

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

4. APPROVAL OF AGENDA.

City Manager John Gunyou reviewed the changes and additional comments provided in the addendum dated July 10, 2006 which related to:

- Item 13B, Café Cabernet and The Wine Shop, attachments related to proposed off-sale liquor license.
- Item 14A, 2727 Ashbourne Road, city planner's recommendation related to location of building pad and shared drive.
- Item 14B, True North Investment's two multi-tenant buildings, removed from agenda due to last-minute issues.

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

5. APPROVAL OF MINUTES: None.

6. SPECIAL MATTERS: None.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings.

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

Amy Hemingway, 25 Milbert Road, explained she lives near Ridgemount Avenue, a road that is shared with Plymouth. She expressed concern about the rerouting of MetroLink buses on Ridgemount because of a number of schools in the area. She is concerned the buses will be routed during the already busy traffic times around the schools. She presented a

petition signed by 31 neighbors on the Plymouth and Minnetonka sides of the street who oppose this change. She requested the council review this matter and see what can be done to use other main arteries.

Gunyou reported Minnetonka staff has been in touch with Plymouth staff. It is a state-aid road that is shared between the two cities, and Plymouth does not need any approval from Minnetonka to make the changes. Plymouth staff has, however, indicated they will take into account Minnetonka resident concerns. At the Plymouth Advisory Committee (PAC) meeting, the plan to route service on Sunset Trail was opposed by residents. At the PAC meeting on June 28, there was a recommendation that the route go on both Ridgemount and Sunset Trail. Service on Ridgemount will be five trips in the morning westbound, and in the afternoon there will be four trips eastbound. Plymouth staff indicated they have received objections to the Ridgemount route, and they are reconsidering that recommendation. This will come before the Plymouth City Council on July 25. Gunyou encouraged concerned citizens to present their signed petition to the Plymouth council at that time.

Wagner echoed concerns about the rerouting of the bus because Ridgemount does not meet up with Plymouth Road, and therefore other residential streets would have to be used.

Mike Van Ossen, 13111 Ridgemount Ave, requested the council send an official letter to Plymouth expressing the resident concerns about the rerouting. He relayed concern that residents on the Plymouth side of the street have known about the change for three months and Minnetonka citizens have known for only two weeks.

Callison noted the council would not take action on this item tonight, but suggested Mr. Van Ossen stay in touch with city staff.

9. BIDS AND PURCHASES: None.

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

A. Claims for council authorization – July 10, 2006.

Allendorf moved, Wagner seconded a motion to approve the July 10, 2006 claims which includes checks numbered 197764 through 198056, totaling \$1,401,304.38. All voted "yes." Motion carried.

B. Final approval of the TONKAWOODS OFFICE PARK plat at 16200 State Highway 7.

Thomas removed this item from the consent agenda to have an individual vote.

Allendorf moved, Schneider seconded a motion to approve the TONKAWOODS OFFICE PARK final plat that was received on June 14, 2006, subject to the following conditions:

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

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

C. Resolutions ordering the abatement of nuisance conditions.

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

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

- 1) 3424 Jidana Lane – in compliance.
- 2) 3525 Elmwood Place – in compliance.
- 3) 3711 Plymouth Road – in compliance.
- 4) 4759 Merilee Drive – in compliance.
- 5) 5732 Holiday Road – in compliance.
- 6) 11808 Oberlin Road – in compliance.
- 7) 14821 Copperfield Place – in compliance.
- 8) Resolution No. 2006-085 ordering the abatement of nuisance conditions existing at 16190 Rindahl Court.
- 9) 16630 Meadowbrook Lane – in compliance.
- 10) 15929 Highwood Drive – in compliance.

All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES: None.

13. PUBLIC HEARINGS:

A. Public hearing to consider a resolution that vacates a public water main easement at 4928 Shady Oak Road for Richard Andron.

Gunyou presented the staff report.

Wiersum asked who bears the cost of moving the water main and inquired about the approximate cost.

City Planner Geoff Olson responded the stipulation is the applicant has to relocate the water main easement, and he is not sure what the cost will be.

Richard Andron, 4928 Shady Oak Grove, reported he received a bid to move the water main for \$3,500.

City Attorney Desyl Peterson requested a word change in the resolution. Section 4.01 (b) should read "The existing water main must be relocated within the new easement which must be granted to the city."

Callison opened the hearing at 6:51 p.m.

Cliff Williams, 4932 Shady Oak Road, expressed support for moving the easement. He asked if there is an easement required for the power lines that run on the two lots.

Callison responded that is not a city easement. She suggested calling the power company.

Callison closed the hearing at 6:53 p.m.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2006-086, with changes recommended by the city attorney, vacating the water main easement that is under the house at 4928 Shady Oak Road.

Approval is subject to completing the following conditions before the city releases the vacation resolution:

- 1) Provide title evidence, as required by the city attorney.
- 2) The existing water main must be relocated within the new easement, which must be granted.
- 3) As-built plans must be submitted to the city.

All voted "yes." Motion carried.

- B. Items concerning the proposed Café Cabernet restaurant and The Wine Shop at 17523 Minnetonka Boulevard:**
- 1) Continued public hearing for the Café Cabernet restaurant for on-sale and on-sale Sunday intoxicating liquor licenses.**
 - 2) Continued public hearing for The Wine Shop for an off-sale intoxicating liquor license.**
 - 3) Conditional use permit, with parking variance, for Café Cabernet.**

Community Development Director Ron Rankin presented the staff report.

Schneider asked if any surrounding communities have established a cap for the number of liquor stores. Rankin responded staff did not ask that question specifically, but he is not aware of any such cap in the Metro area.

Olson described the variances required for the restaurant and wine shop, and outlined the planning commission's recommendations.

Peterson outlined the standards and procedures that should guide the council's discussion. She noted the council has much more discretion in approving or denying a liquor license than it does for a CUP. Liquor is highly regulated, and there are court cases that have been liberal in reviewing what a council has decided. However, courts have decided denials must be made for a public purpose, not a private purpose. She noted five votes will be required for approval. If the resolution fails 4-3, there would not be a majority for denying the licenses. She suggested people voting no in that situation should state their reasons for the record.

Peterson explained the guidelines for the council's consideration of CUPs. If the resolution fails 4-3, state law mandates those voting against must state their reasons for the record.

Wiersum asked how parking requirements would be handled if the restaurant is approved and the wine shop is not.

Peterson explained if only the restaurant is approved, then the CUP would be based on 53 parking spaces.

Allendorf noted he has received a number of calls from residents concerned about an applicant in the future deciding not to run the liquor store and transferring the liquor license, thereby circumventing any percentage sales clauses agreed to with the city.

Peterson responded that is not possible, because a private individual is not able to transfer a liquor license under city ordinances. Any transfer becomes a brand-new liquor license to a new owner, and the new owner has to go through the same city approval process as the current applicant.

Wagner stated concerns have been raised about whether the capital in this business plan is sufficient for this restaurant. He asked if that is something the council can take into consideration.

Peterson responded that is a valid question for the council to examine when considering a liquor license. Obviously the city does not want liquor licenses without adequate capitalization. It can create problem for the licensee in cutting corners. However, capitalization is irrelevant for the CUP.

Callison noted the application process asks about capitalization. She inquired if staff does some analysis as part of the application process.

Peterson responded the staff's role is to provide the information to the council; no analysis is performed regarding whether the capitalization is sufficient.

Callison noted there have been statements regarding employee parking behind the building, but she does not see it shown on the map.

Rankin responded the alley behind the building is being redone in connection with the CR 101 roadway improvements, and there are plans for a limited number of parallel parking spaces on the south side of the alley.

Callison noted that is in addition to the 62 spaces that have been calculated. Rankin concurred.

Callison asked staff to comment on landscaping.

Olson noted the applicant is proposing additional landscaping on the west side. As part of the county project, green area will be created on the west side, and the applicant is proposing to supplement that with additional landscaping. Staff will work with the applicant on the exact location of that landscaping.

Olson noted Rankin has worked with the businesses in the area in an effort to obtain their involvement in the landscaping on the west side.

Callison noted that council policy discusses traffic generated and its impact on surrounding street systems. She asked if the Wine Shop would have any impact on the improvements on Hwy. 101 and Minnetonka Boulevard.

Gustafson responded there are significant improvements being made to both Hwy. 101 and Minnetonka Boulevard. There are also some medians to be constructed on Hwy. 101 to make that section safer. Additionally, some access points will be combined to improve safety. He described the trail and sidewalk improvements.

Chris Eriksson, 1225 Orono Oaks Drive, Orono, described this venture as part of a family business, which includes his wife, sister-in-law and his partner Ryan Sadowski. He noted Sadowski is the wine expert, and Alethea Sadowski has created all the drawings and plans. He described the project as an enhancement to the culture of the community. He noted both businesses will have a separate buyer's card and separate inventory. A patron could go into the store, buy a bottle of wine, and consume it with his meal at the adjoining restaurant, which is a unique situation. The café will fill a large void in the community, as market research has established there are hundreds of residents leaving the community to buy wine. He is willing to stipulate 100 percent of sales will go to wine rather than the proposed 85 percent.

Eriksson added that C & R Partners will be good business partners. They are leasing the building until 2016, so there is no other option than to move forward. Eriksson cited wine industry statistics in order to shed light on why the 10 liquor stores in Minnetonka are thriving and why an additional store will succeed. Demand for the highest margin merchandise has increased more than any other market segment. He acknowledged it is natural for any business to desire to block competition in the area. However, that is not the purpose of liquor license laws. He has found it troubling at previous meetings that the council is in favor of the free market, while some members still voted no. Eriksson said the business plan is sound and capitalization is more than adequate.

Allendorf expressed confusion regarding the percentage of sales the applicant is willing to stipulate go only to wine. He has been troubled that 85 percent of the sales come from wine, 85 percent of

shelf space to wine, yet the applicant wanted 75 percent of sales to go to wine.

Eriksson stated that after approval, he will sign an agreement that limits sales to wine and cooking ingredients.

Wagner asked the applicant to comment on the available capital outside the \$250,000 cited in the application.

Eriksson responded C & R Partners believe that \$250,000 is adequate, and that there is in excess of \$1 million available, though it is unlikely to be needed.

Wagner asked if there is a prohibition against a corkage fee. Peterson responded that fee is permitted by state law.

Callison continued the hearing at 7:30 p.m.

Jerry Green, 5409 Highland Road, said he previously asked the council to not approve a second off-sale license in this area, which the council did not approve. He asked if it makes sense to have an 11th off-sale liquor store in Minnetonka, particularly within 300 feet of Tonka Bottle. He believes there will be a cheapening of the advertising between the two stores, which will have an effect on the entire business community. He would approve an on-sale restaurant, but not an off-sale liquor store. Green noted there are nearby athletic fields as well as a school.

Biff Robalard, 20585 Carson Road, Deephaven, observed many residents in Deephaven shop in Minnetonka, and he believes there is plenty of demand for high-end wine. He believes it is a great time for Minnetonka to introduce a high-end wine store. He noted he has been the applicant's direct supervisor at Merrill Lynch for the last two years, and he has no reservations about the applicant's veracity. He added he buys beer from Tonka Bottle and will continue to do so. The location needs to be filled by a quality business, and he believes this café and wine shop is a good fit.

Mark Raab, 16018 Excelsior Boulevard, expressed support for the proposed café and wine store.

Tim Bevens, 17616 Minnetonka Boulevard, stated the council has the power to control the location and number of liquor stores in the city. He noted there are a number of businesses turning over that sell liquor, and that is what will happen on this corner: two healthy businesses will struggle to survive.

Callison asked the city attorney to clarify how a liquor license is transferred or sold.

Peterson responded it is the same kind of review as the initial application; staff would handle it the same way for the owner of a new business as for an existing business.

Michael Kelley, 19045 Lake Ave, Deephaven, stated he is a business owner at 17416 Minnetonka Boulevard and expressed concern by the applicant's request to ask for a 50 percent parking variance. He is worried the impact the business may have on the overflow parking. He asked how many outdoor seats will be applied for in the future.

Callison responded the applicant would have to come back with a separate request if he wanted to proceed with outdoor eating.

Kelley asked if there is a maximum number of applications that can be made for a liquor license. He expressed support for the café and requested the council vote "no" on the off-sale liquor license.

Callison stated there is no maximum number of applications; she noted there is a fee with each application.

Allendorf stated it may be helpful to review the parking variance again.

Olson stated the parking variance may look ominous on its surface in that it is going from 126 to 63 spots for the restaurant and the wine shop. The anomaly of the code is that it is based on square footage or number of seats, whichever is the larger. Staff feels the seating ratio limit is the more pertinent requirement in this case. There would be 53 spots allocated for the restaurant, with one space for every two seats. There are 106 maximum seats, which would be adequate.

Alethea Sadowski, 19020 Minnetonka Boulevard, Deephaven, stated Ryan Sadowski is her husband and Chris Eriksson is her brother-in-law. She stated she and her family moved to the area two and a half years ago and have enjoyed shopping in Minnetonka. She asked for the opportunity to move forward with this project.

Callison closed the hearing at 7:56 p.m.

Schneider asked if the council should act on the three issues all at once or individually. He suggested holding separate votes. If there is a denial, reasons can be stated for the record.

Callison agreed it was appropriate to have a vote on each item.

Schneider stated if the council wants to limit wine shops in Minnetonka, there is an opportunity for a more deliberative process to decide to limit liquor licenses. Therefore, it is inappropriate to say the city should stop now because it is convenient. He stated the combination of the two businesses would capture a market that is not being captured in the community. He believes that corner could use a higher-end restaurant that is of unique character. He believes there will not be a conflict with parking because the hours of the restaurant will not be the same as adjacent businesses.

Schneider continued he was initially dubious about the two separate liquor licenses with the two businesses, but it makes sense hearing the explanation of buying a bottle of wine at the Wine Shop and paying a corkage fee to drink it at the restaurant. He also believes this application has improved since the previous application. He is reluctant to hamstring the applicant into any specific ratios. He will not vote against it if there is a ratio, but if the council decides to impose a ratio, he would suggest not 100 percent, because it would be too restrictive for the applicant. He noted he supported it last time and does this time as well.

Wagner stated he supported this effort last time; he believes the Wine Shop and restaurant fill the needs of that corner. His concerns regarding capital are alleviated, and parking does not appear to be a problem as a result of the staff's explanations. He would not support a requirement that 100 percent of sales be wine only. The business needs to stand on its own two feet.

Thomas stated he supported the concept last time and plans to do so again. He does not feel comfortable looking into the capitalization of a liquor store or any other enterprise. A business will either survive or not survive in a free market, and it is not the council's role to decide which enterprise will survive and which will not. This would be Minnetonka's 11th off-sale liquor license, which would still put the city at the low end of comparable communities. He suggested increased competition may be good for the market. He noted there are ball fields and schools near other liquor stores currently, so he is not concerned about that argument. He stated the city should not look at limiting businesses in an open and free

market, though he can be flexible if the council wishes to limit a percentage of sales to wine.

Wiersum expressed agreement with Thomas that it is not the role of the council to evaluate business plans. He supports the establishment of the restaurant and will vote for the on-sale liquor license. He believes the parking is tight but adequate. He stated Minnetonka has a sufficient number of liquor stores. The city falls in the middle of comparable communities in terms of liquor stores per capita. The question is where the city wants to draw the line. Maintaining the ratio of the population to liquor stores at a level similar to that of city of Minneapolis is the reason why he will vote to deny the off-sale liquor license.

Ellingson expressed support for many of Wiersum's comments. He will vote for the restaurant and the CUP, but he is concerned about the number of other liquor stores in the city. He noted there have been a number of license transfers recently, and a representative of The Barrel on Highway 7 has indicated he has struggled the entire duration of the license. He wants a reasonable number of off-sale liquor stores for the city, but also reasonable opportunity for these stores to succeed, so he will vote against the off-sale license.

Callison asked for clarification whether Ellingson's expressed economic concern is a sufficient reason for denial of the off-sale liquor license.

Peterson responded economic concerns are not invalid; they can be considered. However, the council cannot try to save one particular business from competition, which would be a private benefit. The council does have the right to look at what is viable in the community. The council does want healthy liquor sellers; the city does not want liquor stores on the edge because there is concern they may begin to cut corners and make illegal sales. Economics are valid, but the council should be thinking in a city-wide context, not for the benefit of one business.

Callison asked if that was the intent of Ellingson's comments.

Ellingson stated that is why he mentioned other liquor stores outside the neighborhood under consideration, in an effort to look at it from a city-wide perspective.

Allendorf stated he is not troubled by the parking. The issue is the viability of that corner, and he thinks the corner will benefit from this kind of restaurant. His concern has always been what else goes at

the location. He cannot make the evaluation whether other businesses are making it or not, and given that, he cannot say whether 10 liquor stores is the right number or 11 is the right number. His point has been a liquor store by itself is not unique enough to vote in favor of it. A wine shop, on the other hand, in combination with this sort of a restaurant has the appeal that could make this a very unique corner. He mentioned earlier that the business plan wants 85 percent of consumable product to be wine, and yet the proposal was 75 percent wine as a percentage of sales and 85 percent of display area. He supports the idea that council should not tie the hands of the business owners. He can and will support 85 percent of the consumables in this establishment being wine. The reason for that is there does seem to be a unique synergy on that corner. The stipulation of 85 percent for both display and sales are consistent with the business plan and is something he would support.

Callison stated that her fundamental belief of why the city has the power to regulate liquor licenses has not changed since the last discussion; it is a public health concern. The question is whether this license poses a threat to public health. The people who use alcohol responsibly do not change whether they are buying it at an 11th store or the 10th store. It is difficult to say whether the city should have 10 or 11 stores. If there were serious problems with liquor licenses in this city, this decision would be different, but that is not the case. The council wants this corner to be a vital area in Minnetonka. She does not want to see the corner become a distressed area, and she does not think this liquor store will cheapen or weaken the corner.

Callison continued it would be nice to have additional parking spots, but the new sidewalk on 101 will be an asset for neighbors to visit the store and restaurant. She supports re-looking at the parking ordinance to determine whether it should be changed to a calculation based on the number of seats. She advised the applicant that coming back again and again before the council with the same proposal would not be not productive, but it does not appear to be the case in this situation.

Thomas moved, Schneider seconded a motion to grant the on-sale and on sale-Sunday intoxicating liquor licenses for the Cafe Cabernet restaurant. All voted "yes." Motion carried.

Thomas moved, Wagner seconded a motion to adopt Resolution No. 2006-087 approving the proposed conditional use permit, with

parking stall variance from 126 to 63 spaces. This resolution is based on the following findings:

- 1) The proposal meets the required conditional use permit standards.
- 2) The proposal meets the required standards for a variance, because:
 - a. There is a unique hardship to the property caused by the nature of the Minnetonka Boulevard/Highway 101 intersection, associated roadway improvements, and the limited area of existing parking on the site. The site will lose 13 parking stalls as a result of the roadway improvements.
 - b. The variance would meet the intent of the ordinance because the restaurant would be limited to 106 seats, which would meet the zoning ordinance standard regarding number of seats.
 - c. Calculating the required number of parking stalls based on seating capacity is a more appropriate way to determine required parking spaces than square footage of the restaurant.

Approval is subject to the following conditions:

- 1) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 2) Any change to the approved use that results in a significant increase in traffic or parking, or a significant change in character would require a revised conditional use permit.
- 3) The restaurant, bar area, and lounge must be limited to 106 seats. The restaurant, bar area, and lounge may have no more than two seats per parking stall on the property.
- 4) The storage areas may not be converted into retail space.
- 5) Spaces shown as proof-of-parking may not be paved, unless approved by the city upon showing a demonstrated need for these spaces.
- 6) Before the city issues a building permit, the applicant must agree to the above conditions in writing and record this resolution with the county.

All voted "yes." Motion carried.

Callison stated imposing a limit on the percentage of wine sales gets into the economics of the business. She noted Allendorf presented a different rationale for the percentage, and she appreciates that. If that is the sentiment of the council, she requested the inclusion of a review period or sunset provision. She thinks monitoring sales in this regard is problematic.

Wiersum agreed the council should not get into the business of monitoring receipts. However, requiring 85 percent of the shelf space going to wine is a fair and easy way to achieve both objectives.

Wagner responded that is a reasonable compromise. The receipts could vary month by month and monitoring them is not a good use of the city's time or the applicant's time.

Allendorf stated he was concerned about staff time when this first came up, and his understanding is staff said they already monitor the amount of food sales and liquor sales of restaurants to ensure they are in compliance, and it is not a big or onerous task. He expressed concern that only looking at shelf space, people can begin purchasing their favorite liquor or beer, and suddenly it becomes a liquor store, which he has concerns about.

Callison asked staff to respond to Allendorf's comments regarding monitoring sales.

Rankin responded there is an annual requirement that every restaurant provide a breakdown of food and liquor sales through third-party reporting. Staff could take similar steps in this case to separate wine sales from other sales.

Callison asked if that would be an annual calculation as opposed to monthly. Rankin responded affirmatively.

Allendorf suggested including an amendment requiring wine be both 85 percent in shelf space and 85 percent in sales. That is what the applicant offered, and the council should accept it.

Schneider moved, Allendorf seconded a motion to grant the off-sale intoxicating liquor license for The Wine Shop, with a stipulation that the applicant submit an annual certified statement, audited by the city, that at least 85 percent of receipts from alcoholic beverages sold on site are from wine sales. Wagner, Allendorf, Schneider, Thomas, Callison voted "yes." Ellingson and Wiersum voted "no." Motion carried.

14. OTHER BUSINESS:

- A. Preliminary plat for a three-lot subdivision at 2727 Ashbourne Road for Peter Knaeble.**

Gunyou noted there is an addendum requiring the location of the house to save more trees.

Olson presented the staff report. He noted before tonight's meeting he discussed the driveways with the applicant. As written, the provision states lot 1 must share a driveway with lot 2 onto Ashbourne Road to avoid a drive onto McGinty. However, the applicant asked if rather than sharing a drive, they can have side-by-side drives. Staff recommends leaving both options open to the applicant. He recommended the language read the drive for lot 1 must be over lot 2 in order to avoid a drive onto McGinty.

Wagner asked if an application for a swimming pool has been considered by staff. He also noted the council has not adopted a tree ordinance yet, but it has been discussed. He inquired if that ordinance, as discussed by the council, would affect this development.

Olson responded there is no record of a swimming pool permit being issued or denied for this lot; neither is there any record of an application. There are two parts to the tree ordinance. One is tree preservation as part of a larger ecological system, and this situation would not meet that criteria. The second component of the tree ordinance considered by the council related to individual significant trees, and there were differing opinions among council members on how to treat those trees. If the council were to adopt an ordinance that would preserve these more significant trees, the trees on the northerly lot would meet that criteria. If those trees were saved, he does not believe the lot would meet the 3,500 square foot minimum buildable area and still save all the trees on the site. The simple answer is if that provision was approved, the northerly lot would probably be lost and there would be two lots.

Ellingson asked if the house is moved to the east on lot 3, whether the driveway could still come off Ashbourne Road or whether it could come off the street to the north.

Olson responded there is a common shared drive to the north.

Ellingson asked if the driveway could come off that private drive, as he is concerned about losing trees with the driveway coming off Ashbourne Road.

Olson responded staff would be happy if that is done, but that would require an agreement of the affected property owners, which

means this owner would have to get an easement to use that drive. That would be a preferable solution, but it may not be possible.

Callison noticed there was a neighborhood comment regarding drainage. She asked if staff can explain what the neighbors can expect to see in terms of drainage as a result of this proposal.

Olson presented an overhead showing the drainage plan in the area. One neighbor was concerned because her property floods regularly because of the pond to the north. This site would not drain to the north in that direction; it would drain to the east to the second pond. This site therefore would not have any adverse impact on the drainage in the neighborhood.

Matt Pavek, 7110 Plymouth Ave North, Golden Valley, stated he concurs with staff's recommendations and welcomed further questions from the council.

Wagner asked if the resolution will require specific direction regarding the driveway or if it will be up to staff.

Schneider recommended the language read the driveway for lot 3 be accessed off Ashbourne Road, and the applicant can determine what the best configuration will be.

Olson responded it was staff's intent to leave the option to the applicant.

Wagner noted he would prefer including language that would prevent removal of a significant tree by adding a wider driveway.

Wiersum suggested utilizing the language requiring access over Ashbourne road.

Wiersum moved, Thomas seconded a motion to give preliminary approval to the Robin Ridge plat, date stamped May 26, 2006, with staff changes. Approval is based on the finding that the plat meets the required standards and ordinances. 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.

- 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. Submittal of proof of a Hennepin County access permit for Lot 3.
- g. The drive for Lot 1 must be to Ashbourne Road to avoid a drive onto McGinty Road.
- 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) Provide a driveway turnaround for Lot 3 before the house is occupied.
- 7) The shed on Lot 1 must be moved to Lot 2 or removed within one year of approval of the final plat, unless application is made for a new home. Submittal of an escrow to cover the cost of removal is also required.
- 8) 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.

B. Items concerning the construction of two multi-tenant buildings at 6001 Shady Oak Road for True North Investments.

This item was removed from the agenda by staff in order to resolve several last-minute issues.

15. **APPOINTMENTS and REAPPOINTMENTS:** None.

16. **ADJOURNMENT.**

Thomas moved, Wiersum seconded a motion to adjourn the meeting at 8:40 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Laura L. Ronbeck
Acting City Clerk