

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, OCTOBER 23, 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 Dick Allendorf, Terry Schneider, Bob Ellingson, Brad Wiersum, Al Thomas, Tony Wagner, and Jan Callison were present.

4. APPROVAL OF AGENDA.

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

5. APPROVAL OF MINUTES: None.

6. SPECIAL MATTERS:

A. Minnetonka Community Action Recognition award for Kim Flemmer.

Wiersum recognized Kim Flemmer, a member of the police advisory committee, for her role in a donation to be used toward the purchase of badges for the police department's two K9 dogs.

Callison noted both Flemmer and her son, Sam, are to be commended for coordinating the bike wash to raise the money for the donation.

Kim Flemmer stated this was an effort of many people in the neighborhood. A lot of people came by to donate money without even having bikes because they were so excited about what the kids were doing.

B. Proclamation declaring the week of November 11 as Housing Awareness Week.

Schneider read the proclamation declaring the week of November 11 as Housing Awareness Week.

C. Proclamation declaring November 1 as the official kickoff day for the three-month "Eat. Talk. Connect!" Challenge.

Callison read the proclamation declaring November 1 as the official kickoff day for the three-month "Eat. Talk. Connect!" Challenge.

D. Proclamation declaring October as Toastmasters Month in Minnetonka.

Ellingson read the proclamation declaring October as Toastmasters Month in Minnetonka.

Callison added this is the second year Minnetonka has recognized Toastmasters Month. She invited Betty Litke from MarshWinds Toastmasters to say a few words.

Litke stated on behalf of her club and the other 10 Toastmasters clubs that meet in Minnetonka, it is an honor to accept this proclamation.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings. He also highlighted the two recent homeowner budget sessions and the business budget session, noting that despite the widespread publicity, only one resident and no business people attended the three sessions.

Callison thanked staff for their hard work on the city-wide open house. Approximately 4,500 citizens attended, and she stated it was fun to see the creativity involved in talking about city activities.

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

Callison recognized Travis Peterson and Boy Scout Troop 208.

Peterson indicated he and his fellow scouts are present because they are working on their "citizen in the community" merit badge. He stated it is an honor to be present at the council meeting.

9. BIDS AND PURCHASES:

A. Consideration of bids for the Richards Drive West Storm Sewer Improvement Project No. 06605.

Gunyou provided an overview of the staff report.

Callison thanked staff for the extra work they did in solving the problems associated with this project.

Wiersum also thanked staff for their efforts on this project.

Wiersum moved, Thomas seconded a motion to award the bid for the Richards Drive West Drainage Improvement Project No. 06605 to Jay Brothers, Inc. in the amount of \$98,200.00. All voted "yes." Motion carried.

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

A. Claims for council authorization – October 23, 2006.

Allendorf moved, Wagner seconded a motion to approve the October 23, 2006 claims which includes checks numbered 199976 through 200295, totaling \$1,877,738.33. All voted "yes." Motion carried.

B. A twelve-month extension of multiple variances to tear down and build a new home at 2813 McKenzie Point Road for Lawrence and Betty Kochevar.

Allendorf moved, Wagner seconded a motion to approve a 12-month time extension to end on December 31, 2007. All voted "yes." Motion carried.

C. Resolution authorizing the installation of traffic control devices at various locations within the city of Minnetonka.

Allendorf removed this item from the consent agenda. He noted part of this resolution is to put no parking signs on the east side of Woodhill between Excelsior Boulevard and Tree Street. That is an area where parents with kids playing ball have complained that parked cars create a visual impairment, and sometimes children can pop out unseen. He thanked staff and the people who brought that safety issue to the city's attention.

Allendorf moved, Ellingson seconded a motion to adopt Resolution No. 2006-135 approving the following traffic control devices:

- 1) No parking signs on the odd numbered side of Eastwood Road, and the even numbered side of Eastwood Circle for a distance of 300 feet south of Eastwood Road.
- 2) No parking signs on both sides of Stewart Lane.
- 3) No parking signs on the east side of Woodhill Road from Excelsior Boulevard to Tree Street.

All voted "yes." Motion carried.

D. Resolution approving agreement with Hennepin County for the Hopkins Crossroad bridge replacement project.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2006-136 approving Hennepin County Agreement No. PW 48-15-06 for the Hopkins Crossroad bridge replacement project. All voted "yes." Motion carried.

E. Resolution accepting plans and specifications and authorizing the advertisement for bids for the CSAH 5 / CSAH 101 Ornamental Street Lighting Improvement Project No. 06406.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2006-137 accepting plans and specifications, and authorizing the advertisement for bids for the CSAH 5 / CSAH 101 Ornamental Street Lighting Improvement Project No. 06406. All voted "yes." Motion carried.

F. Amendment to conservation easement for Crosby Cove.

Wiersum removed this item from the consent agenda and noted he does not agree with the staff recommendation. As the council may recall, Crosby Cove was a controversial development, because dramatic changes were made to the topography of that land, including removal of trees. The council worked hard to protect some of that property with conservation easements, but the tools were not available to change some of the things planned for that property because all of the lots were conforming. He has had numerous conversations with people in that neighborhood regarding the proposed development, and they were frustrated because the council had so little legal flexibility to make changes.

Wiersum explained some of the things the council did including placing a conservation easement on parts of that property. The staff report indicates there is a consideration of a fence through the conservation easement. There is no information regarding what type of fence will be installed. He wonders how the neighbors who wanted that property protected feel about potentially having the conservation easement blocked from their view. He does not believe that putting fences through conservation easements are a good idea. When the property owners purchased the home, they knew part of the yard was in a conservation easement. There is no reason to approve this and set a precedent to start allowing

property owners to put fences and potentially other structures through conservation easements. He intends to vote no and urges other members to do so as well.

Gunyou stated this is an issue in which the council has a great deal of discretion. Staff's review focused on whether the fence would affect any of the trees in that area, and determined it would not. He noted it is possible to fence the pool they are planning to put in without having a fence around the entire yard.

Schneider indicated his understanding of a typical conservation easement is that it does not give the city rights for access or anything else, other than to preserve the vegetation in that area. That is the extent of the wording. He believes it does not discuss anything about the views of the trees. He asked the city attorney if his understanding is correct.

City Attorney Desyl Peterson agreed, and noted the standard easement agreement states no structures can be built in the conservation easement as well.

Schneider asked if a fence is considered a structure. Peterson responded affirmatively.

Callison believes the conservation easement exists to protect the resource, and she does not believe a fence will affect the resource in this case. The resource belongs to the property owner, and the conservation easement does not change the ownership. It simply changes the ability to remove those trees and to do things that might affect them. She thinks the fence is appropriate so long as it does not affect the resource. Her understanding from staff is the fence can be placed so it does not affect the resource, so she supports the amendment in this instance.

Wagner stated his concern is if the conservation easement area is fenced in, even though it is not city property, it gives the appearance to the neighbors that it is not under a conservation easement. As a result, they may not be as dutiful in watching that area as a neighborhood resource.

Wiersum stated another issue is what kind of fence this will be, for example, a privacy fence, chain-link fence, or wrought-iron fence. The homeowner could also hire a structural engineer to explore a stone or a brick wall. When exceptions are considered, it potentially gets into design elements. One type of fence may be more damaging to the trees than another type would be. He thinks the

simplest and best answer is to say no fence, because then the council does not have to get into a discussion of design elements of the fence. He believes this is a bad idea, though he recognizes the property owner does own the property and the trees. However, the property owner purchased the property knowing the conservation easement limits the building of structures without approval.

Peterson noted she has reviewed the standard easement form, and it does also say that no improvements of any kind may be made. Even if a fence is not considered a structure, it is considered an improvement.

Allendorf commented that without amendment, this is an improvement/structure, and therefore a reading of the form would indicate that the council should not allow it. The council can allow it, but the council should not.

Peterson stated she is not trying to indicate what the council should or should not do. The current conservation easement says it is not allowed, but the council can amend it if the council feels it is appropriate.

Schneider stated he is trying to balance allowing the property owner to use the property the way he sees fit and the drawing that is in the council packet, which shows a 5-foot fence. If conservation easements are going to be tools, he does not want the council to become overly onerous and have a backlash from residents. It is a tool that needs to be used judiciously.

Schneider moved, Allendorf seconded a motion to approve the easement addendum for Crosby Cove. Allendorf, Schneider, Callison voted "yes." Ellingson, Wiersum, Thomas, and Wagner voted "no." Motion failed.

G. Approval of an encroachment agreement with XO Communications Services, Inc.

Allendorf moved, Wagner seconded a motion to approve an encroachment agreement with XO Communications Services, Inc. for the purpose of installing telecommunications on street right of way and public easements. All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Preliminary plat, with lot width at right-of-way variances, for a two-lot subdivision at 2001 Yorkshire Avenue, for Dennis and Julie Recknor.

Wischnack presented the staff report. She noted the planning commission recommended approval with a number of conditions, including a requirement that the FAR of 0.16 encompass the house, garage, and half the walk-out basement square footage.

Callison asked Wischnack for an explanation of FAR. Wischnack explained the FAR, floor area ratio, is total square footage of the home divided by the lot size, and that is a certain percentage. The maximum being proposed is 16 percent of the total lot area.

Wagner asked for an explanation about the sizes of the houses on the two proposed lots, given the FAR. Wischnack pointed out the 0.16 is the highest FAR in the neighborhood. An FAR of 0.16 would allow a 3,500 square foot home.

Wagner noted staff is retaining its recommendation to limit the size of the houses to one-and-a-half story. Wischnack confirmed that is correct.

Callison commented she does not have any concerns about the size of the lot subdivision itself. She asked about the restrictions on size, particularly since the council has not adopted a McMansion policy yet. Staff is recommending a FAR as well as a height restriction for these homes, which she is concerned about. Because these two houses will really function as a cul-de-sac, she wondered whether it makes sense to restrict the placement of the two houses rather than apply the FAR. She is not sure she supports a one-and-a-half story requirement and is not sure this is an appropriate use of the FAR, even while recognizing there is a variance. She noted this is not a house behind house situation.

Wagner stated he believes this is an appropriate use of FAR, but he struggles with the one and a half story requirement. He believes that was included due to some neighborhood concerns. He suggested requiring a FAR for one of the lots and a different FAR for the other, as the two lots are of different sizes. This would be in lieu of the one-and-a-half story requirement. Because this is lakeshore, perhaps one house could have an FAR of 0.16 and the other an FAR of 0.15 and still accomplish the same goal.

Wiersum stated similar to Wagner's comments, the lot sizes are not meaningfully different, but the houses have roughly a 1,000 square

feet difference using the FAR. The neighborhood has dramatically different FARs. He questioned whether having houses next to each other with such different square footages is consistent with the policy the council is trying to develop. This might warrant slightly different FARs for the two lots because of the impact on the neighborhood.

Ellingson expressed opposition to the story-and-a-half requirement. The materials indicate that houses with a story-and-a-half or split-entry are not as marketable as two stories. He believes it is premature for the council to have design requirements for these houses.

Schneider concurred with Ellingson's comments. He agrees the typical split-entry home in Minnetonka is not as valued as a two story. That is cutting new ground that council needs to have discussion on before applying height restrictions. The idea of the city's policy is to try it out and see if it works. He believes this is a good application for the FAR. The difference in the sizes of the lots does not bother him too much, as the lots are differently shaped. He supports approval of the planning commission's recommendations.

Allendorf commented the benefit of the FAR is that the council treats homeowners the same, and the same standards are applied. The city has not figured out precisely what those standards are, but this and other projects will allow a learning process. The one-and-a-half story requirement involves too much tinkering with the design. However, he feels uncomfortable applying two different FARs to two homes right next to each other. The lot size and a consistent FAR take care of the properties as they exist. To go further with that is to be capricious.

Callison noted the public hearing was held at the planning commission, and this is a consent agenda item before the council tonight. However, she invited brief comments from the public if anyone would like to speak.

Tom Goodrum, 15050 23rd Avenue North, Plymouth, stated he is representing the Reknors on this property. He thanked the staff, council, and planning commission for their consideration and expressed agreement regarding concern of the limitations. He understands the policy has not been made yet, and understands council concern about the homes fitting in with the rest of the community. They are agreeable to staff's recommendation, but if that is waived, they are agreeable to that as well.

Callison agreed with Allendorf regarding the problems with different FARs for two adjoining houses. It feels arbitrary and is a slippery slope.

Wiersum expressed agreement with Callison and Allendorf's comments regarding the FAR.

Wiersum moved, Wagner seconded a motion to approve the Recknor preliminary plat, with lot width at right-of-way variances, date stamped October 4, 2006. Approval is based on the following findings:

- 1) The proposal meets the required standards and ordinances for a preliminary plat.
- 2) The proposal meets the required standards for a lot width at right-of-way variance in Section 300.10, Subdivision 5(h)(2)(b).
- 3) The proposal meets the general standards for a variance, because:
 - a. The proposed plat is reasonable in the context of the neighborhood. It would result in two homes being constructed at the end of a cul-de-sac. While the lots would not technically meet city standard, they would be similar to many other lots at the end of the cul-de-sac.
 - b. The overall size of the property, relative to its frontage on a public street, is a unique circumstance not common to all R-1 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) Additional 7 feet of right of way south of the existing cul-de-sac, as shown on the preliminary plat.
 - (2) 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.
 - (3) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (4) Drainage and utility easements over wetlands, floodplains, and public storm water ponds, as determined by the city engineer.
 - b. Pay the city a park dedication fee of \$2,375.00.

- 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.
 - 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. Maximum floor area ratio shall be no more than 0.16 per lot. Garage space is included in the floor area ratio calculation, as well as ½ of the square footage of the walkout basement floor.
 - h. Two properties must share a 20-foot wide driveway centered on the common property line or a driveway(s) as approved by the city engineer.
 - i. Minimum floor elevation is 936.0
 - j. Homes must be equipped with automatic fire sprinklers as required by the fire marshal.
 - k. Existing sewer service should be used for the easterly lot.
 - l. Rooftop drainage from homes must be directed to a depressional basin as approved by the city engineer.
 - m. No additional drainage may be directed to the neighboring properties.
- 5) Any existing private wells should be sealed.
 - 6) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
 - 7) 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.
 - 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.

Callison noted the motion would approve the development, retain the FAR of 0.16, and remove the one-and-a-half story restriction.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance regarding prohibited sewer discharges (I & I program).

Peterson presented the staff report.

Allendorf asked what the explanation would be to residents should anyone inquire about the amount of the fees or fine.

Peterson explained it does operate more as a fine than it does as a reimbursement of the cost to the city. However, one could make the argument that it does constitute a reimbursement because if the city cannot get its inflow down, penalties will have to be paid. The dollar amount was borrowed from what other cities have done.

Allendorf clarified if the question was raised by a resident, staff could provide a table of fines or fees that surrounding communities have.

Peterson noted that other cities are ahead of the curve on this issue.

Thomas asked Peterson why the ordinance includes language about an approved plumber rather than a licensed plumber. He asked Gunyou how the city will advertise and inform the residents so they really understand this program. He would imagine that the bulk of the community has sump pumps and it will be a huge change for them. The council knows the reason for this from the study session, but this is a significant change and perhaps an information campaign is needed.

Peterson stated the summary language is "approved plumber" but the plumber does have to be licensed. The ordinance itself indicates licensed plumber approved by the city. Staff proposes to have a list of plumbers who are licensed and are known to do good work, and residents can choose from that list.

Gunyou noted staff plans an extensive education program that has already begun. There was previously an article in the Minnetonka Memo, and this month there was a front-page article introducing I & I. At the open house there was a prominent display booth explaining the program. There will also be information in the water bills. This program is occurring along with the replacement of the water meters, so staff will have an opportunity to explain the I & I program on an a one-on-one basis.

Wiersum asked about the term of surcharge. He asked if these are fines and if they are intended to be punitive or corrective. While it might seem benign to connect a sump pump to the sanitary sewer, if residents outstrip capacity of the municipal waste water facility, it is exceedingly costly for the city. The council needs to be clear about what these charges really are; they should be called fines if they are fines.

Peterson responded the charge has a dual function. One of those functions is a penalty, but it can also be argued that is a way the city recoups costs it will have to pay if the goals are not met. She is trying to follow what other cities have done, and many of them call them surcharges.

Gunyou added the Met Council gives cities a certain number of years to gain compliance. If the city does not become compliant, the city will be assessed fines that will be spread across all sewer users. The latest estimate for Minnetonka is \$377,000 annually. That figure will go up as there is more rainfall. A high level of compliance is expected, but those who are noncompliant should not be given a free pass. In keeping with earlier council direction on ordinance violations, the intent is to make it easy to comply and then make noncompliance expensive. Staff is creating an incentive program for people facing costly improvements, and this will be funded through the water and sewer rate structure. Peterson added the grant program is set up so that the city will pay half, up to a total cost of \$1,000.

Gunyou stated the goal is not to generate revenue; the goal is to gain compliance.

Wiersum asked whether doubling the fine for a resident who makes a reconnection is adequate, as that person is willingly breaching the law.

Peterson stated it is a proposal; staff can increase the penalty if the council wishes. It is consistent in the sense that when someone does work without obtaining appropriate building permits, double fees are charged. It is based on that same philosophy.

Wagner asked if there is a formal program the city will require plumbers to go through to comply with the city's expectations. Peterson responded she is not sure of that, but will gather that information prior to the second consideration of the ordinance.

Callison asked if the effective date of the program would be upon adoption by the council.

Peterson responded it would be effective 30 days after council adoption, but the plan is to start it after the first of the year.

Callison asked whether any consideration was given to an appeal process, given the fees and/or surcharges and the possibility of shutting off somebody's water.

Peterson commented the ordinance already has a provision to shut off sewer and water if residents do not pay the bills. One industrial user was threatened with water shut-off because there was a pattern of nonpayment, but in her years at the city, a homeowner's water has never been shut off due to public health considerations. It is not something likely to be used, but it would be a good tool to have, particularly for industrial users. She added there is no appeal process set up, but staff can look at that for the second consideration.

Gunyou added it is also a public safety issue. The city has not shut off residential users, but has temporarily shut off commercial users after a long series of payment delinquencies. In those cases, the business is effectively shut down because they cannot operate without water. It usually gets the business's attention right away.

Callison questioned including that provision if the city will never use that recourse against homeowners.

Gunyou stated there could be a sale or vacancy in a rental unit where it might be appropriate to threaten a shut off. Peterson added it would more likely be used with non-single family residential.

Gunyou suggested the possibility of adding a provision where potential residential shut-offs would have to come back before the council.

Callison asked if there is a process of providing more notice about this between tonight and when this comes back for the second reading.

Gunyou noted one difficulty is the cycle of the water bill, which is issued only every three months. Staff can place another article in the next *Minnetonka Memo*, which could be prior to council consideration the second time.

Peterson stated if staff waited until the meeting in December, it would not be effective the first of the year.

Gunyou noted there is a reporter in attendance at tonight's council meeting, so it will surely be in the paper.

Schneider liked the idea of having this issue in the *Memo* for informational purposes, but it should not be a condition for bringing it back for council consideration.

Gunyou suspects staff will hear more from the public once the program actually starts.

Wagner moved, Allendorf seconded a motion to introduce an ordinance regarding prohibited sewer discharges (I & I program). All voted "yes." Motion carried.

B. Ordinance amending the city code regarding fees.

Gunyou noted this is the annual review. Staff is recommending some inflationary adjustments in some areas, but not for all fees.

Community Development Director Ron Rankin provided an overview of the staff report.

Allendorf moved, Wiersum seconded a motion to introduce an ordinance amending the city code regarding fees. All voted "yes." Motion carried.

C. Ordinance making technical corrections to the city code.

Peterson provided an overview of the staff report.

Wiersum moved, Wagner seconded a motion to introduce an ordinance making technical corrections to the city code. All voted "yes." Motion carried.

D. Ordinance rezoning 9701 Data Park Drive from I-1, Industrial, to PUD, Planned Unit Development, and approving a master development plan, with variances, and final site and building plans for Phase I for United Health Group.

Gunyou provided an overview of the staff report, noting this will be heard by the planning commission on October 26 and November 9.

Callison noted a work session was held on this issue last week, so the council is somewhat familiar with it. She was reminded by a resident today about the care the city has taken to place parking ramps where they are not visible from roadways, and the resident asked the council to be cognizant of that in these plans.

Thomas moved, Schneider seconded a motion to introduce ordinances rezoning 9701 Data Park Drive from I-1, Industrial, to PUD, Planned Unit Development, and approving a master development plan, with variances, and final site and building plans for Phase I for United Health Group. All voted "yes." Motion carried.

13. PUBLIC HEARINGS:

A. Amendment to Glen Lake Athletic Park Renewal Plan.

Gunyou introduced the staff report. He noted it is unusual for a park plan to come back before the council after the master plan was already approved, but the development of the adjacent Alano site has resulted in a number of changes in the Glen Lake park area.

Perry Vetter, Parks and Trail Manager, presented the staff report.

Thomas asked whether staff considered reopening acquisition discussions with the private landowner of land on Excelsior Boulevard that is surrounded on three sides by the park. Vetter responded that the private property would be highly desirable to incorporate into the park

Gunyou said several years ago there were extensive, but fruitless, discussions to work out a deal. The property owner was approached again, but his expectations were far beyond what would have been reasonable, so a deal was not possible.

Assistant City Manager Geralyn Barone added that within the last year, staff has discussed with the property owner the possibility of doing a land swap, but he wanted land worth twice as much as his property. It has been a difficult negotiation over the years.

Thomas commented it may be worth a phone call, given all the opportunities in the Glen Lake area, just in case the city can get that private property out of there.

Callison noted the overlook area will not be built until 2007. She asked if there is anything else in this plan that residents should expect not to see in the spring.

Vetter responded that is the only item. The reason for that timing is staff would like to design the overlook decking area so that the Tree Trust organization can build it. This is exactly the type of project they do. Unfortunately, since they focus on environment education and employment, many times the education piece makes their projects take longer than a normal contractor. It is staff's goal to get everything else going for the April opening: the fencing improvements, trail access, and retaining walls.

Callison noted when the park board reviewed this proposal, a number of recommendations were made. She asked how those and the other changes would be memorialized on the master plan so people can be sure they happen.

Vetter stated he believes the guardrail is the only thing not now included on the master plan. A guardrail will probably be added to the parking lot.

Callison stated she has a hard time envisioning the aesthetics of a chain-link fence on top of the retaining wall. Vetter responded the intent is to use a variety of materials throughout the site. In the more formal seating areas, the intent is to use more attractive picket fencing, and in the more utilitarian areas use the galvanized chain link. Using a variety of styles helps break up the one unit and provides the best scenario for each spot.

Gunyou summarized the three most significant changes to what the council previously approved. One is the number of parking spaces. The original plan called for 32; now there are in excess of 50 public parking spaces. The original plan only had two batting cages; now there are four. Third, the seating area behind the field 2 diamond now has more auditorium-style seating rather than just new bleachers. The improvements will provide a showcase field, and the park will be much better than originally planned. Gunyou acknowledged the participation and help of the Mighty Mites organization in the modifications. They had many suggestions about tweaking and adding things to make sure it was going to serve their needs.

Callison also thanked the park board for their work.

Callison opened the hearing at 8:06 p.m.

Mark Gregg, 12700 Greenwood Trail, vice president of the Mighty Mites, thanked the staff for their hard work. At the Glen Lake

update meeting, residents were surprised by the magnitude of the wall. He subsequently discussed it with city staff and indicated his trust in city staff to come back with a plan that everyone would be happy with. He believes this is a win-win situation. Staff has also done a great job incorporating the issues that came up at the park board meeting.

Dennis Johnson, 5725 Lake Rose Drive, recalled when the council approved the plan in February, instruction was to begin design and construction. But now it is October, and there are problems with the design. The park is being redesigned for a parking lot for a facility that is not even there. He questioned the timing of this and how the process went through. The plan in February was a good one. More parking is nice, but it is only at the cost of the loss of trees. He asked how the retaining wall could be a surprise.

Callison indicated this has been a long process and the design has gone through a number of changes. She asked staff to comment on the retaining wall.

Johnson expressed agreement with Thomas' comments that the city should have acquired that private property. He believes things are being done in the short-term for the benefit of Alano, which may harm the park over the long-term.

Allendorf stated there was no opportunity to acquire the private property. It takes two to make a deal, and there was only one side willing to make a deal, and that was the city. However, he agrees with Thomas' comments that another phone call will not hurt, in case things have changed.

Callison expressed appreciation for the work that neighbors and members of the Mighty Mites have put into this to make the park an asset to the city. That long process is bearing some good fruit.

Ginger Guggenberger, 4851 Westminster Road, stated she and her husband have three boys who played with Mighty Mites, and she was a board member for five years. She has a lot vested in seeing this continue because it was a great experience for her family. She asked why this is before the council again. She understands there are field changes that happen, but she does not understand how a wall of that magnitude could happen. Her concern is big picture – what happened in the process to be here again. Somewhere the process in the city has failed. She believes the current plan is acceptable, but she is concerned that so much green space is lost.

Paul Lehman, chair of the park board, stated the park board believes this is a good and workable plan. Users of the facilities have reviewed the plan and believe it will meet their needs. There were some concerns among park board members about the process. It may not have been the best process, but the end result is good.

Allendorf commented the previous speaker was asking for a review of the process. He asked where Lehman believes the process could have been improved.

Lehman responded the timing of things could have been better. The park board was not aware of the specific changes until the October 4th park board meeting. The biggest process improvement would have been to give earlier notice to the park board of what needed to be looked at so that feedback could be given regarding features in the park.

Allendorf asked what occurred between the council approval and the October 4th park board meeting. Lehman responded most times the master plan never comes back to the park board. Typically, the board receives updates along the way, and it is left up to the experts in the field to come up with the right changes or adjustments. The park board never usually has a need to revisit plans. In this case, the changes that needed to take place were more significant, such that they were now starting to affect the features of the park and pedestrian flow through the park. Those changes should have come back to the park board earlier so there was the chance to involve as many of the original participants in the public planning process as possible.

Callison closed the hearing at 8:22 p.m.

Schneider stated this is an example where the devil is in the details. He thinks the breakdown was in the communication process.

Wiersum indicated he did not think staff ever said the retaining wall was a surprise; he said it was a mistake. The plans were two-dimensional on paper. He does not think anyone here would have approved a 10-foot high retaining wall; it was probably bigger than anyone would have envisioned.

Ellingson concurred it is difficult to look at a two-dimensional drawing and visualize how it will look three-dimensionally. He attended a neighborhood meeting for the Glen Lake Park where there was the presentation about the Alano building. He walked

around the area, and it never occurred to him the retaining wall would be as big as it was. One change that could have been made was sending the materials to the park board before the council approved them.

Allendorf stated this is a good plan and he will vote for it. He asked whether the parking lot design was run past someone who knows parking lots. When he was on the site last weekend, it seemed to him the angles were rather severe.

Gunyou responded the parking lot was reviewed by the planning commission, as was the whole Alano project. He noted the parking lot was reviewed by a reputable firm and also went through an internal staff review.

Gunyou does not think anybody realized the wall was going to be that intrusive because of the grading elevation changes. The block wall was installed in a matter of days, and when staff saw the results, work was halted. The initial plan was to simply fix the wall, but staff subsequently concluded that it would be better to delay the overall project, and reopen the public process.

Allendorf asked how the changes will affect the budget for this project. Gunyou responded the changes would increase the budget, but accommodations have been made through the park renewal budget and TIF reimbursement funds. Materials from the wall will be reused.

Thomas stated he is glad the public's comments focused on the process. He believes this will create better fields that will serve families and kids better.

Thomas moved, Ellingson seconded a motion to approve the Amended Master Plan for Glen Lake Park and direct staff to proceed with implementation of Master Plan, with the inclusion of a guardrail on east parking lot. All voted "yes." Motion carried.

B. Public hearing to consider the renewal of a Minnesota Currency Exchange License for 2007 for Action Check Cashing, 11503 Excelsior Boulevard.

Schneider departed the meeting at 8:32 p.m.

Gunyou provided a brief overview of the staff report and noted there is no reason for staff to recommend against the approval.

Callison opened the hearing at 8:33 p.m.

No one spoke.

Callison closed the hearing at 8:33 p.m.

Thomas moved, Wagner seconded a motion to approve the issuance of a renewed Minnesota currency exchange license for Action Check Cashing, located at 11503 Excelsior Boulevard. Allendorf, Ellingson, Wiersum, Thomas, Wagner, and Callison voted "yes." Schneider was excused. Motion carried.

Schneider returned to the meeting at 8:34 p.m.

The council meeting recessed at 8:35 p.m.

Callison reconvened the council meeting at 8:48 p.m.

14. OTHER BUSINESS:

A. Agreement regarding access to United Health property.

Peterson presented the staff report.

Thomas noted number 5 on the staff report is a statement on public improvements. He inquired whether the city is limiting itself if it decides there is a sewer and water issue or trail or green space issue that should be included and United Health does not agree.

Peterson responded this really does not bind the council to anything other than it is a statement that the council intends to work with them cooperatively.

Allendorf commented this agreement seems to say the council will do the job it was sworn to do. His fear would be it might dampen the normal enthusiasm the planning commission would have in trying to improve certain plans or reject certain plans. He asked staff to address that concern.

Peterson stated as a practical matter, staff already has some disagreement regarding traffic improvements needed for the expansion proposed. She is not worried about any dampening effect on someone voicing opposition to part of the plan.

Callison noted this is an unusual document. Peterson agreed it is unusual. However, it was a request from United Health Care, and

she made it very clear they cannot bind the council through the statement of intent.

Callison agreed with some of Allendorf's concerns, but does not feel so strongly that she would oppose the statement of intent. At the same time, she is not sure what good the agreement will do.

Allendorf moved, Schneider seconded a motion to approve the agreement regarding access to United Health property. All voted "yes." Motion carried.

B. Preliminary plat, with variances, for a two-lot subdivision at 3848 Haven Road for Leland and Lorraine Sorenson.

Wischnack provided the staff report.

Callison asked staff to comment on the setbacks. Wischnack responded there was some effort made with the applicant in terms of what the proposed setbacks would be. There is a house located to the north of the parcel, and there is some concern about the teardown of the existing house and the impact of the view to that property. There were some suggestions about a setback of 40 feet, particularly in the central portion of the property, to ensure there is adequate distance between the homes.

Allendorf asked staff to comment on the reason for taking the right-of-way and if the right-of-way were not were taken, whether the lot would meet the 22,000 square foot size requirement.

Wischnack responded there is no dedicated right-of-way on this property. It does constitute 3,250 feet, so depending on how the dividing line is situated, there would be enough on one parcel, but the other parcel could be smaller than 22,000 square feet.

Wiersum stated he presumes some of these lots extend into the lake. He asked what the relevant square footage for the subdivision would be if some of the lots subdivided, given the fact that they do not have the buildable area of the size of the lot in question.

Wischnack responded the lot sizes on that side of the map are a little bit misleading. Staff would have to calculate what is below the ordinary high water of that lake. She estimates it would probably not meet the buildable area requirements. Certainly the one on the south would not meet the frontage requirements.

Wiersum stated these lots are much smaller than what is indicated in the documents. A relevant question in this case is what the truly applicable size is of the lot under consideration. Given the fact that the lot does extend into the middle of the street, the functional size of the lot is less than the 43,578 square feet.

Wischnack responded it would be 3,250 feet less than the 43,578, so it is a much smaller parcel being considered than what is on the property map after the dedication occurs.

Lorraine Sorenson, 3848 Haven Road, asked the council to reconsider division of her property with revisions. She asked to present a revised version to the council.

Peterson responded the council can take a look at whatever is prepared. If it is significantly different, it may have to go through the process again, but she doubts it would be significantly different.

Sorensen distributed a document to the council.

Leland Sorensen, 3848 Haven Road, provided an overview of the new proposal. He noted the primary difference is that there is one driveway shared by the two houses. The position of the house on the back lot is changed so it faces the lake and is more desirable. He suggested the council can continue consideration of this matter if more time is needed.

Ms. Sorensen stated they have lived at this address for 48 years and have lived through many changes. The city reduced lot sizes and required two sets of utility services, which apparently meant that someday the city thought the lot would be divided. The first change was a flag lot across the street, followed by another to the north, followed by the Haven Wood development. When she and her husband appeared before the city in June 2005, the suggestion was made that they meet with neighbors. They did meet with neighbors and tried to purchase property, but the neighbors refused. It seems the city is asking them to buy property to meet their code while they are taking their property. Their circumstances are similar to the lot across the street. That lot was reduced because they had to give the city 3,000 square feet of right-of-way.

Ms. Sorensen stated the council voted to allow that variance. Their lot is being reduced in size, but in spite of that, each one of the two lots would be larger than the neighbor's. She read out loud from the staff report for the June 13, 2005 council meeting that listed reasons in support of the lot split.

Ms. Sorenson continued that without the city taking the right-of-way, the property would fall only 195 square feet short of the 40,000. That is no fault of their own but is due rather to the unique nature of the property. If granted, the variance would not alter the character of the neighborhood. The cul-de-sac is not the whole neighborhood of Haven Road. She pointed out a list of neighbors' names who do not object to the lot division. They have done everything right by their neighbors. She asked whether there is a provision in the ordinance that allows the city to waive the dedication of the right-of-way.

Callison asked whether the city can waive the requirement of dedicating the right-of-way.

Peterson clarified the road is already over part of that land. State statute indicates that because the road is already there, there is already a road easement over the actual amount of property being used for the road, including a reasonable amount for snow storage, drainage, et cetera. Even if the city were not asking for a formal dedication, by operation of law, they have already lost part of that property to a right-of-way easement. The council does not have to require a dedication of right-of-way, but a good chunk of it has already become dedicated by virtue of state law.

Ms. Sorenson asked why she and her husband did not know that.

Peterson explained the state law indicates that if a public road authority occupies and uses property as a public road for six years at a time, then that authority gets a public road easement for the property that is actually used.

Callison stated the council will take comments from the neighbors and will have discussion afterwards. She thanked the Sorensens for their comments.

Karen Keitel, 3918 Haven Road, thanked the council and staff for taking time to consider this. She noted the Sorensens are wonderful neighbors, and it is difficult to be here in opposition to their plan. She and the other neighbors have not seen the new proposal they made tonight, so it is hard to react to it; it is difficult to tell what the setbacks are. She supports the city planner's and planning commission's position on this issue. She does not believe the proposal meets statute requirements for a variance. Minnetonka sets a very high standard for variances, and she hopes the council will uphold those. This is a property that can be fully enjoyed in the

way it is right now and has been enjoyed for many, many years by the Sorensens.

Keitel continued that economic issues are not a concern when granting a variance if there is a reasonable use, and she submits that there is a reasonable use here. Additionally, she believes the variance would alter the character of the neighborhood. What is being requested here is to put a driveway the length of her lot, which would have a bowling alley effect. She also believes the lack of frontage is an issue as well as the crowding and awkward placement of the houses. Those other flag lots were granted many years ago, and standards have changed. The property to the north required only one variance because the lots themselves were conforming.

Keitel added that the proposed development would have a house looking right into her living room, kitchen, and master bathroom, so there is a privacy concern as well. She indicated she is representing the families on the cul-de-sac and submitted a petition with neighbors' signatures. She noted some of those same people signed the Sorensens' petition earlier and then changed their mind about support of the proposal. She asked that the council uphold the standards of the city. This has been open for well over a year, and it would be nice to have a final vote on this.

Andy Chollar and Libby Soderberg, 3826 Haven Road, purchased their home this summer. They echoed the comments about the Sorensens being wonderful people; this is not at all a personal issue. In addition to the points made, they underscored that the proposed subdivision would detract from the rural feel of the road. Many of the mature trees add to the look and feel of the neighborhood, and they do not want to see that character compromised. The two houses on the lot would significantly reduce the green space in the neighborhood. It is the character of Haven Road that attracted them to the neighborhood and the purchase of their home. There is no question the proposed variance from the city's standards would change the character of the neighborhood.

Paul St. Clair, 3830 Haven Road, is a lifelong resident of Minnetonka. He submitted a petition to the council in opposition to the variance and stated he does not wish to be redundant about the previous comments stated.

Schneider stated he has met with the Sorensens, as has most of the council. He clarified the reason he previously pushed for a continuation was the way this property is situated and that it offered

the potential of redeveloping in such a way to complement the character of the neighborhood rather than compete with it. He believes two homes could be put on the property facing the lake as if they were part of the cul-de-sac. The challenge was to go back and talk to the neighbors to see if there could be a way to allow the lots to face the lake. It is obvious from the discussion with the Sorensens that they made a good-faith effort but it was not achievable.

Schneider continued that given that background and the fact that there was not a workable arrangement where they could cooperate with the neighbors, he suggested the Sorensens go back to their engineer to lay out home sites that would be fronting on the lake side but yet have a shared driveway off the eastern side. That is what this current attempt is. The unfortunate part about that is it does not do it in context with the surrounding neighborhood. It would have been helpful to see how those home sites' orientation would have fit in to the north, east, and south. However, he does think this is a case where this site would be better suited for two homes of similar size oriented toward the lake than either left as is or just one huge home. He believes that is the best solution. The Sorensens are not sophisticated developers and are left with following staff's recommendation or an engineer's recommendation. Even without the acquisition of property, he believes homes could be built in such a way that it would appear to be compatible with the neighborhood, saving most of the trees, and would be a better long-term solution than as it now is. Even though this has been continued for a year, he believes it is closer to having a better solution if they are able to hire a more adequate planner who can get into the specifics and detailed footprints. He would like to grant a continuation to allow that to happen.

Callison commented this is a very difficult issue and there are probably three alternatives: one is the house stays as is; one is the lot is divided and there are two houses. The third is the house is removed and one new house is built, in which case because this is not a lot that needs a variance at that point, the setbacks on the side property lines can be as close as 10 feet. It could very well be placed to block the view of the other house from the lake, and there will be nothing the city can do at that point to address privacy concerns.

Callison continued that she has reviewed the variance standards and the staff analysis. For the second requirement, staff does believe there are circumstances unique to the property, and she agrees. She struggles with the first requirement, that there are

practical difficulties that prevent a reasonable use from complying with ordinance requirements. She disagrees with staff's conclusion that the variance would alter the essential character of the neighborhood. She does not understand character as finely as that; she understands it more broadly. She also thinks one large house would change the character. She thinks if the neighbors prevail in terms of not permitting a subdivision, they may get a result not as good for the neighborhood. If this is continued, she would suggest the continuance only be for two weeks so there can be a timely final resolution.

Wiersum stated this is a tough issue. In this situation there is not quite enough property for a division to meet the 22,000 square foot minimum. He takes those standards that the neighbors talked about very seriously. However, considering character of the neighborhood, the neighbors could win the battle and lose the war if they prevail, if a monster house is built 10 feet away from the lot line that totally obliterates their view. It might not even be that great of a house architecturally. That will be an expensive lot, and the house could very well be huge.

Wiersum continued that the council asked the Sorensens to go back and talk to their neighbors, because the neighbors would be best off to allow a logical split. That did not happen. He can foresee a situation where the neighbors rue the day when they did not agree to the split. He would like final resolution of this issue, because the Sorensens would like to move on, as would the neighbors. He thinks the neighbors only want to move on with the result that they want. He encouraged the neighbors to compromise and let this occur, because that is really going to be in the best interests of the neighborhood.

Wagner indicated for him to be swayed to approve this variance, he would require the documentation Schneider mentioned, including the FAR, and the look and placement of the houses. Without that documentation it will not have his vote. He agreed with Callison that when these lot divisions are denied, there can be enormous homes built in place. He would be willing to grant a continuance to look at a more specific plan.

Thomas agreed with Wagner about a continuance only with the assurance of definite plans. He normally does not support lot sizes that are smaller than the minimum. However, he believes if the lot split does not happen, there will be a huge lot with a huge house that will require no variances, and the city will have no say about what goes in. That does happen around the city, and then the

council hears from the neighbors. That is the downside of all of this. That very well could happen, and if the council does not approve the lot split, it can be assumed someone will lose their view to the lake due to a huge house being built there. He wants to be sure the council reviews its options and what is best for the neighborhood. If he were to vote right now, he would vote against the split, but he is willing to wait and look at more detailed information.

Allendorf agreed with Thomas and Wagner, except he would allow a four-week continuance rather than a two-week continuance.

Ellingson agreed this should be brought back with specifics about a FAR because both lots will be smaller.

Schneider suggested instead of relying on a FAR, this parcel is more about orientation and site placement. He suggested the council needs to look at a specific floor footprint as part of the architectural plans.

Wiersum stated he hears the concerns of the neighbors. However, none of the arguments had anything to do with the fact that the lot was unsuitable for splitting other than the fact that it barely missed the requirement. If this lot were slightly bigger, it would not require a variance and the neighbors would have nothing to say about it. There is nothing distinctive about this lot other than that issue. That is significant. He takes the 22,000 square feet seriously, but this is a splittable lot. If he thought there was a way to prevent a monster house being built on this lot, he would not support the variance.

Callison summarized the council is looking for more information regarding what the lot split would look like in terms of the placement of the two houses. The council would like more information to make a better decision. She urged the Sorensens to contact staff tomorrow morning to find out exactly what it takes to have this come back before the council.

Peterson suggested the council consider what the practical difficulties are, because that is a finding that has to be made should the variance be granted.

Schneider added he believes the practical difficulty is the city taking the 25-foot right-of-way and the fact that the cul-de-sac to the south of it has a funny angle.

Callison asked about the deadline for action on this matter. Peterson responded the Sorensons have waived the 180-day requirement indefinitely.

Allendorf moved, Schneider seconded a motion to postpone this matter to a date within four weeks of this evening.

Callison clarified the motion will continue this for four weeks, allowing the applicants to do some more work and also the opportunity to go to the neighbors so they can also see some revised plans and the impacts.

Schneider added that the council is looking for someone to design two homes on that site properly – whether that is a planner, architect, or civil engineer.

Callison urged the Sorensons to contact staff tomorrow.

Wischnack asked if FAR information should be included. Callison responded affirmatively.

All voted “yes.” Motion carried.

C. Items concerning a three-lot subdivision of 15549 Ranchview Court, for Evergreen Development Corporation.

Wischnack presented the staff report, noting the staff and planning commission recommended denial of the subdivision.

Tom Goodrum, 15050 23rd Avenue North, Plymouth, stated he represents the Baxters on this matter. He is coming before the council to request a continuation of this project to either subdivide as a two- or three-lot subdivision. He was pleased with the discussion the council just had about the previous application. He believes there are some similar issues and scenarios with regard to this lot that warrant further council discussion. The staff report that went to the planning commission focused primarily on the use of the PUD for this application, and denial was based on it not meeting PUD criteria. As noted in his October 13th memo, the PUD was to be used to achieve a single-family subdivision within a medium-density district.

Goodrum explained it was stated several times that this site was appropriate for a mixed-use single-family development, which is what is proposed. Additionally, medium density is the desired guiding for this area. That was the only avenue allowed through the

ordinances for a PUD, and they followed them. He also considered the character of the neighborhood. He is not proposing smaller lots within the neighborhood; they would be the same buildable area as the neighboring areas. It is a single-family lot division that fits in the character of the neighborhood. He is now considering different scenarios, and if staff is not comfortable with a PUD, there are other avenues. The R-2 is a low-density development that allows for a lot that is 15,000 square feet. He is not opposed to a two-lot subdivision, and if that is what the council desires, he will build that. Either way, he would like consideration of other options that may be available. He is not looking for action tonight but would appreciate a continuation.

Gunyou stated the applicant had previously requested a study session discussion on this development, and staff indicated that would not be appropriate for such a small subdivision. Staff advised him to come forward with a specific plan, and suggested a two-lot plan would be more appropriate. The applicant insisted on bringing the three-lot plan forward, and staff does not think it appropriate that the applicant is still trying to have a general study session discussion. Staff is not prepared to comment on any alternative plans, other than that proposed by the applicant and reviewed in the staff report.

Callison stated council discussion will focus on the three-lot proposal which is now before the council, or the request for a continuation in order to prepare an alternative proposal.

Pete Silbaugh, 15553 Ranch View Court, stated he lives just to the north of this proposed property. He built his house in 1991, and at that time he was told that the outlot status would continue and would not be buildable until the property east of him would be developed. He was told that was due to the fact that utilities and sewer would have to come from Parkers Lake Road. When this proposal came to his attention, he was shocked. He wanted to purchase the outlot property from his neighbor when he initially bought his land, but the neighbor wanted to hang on to it as an investment. She since moved out west, and it is a mystery how this land was acquired. He found out the proposal included taking some of the Jondahl property to make the cul-de-sac happen. Mrs. Jondahl explained to him that it was to fix a drainage problem she has. Silbaugh concluded that the size of the homes proposed would not be consistent with the size of the current homes in the neighborhood and would therefore negatively affect property values.

Schneider stated he has had many conversations with the Jondahls regarding drainage issues and how they relate to her desire not to develop her property. He understands staff wants to follow protocol. However, in his years on the planning commission and the council, he does not recall ever hearing that someone cannot develop his property until the neighbor develops. This is a unique situation in this case. He could see some validity if there were some access issues.

Schneider suggested this does require guidance regarding whether some of the original conceptions from the 1980s are valid or whether they are not an essential element anymore. Those issues need to be provided with some policy direction, not just staff direction. After those are decided, it can be decided whether it is two or three lots. It is a matter of getting the guide plan/development issues off the table instead of having convoluted messages going to the applicant.

Rankin stated the outlot status occurred originally because of the practical difficulties in providing utilities in this part of the property. For that reason it was envisioned that the property would eventually develop with the land to the east. The current situation is not as convoluted as the applicant would have the council believe. Staff has told the applicant from the beginning to decide what he wants to do with this property. If a two-lot subdivision application comes in, each lot will have to have an individual house pump to provide sewer services, so there are still practical difficulties to deal with, although they are easier to deal with today than many years ago.

Wiersum stated he believes this is a simple issue. He is concerned a little bit about the mid-density guide plan and the R-1 designation, but the staff report indicated a preference for the R-1 designation. That is what he would prefer to see. He would prefer two lots on this property if it is going to develop, and he would not support a PUD in this circumstance because it is not warranted.

Callison asked whether Wiersum supports continuing the application so a two-lot proposal can come forward.

Wiersum responded affirmatively and indicated that the situation has changed sufficiently that the outlot issue is not as relevant today as it once was, as Rankin indicated. He is not concerned about the outlot status. If single family development makes sense and it can be done from a water and sewer perspective, two lots are a win-win for everybody.

Allendorf said there are two alternatives before the council, either to deny the project or have the applicant withdraw the application.

Callison asked if Allendorf would grant a continuance.

Allendorf responded the applicant bringing back a two-lot subdivision is different than continuing a three-lot subdivision. The council is providing the applicant what he wanted, which is a good discussion of the issue. The outcome of that discussion is the choice to either deny the project or have the applicant withdraw the application.

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Thomas expressed agreement with Wiersum and Allendorf. Either it is a denial of the three-lot subdivision, or the applicant has to come back with a two-lot application. He would not support a PUD and he would not support three lots that are smaller than the city's minimum standard.

Wagner moved, Wiersum seconded a motion to deny all items concerning a three-lot subdivision of 15549 Ranchview Court for Evergreen Development Corporation.

Schneider asked staff whether an application for a two-lot subdivision requires another application review by the planning commission. If it does, then denial is the right course of action because they will reapply either way. If it is substantially the same and does not require planning commission review, then the council has the authority to approve it without planning commission review.

Peterson stated at this point she believes the council should take action on what is before the council because that is what the applicant submitted. The applicant was given the option of submitting a two-lot proposal and rejected it. Therefore, action should be taken on what is presented to the council this evening. A two-lot subdivision, would be at least a 50 percent change, and that is a significant change from what was reviewed by the planning commission.

Wagner agreed this is such a substantial change that it has to go back through the public process and be reviewed by the planning commission.

Schneider asked whether the reapplication for a two-lot subdivision will also re-guide the property to low density. That seems logical to get that consistency taken care of.

Goodrum apologized for any miscommunication and requested that he be allowed to go back before the planning commission to continue discussions about a two-lot subdivision.

Callison asked if the applicant would prefer to withdraw the application.

Goodrum asked what a withdrawal of the application entails.

Peterson explained either way, the process will start over.

Goodrum consulted with his clients, and withdrew the application.

Peterson requested something in writing from the applicant indicating a decision to withdraw the application.

Goodrum stated the Baxters are in Hawaii; he asked to submit that in writing upon their return.

Peterson requested something in writing this evening from whoever made the decision tonight, including an explanation of their role in this application.

Schneider suggested the guide plan change be initiated, whether this application comes back or not.

The applicant provided a written withdrawal of the application.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointments to the senior citizens advisory board.

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

- Karen Bjorgo, to the senior citizen advisory board to fill the remainder of a two-year term, effective October 24, 2006 and expiring on May 31, 2008.
- Beverly Montgomery, to the senior citizen advisory board to fill the remainder of a two-year term, effective October 24, 2006 and expiring on May 31, 2008.
- Judi Mullin, to the senior citizen advisory board to fill the remainder of a two-year term, effective October 24, 2006 and expiring on May 31, 2008.

All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved. Wagner seconded a motion to adjourn the meeting at 10:18 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Laura L. Ronbeck
Acting City Clerk