the full report and discussion before making a decision.

Marcie Riopelle, 4000 Hunters Hill Way, favors the approval of The Wine Shop's license. It would be upscale. She is a child protection worker and did not think the approval of the liquor license would be detrimental to children. Underage drinking at on-sale liquor locations is a threat to children.

Chet Torrey, 17404 Bay Lane, welcomed a nice restaurant, but not so close to the Tonka Bottle Shop. It would be out of line to have off-sale and on-sale liquor licenses.

Schneider stated that the off-sale liquor license was the only license being reviewed. Torrey was opposed to The Wine Shop having both off-sale and on-sale liquor licenses, but was fine with it having only an off-sale liquor license.

Chris Eriksson, 1225 Orono Oaks Drive, Orono, the applicant, explained the two step process. He is currently applying for the off-sale liquor license and within 30 days plans on applying for an on-sale liquor license. He stated that the Wine Shop would provide a better selection, better prices, more knowledgeable staff, and better environment. An extensive market study convinced him that there is a demand for a specialty, fine wine store. The business will succeed by fulfilling the market demand. Objections to the proposal were solicited by Tonka Bottle, a competitor. Competition is not a valid point to deny the application, he said. The economy is a market economy where competition makes things better.

Eriksson also said that there is no correlation between underage drinking and off-sale alcohol sales in Minnetonka. The applicant's location is 600 feet from Groveland School. Tonka Bottle's location is 1,000 feet from Groveland School. The applicant's location is 1,400 feet from St. Therese School and Tonka Bottle's location is 1,000 feet from St. Therese's School. Excelsior Vintage in Excelsior is 410 feet away from Excelsior Elementary. On February 6, the city council approved Glen Lake Liquors to move directly across the street from the Glen Lakes Mighty Mites baseball diamond. If the logic that it would harm children did not apply there, it does not apply for this application. Eriksson is looking for an opportunity to enhance the corner, and said he would not let the council down.

Arnold Palmer, 6700 Basswood Circle, Rockford, owner of the building that houses Tonka Bottle Shop, said he is aware of politics, that spin is part of politics today, and accused the applicant of spinning the facts. He hoped that the council did not buy it.

With no one else asking to speak, Callison closed the hearing. She requested that public testimony not include personal attacks.

Wagner asked if any off-sale liquor licenses are restricted to sell beer and/or wine only. Peterson explained that a number of convenience stores have 3.2 percent alcohol off-sale liquor licenses rather than the all-inclusive off-sale liquor license. Those are the only two categories of off-sale liquor licenses.

Wagner asked if a condition of approval of the liquor license could be utilized to require a certain percentage of sales be from wine sales only. Peterson said that it could. She stated that some other cities choose to limit the number of liquor licenses. Minnetonka currently does not, since it is already a highly regulated industry. If the applicant's position is that the proposal is unique and would provide a unique service, it could be appropriate to add conditions of approval to prevent direct competition that would undermine the liquor regulations.

Schneider reviewed the process and procedures the council has used in the past to approve liquor licenses. Council and staff are thorough and diligent. The general criteria for considering a liquor license have included the quality, character, and ability of the license holder to run a good business. A detailed background check by the police department helps determine the quality of the applicant.

Schneider stated that the proximity to competition has not been a reason to deny or grant an off-sale liquor license in the past. If this is changed, it should be discussed as a policy change rather than creating new rules during the review of an application.

Schneider noted that 20 years ago there were no criteria to determine what liquor licenses would be approved, but it was well known that it was very difficult to get a liquor license. Licenses were extremely valuable, worth well over \$100,000 in the 1970s and 1980s. A conscious decision was made to make liquor licenses available dependent on the quality of the license holder. He does not want to see things go back to the way they were. If the proliferation of liquor licenses is a concern, the issue should be studied, and past council actions examined. The council knew that it would be difficult for Broviak to survive with Cost Plus, but they determined they would not limit competition.

Schneider saw no basis to deny the application or create a new class of license by determining what should be sold. There was no choice but to support the application.

Allendorf said he was not one to stifle competition. He voted for the liquor license on Highway 7. His concern was the aesthetic appearance and vitality of the site. That would be the reason he would vote against the proposal.

Wiersum weighed the pros and cons of the compelling arguments. He believed in a free market economy and competition. He has a problem with denying the application for that reason. However, he also believes that Minnetonka has enough liquor licenses. One liquor store for every 5,000 residents is a reasonable measure. It might assist with a liquor store's viability. The site location close to Groveland School is meaningful, but is not a compelling factor. The city does not need 11 liquor licenses; ten is plenty.

Callison considered the number of times the council had conducted liquor license public hearings. The city does not hold the power to grant or deny a liquor license for competitive reasons. That is left up to customer demand. There are plenty of coffee shops and banks in close proximity to each other. In 1974, the city had 9 liquor licenses when the population was between 35,000 and 38,000. The city should have had 45,000 to maintain 9 liquor licenses. The market sorts itself out.

Callison believes that the purpose of licensing liquor stores is to protect public health. The area is zoned commercial. The council

would not consider whether a dry cleaner would add vitality to the area. She was well aware of the efforts to deal with underage drinking, but it is not driven by liquor stores. It is driven by access in parents' homes and access from other adults. She is very comfortable and confident in the liquor license holders' ability to make sure that underage drinkers do not gain access to alcohol from them. While it might be an issue for older kids, proximity to an elementary school would not impact public health. The decision to approve the liquor license that ultimately resulted in the closing of Broviak was the right one to make. The council's mission is not to insert itself into the competitive market, but to protect public health. This application would not impact public health and, therefore, should be approved.

Allendorf factored in the time and money spent on determining what the city wanted the corner to be. He felt the wine bar would be unique enough to secure his vote for approval. Absent the ability to see what the unique wine shop liquor store would look like, he was unable to make that decision. The site is a special corner. If he approved a plebian use, it would not be consistent with his vision for that corner.

Thomas reflected on the last time he was involved with approving a liquor license for a site on Highway 7 with the knowledge that it might cause another store to go out of business. The council's role is to look at the regulations, laws, compliance, and backgrounds of the applicants to make its decision on whether to approve or deny a liquor license. Competition has not been a factor in the past. If council wanted to add more factors to be taken into consideration, such as competition, location, number of licenses, and visions for certain sites, then he would be willing to consider those. Right now, his role was not to determine what would be competitive. The council's role is to grant a license to an applicant legally allowed to have a license. He supported granting the off-sale liquor license.

Wagner agreed with Schneider. There is no policy that prevents a liquor store from being located within a certain distance of another liquor store. He did not see how council could deny the application without a revision in the policy. The policy has worked. Liquor stores comment that the city does a good job enforcing compliance. This proposal is unique. There is a school close by, but the kids are not of junior high or high school age. He supported the request, especially considering the past action regarding Cost Plus and Broviak.

Schneider did not think the role of issuing a liquor license was related to the character of the corner or to what the applicant may or may not do. The corner has seen a lot of turn-over and it needs critical mass to make the area vital. A top end restaurant without something with it may not make it. He felt the proposal would be an asset to the corner.

Callison clarified that the council's role is not to consider what use should be located on the corner. If the use meets the zoning requirements, it is allowed.

Schneider moved, Thomas seconded a motion to grant the license for an off-sale intoxicating liquor license for use at The Wine Shop, 17523 Minnetonka Boulevard. Thomas, Wagner, Schneider, and Callison voted "yes." Allendorf, Ellingson, and Wiersum voted "no." Motion failed.

Wagner requested that a study session be held to look at factors used by the city council to determine whether to approve or deny a liquor license, since there is disagreement on the council. Callison felt it would be appropriate for councilmembers to give feedback to staff regarding whether each would like to have a study session.

Schneider asked Peterson if the council needed findings for denial. Peterson answered in the negative. It is not a land use or zoning item. The remarks given substantiate the reasons for denial.

Thomas agreed with Wagner that the guidelines need to be discussed or the vote would be the same every time.

Wagner concurred. He pointed out the cost involved in the application process, and saw potential for another liquor license application to be reviewed in the near future.

Councilmembers were in agreement that the liquor licensing issue should be discussed.

Callison recessed the meeting at 7:52 p.m. and reconvened it at 8:01 p.m.

B. Resolution adding property to the Glen Lake housing and redevelopment project and amending the Glenhaven tax increment district to reflect that change (for West Suburban Alano).

Gunyou provided the staff report.

Callison opened the public hearing. No one spoke. Callison closed the public hearing.

Allendorf moved, Thomas seconded a motion to adopt Resolution No. 2006-031 adopting a modification to the Housing Development and Redevelopment Plan for the Glen Lake Station Housing Development and Redevelopment project and a modification to the Tax Increment Financing Plan for the Glenhaven Tax Increment Financing District. All voted "yes." Motion carried.

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

Peterson provided the staff report.

Wiersum asked Peterson to define "plat." Peterson did so.

Callison continued the public hearing. No one spoke. Callison closed the public hearing.

Schneider moved, Thomas seconded a motion to adopt Ordinance No. 2006-07 amending the city charter section 12.06 regarding vacation of public property street vacations and adding a new section 12.13 regarding enforcement. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Items concerning a proposal for a new building on the property at 13000 St. Davids Road for The Episcopal Parish of St. David.

Gunyou provided a brief history of the Intercongregational Communities Association's (ICA) space needs. It outgrew its current space several years ago. ICA's board and the Episcopal Parish of St. David's board approached the city, and have been working together on the project.

Olson provided the staff report. He reviewed additional comments received by the city and revisions to be made to the site and building plan, conditional use permit, and variance findings provided in the addendum. Gunyou fixed a typo on the change memo to read "non peak time" instead of "no peak time."

In response to Wagner's question, Olson explained that the previously approved expansion would have been located on the west side of the sanctuary. The proposed food shelf would be located on the east side. The current proposal allows the pond to be moved to a more open area.

Ellingson asked if the conditional use permit approved in 1993 is still valid. Peterson explained that state law ties a conditional use permit to a property in perpetuity, and is valid as long as the property is in compliance with the conditions.

Wiersum asked if the sanctuary could still be expanded in the future. Olson stated that the applicant would need to apply for a revision of the conditional use permit. Since it is a nonconforming use and there are traffic concerns, there would have to be a significant change in conditions for staff to support expansion of the sanctuary. An example of a changed condition would be acquiring the home on the northwest corner to provide access to Minnetonka Drive.

Callison noted the concern of increased crime. Gunyou said that the police department found no crime-related calls to the existing food shelf during the past two years. He added that a neighborhood-by-neighborhood comparison showed very low criminal activity in the area around the existing operation.

Callison asked how the proposed traffic would compare to a grocery store. Gunyou learned from the traffic consultant that a grocery store of the same size would generate approximately 1,000 trips a day. This proposal is expected to generate about 120 trips a day.

Callison asked that the issue of "spot zoning" be addressed. Peterson responded that the application does not include rezoning of the site. It is currently appropriately zoned to allow a food shelf. Spot zoning does not apply.

Gunyou elaborated on the types of uses allowed by a conditional use permit in an R-1 district.

Wiersum asked if there would be enough room for vehicles dropping off items to travel forward to prevent the beeping sound from trucks backing up.

Gunyou said the applicant could address that question, and encouraged the applicant to also discuss the frequency of UPS

type trucks that would be making deliveries. He understood that most vehicles dropping off items would be personal vehicles.

Chris Winter, Senior Warden of the Episcopal Parish of St. David, applicant, introduced ICA and St. David's staff, volunteers, consultants, and supporters. He stated that:

- The Burwell family granted the land to St. David's for it to be used to serve the community.
- In 1971, St. David's was one of the founding congregations of ICA.
- St. David's operated a school with 100 students and 25 staff members each day for nearly a decade. Many of the children were physically disabled and arrived in buses and transportation vans.
- The facility houses numerous non-profit activities to raise funds for worthwhile causes and serves the community.
- A majority of the ICA volunteers are seniors.
- Most of the deliveries are transported by mini-vans and cars. A few shipments a month are delivered by UPS-sized trucks.
- The existing spaces are inefficient, impractical, in need of maintenance, and have limited time remaining on their leases.
- Having all operations housed in one building would increase the facility's efficiency to better serve the community. It would increase safety for its volunteers, clients, and staff. It would save costs related to heating and lighting two facilities.
- He explained the traffic pattern that was designed to minimize the need for backing.
- A fence will screen and increase safety near a small retaining wall.
- The architectural details of the addition would match the existing building. The pitch of the roof would be lower. He provided different views of the proposal.
- He also provided illustrations of the floor plan, landscaping, and screening.

Callison asked if the facility would have a kitchen. Winter indicated where a small serving kitchen would be located.

Callison asked if it is realistic to expect office staff to leave by 5 p.m. and Winter answered in the affirmative. A scheduling system has been developed that will work for both St. David's and ICA.

Wagner asked if Winter foresaw any factors that would require future expansion of the facility. Winter responded that no expansion is planned at this time.

Callison explained the land use application process that consists of the applicant and staff working on an application; public hearings held by the planning commission; and council's time limit to take action. She appreciated residents' comments, but councilmembers have legal constraints within which they must operate. She reviewed the primary issues and issues not relevant to the application.

Schneider added social benefits to the list of issues not relevant to the council's decision to approve or deny the application. Whether a food shelf operation is a legitimate extension of a church use is the relevant issue before the council.

Callison opened the meeting for public comments.

Mark Jones, 19600 Chimo, Wayzata, previously lived in Minnetonka for 15 years. He is a general contractor and has done several developments in Minnetonka. He knows Roger Freeberg and commended him on creating a great design. He supported the proposal.

Kristin Hays, 9141 Decator, Bloomington, current Executive Director of St. David's Child Development and Family Services, stated that the school operated at the site from 1961 to 1991, and generated 250 trips a day. There were no major traffic issues with the neighborhood.

Carol Rye, 16316 Highwood Drive, stated that she has lived there for 28 years. It is her pleasure to speak in support of the ICA food shelf. Working as a volunteer at the facility has become a high priority in her life. It is a well run facility. There are over 300 volunteers from the community that work there on a regular basis. It is the warmest, most joyful place to work. The clients are respectful and thankful. She takes clients' personal information. The food provided is enough for a family for one week. It is a wonderful organization and is supported by the community. She thanked the community for its support.

Linda DeRoode, 3426 Shady Oak Rd, stated that she has lived there for 14 years. She stated that:

- She supported the sanctuary's expansion in 1993, because that would be an appropriate use.

- The proposed use would operate as a commercial facility. It would be open from 9 a.m. to 5 p.m. and increase traffic by 126 trips daily during off-peak times.
- She does not see how it would benefit St. David's parish.
- The land use would not be appropriate.
- It should be located on an arterial road with a bus route in more of a commercial setting.
- The proposal would impact the neighborhood. She has two children who bike on the road. Two vehicles do not pass each other easily.
- Her back yard floods every spring. She is concerned with additional hard surface coverage.
- The proposal would be an excessive use of the conditional use permit.
- She strongly opposed the proposal and requested the applicant find a more appropriate site.

Jennifer Kaltz, 19100 Stratford Road, thanked everyone who supports ICA. People need to get beyond judging people. Just because people do not have enough money for food, does not mean that the facility would increase crime or theft in the area. There are unexpected emergencies in people's lives.

Dennis Andersen, 4723 Forest Circle, stated that he has resided there 41 years. If a food shelf is not a church function, he did not know what was. It directly serves the needs of the community.

Tim Barns, 15271 Prior Lane, Executive Director of the Emergency Food Shelf Network, explained that food is delivered by an electric pallet jack on a truck. The process takes a total of 10 to 15 minutes. His organization delivers to ICA usually once a month, no more than twice a month. Fifty percent of food shelves are located in churches. The other fifty percent are located in residential neighborhoods. The biggest problem is that food shelves are outgrowing their spaces. Five thousand square feet is very common and is in line with the size of other food shelves.

Wagner asked if Barns foresaw a problem with not having a loading dock. Barns felt a loading dock would be appropriate, but it could work without one. The network has had a long history with working in tight quarters.

Ellingson asked if Barns was aware of a church that built an addition for the purpose of housing a food shelf. Barns was not

aware of such a situation. Food shelves are housed in churches or commonly found in former schools that are used as community centers.

Gordon Aumann, 12508 Overlook Court, has lived there for 27 years and attends Faith Presbyterian Church. He has worked at ICA for 4 years. He assists clients at the facility; makes deliveries to clients to their residences; and drives clients to doctor appointments. He strongly supports the proposal. It is needed in the community.

Kevin Conley, 24740 Amlee Road, Shorewood, is a member of St. David's and is an architect. He has been involved in the project from the beginning. He offered that a simple, four-foot high loading platform would be easy to add and make reception of goods easier. The lease agreement would restrict the maximum length of trucks to 26 feet. The loading platform would be reasonable.

Callison saw the industrial sized garage door as the issue with the loading dock. She questioned if the loading dock could operate with a normal size garage door. Winter stated that the garage door size could be the same with or without the loading dock. The loading dock's purpose is to decrease the amount of lifting.

Jack Barbier, 13001 St. David's Road, stated that he has lived there since 1993 and has never had a problem with the church. He stated that:

- He and his wife applauded the effort to help ICA. He respected the people making the proposal.
- He was shocked and somewhat appalled at how little voice is given to the people most affected by the proposal.
- The meeting facility would operate additional hours.
- The intersections of St. David's Road and Shady Oak Road, and Minnetonka Boulevard, and Plymouth Road are already clogged and dangerous.
- Once all of the nice pictures are put aside, the issue is whether the city will set aside all of the zoning restrictions made to protect people like him for a special interest group.
- He works nights and when he returns in the morning, he has to rest before he goes out again. The construction noise would not allow him to rest.
- A food shelf of the proposal's size and magnitude should be denied on a dead-end, residential street.

- He questioned what was wrong with the 100 other places considered.

Terry Barnes, 12950 St. David's Road, lives next door to the site. She has worked for the Salvation Army for 17 years at a food shelf. She trusted that the proposal would decrease the drainage in her back yard. A loading dock would turn the site into a commercial warehouse. The church contributors could use the elevator to reach the lower level storage space. A ramp and dolly could be used to unload deliveries in the front. A retaining wall and hard surface would cost a lot.

Beverly Baker, 12900 St. David's Road, acknowledged that the food shelf would benefit the community. She questioned if the railroad authority approved the pond. She was concerned with future growth of the food shelf. The church currently has trouble enforcing its parking policy of requiring motorists to park in the lot.

City Engineer Lee Gustafson explained that no grading would occur on the railroad property; therefore, approval from the railroad would not be needed.

Callison asked how parking problems and other issues in the future would be addressed. Gunyou encouraged residents to notify staff of any problems. A condition of approval requires ICA and St. David's parish to submit an annual operating plan, which will be reviewed.

Callison asked Winter to speculate on ICA's plans for the next five years. Winter analyzed the current space and efficiencies gain. He found some growth potential in the existing building. Adding satellite offices may be a future option.

Julie Keller, 2700 Mayflower Avenue, is a member of St. David's. She provided statistics related to low income families who reside in Minnetonka. She stated that just below 10 percent of Minnetonka households have an annual income of less than \$25,000 and just over 5 percent of households in Minnetonka have an annual income of less than \$15,000. There are 1,335 people living in poverty in Minnetonka. Over 25 percent of female headed households with children below 5 years of age are living in poverty. It is a community issue. ICA is not a commercial venture. The clients live in the community. ICA searched high and low for a safe, efficient site. St. David's spirit has been the defining character of the neighborhood and is not new. The construction of the facility is consistent with the character of the neighborhood. She strongly urged the council to approve the conditional use permit. The council

will be taking courageous action that recognizes the needs of the community and the rights of Minnetonka's most vulnerable citizens.

Kathleen Black, 15308 McKenzie Boulevard, has been a neighbor of ICA for 12 years and volunteers there. The parking lot is seldom full. Clients are scheduled 15 minutes apart. The clients are interviewed to prove financial need. It is very embarrassing at the current facility because it is done in front of other people. The building should be condemned.

Katie Ullsperger, 4440 Avondale Street, stated that she has volunteered at ICA for three years. Her son is seven and she wanted to show him what people are doing to help others. The proposal would be a visible sign of compassion in our community.

Allendorf agreed that ICA does good work, but he reminded those present that the application is a land use issue.

Callison asked for additional public comments.

Barbier stated that the issue is not whether a food shelf should be built. The issue is whether it should be located on a dead-end, residential street.

Nick Strandberg, 14616 Woodhaven Road, spoke on behalf of himself and his wife, Pat. They supported the ICA food shelf. They live two doors down from the current food shelf and did not realize for three years that it is a food shelf. It has been a very good neighbor. He would welcome the facility even if Woodhaven Road was a dead-end street. The proposal would use the land for what the Burwell's intended. He asked councilmembers to approve the application.

Tim Erickson, 3508 Kohlen Circle, felt fortunate to be an American and participate in the public hearing process. He quoted the ordinance requirement that restricts a church to an arterial or collector road. St. David's church cannot guarantee future use of the property. He questioned what practical difficulties would be imposed on St. David's for locating ICA at the facility. He questioned the appropriateness of the use at that location.

Callison asked for any new public comments. There were none.

Schneider has seen ICA's well run operation. He supported its work, but noted that the potential benefit for society does not allow council to ignore the city's ordinances. The interpretation of

ordinances, the appropriateness of the use, the site's non-conforming use status, and the facility's location on a residential street are the necessary considerations.

As Schneider looked through the first planning commission report for the item, his main concern was determining if the proposal was an expansion of a nonconforming use or a variance. When the ordinance was crafted, it set guidelines for new churches. It was later strengthened to apply to existing churches by making them nonconforming uses. He initially thought that the proposal was an expansion of a nonconforming use.

However, Schneider subsequently realized that the conditional use permit to expand the sanctuary by 300 seats was approved in 1993. This predated the ordinance update. He felt the food shelf would be a legitimate expansion of a church use. He leaned favorably toward approval of the proposal, because the previously approved conditional use permit was being voided and replaced by the new conditional use permit request; he did not see the new request as an expansion of a non-conforming use.

Wiersum spent time at the site and talked with neighbors. The conditional use permit exists because the church is not on an arterial road. That restriction was added to the ordinance after the church had been built, so it was grandfathered in. Churches typically grow. He questioned if the church should be limited to a certain size because of its conditional use permit, and felt it should be able to expand. ICA's work would be an appropriate expansion of St. David's mission. He commended the people who worked on the building to make it fit in with the campus. It would be a beautiful building. He applauded St. David's for its mission. The former school created more traffic than the food shelf would. Those factors made Wiersum favor the proposal.

Wagner found it difficult to expand nonconforming uses. St. David's church is a nonconforming use that will never go away. It happens to be located on a residential street. The ordinance was enacted to guide new facilities. Historically, the site being used as a school set a precedent. The footprint of the structure was not as large, but the school generated more traffic. Neighborhood meetings have improved the proposal; although, not everyone will be pleased with the result. When Peterson explained that a church use includes schools, ball fields, and caring for the poor and those in need, he learned that a food shelf fits that definition. The expansion would be less than the 1993 conditional use permit and have less of an impact than the school that operated from 1961 to 1991. With the

conditions recommended in the staff report, he supported the expansion of the nonconforming use.

Thomas' main concern with the application was the expansion of a nonconforming land use. He understood that a proposal was previously approved. The increased traffic on a cul-de-sac would not be appropriate and would change the character of the neighborhood. He did not consider the community or social benefits. He viewed the issue strictly as expanding a land use. He was still undecided.

Allendorf viewed the proposal as a land use issue. He asked people who he received e-mails and telephone calls from where each lived. He discovered that people who live close to the site were opposed to it, and people who live farther away supported it. The next course of action was to mitigate concerns. The applicant worked with the neighbors' concerns and staff and did a pretty good job of addressing those concerns. The building materials are compatible. The increase in parking lot height is good. The loading dock was removed. Sixty vehicles a day is reasonable. The land use issues have been taken care of in his mind. Allendorf was satisfied that the conditional use permit is appropriate. Expanding a nonconforming use was not an issue. He supported the proposal.

Callison referred to uses allowed by ordinance in an R-1 district. Residential neighborhoods are not limited to single-family homes. It is reasonable to expect a church to host a food shelf, particularly St. David's because of its history. The ordinance was changed a couple years ago to make it clear that churches should have direct access onto collector, arterial streets. The application clearly meets five of the six requirements to approve a conditional use permit for a church. Callison noted that Gatewood Elementary and Glen Lake Elementary schools are not on arterial roads.

Callison said that the proposal is not an unreasonable expectation for this church on this street. That is part of the character of the street. The drainage problems will be solved. The building will be attractive. She appreciated the changes made to dress-up the facility. The applicant's hardship is the access onto Minnetonka Boulevard. Hennepin County opposes access to the site from Minnetonka Boulevard and the city favors it. The proposal is appropriate, and she supported staff's recommendations. It is possible to oppose the application and support ICA's efforts. ICA currently operates in the city, and no depreciation in property values or increase of crime occurred. She challenged people to look beyond their fears.

Ellingson felt a food shelf is an appropriate church use. He had some difficulty with the warehouse part of the proposal. Residents have a reasonable expectation that the neighborhood will remain residential. The church is a permitted use. He understood how residents would be sympathetic to expanding the church, but opposed to allowing a food warehouse with delivery trucks next to their residences.

Schneider's rationale was that the trips to deliver and pick-up food would be able to be scheduled during non-peak traffic times. The increase in trips would be reasonable for a public street. The more difficult issue is parking on the street. He suggested restricting parking to one side of the street.

Wiersum agreed that would be appropriate.

Winter explained that members are more aware of the parking policy and it is working better now.

Gunyou said that staff could monitor the parking situation, and install "no parking" signs if needed.

Schneider moved, Wagner seconded a motion to:

- 1) Adopt the Resolution No. 2006-032 amending an existing conditional use permit with the condition that parking be monitored on the site and steps be taken to correct street parking issues. This resolution replaces the existing resolution and is based on the following findings:
 - a. Apart from the requested access variance, the proposal meets the required conditional use permit standards.
 - b. The proposal meets the required standards for a variance, because:
 - (1) St. Davids Road is the only viable access to the property.
 - (2) The church is an existing, non-conforming use. The church building was built, and a conditional use permit was approved, prior to the current access requirement.
 - (3) Since the church already has access onto St. Davids Road, the variance itself would not alter the character of the neighborhood. This reasonably-sized expansion of the church use would not add anything that will change the character of the neighborhood because:

- (a) It will have less square footage and impervious coverage than the current conditional use permit granted for the property;
- (b) The traffic generated by the expansion will be during the week, which is the no-peak time for the church; and
- (c) The traffic generated by the expansion should be not greater than the traffic previously generated when the school was at the church.

Approval is subject to the following conditions, which amend the existing conditional use permit conditions:

- ~~a. The applicant add landscaping in the east and northeast prior to issuance of a grading permit.~~
- ~~b. The applicant post one-way signs for drive aisle and western parking lot prior to the issuance of a certificate of occupancy.~~
- ~~c. The applicant remove eastern sign within the right-of-way prior to issuance of a grading permit.~~
- ~~d. The applicant submit a bond for grading, landscaping, and tree preservation prior to issuance of a grading permit.~~
- ~~e. The applicant submit an illumination plan prior to issuance of a building permit.~~
- ~~f. The applicant install erosion control along south and east side of the property and fence all trees slated for preservation prior to issuance of a grading permit.~~
- ~~g. The applicant install concrete curb and gutter with patching along St. Davids Road and curb and gutter all revised parking lots and drive aisles.~~
- ~~h. The applicant dedicate the proposed easement and vacate appropriate right-of-way prior to issuance of a grading permit.~~
- ~~i. The applicant install masonry trash enclosure and submit plans for staff review and approval prior to issuance of a building permit.~~
- a. Physical use of the church property is only allowed as depicted on the site plan received on April 10, 2006 and the existing condition plan dated March 15, 2006. This resolution replaces and supersedes the prior conditional use permit approved in 1993 and only allows use of the property as shown on the plans approved on April 10, 2006.
- b. The new building on the east side of the property may be used for operational and parish activities, and as a

food shelf with related services. Any other use of the building requires amendment of the conditional use permit.

- c. Operation of the food shelf must follow a written operations plan to be submitted annually for city staff approval. In preparing the plan, the food shelf must solicit input from the parish and area residents. The plan must limit hours of food shelf operation to Monday through Friday 9:00 a.m. to 4:00 p.m. and to 5:00 p.m. for office staff. City staff may approve food shelf operation one evening a week and occasional administrative meetings, provided these times do not conflict with evening church activities. Approval of extended hours is subject to providing a revised traffic study.
 - d. No semi-truck delivery of food to the food shelf is allowed. A 26-foot-long panel truck is the largest truck permitted to deliver food to the food shelf.
 - e. Any special distribution by the food shelf of holiday food, trees, toys, etc. may only occur during regular client visits.
 - f. The city council must approve any banners, temporary signs, or other temporary items on the St. David property.
 - g. The city council may reasonably add or revise conditions to address any future unforeseen problems with traffic and parking issues.
 - 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. If on-street parking becomes a problem, the city may take steps to correct the problem, including "no parking" signs.
 - j. Before the city issues a building permit, the applicant must agree to the above conditions in writing and record this resolution with the county.
- 2) Approve the site and building plans for an additional building at 13000 St. David's Road, 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 April 10, 2006.
 - Grading/drainage plan date-stamped April 10, 2006.

- Landscaping plan date-stamped January 27, 2006.
 - Illumination plan date-stamped January 27, 2006.
 - Building elevations date-stamped January 27, 2006 for the easterly, westerly, and southerly elevations and April 10, 2006 for the northerly elevation.
- b. A grading permit is required. The complete grading permit application must include:
- (1) Final site, utility grading, and drainage plans and calculations for staff review and approval. The plans must:
 - (a) Include a pond acceptable to the city engineer; the pond must be moved further west and designed to minimize tree loss and catch more of the stormwater run-off from the existing building and parking lot.
 - (b) Minimize impact to the critical root zones of large oak trees northwest of the proposed parking lot.
 - (c) Include a catch basin on the east side of the proposed driveway, opposite catch basin No. 3, near the northeast corner of the proposed building.
 - (2) Final utility and erosion control plans for staff review and approval.
 - (3) A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
 - (4) If required, copies of the watershed district permit. The city may require revisions to the approved plans to meet the district's requirements.
 - (5) A construction management plan for staff approval.
- c. Before the grading permit is issued, temporary rock driveway, erosion control, and tree protection fencing must be installed for staff review and approval. These items must be maintained throughout the course of construction.
- d. 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 plan must:
 - (a) Meet minimum value requirements as outlined in city code.

Callison recessed the meeting at 10:32 p.m. and reconvened the meeting at 10:41 p.m.

B. Items concerning the renovation of the baseball fields at 18301 Highway 7 for Minnetonka High School.

Olson provided the staff report.

Recreation Services Director Dave Johnson gave a presentation explaining an agreement with the city and the school district for funding and operation of the proposal.

Tom Berge, Minnetonka School District Director of Finance and Operations, reviewed what the project would entail.

John Guy, Minnetonka Diamond Club, said that the proposal would solve inadequate capacity needs; programs would be allowed to grow; and the Minnetonka Millers would be able to play on the field.

Callison asked if there would be pedestrian access to the lower fields. Guy stated that access would be dramatically improved. The trail would be paved and provide Americans with Disabilities Act standard entrances. The second phase would improve the softball fields significantly.

Berge described meetings held with neighbors. He appreciated the city's willingness to work together on the project. The operating agreement is a 20-year commitment with 10-year extensions.

Thomas asked what would happen if the lights are operated during prohibited times. Johnson stated that the baseball association would be warned and the site would be checked to make sure that it did not happen again.

Thomas asked what happens in situations like the Pagel Center where the lights were on past 11 p.m. many times. Johnson explained that, in the park system, the response to a first complaint would be a call to the agency. Police enforcement would be an option for a chronic situation. Olson notified Berge of all complaints related to the campus.

Allendorf recalled that Hopkins High School football had a provision that if the lights were on later than allowed over three consecutive instances, a punitive action was imposed.

Berge stated that a site management plan is in place that requires the lights to be out by 10:30 p.m. He would visit with the manager of the Pagel Center regarding its operating procedures. There are people who clean up the building after 11 p.m. The Pagel Center issue related to traffic after 11 p.m.

Thomas asked staff to verify if the Pagel Center is selling ice time after 11 p.m. That would be in direct violation of what is allowed.

Thomas asked what would happen if the audio system violated sound requirements. Olson explained that staff would check the sound 500 feet from the site. If there is a violation, he would contact Berge and request that it be fixed. Legal action could be taken to ensure compliance.

Berge has worked with Olson and found him proactive in dealing with citizen complaints. The school district wants to be a good neighbor.

Wagner sensed concern regarding the management of the facilities. He suggested looking at possible penalties, including possibly reducing the city's funding for the project.

Callison encouraged looking into the process that is in place with the Hopkins School District.

Thomas did not know if a financial penalty would be possible. He heard from the residents that the lights are on and ice time is being sold after 11 p.m. He wanted the appropriate party to follow the agreed upon stipulations.

In response to a council question, Peterson said she was comfortable with changing the agreement to make it a 20 year agreement without set extensions.

Callison opened the meeting for public comments. No one spoke.

Allendorf said he supported the project.

Allendorf moved, Wiersum seconded a motion to:

- 1) Adopt Resolution No. 2006-033 approving a conditional use permit for grading of 6,000 cubic yards of material, and the upgraded lighted baseball field stadium with elimination of wording regarding extensions of the operating agreement. Approval is based on the finding that the proposal meets the

required conditional use permit standards and is subject to the following conditions:

- a. Record this resolution with the county before the city issues a building permit.
 - b. The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - c. All site and building plan review conditions must be met.
 - d. The applicant must agree to the above conditions in writing.
- 2) Approve the site and building plans for the upgraded varsity baseball field at Minnetonka High School, 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 February 22, 2006.
 - Grading plan date stamped February 22, 2006.
 - Landscaping plan date stamped February 22, 2006.
 - Illumination/lighting plans date stamped February 22, 2006.
 - Field and building elevations date stamped February 22, 2006.
 - b. The following must be completed or submitted with a grading permit application. All of these items must be completed or submitted to make a grading permit application complete:
 - (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 staff.
 - (2) Submit final site, grading, drainage, utility and erosion control plans for staff approval. Final drainage calculations must be included.
 - (3) Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
 - (4) Submit a construction management plan for staff approval.
 - (5) An illumination plan for staff approval
 - (6) All required hook-up fees

- c. The property owner is responsible for replacing any required landscaping that dies.
 - d. A 6-8 foot tall wood fence must be constructed along the west side of the westernmost drive aisle to provide screening for the adjacent single-family homes.
 - e. 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.
 - f. The sound system may not be audible from 500 feet from the speakers.
 - g. Baseball lights must be off by 10:30 pm.
 - h. The city council shall review and approve the revised site management plan as part of this request. A management plan for tournaments must be detailed in the plan.
 - i. All conditions of the Minnetonka High School Site Management Plan must be met.
 - j. All 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.
 - k. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
 - l. Construction must begin by December 31, 2007, unless the planning commission grants a time extension.
3. Approved the agreement with School District 276 to authorize city funding for improvements.

All voted "yes." Motion carried.

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

Geoff provided the staff report.

Olson clarified for Allendorf the location of the streets and building pad. Trees and steep slopes played a large role in the location of accesses.

Wagner walked the property. He confirmed with Olson that Forest Lane is a private street on a public right-of-way. Wagner asked if Lots 2, 3, and 4 could be located off of a private drive from the south. Olson stated that access would be needed through the Fischer property.

Olson agreed with Wagner that an impasse exists. Olson explained how staff stepped back and looked at where the streets should be located in relation to long-range planning. It is up to the property owners and developers to make it work. If it is not workable right now, development may be premature.

Schneider understood the impasse. He felt there would be a mechanism to convert a private street into a public street up to Lot 4. It may not be the easiest to do, but it would not be impossible. He was inclined to allow the development to proceed without the link to the north.

Callison agreed that the applicant would be overburdened by staff's recommendation.

Allendorf felt that to require the access from the south would be to burden the entire project unnecessarily when it already has access to the north.

Wiersum and Wagner concurred.

Earl Fischer, 18025 County Road Number 6, Plymouth, applicant, was fully in support of council's support of his application.

Dr. Ron Campbell, 3100 Forest Lane, appreciated council's and staff's effort to understand the complexity of the situation. There is no perfect solution. The 1978 maps do not consider topography. His property has two very steep slopes on the north. It would require a significant environmental change to access the road from the north. The maximum number of houses allowed already have access to Forest Lane. Access to the north would not provide an easy answer either.

Schneider felt it would be acceptable to convert the road to the north into a public street and extend a private drive through two lots at the lower part of the hill with a retaining wall.

Callison appreciated staff's attention to the environmental aspects of the site. She encouraged Campbell to look into the open space program for an easement for the back area.

Schneider moved, Wiersum seconded a motion to give preliminary approval to the Fischer Subdivision, date-stamped February 1, 2006, with the changes and conditions listed below and as shown on page A31 of the council letter with the elimination of the condition requiring access to the north. Approval is based on the finding that the plat would meet the required standards and ordinances and the staff plan would provide the opportunity for street access to adjacent properties.

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
 - a. Show the following on the final plat:
 - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven foot-wide drainage and utility easements along all other lot lines.
 - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (3) Drainage and utility easements over wetlands, floodplains, and public storm water ponds, as determined by the city engineer.
 - (4) Plat a 50-foot right-of-way to the north to ensure that Lot 3 has at least 80 feet of frontage on the right-of-way. This right-of-way would not have to be platted upon submittal of a conservation easement over the south half of the lot to the north, stating it would never be developed.
 - (4)(5) Plat 15-feet of right-of-way along the east lot line for future road extension to the property to the south.
 - (5)(6) Revise the lot lines between Lots 2 and 3 to reflect the new right-of-way and both lots must meet all minimum zoning ordinance standards.
 - b. All lots must meet minimum zoning ordinance requirements including the required extended right-of-way.
 - c. If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
- 2) The following items must be submitted to the city before the city releases the final plat:
 - a. An engineering/utility inspection fee.

- b. Payment for traffic signs and installation, as required by the city engineer.
- c. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
- d. The developer must submit a signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements. This agreement must include an escrow to ensure that the developer completes all public improvements and complies with all city regulations. This escrow must be a letter of credit or cash deposit. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
- e. The following documents for the city attorney's approval:
 - (1) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - (2) A notice recorded against individual lots that the stub street may be extended to provide access to the adjacent property.
 - (3) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.
 - (4) A temporary access easement to the city of Minnetonka for the turnaround at the north and south end of the required public street. Construction of the temporary turn-around shall be subject to review and approval of the city engineer.
 - (5) Public right-of-way or easement over 13535 or 13581 Wentworth Trail to provide enough right-of-way to build the public street.
 - (6) A trail easement to provide a connection from the property to the north to the property to the south. Final trail location and size would be determined by the city council.

These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.
- f. Any other requirements included with final plat approval.

- 3) The following must be completed before the city issues a grading permit or any site work is started.
 - a. Approval of final grading, drainage, and erosion control plans by the city engineer. The developer must submit final street and utility plans for the city engineer's approval. The following changes must be included on the utility plans:
 - (1) Catch basins and a storm sewer must be added in the new streets, including at the intersection with Wentworth Trail.
 - (2) A sump catch basin must be added at the downstream-most point in the street.
 - (3) Sewer lines must be 8 inches and the water lines 6 inches.
 - (4) Existing public sanitary sewer must be lowered to serve the property to the south.
 - (5) Storm sewer design and installation must include provisions for pond outlet from the existing pond basin on Wentworth Trail, per the city's water resources management plan. The developer may construct the storm sewer or petition the city for its construction. The city will pay for the additional costs required to include the storm water pond outlet, as determined by the city engineer, that are over and above the normal costs for the developer to install storm sewer for his subdivision.
 - b. The maximum street grade may be 7 percent.
 - c. A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site must be submitted to the city. The city will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway, and grading have been completed according to the plans approved by the city.
 - d. All trees to be preserved must be fenced and erosion control measures installed, as approved by the city.
 - e. Approval of a construction management plan by the planning director.
 - f. If required, submit evidence of the watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
 - g. Fire hydrants shall be subject to staff approval.

- h. Public right-of-way or easement must be established over 13535 Wentworth Trail to provide necessary right-of-way to build the public street.
- 4) 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 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. Pay a hookup fee for sanitary sewer and water.
 - e. 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.
 - f. A fire flow test must be conducted on the new water main. If the fire hydrant flow is less than the minimum NFPA fire flow requirement of 2750 GPM, homes must be built with a sprinkler system.
- 5) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
- 6) 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.
- 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 concerning grade changes and a pervious patio on the lake access lot at 17024 Gray's Bay Boulevard for Lakewest Landscape.

Olson provided the staff report.

Scott Jahnke, of Schoell and Madsen on behalf of the applicant, stated that:

- There is a current hardship from storm water drainage traveling on the property from three surrounding properties.
- It is difficult to use the property for recreational purposes.
- The proposed patio would be a pervious system and would allow infiltration.
- At grade, uncovered patio areas are not subject to setbacks or have a minimal setback.
- It would not block the view of the lake.
- The pervious paver system holds up better than reinforced turf.
- The surface would infiltrate water better than a wood deck or aggregate system.
- It meets the homeowner's recreational requirements.
- The floodplain alteration permit and setback variance are necessary to allow the pavers to be located in an already flat area. He explained the drainage pattern that would capture the swale area and bring it to the infiltration system. It would cure water problems.

Allendorf questioned why staff did not concur with the applicant's engineer as indicated in the primary issues section of the staff report. Gustafson stated that staff agreed that the site has drainage problems and that the pavers would improve that situation. However, staff does not agree with moving the patio as much as the application requested. It could be moved within the ordinance setback requirements.

Jay Hill, Schoell and Madsen Civil Engineer for the applicant, explained the drainage problems with the site. He questioned why one impervious surface is allowed and another one is not. From the engineering side, they operate in the same fashion.

Gustafson stated that the applicant could still have a 10 foot by 18 foot patio by moving it back a couple feet in order to meet the setback requirement.

Jim Fretham, 3138 Highland Boulevard, spoke on behalf of the applicant who was unable to be present. He was trying to find a reasonable solution to the drainage problem. He asked if council had a solution. Callison felt the 10 foot by 18 foot patio was a reasonable solution.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2006-034 approving the conditional use permit, floodplain alteration permit, and denies the shoreland setback variance from 25 feet to 14 feet. This resolution is based on the following findings:

- 1) The proposed variance is denied for the following reasons:
 - a. The patio can be reduced to a reasonable size and moved back to meet setbacks.
 - b. There are other options to use the setback area that would not require a setback variance.
 - c. While the adjacent properties have patios closer to lake, those patios are illegal or legal nonconforming uses.
- 2) The proposed conditional use permit and floodplain alteration permit are approved for the following reasons:
 - a. The proposed use would have low damage potential. Flood flows would not be obstructed, no net fill will occur, water storage would be maintained, and there would be no increase in the flood elevation.
 - b. All fill material and exposed soil will be protected by vegetation or stone.
 - c. No impact will occur to significant trees, wetlands, or public easements.

The above-described conditional use permits are approved, subject to the following conditions:

- 1) Tree protection and erosion control must be installed and maintained until groundcover is established.
- 2) Submit proof of having recorded this resolution with the county before the city issues a grading permit.
- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) Moving the patio back to meet setback requirements.

All voted "yes." Motion carried.

David Sewell, 4720 Hamilton Road, real estate agent who sold property to applicant, had a similar situation on his property. The applicant was trying to do something in the proper way. His hardship was caused by what was done in adjacent properties. It would be inappropriate not to approve the application. It is a great plan and the applicant took due diligence to do it correctly.

Peterson acknowledged Sewell's complaint regarding properties not complying with the ordinance.

Wagner questioned the purpose of a standard if it is not enforced for a vacant lot.

Schneider asked staff to follow up on any abuses that may exist in the area.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Wagner moved, Wiersum seconded a motion to adjourn the meeting at 11:55 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk