

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JUNE 5, 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 Brad Wiersum, Al Thomas, Dick Allendorf, Terry Schneider, Bob Ellingson, and Jan Callison were present. Tony Wagner was excused.

4. APPROVAL OF AGENDA.

City Manager Gunyou reviewed the changes and additional comments provided in the addendum dated June 5, 2006 which related to:

- Item 5, approval of the May 8, 2006 city council meeting minutes; minor revisions to minutes were enclosed
- Item 9B, consideration of quotes to replace cameras in the council chambers; explanation included a description of why low bid for project was not accepted.
- Item 10B, Picha Hill Plat; revised property house size was enclosed.
- Item 13A, The Wine Shop; additional public comments received from the public were enclosed
- Item 14A, Opus Corporation redevelopment project; changes to the encroachment agreement and added condition concerning entrance to the visitor parking lot were enclosed

Callison stated the staff recommendation is to continue consideration of Items 13A and 13B, the off-sale liquor license for The Wine Shop, until July 10. She welcomed public comment tonight, but noted there will be no council discussion or decision tonight should staff's recommendation be followed.

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

5. APPROVAL OF MINUTES:

A. May 8, 2006 regular council meeting.

Callison noted a clarification to the third paragraph on page 9, stating it should read "Rankin agreed with Callison that an increase in the square footage of the site used as a restaurant might require more parking spaces than are available on site."

Schneider moved, Allendorf seconded a motion to approve the minutes of the May 8, 2006 Minnetonka City Council regular meeting as amended. All voted "yes," with an abstention by Wiersum. Motion carried.

6. SPECIAL MATTERS:**A. Retirement recognition of Kathy Magrew, City Clerk/Assistant to the City Manager.**

Callison read aloud a recognition of the retirement of Kathy Magrew, highlighting her contributions to the city over the last 29 years. She also presented Magrew with a scrapbook highlighting the Burwell House and including a certificate of appreciation for her service to the city.

Magrew thanked the council for the opportunity to serve Minnetonka and for their respectful support of staff. She recognized her past and present supervisors. She noted one of her toughest situations was two years ago during the presidential election when a staff member was absent for two months. She had to pull together the ranks to make the election run smoothly, calling on the aid of her sister and husband. She also thanked her parents for raising her in Minnetonka and creating in her a love for the community as well as the charm and beauty of old houses. She thanked the council for the recognition.

Callison introduced retiring Rep. Ron Abrams.

Rep. Abrams stated he will be joining the Hennepin County Court bench later this month and therefore will not be seeking re-election. For 18 years he has represented Minnetonka and Plymouth in the Minnesota House of Representatives. He highlighted some of the things accomplished on behalf of the constituents during that time, including the park and ride, opt-out legislation, Gray's Bay boat launch, addressing Eurasian water milfoil, and a number of other local issues. He thanked the council and its predecessors as well as the city staff and indicated it has been a privilege to serve area residents.

Callison indicated the council intends to invite Rep. Abrams back to recognize him for all of his efforts and accomplishments over the years. She noted he is a respected voice at the capitol.

Rep. Abrams noted he intends to remain an involved citizen of Minnetonka. He stated as chair of the House Tax Committee for six years, he developed a sense that those who serve on various community boards really do a service that is overlooked. He encouraged the members of the council to continue to be involved and to encourage others to become involved as well.

B. Review of the 2005 Financial Report with the city's audit firm of Kern, DeWenter, Viere, LTD.

Gunyou introduced Steve Wishman, the auditor presenting the audit tonight. He also acknowledged Darin Nelson, the assistant finance director and CPA responsible for preparing the Comprehensive Annual Financial Report (CAFR). He indicated the auditors work for the council and are here to provide a report on how well staff is handling resources.

Callison acknowledged Merrill King, finance director, is also present tonight.

Steve Wischmann, Kern, DeWenter, Viere, LTD, presented the financial report. He noted his firm presented an unqualified opinion, the highest rating that can be received. This is the third year they have audited the city and have issued an unqualified opinion each of the three years. He reviewed a Power Point presentation highlighting the findings of the report. He noted the report includes a management discussion and analysis which explains from the city's perspective what happened during the year. He encouraged the council to read that management analysis. He noted they are required to test compliance with Government Auditing Standards and the Minnesota Legal Compliance Standards. Those reports were unqualified as well.

Wischmann stated his firm is required to report any limitations on any testing they have done, and there were no limitations or disagreements. He expressed appreciation for staff in helping gather all the necessary information.

Wischmann outlined the city's general fund for 2005. The revenues increased 7.4 percent over 2004, from \$20,551,748 to \$22,074,120. The percentage breakdowns of the general revenues were very

consistent from 2004. He explained property taxes consisted of 72.3 percent of general fund revenues this year, which is almost \$16 million, and licenses and permits consisted of 13.1 percent, which is \$2.9 million. He noted the \$2.7 million taken in 2004 from licenses and permits is the second highest per capita among the 12 largest Metro cities.

Allendorf asked about the relevance of being second in licenses and permits.

Wischmann responded a higher level of licenses and permits means less taxes have to be levied. It also indicates a high level of growth and redevelopment in the city.

Allendorf asked if there was something done by the city to make this occur. He inquired if the city is a more desirable place to build.

Wischmann responded Minnetonka is a very attractive place for development and redevelopment. The city is able to generate those levels of permit and license stream and therefore provide a reasonable level of those licenses and permits to subsidize the operating fund for the city.

Gunyou stated staff tries to ensure fees and licenses are priced to fully recover the costs of the building permit process so it is not subsidized by general tax dollars. He noted the fees are highly regulated by the state so the city cannot overcharge, but the city does charge the right amount.

Wischmann concluded his final comment on the general fund by noting the council approved a budget of \$21.5 million, and revenues came in at over \$22 million, so revenues exceed the budget by a little over \$500,000.

Wischmann continued with the presentation about general fund expenditures. In 2005 expenditures were \$21,807,648, an increase over 2004's expenditures of \$20,938,980. He noted the budgeted expenditures were about \$22.1 million, so the city came in under budget by about \$368,000. That variance in the revenues and in expenditures essentially added to the fund balance of approximately \$1 million.

Wishman explained the composition of expenditures, noting public safety is highest at 38.6 percent. He noted the 4 percent increase in expenditures and the 7 percent in revenues.

Wischmann explained the unreserved general fund balance. He reiterated the total fund balance went up just over \$1 million this year. He noted the unreserved fund balance of \$7,966,059 is about 35 percent of next year's budgeted expenditures. He noted the city is right in the range that the state auditor's office recommends for a fund balance. He noted the fund balance is very healthy. Fund balances are needed for cash flow purposes. Most of the city's revenue comes through property taxes, received twice a year, resulting in peaks and valleys in the operating cycle. Therefore, the need exists for a fund balance to carry the city through the year.

Wischmann explained the fund balances have generally been increasing since 1996, the period shown on the graph.

Wischmann discussed the water and sewer utility fund for 2005. He pointed out that the first bar on the graph shows operating income or loss. The second bar shows the same number excluding depreciation. He noted the graph consistency from 2003 to 2005. The graphs indicate that water and sewer utilities are covering a majority of the depreciation expense plus all the operating expenses, so the bottom line is the net assets have been increasing over time in the water and sewer utilities. He explained revenues were up about 4.5 percent, and expenses were a little bit higher this year, at about 17 percent.

Wischmann presented information on the ice arena, noting revenues were higher this year. The expenditures were consistent, so there was an improved operational analysis. There was net operating income for the last three years, so things definitely improved in the ice arena fund for 2005.

Wischmann highlighted the environmental fund, noting it was consistent with prior years. He noted there is no depreciation charged to that fund as there are no capital assets associated with it.

Wischmann explained the Williston Fitness Center had a change in the operating results. After depreciation was subtracted out, there was a net operating income of about \$38,000. The revenues were down 8 percent this year, but the prior year had included additional revenue from restitution. Expenditures were a little higher this year, up about 5 percent, partially due to the additional costs of a new gym floor.

Wischmann provided an overview of the Gray's Bay Marina fund, noting revenues increased and there was an operating income of about \$41,000 and before depreciation of about \$67,000.

Wischmann stated one of the city's newer business-type funds is the storm water fund. Operating income has increased for all three years.

Wischmann summarized all the figures for the enterprise funds indicate that the user charges are set correctly to increase the net assets or the equity balances and support the operations of those business-type funds, which is very much a positive.

Wischmann presented a graph for the Firefighter's Relief Association. The market value of the assets is just over \$10 million. The actuarial valuation is about \$9.8 million, so that pension liabilities of the fund are 100 percent funded at this point in time. It is therefore supporting the level of benefits that have been approved for the Firefighter's Relief Association. He noted there is a separate audit report that is completed and has been recently issued by his firm and sent to the association. The audit report included an unqualified opinion as well.

Wischmann explained the market value of taxable property shows a significant increase over the last number of years. Looking at the larger Metro cities for 2004, Minnetonka ranks second out of 12 in terms of tax capacity per capita. The figures demonstrate the city is wealthy in terms of taxable valuation, and it has been increasing nicely over the last five years.

Wischmann stated Moody's recently updated their bond ratings. Minnetonka maintained the AAA bond rating; only 3 percent of cities nationwide receive that rating. He noted there is very little change from prior years. He congratulated the city on maintaining that rating and anticipates the city will maintain that rating in the future.

Wischmann summarized the audit process itself went very well. The field testing began in early March, and audit staff was on-site for two to three weeks looking at documents. The reporting process began after that. He noted his firm met with and reviewed the report draft with the city manager and finance staff. To finalize that process, the report will be submitted to the Government Finance Officers Association for their certificate of excellence. He noted everyone in the finance department was very helpful and

knowledgeable and took care of all the audit staff's requests in a timely manner.

Wiersum asked how much value the AAA bond rating has for the city. He asked what the difference would be if the city had an AA bond rating and went out to borrow money.

Wischmann responded there are a lot of factors that go into the final cost of public borrowing. If bonds were issued today at 4 percent for an AAA rating, an AA rating would be in the 5 to 5.5 percent range. Over a 10-year period, that would amount to thousands and thousands of dollars.

Thomas thanked Wischmann for the presentation. He asked if there was a flag that came up throughout the process that was not included in the report but may pop up in the future. He noted the management recommendations included are fairly minor things and asked if there are any trends anywhere that the city should start looking at now.

Wischmann answered as a result of the changes in response to the Enron and Worldcom situations, there are more governmental standards and compliance work related to internal controls. He agreed the management recommendations are housekeeping-type items. However, these recommendations do lead to checks and balances over all aspects of the city's operations as a key point in the future.

Wischmann stated journal entries are one of the ways corporate fraud has been perpetrated in the last few years. As a result, it is a hot-button issue for all audits, which is why it is a management recommendation. He noted the city's controls are currently very good, but it will be one area that will garner more focus.

Schneider asked if there are any possible external impacts, especially something the state legislature may do over the next couple years, which may impact the city financially.

Wischmann responded nothing that is imminent. There is one other standard that is forthcoming related to post-employment benefits, but that is more a federal issue rather than a state issue. He stated the city is not heavily dependent on state aid, so he does not see anything imminent in that respect.

Gunyou stated there are two potential revenue impacts staff is keeping its eye on. The first is levy limits, which may be imposed

by the state. Even though the city does not receive any state aid, it would be problematic if the state restricted the amount of revenue the city can raise. The second issue to be aware of is potential significant federal changes to the telecommunications law, which could have a major impact on the franchise fees collected from cable television. The House of Representative is voting on the issue this week. Those fees finance IT and communications positions, festivals and the *Minnetonka Memo*.

Callison asked if the financial report will be available on the city's website. Gunyou responded it will be posted immediately.

Callison thanked Wischmann and city staff for their work in putting this together.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou stated the city held its hazardous waste drop-off, with just under 1,000 vehicles counted, which is about average for attendance. This is a service offered to citizens to dispose of items that will not be taken by the normal trash haulers. He reported that 700 fluorescent lamps, 160 vehicle tires, thirteen 30-yard roll-off boxes, one 120-foot trailer filled with consumer electronics, 331 appliances, 150 vehicle batteries, and 350 pounds of household and button batteries were received. This drop-off will be held again Saturday, September 16.

Gunyou reported on the schedule for upcoming council meetings. He stated next Monday is the study session for the council. At 6:30 there will be a tour of the new water treatment plant. After the tour the council will reconvene. The rescheduled park board canoe trip is set for June 14. On June 19 there is no council meeting. The annual ice cream social and Summer Festival is scheduled for June 24. He stated the next regular council meeting will be June 26.

Callison stated she attended the grand opening of Jimmy's American Grill on Saturday, and they open to the public tomorrow. She wished them a successful opening tomorrow and a successful business in Minnetonka.

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

Rick Greenfield, 4080 Terrace Lane, stated he has a question about residential curbing. He stated Terrace Lane was resurfaced last year, and it has done a fantastic job in improving driving, biking, and everything else. However, the curbs are like a lot of curbs in the city, in that it is just casual discharge from the blacktop machine.

Greenfield said that Orchard Road was resurfaced in the last two weeks, and it only has curbing on part of the road. Additionally, in 1992 Clear Spring Road and Patricia Lane were both redone with concrete curbs, and the city called this a demonstration of what things would be like. He asked what the cost differential is between the casual discharge curb and the kind of blacktop curb put on Shady Oak Road a couple years ago, which would be a vast improvement aesthetically. He asked if there is any consistent procedure or plan.

Callison asked if he is most concerned about the aesthetics of bituminous curbing.

Greenfield responded affirmatively. He did call and thank the city after Terrace Lane was redone, but to have a nice road with that kind of curbing is aesthetically unpleasing and also nonfunctional when part of the curb is removed by a snowplow.

Callison noted this is a topical issue, as the council has had discussions about it in the recent past. She asked Lee Gustafson to provide some more information tonight.

City Engineer Gustafson stated city staff considers adding concrete curb and gutter to any streets that are completely reconstructed. Studies have been done in the past where staff has looked at excavating the curb line to add concrete curb and gutter, and that is not cost-effective. The only time the city considers concrete curb and gutter is when the street is completely reconstructed.

Gustafson explained the types of resurfacing mentioned were possibly a thin overlay, which the city started two years ago, or a mill and overlay. In both of those applications where the city is just doing an overlay, no permanent curbing is added. The street is overlaid and a rolled curbing is used. He noted the cost differential between concrete and bituminous curb and gutter, when a street is reconstructed, is essentially the same.

Callison asked about the long-term cost differential.

Gustafson responded the concrete curb and gutter could last at least twice as long as bituminous curb and gutter.

Callison stated the council had a discussion on a road project four or five months ago, and there is a split among members of the council regarding whether concrete or bituminous should be used. This is probably a conversation that will be ongoing before the council. She thanked Greenfield for bringing the issue up tonight.

Schneider stated there is a wide variety of feedback from the citizens of Minnetonka regarding what they view as attractive or unattractive curb and gutter. The comments he frequently receives relate to what is the most attractive at preserving the rural nature of this area, and that is epitomized in their opinion favoring bituminous curb and gutter rather than the concrete, which is more akin to Edina or Minneapolis. He probably has received comments in favor of bituminous over concrete at a ratio of 10:1 in the years he has served on the council.

9. BIDS AND PURCHASES:

A. Consideration of bids for portable generator – public works facility.

Gunyou stated when the new public works facility was completed a few years ago, the plan for a backup generator was to use the capacity off a nearby lift station. Unfortunately, that was designed to accommodate only the basic functions of the public works building. There were two major power outages last year and this year that have pointed out the vulnerability of that system. With the continuing unreliability of Xcel Energy in many areas throughout the city, there is concern that the entire facility should be able to function like city hall does with its backup generators.

Gunyou explained a trailer-mounted generator is being proposed so it can also be used in other parts of the city when there are power outages. It will be funded in part by the utility fund and a one-year delay of a rehabilitation of a water treatment plant which will not cause any undue problems. He concluded it will be within the same dollar amounts of the CIP that is already in place.

Wiersum moved, Thomas seconded a motion to modify the 2006 Capital Improvements Program to delay the rehabilitation of one water filtration plant and that the bid of Ziegler Power Systems, Inc. be accepted in the amount of \$103,678.00. All voted “yes.” Motion carried.

B. Consideration of quotes to replace cameras in the council Chambers.

Gunyou stated the cameras installed in the council chambers today were installed over 10 years ago, which is well beyond their usable life. Lighting has been improved over the years to try to improve the quality of the broadcasts of the council and planning commission meetings. Staff believes it is now time to replace the cameras; it has been included in past CIPs. Bids were received for

the replacement that will upgrade the cameras and also provide additional coverage with a better televised picture for home viewers. The overhead projection will also be improved.

Callison noted this was an item that had an addendum as well.

Gunyou concurred, noting the addendum explains why the low bid was not accepted in this case.

Schneider moved, Allendorf seconded a motion to authorize the purchase of new cameras from Full Compass Systems for \$59,461.00. All voted "yes." Motion carried.

Allendorf stated he views a number of council and school board meetings on the cable channel, and he believes the city's broadcasts are superior to the others both visually and acoustically. He believes those that work in that area should take credit for that, and he would like to recognize them.

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

A. First addendum to an agreement with School District 276 to authorize city funding for improvements.

City Attorney Desyl Peterson noted the substance of this item will stay the same, but there will need to be a change in format.

Allendorf moved, Wiersum seconded a motion to approve the addendum to an agreement with School District 276 to authorize city funding for improvements. All voted "yes." Motion carried.

B. Final approval of the PICHA HILL plat at 5432 Picha Road for Rod Miller.

Allendorf moved, Wiersum seconded a motion to approve the PICHA HILL final plat that was received on May 26, 2006, with the change as noted in the addendum, subject to the following conditions:

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

All voted "yes." Motion carried.

C. Resolutions ordering the abatement of nuisance conditions.

Community Development Director Rankin recommended that property numbers 2, 5, 7, 8 and 9 be deleted because they are in compliance, so that the only properties with resolutions being adopted are 1, 3, 4, and 6.

Allendorf moved, Wiersum seconded a motion to adopt the following resolutions ordering the abatement of the nuisance conditions:

- 1) Resolution No. 2006-070 ordering the abatement of nuisance conditions existing at 900 Horn Drive.
- 2) 3105 Shores Blvd. – in compliance
- 3) Resolution No. 2006-071 ordering the abatement of nuisance conditions existing at 4407 Loretta Lane.
- 4) Resolution No. 2006-072 ordering the abatement of nuisance conditions existing at 5431 Williston Road.
- 5) 5439 Williston Road – in compliance
- 6) Resolution No. 2006-073 ordering the abatement of nuisance conditions existing at 10604 Crestridge Drive.
- 7) 11481 Robinwood Circle – in compliance
- 8) 12017 Lake Street Extension – in compliance.
- 9) 16215 Ice Circle Drive – in compliance.

All voted “yes.” Motion carried.

11. ITEMS REQUIRING FIVE VOTES: None.**12. INTRODUCTION OF ORDINANCES:****A. Ordinance amending a master development plan at 6001 Shady Oak Road and 11000 Red Circle Drive for True North Investments to build two mixed use buildings at 6001 Shady Oak Road.**

Gunyou noted both 12A and 12B are introductions and referrals to the Planning Commission tonight.

Planning Director Geoff Olson provided a brief overview of the project. He noted there has been a lot of background to this project, including a number of revisions and plans. He extended appreciation to the two property owners involved, one of which is the Jimmy’s Grill property owners. The two property owners have had to work together since they share a site. A number of plans have been reviewed to get to this point, and he thanked the city

attorney for her ability to step in and mediate between the two parties. He believes this is a plan both parties are happy with.

Callison asked when the planning commission hearing will be held.

Olson responded it is June 15.

Schneider moved, Thomas seconded a motion to introduce the ordinance amending a master development plan at 6001 Shady Oak Road and 11000 Red Circle Drive for True North Investments to build two mixed use buildings at 6001 Shady Oak Road and refer it to the planning commission. All voted "yes." Motion carried.

B. Ordinance rezoning the Locust Hills plat at 2400 Bantas Point Lane from R-1, low density residential, and wetland/floodplain zoning to PUD, planned unit development, with variances.

Olson provided a brief overview of this project, noting this is part of the property known as the Sweatt property. He noted most of the development is in Wayzata, where it has been somewhat controversial. Only six of the homes in the project will be in Minnetonka. This project includes high-priced homes with boat docks and some significant environmental features such as wetlands, particularly in the Wayzata portion.

Olson noted the planning commission will hold a hearing on this project on June 15. He stated this could be called a conservation project, since the PUD is being used to allow for smaller lot areas in order to preserve some of the significant trees and natural features on the site. The developer is trying to achieve a real conservation project in both Wayzata and Minnetonka.

Wiersum moved, Thomas seconded a motion to introduce the ordinance rezoning the Locust Hills plat at 2400 Bantas Point Lane from R-1, low density residential, and wetland/floodplain zoning to PUD, planned unit development, with variances and refer it to the planning commission. All voted "yes." Motion carried.

Callison noted this project is timely given the size of the lots, the size of the houses, and the discussions at previous council meetings about mass and visual appeal.

13. PUBLIC HEARINGS:

A. Continued public hearing for an off-sale intoxicating liquor license for The Wine Shop, 17523 Minnetonka Boulevard.

Rankin stated the reason staff is recommending this be continued to July 10 is the planning commission needs to consider a CUP for the restaurant operation for part of the space that the applicants have leased. That will be taken up by the planning commission on June 29 and will come before the council on July 10. The council will be considering the CUP as well as the off-sale and on-sale liquor license applications at that meeting.

Rankin pointed out there is a revised floorplan included in the council packet. The applicants propose the off-sale portion will be in the east part and the proposed restaurant has moved to the west side. The applicant has done that in the hope that outdoor dining might be offered on the west side of the building in the future if the plans move forward. He noted the police background report has been completed and was included in the council packet. The police department has found no basis to deny the license from the information compiled.

Schneider stated he notified staff he would like additional information regarding the legality of transferring wine between the off-sale and the on-sale sides of the business.

Wiersum recalled when the council reviewed the off-sale portion previously; he expressed concern about the concentration of liquor stores in Minnetonka relative to Minneapolis. He asked staff to review how Minnetonka compares with other suburban cities that the city compares itself with on other issues, such as Eden Prairie, Plymouth, and Edina. That gets to the question of what kind of city Minnetonka wants to be.

Callison noted the public hearing is open from the previous council meeting and she invited public comment. No one spoke.

Allendorf moved, Wiersum seconded a motion to further continue the hearing for an off-sale intoxicating liquor license for The Wine Shop, 17523 Minnetonka Boulevard to July 10, 2006. All voted "yes." Motion carried.

B. Continued public hearing for on-sale and Sunday on-sale intoxicating liquor licenses for Café Cabernet, 17523 Minnetonka Boulevard.

Rankin reported there is no additional information regarding the on-sale liquor license. He noted the applicant is present if there are questions for him.

Callison noted the public hearing was opened previously and remains open. There will be further opportunity to comment at the July 10th meeting. No one spoke.

Allendorf moved, Thomas seconded a motion to further continue the hearing for on-sale and Sunday on-sale intoxicating liquor licenses for Café Cabernet, 17523 Minnetonka Boulevard. to July 10, 2006. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. **Items concerning a two-phased office redevelopment project at 5720 and 5740 Green Circle Drive and 10350 Bren Road West for Opus Corporation.**

Olson provided an overview of the office redevelopment project.

Callison asked Olson to comment on the additional condition in the addendum regarding the entrance to the parking lot.

Olson responded the traffic engineer was sensitive to the fact that there were previous concerns about traffic from the condo owners, so he suggested one way to minimize that is to have entrance only into the visitor parking lot. Cars would then exit to the south onto Bren Road, which would help keep traffic off Green Circle Drive.

Callison stated the applicant is proposing to start construction of phase I a year from now, but construction of the southerly building and the ramp is contingent upon market conditions and may or may not happen.

Olson responded that is his understanding, but he suggested the applicant speak to the schedule. He noted the applicant would come back before the council for final building plan review of phase II at such time as they are ready to proceed.

Michelle Foster, senior director of real estate for Opus Northwest, explained the timing of the second phase is dependent upon the growth of the company. At this time the company expects to fill the first building, but the timing of the second building is uncertain. It will not depend on the market as much because it is not a speculative office building; it depends on the company's growth projections and how they turn out.

Foster noted the traffic study discussed two different options for controlling access to the visitor entrance. The second alternative discussed using signage to be able to keep employees from coming out to Green Circle Drive. She is not clear which part of that recommendation is part of the staff report.

Callison explained the report includes both recommendations. She read the language of the report: "design and sign the entrance to the visitor parking lot as an entrance-only to minimize traffic onto Green Circle Drive."

Foster stated Opus felt the visitor parking was limited enough that having a two-way entrance would not impact the traffic onto Green Circle Drive.

Callison stated it may be a question of terminology. She asked if there is a sketch that shows phase I with the parking lot in front. She noted there are 28 parking spaces on the north.

Foster stated there are 28 spaces on the north side, and they have to enter and exit onto Green Circle Drive. She believes what is under question is the circular visitor parking in that location that was proposed as a two-way. She noted they are willing to sign the employee parking to the south so traffic cannot come back up to the visitor area and exit onto Green Circle Drive.

Callison noted it appears the visitor and employee parking are linked.

Foster confirmed they are linked, and the intention was to sign the employee area so that traffic would not come out onto Green Circle Drive.

Callison asked staff to comment.

Olson stated either option is acceptable in the traffic study. Staff thought it was the intent of the applicant to have visitor entrance only, but perhaps there was some miscommunication. Staff will accept either option.

Schneider stated the area is already confusing, and he would be inclined to take the applicant's recommendation to sign the employee lot rather than limit where visitors can go. The visitors should have the option of exiting the same way they entered.

Foster noted Opus will go forward next spring once the buildings they have purchased have been vacated.

Callison recalled the planning commission had some specific concerns about the appropriateness of the skyway.

Schneider stated he does not think the skyway is good or bad, but if the applicant is willing to spend the money on it, and there are no health, safety or welfare issues, he questions why the city would be against the skyway. It is better than trying to do something underground.

Allendorf also expressed support for the skyway. He noted there are a number of good applications of skyways in downtown Minneapolis. Additionally, tunnels have some safety concerns, and the skyway with this much glass benefits from a number of people viewing what is going on inside. He also expressed support for the signage for employees not to enter the visitors' parking lot rather than forcing visitors to go where they do not want to go or into an unfamiliar area.

Schneider moved, Thomas seconded a motion to approve the encroachment agreement and adopt Ordinance No. 2006-12 approving the following for the Opus Corporate Center at 5720 and 5740 Green Circle Drive and 10350 Bren Road West:

- A rezoning of all three sites from B-1, Office, and B-3, General Business, to PUD, Planned Unit Development; and
- A master development plan and final site and building plan for Phase I, with a setback variance from 20 feet to 10 feet for the parking lot on the west side and from 35 feet to 0 feet to build a skyway connecting the existing office at 10350 Bred Road West to the new office at 5720 Green Circle Drive.

The ordinance is based on the following findings:

- 1) The proposal would meet the required standards and ordinances for a site and building plan approval.
- 2) The proposal would meet the required standards for a variance, because:
 - a. There is a unique hardship to the property caused by Green Circle running between the two Opus sites, which prevents a skyway connection between the two buildings. There is not adequate area on the site to expand the business.
 - b. The variance would meet the intent of the ordinance because the buildings themselves would meet all required setbacks. The intent of the ordinance is to provide a separation between buildings.

c. The proposed skyway is a reasonable use. It provides a reasonable pedestrian connection between the two buildings for uses of the Opus facilities. Users between the two buildings would not have to go outside in the winter time and would not have to cross Green Circle Drive. The skyway would tie the two sites together to make it a unified development.

This rezoning 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 April 10, 2006.
 - Grading plan date stamped May 18, 2006.
 - Landscaping plan date stamped April 10, 2006.
 - Building elevations date stamped April 10, 2006.
- 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 natural resources staff.
 - b. Submit final site, grading, drainage, utility, and erosion control plans for staff approval. Plans must include hydrologic and hydraulic computations listing stormwater runoff volumes and rates. Capacity must be sufficient to hold the runoff from a 1.5 inch rainfall event.
 - c. Submit a letter of credit or cash escrow for 150 percent 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. Final landscape and irrigation plans for staff approval.
 - b. A letter of credit or cash escrow for 150 percent 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) With the exception of security lighting, lights within the buildings and skyway must be turned off by 11:00 p.m. unless there is an emergency situation or a room is being cleaned.
- 8) 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.
- 9) An encroachment agreement to allow the skyway within the city right-of-way, subject to review and approval of the city attorney.
- 10) Phase II would require site and building plan review.
- 11) Construction must begin by December 31, 2007, unless the planning commission grants a time extension. The above plans are hereby adopted as the master development plan and as final site and building plans.
- 12) Sign the employee parking lot to prohibit exiting onto Green Circle Drive.

All voted "yes." Motion carried.

B. Preliminary plat, with lot area variances, for a two-lot subdivision at 5717 Eden Prairie Road for Duane Shultz.

Olson provided an overview of the proposed subdivision.

Allendorf asked if there is a fallback position if the 10-foot right-of-way is not agreed to.

Olson responded the applicant previously provided 5 feet of additional right-of-way. With the existing 10 feet, and the new 10 feet, there are 25 feet from the center to his property. He explained 25 feet on each side meets the normal 50-foot right-of-way requirement, which is the Code-required right-of-way. He noted

there have been some times when the city has reduced a right-of-way in an effort to save trees or on a minorly used cul-de-sac.

Duane Shultz, 5717 Eden Prairie Road, stated he has lived in Minnetonka for 40 years. He asked Olson to repeat the information regarding the current right-of-way and the current road.

Olson pointed out the property line of the applicant on an overhead projection of the proposed plat. He explained there is the historic 10-foot easement for Grenier Road, and then some time ago, an additional 5 feet was acquired. He pointed out the additional 10 feet that is being asked for tonight. He explained the city would be looking for the remaining 25 feet from the south side.

Callison asked if the road is on the existing right-of-way or if it is south of that border.

Olson pointed out where the pavement is on the plat. He stated some of that 15 feet is paved.

Schultz stated when he acquired this property many years ago, it was 60,000 square feet. Through time and adjacent road projects, he is down to 39,000 square feet for the entire property. The survey just completed of the lot would indicate the property line is actually across Grenier Road, and at the east end of the property it is two-thirds of the way across the road. That is where much of the land has gone. For the past number of years, he has paid taxes on the 60,000 square feet. In 2004 and 2005 the County adjusted the size of the lot down to 1.07 acres. He understands both lots 1 and 2 require a variance for being under the 22,000 square feet level.

Callison responded only one lot requires a variance.

Schultz continued the trees are important to him. He was involved with the Glen Lake Mighty Mites many years ago. At that time he obtained 16 trees to be planted at the Mighty Mites fields. Each team planted a tree and many of those trees are still there today; he is concerned that these trees will go away.

Callison explained she understands his concern, and noted if there were a project to put a road in here, there would be another procedure to go through. This decision tonight does not dictate what will happen to those trees.

Schultz stated he would not like to see the 10 feet taken. He asked if it would be possible to reduce that right-of-way to 5 feet, which would guarantee the trees would stay.

Callison stated she cannot speculate that the trees would necessarily be saved if the road were 5 feet further away. She does not know at what point an impact will be seen.

Peterson stated reducing the right-of-way to 5 feet does not mean it would legally protect the trees, because the city might need a construction easement that would have the trees go down. Giving the city the easement to those 10 feet does not give the city unlimited right to cut those trees down. The only right the city has is to construct a public street. Absent the need to do that, those trees will remain Mr. Schultz's. The city can only take those trees down if it is needed for the street.

Schultz stated there are eight houses on Grenier Road today, and assuming this lot is simplified, there would be nine. He questioned the need for a 50-foot street with so few houses at any point in time.

Callison stated the street would not be 50 feet; the standard is 26 feet. However, width is needed on either side of the street for construction.

Schultz stated he feels very passionate about the trees.

Callison reiterated there would be a second process to go through if ever the city felt it needed to widen the street.

Schneider stated if this had adequate right-of-way on the south side of the road, this road would be a good candidate for a 40-foot right-of-way because of the tree impact. He noted if the road is rebuilt, the city would have to decide what to do with acquiring more right-of-way, or the area to the south may redevelop. With that unknown in place, he is inclined to stay with the city standards for now with the idea that the city has no plans to redo the street, and in all likelihood it would only be rebuilt if it fell apart or the area to the south develops.

Schultz noted that property to the south just sold recently.

Callison thanked the applicant for his comments.

Wiersum asked where Grenier Road fits into the city's plans for street reconstruction. He sympathized with Mr. Schultz's concern because when the right-of-way is lost, there are no guarantees.

Gustafson stated the city currently has no plans to reconstruct the street. It is not scheduled for anything within the next 10 years. He pointed out that any time the city does a reconstruction project; every effort is made to save as many trees as possible. He stated the city would do everything possible to protect the trees.

Allendorf recalled when he asked his earlier question about a fallback right-of-way amount, he was trying to grab on to some sort of principle or rule. Because there are only nine houses on the street does not mean it will not be reconstructed because it may deteriorate. He stated he will follow staff's recommendation, knowing the applicant's feelings, but also knowing that this council or the council 10 years from now will be very attuned to what the natural resources are.

Wiersum stated he will also go along with the staff recommendation because there are not great alternatives on the north or south side of the road. He noted this situation arises out of the applicant's desire to subdivide his property. He believes staff will be compassionate regarding the trees. The applicant will be able to divide his property, and the city is able to obtain the right-of-way. Even though it is not a perfect solution, both parties are gaining something.

Ellingson stated he was inclined to go along with a smaller easement as suggested by Allendorf. He noted there is almost no traffic on this street because there are only nine houses. He stated the other people who live on the street except for the new houses have not had to give up this 10 feet.

Olson stated when the Sheely's subdivided their lot, they did dedicate 25 feet on the south half of the road and the right-of-way for a turnaround cul-de-sac.

Ellingson restated that other than the two new houses, he is not sure the city has acquired that 10-foot easement from other houses on the street. His understanding is the city would have to buy an easement from those other houses like it bought the 5 feet from the Schultz's a while ago. He does not think it is likely the street will be widened for a long time, so it does not seem necessary to take the full 10 feet.

Peterson stated the reason the city is able to get additional right-of-way from the applicant is that he is getting an advantage and a benefit of being able to subdivide his property. The law gives the city the right at that point to request the right-of-way because his property will add more traffic onto that public road and will create an additional burden on that road. Therefore the city does have the right to ask for an additional right-of-way. If the properties on the south side did not subdivide, the city would not have had the opportunity to ask for the additional right-of-way.

Callison stated she will support the staff recommendation on this. It is difficult to do that, but it is prudent as a city to request the right-of-way and not to pay for it down the road. She is comfortable that if the road is widened at some point, every effort will be made to avoid those trees. She also understands that Schultz wants to subdivide his lot, and that is the reason this is transpiring. This is a good decision for future planning.

Schneider moved, Wiersum seconded a motion to give preliminary approval to the Grenier Road Addition plat, date stamped April 11, 2006, with lot area variances. Approval is based on the following findings:

- 1) Except for the requested variances, the proposal meets the required standards and ordinance for a preliminary plat.
 - a. The variances are reasonable. The variances are necessary due to required dedication of street right-of-way. If the additional right-of-way were not needed along Grenier Road, the property could be divided without variance.
 - b. The proposed lot sizes would be consistent with existing substandard lots in the area.
 - c. The existing property is a large, corner lot located on a substandard right-of-way. This is a unique circumstance not common to every R-1 property.
 - d. The variances would not alter the character of the neighborhood.

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
 - a. Show the following on the final plat:
 - (1) Dedicate 10-feet of additional right-of-way along Grenier Road.
 - (2) Dedicate 7 feet of additional right-of-way along Eden Prairie Road.
 - (3) At least ten-foot-wide drainage and utility easements along the front property lines and at

least seven-foot-wide drainage and utility easements along all other lot lines.

b. Pay the city a park dedication fee of \$2,375.

c. Submit final utility plans

2) The following items must be submitted to the city before the city releases the final plat:

a. An electronic CAD file of the final plat in microstation or DXF on a CD disk.

b. The following documents for the city attorney's approval:

(1) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.

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

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

c. Any other requirements included with final plat approval.

3) The following must be completed before the city issues a building permit:

a. city approval of a grading and tree preservation plan for each lot. The plans must be in substantial compliance with the building pad 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, and tree 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.

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

Wiersum, Thomas, Allendorf, Schneider and Callison voted “yes.” Ellingson voted “no.” Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Thomas moved, Wiersum seconded a motion to adjourn the meeting at 8:29 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

Laura Ronbeck,
Acting City Clerk