

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, NOVEMBER 20, 2006**

**1. CALL TO ORDER.**

Mayor Callison called the meeting to order at 6:30 p.m.

**2. PLEDGE OF ALLEGIANCE.**

All joined in the Pledge of Allegiance.

**3. ROLL CALL.**

Councilmembers Al Thomas, Tony Wagner, Dick Allendorf, and Jan Callison were present. Bob Ellingson arrived at 7:18 p.m. Brad Wiersum was excused.

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou reviewed the changes and additional comments provided in the addendum dated November 20, 2006, which related to Item 11A:

- an alternative preliminary plat for council consideration, as requested by Councilmember Schneider, for the two-lot subdivision at 3848 Haven Road.

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

**5. APPROVAL OF MINUTES: None.**

**6. SPECIAL MATTERS:**

**A. Recognition of the Minnetonka Police Chaplains.**

Callison recognized and thanked Minnetonka Police Chaplains Mark Vinge, Bud Boberg and Rabbi Norm Cohen and their advisors for their volunteer contribution to the city of Minnetonka.

The three chaplains present thanked the council for supporting this program. They also expressed appreciation to the police department for the work they do.

Callison also recognized the members of Cub Scout Troop 346 present at the council meeting and thanked them for taking an interest in civic matters.

**7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.**

Gunyou reported on the schedule for upcoming council meetings.

Callison thanked staff and election judges for a successful election. There were 240 election judges in the community. She noted 69 percent of registered voters in Minnetonka turned out for the election.

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

No one appeared.

**9. BIDS AND PURCHASES:****A. Printing bids for the Minnetonka Memo.**

Gunyou provided an overview of the staff report.

Schneider moved, Wagner seconded a motion to award the contract to Jessen Press Incorporated. All voted "yes." Motion carried.

**10. CONSENT AGENDA (Items Requiring a Majority Vote):****A. Claims for council authorization – November 13, 2006.**

Allendorf moved, Thomas seconded a motion to approve the November 13, 2006 claims which includes checks numbered 200296 through 200702, totaling \$1,520,648.03. All voted "yes." Motion carried.

**B. Agreement with the Independent School District #276 for police liaison services for 2007.**

Allendorf moved, Thomas seconded a motion to approve the agreement with the Independent School District #276 for police liaison services for 2007. All voted "yes." Motion carried.

**C. Agreement with Hopkins School District # 270 and the cities of Hopkins and Golden Valley for junior and senior high liaison services for 2007.**

Allendorf moved, Thomas seconded a motion to approve the agreement with Hopkins School District # 270 and the cities of

Hopkins and Golden Valley for junior and senior high liaison services for 2007. All voted "yes." Motion carried.

**D. Agreement with the Northern Star Council for a community based juvenile diversion program for 2007.**

Allendorf moved, Thomas seconded a motion to approve the agreement with the Northern Star Council for a community based juvenile diversion program for 2007, not to exceed \$20,000. All voted "yes." Motion carried.

**E. Agreement with Sojourner Project, Inc. for domestic services for 2007.**

Allendorf moved, Thomas seconded a motion to approve the agreement with Sojourner Project, Inc. for domestic services for 2007 with the same rate of \$60 per hour, not to exceed \$20,000. All voted "yes." Motion carried.

**F. 2007 fee schedules for consulting engineering services.**

Allendorf moved, Thomas seconded a motion to approve the revised 2007 fee schedules proposed by the city's general services consulting engineering firms, remove Braun Intertec Corporation and GME Consultants, Inc. from the approved consultant list, and authorize the mayor and city manager to execute the Addenda to the Agreements for Professional Services with the following firms:

Applied Ecological Services, Inc.  
Kaeding and Associates, Inc.  
Barr Engineering Company  
SECOR International Inc.  
Brauer & Associates, Ltd.  
Short Elliott Hendrickson, Inc.  
SRF Consulting Group  
Gale-Tec Engineering, Inc.  
STS Consultants, Ltd.  
WSB & Associates, Inc.  
Hansen Thorp Pellinen Olson, Inc.

All voted "yes." Motion carried.

**G. Final approval of the two-lot SINKIE ADDITION plat at 4700 Eastwood Road for Wayne Sinkie.**

Allendorf moved, Thomas seconded a motion to approve the SINKIE ADDITION final plat that was received on August 18, 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.

All voted "yes." Motion carried.

**H. Amendments to the on-going agreement between the City of Minnetonka and Intermediate School District #287 for school liaison services.**

Allendorf moved, Thomas seconded a motion to approve the agreement with the language changes and authorize the mayor and city manager to enter into an agreement with Intermediate School District # 87 to provide police liaison services. All voted "yes." Motion carried.

**I. 2006 performance pay for the city manager.**

Allendorf moved, Thomas seconded a motion to approve a lump sum merit pay amount of \$1,115.03. All voted "yes." Motion carried.

**J. Amendments to the joint and cooperative Southwest Cable Commission agreement.**

Allendorf moved, Thomas seconded a motion to approve the amended joint and cooperative Southwest Cable Commission agreement. All voted "yes." Motion carried.

**K. Items regarding water service to Church of St. Therese.**

Allendorf moved, Thomas seconded a motion to approve both amendments, contingent on execution of the purchase agreement amendment by the Church of St. Therese:

- 1) Amendment to water service agreement with Deephaven
- 2) Amendment to purchase agreement with Church of St. Therese

All voted "yes." Motion carried

**11. Items requiring Five Votes:**

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

City Planner Julie Wischnack presented the staff report.

Wagner noted the lot would not be oversized from a split standpoint. Staff concurred.

Ed Hasek, Westwood Professional Services, asked if the five councilmembers in attendance could be polled regarding this vote. If there are not five "yes" votes present, the Sorensens would request a continuation until April 2007, as they would like to get to Arizona before the weather turns bad.

Callison stated there is not a way to poll the council before the vote. She noted she spoke with Wiersum this weekend and he sent his apologies for not being able to attend the council meeting, as he was called away on business.

Gunyou added Ellingson had indicated he would be present at the meeting tonight, so he may still arrive.

Callison asked staff if the council would also need to agree to a continuation or whether the Sorensens could solely decide on a continuation of the matter.

City Attorney Desyl Peterson responded the council would have to agree to a continuation as well.

Hasek stated another option available is to simply remove the item from consideration.

Peterson concurred the Sorensens could withdraw the application and reapply in the future if they so choose.

Hasek stated he would like to ask the council to postpone consideration of this until May of 2007. If that is not a possibility, he requested the application be withdrawn. If there is a denial, the Sorensens do not want to wait another year to reapply.

Peterson noted there is no legal provision requiring the applicants to wait a year to reapply.

Callison noted if circumstances had not changed at the time of reapplication, it would be difficult to see why approval should be granted.

Schneider stated a con of the postponement would be the neighborhood not receiving a resolution of the issue. On the other side, the Sorensens would not have to pay the application fees again, and staff would not have to begin the process from scratch.

Wagner stated he would be supportive of a continuation, as a year's worth of staff time has been put into this already, and the Sorensens would not have to start again with a new application.

Callison noted that is not the neighbors' preferred outcome.

Schneider commented that while it may not be the preferred outcome, it may allow other alternatives to surface.

Schneider moved, Wagner seconded a motion to continue the matter indefinitely.

Schneider noted that while the neighborhood is not getting closure on this issue at this time, perhaps the neighborhood could discuss other alternatives. Additionally, he recommended the Sorensens hire a buyer/developer who would actually build the new home or homes so he can work with the neighborhood and create a win-win situation. That would aid the process.

Wagner stated he believes the neighborhood has put forth another alternative for the Sorensens. He continues to struggle with what benefit there is in dividing this lot.

Thomas concurred with Wagner's comments. He also has a problem with the two houses on this lot and the configuration. This continuation may provide the Sorensens the opportunity to look at all the options and realize what may make the most sense versus what they may want to have happen.

Allendorf asked if Hasek has considered reducing the size of the two proposed homes in order to reduce the FAR.

Hasek responded he is not sure how the FAR was calculated in this instance, but he would like to see it calculated based on the buildable area of each of the lots rather than on the entire lot size. He did not look at smaller houses; he felt it important to look at houses similar in character with what is in the neighborhood.

Callison stated the lot does not have sufficient area to be divided according to the ordinances in Minnetonka. She urged the

Sorensons to consider the full range of options before bringing this back to the council.

All voted "yes." Motion carried.

Callison asked whether there will be a notification process when this matter comes back before the council.

Gunyou indicated city staff will notify the neighbors when and if this comes back for council consideration.

**12. INTRODUCTION OF ORDINANCES:** None.

**13. PUBLIC HEARINGS:**

**A. Items concerning a two-phase office redevelopment with a parking ramp at 9701 Data Park Drive for United Health Group, called the Data Park Expansion project.**

Councilmember Ellingson arrived at 7:18 p.m.

Gunyou noted Geoff Olson has retired from city staff, but he is assisting the city as a consultant because it is a major project and he worked on it prior to his retirement.

Geoff Olson presented the staff report and staff recommendations, highlighting the traffic improvements.

Schneider asked about the easement being vacated. Olson responded it is a private access easement with Time Warner.

Schneider asked where Time Warner's access to a public street comes from. Olson pointed out the north/south access. Under phase I that access will be relocated to the east. There will also be a new access off Blue Circle Drive, which will be shared between Time Warner and United Health Group (UHG). Time Warner, therefore, will have two points of access in phase I.

Schneider asked whether Time Warner has direct access to a public street or if they are landlocked. Olson responded Time Warner has frontage but no street access. That is largely because there is a very steep grade from Blue Circle Drive to their property, and it is not practical.

Schneider asked if the project will be put into any nonconformity by any of the actions the city would take. Olson responded this would

actually increase the access Time Warner currently has. He noted the lot lines will be changed; they will have the same frontage they have now, along with the benefit of additional access.

Wagner asked about the parking ramp requirements. Olson responded staff is recommending it be exit-only drive out of the ramp, and it would be enter and exit for the drive due south of that. The proposal in the plans is for a reversible drive. UHG's preference is to have a separate entrance and exit drive. Upon review, from a traffic safety and circulation standpoint, staff is recommending exit-only.

Wagner noted the staff report indicates there will be an additional 1,500 employees in phase I, yet only 700 new car trips are projected for the morning and in the afternoon. He asked the staff to explain those figures.

Olson explained the report indicates there will be 700 a.m. and 700 p.m. peak hour trips, for a total of 1,400 trips.

Wagner noted there are 1,500 employees, and there will likely be more than 700 trips even if all employees are not there on the same day.

City Engineer Lee Gustafson stated the ratio is calculated based on many studies. Those studies have shown that the appropriate ratio in this case would result in 700 vehicles in the a.m. and 700 in the p.m. He noted the traffic engineer can elaborate if necessary.

Wagner stated there has been discussion regarding Metro Transit working with UHG on developing a plan. He asked whether the city has any requirements related to transit flow, particularly given that the roadway capacity will be pushed during phase II.

Olson responded staff has considered that. Staff has contacted Metro Transit about extending the Route 12 bus service. Additionally, one of the stipulations for phase I and phase II is the applicant has to do a traffic demand management (TDM) plan. As part of that, ways to provide effective bus service will be reviewed. That may consider where a bus shelter ought to be located as well as the best way to turn a bus around. There has been discussion about the potential for a shuttle service. One long-range plan is for LRT in the Opus II area. The other piece might be walkways to the bus shelter or bus stop.

Olson continued that traditional traffic demand management options will be considered like the opportunity for shifting hours. One part of the project is the cafeteria where employees can come early and have breakfast and have the opportunity for dinner as well. There will be a place for bike storage and also a proposed fitness center. UHG is looking at a number of options to make flexible hours realistic for employees. UHG is hesitant to have anything imposed on them by the city because they still need to manage the business, but they have indicated a willingness to work with staff on these issues.

Gunyou added the TDM plan is one of the conditions of approval, which gives the city a fair amount of discretion going forward. The traffic recommendations were developed more conservatively than is often the case, in that they do not give UHG any credit for a TDM plan. Ultimately, UHG will have to remedy any problems with phase I in order to move ahead with phase II.

Allendorf stated some communities have required a TDM plan, TDM manager, and a TDM follow-up. It seems the city staff sounded like they were going to be the driving force behind the TDM plan, and that is not what makes a TDM plan work. He asked Rankin about his feeling regarding the TDM plan in this case as contrasted with other projects.

Community Development Director Ron Rankin responded that the company has already begun to think about steps to take to assist in that effort. He agreed that companies that take this on as part of their own business have the most success in this area. Staff will be working with them as the TDM plan is developed, and will likely be part of the broader Opus planning ahead.

Callison stated one rationale for a PUD is to promote energy conservation. She asked whether the buildings would meet that goal of energy conservation.

Olson responded that is one of the goals of the PUD ordinance, and the applicant is hoping to meet that goal. One thing UHG is pursuing is LEED certification, which is a national certification for buildings related to energy conservation and which is fairly difficult to obtain. He explained the point system involved in obtaining LEED certification.

Wagner noted the planning commission had concerns about the parking ramp and the number of spaces UHG is asking for, and staff had appropriate responses to those concerns. Olson noted

part of the response is UHG has made reasonable arguments about the need for parking ramp levels 6 and 7 for phase II. This is because surface parking spaces that will be lost during phase II construction need to be included in the taller ramp.

Steve Dorgan, appearing for the applicant, 80 South Eighth Street, Minneapolis, thanked the staff for the work done on the project up to this point. He noted UHG is generally in full agreement with the staff report and recommendations. He reported UHG has 10 sites throughout the metro area, totaling about 1.6 million square feet of office space. UHG is looking to accommodate growth and consolidate space; they acquired the location to the south and developed a master plan to accommodate growth immediately and in the second phase.

Dorgan discussed some of the issues residents have expressed concern about, including the FAR. UHG did look at the existing site, but the growth needs to be accommodated. The site will truly function as a campus. They have worked through the traffic with consultants and city traffic engineers and come up with improvements to accommodate traffic in the area. UHG will be paying for the recommended road improvements, and that would be credited back in a future assessment. He noted UHG will be fully funding the improvement to Bren Road, and that will not be credited back to UHG in future assessments.

Dorgan stated the neighbors to the west expressed concern about the ramp; the ramp has been moved back and concerns have been addressed regarding the loading dock area. It will be screened and there will be a wall to make it out of sight, and landscaping will be beefed up. UHG wants to accommodate their employees in the area as well as provide transit in the most efficient way. There is not a specific solution at this point, but UHG is committed to developing a TDM plan that is agreeable for the daily operations and is mutually agreeable with city staff. He noted it is becoming more and more common with office buildings to obtain LEED certification. However, it is difficult to get and is an extra expense, and UHG is making an effort to do that both in the community as well as on this site.

Callison noted Wagner had asked about the number of vehicle trips estimated on the site and whether those ratios are consistent with what UHG has experienced elsewhere.

Dorgan explained it is consistent and is based on a commonly used ratio. Those trips are based on a one-hour peak time frame; the other trips would come earlier or later in the morning or afternoon.

Callison opened the public hearing at 7:57 p.m.

Doug Jines, 6020 Blue Circle Drive, stated he and his wife own two businesses at Opus II. He has three issues with this project; the first one is the size of the project. He is part of the business owners association at Opus, and they are afraid of all these people coming in and out of the park. Their traffic studies show this project will create an additional 10,092 daily car trips. They would like to see this scaled back to the size of UHG's existing property. He also believes UHG should pay for all of the roads. He requested the council say no to this project. The size should be more reasonable, and if they are bringing in thousands of employees, they should pay for all roads.

Callison asked staff to comment about the proposal for development of a master plan for Opus and the possibility of assessments for business owners there.

Gunyou responded part of the master plan is to develop a roadway financing plan going forward. At this point, staff does not have anything new to share. Conceptually, the growth that takes place would share primarily in the cost of improvements necessary for that growth. However, new improvements do, to a certain extent, benefit existing businesses as well. Fairness will be a major factor in whatever plan is put in place.

Allendorf stated Jines indicated a traffic study showed 10,000 additional trips, which is not consistent with the numbers discussed previously.

Gustafson responded staff did see a review of the existing traffic study, and there were some recommendations within that review that indicated the projected trips to the site were low. The city's traffic engineer and UHG's traffic engineer concurred with that review and revised the trips based on employee counts. These trip revisions were based on more conservative counts resulting in the traffic report being more conservative than what was requested by this property owner's traffic review.

Callison stated the November 3<sup>rd</sup> traffic review does show about 10,000 trips per day.

Gunyou pointed out that “conservative” means the number of trips has been increased, so the traffic planning reflects a higher number of anticipated trips.

Bill Marzolf, 6024 Blue Circle Drive, stated there are two major elements to this project that need to be seriously considered. One is the land area ratio is one and a half times what is recommended by the ordinance. It is the largest project Minnetonka has. The other aspect is the fact that the use of the land will be extremely high density. UHG is proposing 4,000 employees. UHG is asking the city to make decisions about this project prior to making additional plans relative to traffic and flow. The sketches and images presented so far are deceiving with how campus-like this project will be. While staff mentions this project is consistent with what Opus II will look like, he disagrees. He does not think the city wants this type of density for this area.

Marzolf stated traffic studies are required to look at how traffic will be impacted within the site, but no requirements to look at what will happen to Hwy. 169. There is a lot of conjecture about what UHG may do. For the traffic count UHG is proposing, northbound Hwy. 169 will have 1,000 cars total on the ramp. At that rate, during peak hours, one car will be added to Hwy. 169 every three seconds. Without having the requirement of contacting Mn-DOT, it is impossible to integrate what this project is going to be requiring of that traffic on Hwy. 169. The project and planning look good until someone wants to get on the freeway, and then there is no way to go. Phase II requires significant changes to the bridge and onramp, and there are no plans within the next 10 years for Mn-DOT to fund any of those projects.

Marzolf noted the comparison has been made between this project and the Carlson Towers, which is actually 10,000 square feet less. For that size of a project, they only need to accommodate 1,700 cars. The UHG development will be a large lot in terms of square footage and will also have extremely high density. There are red flags all over this project. There seems to be a real force behind this project; it is an interesting project for Minnetonka, and everyone wants to support the growth of UHG in Minnetonka. However, things are being pushed forward. UHG has done little to explore using this property for a phase I type of development which would not require a lot of these changes.

Marzolf stated UHG has tried to convince the city that combining the two properties will make the FAR conforming. Another 350,000 square foot building could be built here. It would be wise to back up

and ask UHG to come up with a plan to use the property in a more responsible fashion and explore using the area as their campus, while winding up with a product that is more desirable for Opus II and for the city.

Callison noted there have been legitimate concerns expressed about the traffic impacts of this project. However, one condition the staff is imposing is that before phase II goes forward, those changes to the Hwy. 169 bridge have to be in place. Phase II does not happen unless Bren Road is expanded to three westbound lanes and there is a third lane added on Bren Road East.

Gustafson concurred, and added that the condition goes on to say that any other concerns that may come up with an additional traffic study will have to be addressed as well.

Robert Debrey, 6014 Blue Circle Drive, stated he is in agreement with the previous objections stated against this proposal. He recalled one member of the planning commission, Steve Adams, voted against the UHG expansion at this time. He fully agrees with his conclusions and recommendations. He does not think the traffic problems have been solved. The plans UHG is showing within the park will probably mitigate the problems there, but it is a different story on Hwy. 169. This is the largest project in Minnetonka history, and the council owes it to itself to go through the Comp Plan update first. It is out of sync to approve the plan ahead of that.

Callison closed the hearing at 8:20 p.m.

Schneider stated if Opus does over time redevelop to higher-density uses, he would like some dialogue on the safety valve the city will have. The Time Warner site has a lot of green space that may be buildable. He asked what could be done on that site without any additional approvals from the city.

Olson responded any of the people in Opus who meet the city ordinances are entitled to build. They have to go through the normal site and building plan review process. Even under a site and building plan review, the city has the right to require as a condition of approval that certain traffic improvements be made if deemed necessary. One of staff's earlier comments is this project will probably use up most of the excess road system capacity. Any addition of a new development or even a significant decrease in vacancy rates of existing buildings will trigger some or all of the improvements required.

Schneider stated this site could not be rezoned to a PUD or other use. Olson responded he would have to check. He is not sure if there is a height limit in the industrial area.

Schneider asked about the concern expressed about future special assessments and whether the city could use a special assessment based on benefit. Peterson explained cities typically have used formulas, such as so much per square foot or so much per front foot, but cities are supposed to look at benefit, as Schneider suggested.

Wagner stated he is concerned about using all the available capacity on this project. He asked whether the city will be 100 percent responsible for future improvements if traffic forecasts turn out to be incorrect.

Olson reiterated the conservative nature of the traffic estimates. It is highly unlikely that the traffic will exceed the proposed improvements. Staff is comfortable that the improvements recommended for phase I will be adequate to handle the traffic from that project. As new uses come in, the question is how to fairly allocate any additional needed traffic improvements. The intent of the broader plan that will be developed over the winter is to look at potential developments for Opus, what the city wants the park to look like, and what kind of capacity there is for traffic improvements and utilities and how it will be paid for.

Wagner asked whether the city will be able to require more in the way of UHG financing traffic improvements if it is determined that they are using more capacity than expected.

Gunyou indicated staff does not think it is correct to think of this development as using up all the capacity. UHG is being required to pay for the improvements, and that is the approach the city takes with any new development coming in. More broadly speaking, the master planning process will look at a number of different scenarios. Based on that analysis, staff will develop a financing mechanism that is flexible going forward. UHG would be part of that as one of the owners in the area.

Schneider stated the traffic is the biggest concern of this project, and the TDM approach may help if it is taken seriously and there are some enforcement mechanisms. Of all the various alternatives, the staggered work hours are the easiest and cleanest resolution to traffic problems. It looks like UHG is headed that way in terms of providing employees incentives to come in earlier or stay later. His

concern is from a requirement standpoint. It sounds like the city has the right to some enforcement in phase II but not in phase I.

Allendorf expressed agreement with Schneider's concern. He has seen TDM plans work. They work for flex hours and for carpooling, but the company itself has to be behind it, and there has to be some mechanism to enforce it. The 494 Corridor coalition works on TDM plans very effectively. He had hoped to hear staff indicate UHG had already appointed someone to handle the TDM, but he did not hear that.

Gunyou indicated that the stipulation currently says the TDM has to be a mutually agreeable plan. The council may want to consider putting in place a specific requirement. For example, if the phase II levels are triggered earlier than expected, there could be a requirement that the TDM be enacted.

Allendorf stated that would work and may allay some fears. That does place the onus on staff to determine what the triggers are and what the requirements really mean. He understands what the other Opus II tenants are talking about. However, he also does not believe UHG would locate its headquarters in a location where they think there will be choke points or where they think it is a bad decision because of the traffic problems. He is comforted they have looked at this situation and believe it is going to work. He is also comforted that staff is recommending it. He is concerned about traffic, but in the end, he has to go with the experts hired by the city. He can support the variances and the project; and in this southeast quadrant, the FAR is something he can support.

Wagner echoed what Allendorf and Schneider have stated about transit and dealing with the new trip generation going forward. He would be happy to have the city take a more aggressive stance on how to manage TDM plans in the Opus development.

Wagner also noted that this project will initially reduce impervious surface, but phase II will bring it back up. As development in this area continues, he would like the staff and Comp Plan committee to look at other ways to reduce stormwater runoff and infiltration. He commended UHG for seeking LEED certification and for its commitment to sustainability.

Thomas reiterated he is concerned about the traffic as well. He does not have a concern about the height of the building because of its location in Opus.

Ellingson agreed about the concern over traffic. However, this is a project that poses great benefit for the city. He believes the staff has done a good job in trying to resolve the traffic problems, and he will support the project.

Callison stated there are a lot of questions about traffic. She noted that phase I does not trigger the worst-case scenario projections. Traffic will use Data Park Drive for the most part to get into this park rather than Blue Circle Drive, so the improvements identified for phase I are very appropriate. Traffic does move well within Opus. Even after these changes are made, it is still acceptable for what the city expects.

Callison does not like the implication that this is being rushed through; this has been given due consideration, appearing before the planning commission twice. Staff prepared almost 300 pages of background material including the environmental impact statement. Lots of study and thought has gone into this project in terms of how it affects the park. She does believe there will be increasing density in this part of the city.

Callison noted that this part of Opus is appropriate with the surrounding buildings and their heights. She has not struggled as much with the traffic issue because there are a number of solutions, including a TDM plan or freeway improvements.

Callison said an additional concern is the size and the impervious surface. The FAR is an indicator of the relationship between the building and the land. Once the building is 10 stories, she does not think the FAR is as helpful. She accepts the FAR because of where this is in Minnetonka and where it is in the park and how it functions with the northern part of the UHG campus. She expressed support for the project. She noted it is the beginning of change in the Opus park, and the city needs to get in front of that change and think through the management of it.

Schneider stated an overall FAR makes sense, because it is one big campus. When phase II comes back before the council, he would look favorably on an arrangement of UHG acquiring the southern portion of the Opus site and combining it with this lot. In essence, that would take developable acreage out of the Opus property and put another five-story building there. He believes that kind of approach should be looked at when phase II comes through.

Allendorf commented his only difficulty with Schneider's comments is it would be difficult for the city to get involved between two property owners, requiring one to sell and one to buy.

Allendorf asked how to implement, without an amendment to the motion, a TDM plan that could be put in place with some teeth.

Peterson explained that would need to be part of the motion, as currently page 255 of the packet indicates a "mutually agreeable" TDM plan is required. That language would need to be strengthened. Perhaps the best approach may be to require that UHG prepare and implement a TDM plan subject to staff's approval at such time that traffic rises to the level that it would trigger the need for phase II road improvements.

Wagner stated he is concerned the TDM will not be implemented until traffic has reached a severe point; he would prefer more of a phased approach.

Peterson suggested the language be simplified to indicate UHG has to prepare and implement a TDM plan subject to staff approval, allowing staff and traffic engineers to come up with some criteria that can be used.

Allendorf and Wagner concurred with that language.

Gustafson stated a TDM plan could be prepared using the guidance that Olson recommended in the initial stages, but could have more teeth in it when the trips on Bren Road increase to a degree council is concerned about. It could be a requirement but be phased in before it reaches a critical point like Wagner mentioned.

Allendorf stated this approach is what goes on at the 494 corridor commission all the time. There are plans put in place and trigger points.

Callison asked the applicant to comment.

Dorgan stated UHG is not adverse to a TDM plan at all; they just want to be part of the solution so there are not requirements included that may adversely affect the way business on the site is done. UHG wants to be part of the solution. He is not objecting to the recommendation, but he does want it to be a mutually agreeable TDM plan, still subject to staff's approval. He noted UHG has worked well with city staff throughout this whole process and believes a good solution will be found.

Callison clarified the motion is to approve the project and include a requirement that a TDM program be prepared and implemented subject to staff approval.

Allendorf moved, Wagner seconded a motion to:

- 1) Make a negative declaration on the need for an environmental impact statement, because the project would not cause any significant environmental effects. The following are specific findings:
  - a. There are no ecologically sensitive resources on this site or surrounding sites that would be affected by the proposed project.
  - b. The site's impervious surface would be reduced in Phase I from 7.9 to 6.7 acres or from 79% to 69%, adding about 52,000 square feet of green area to the site; however, the impervious surface would increase back to about 79% with Phase II. This is still under the city code limit of 85%.
  - c. The project would improve water quality and reduce current stormwater discharge rates and volumes.
  - d. The only potentially significant environmental impact would be traffic, which would be mitigated by city-required traffic improvements.
- 2) Adopt Ordinance No. 2006-23 rezoning from I-1, Industrial, to PUD, planned unit development, and adopting a PUD master development plan, with variances, and approving final site and building plans for Phase I at 9701 Data Park Drive, subject to the conditions as recommended by staff. The ordinance is based on the following findings:
  - a. The rezoning is consistent with the city's Comprehensive Plan.
  - b. Building height is consistent with other buildings on the easterly side of the Opus II Park, such as the 16-story Marriott Hotel building to the west, the 10-story United Health Group building to the north, and the 10-story Cloud Nine building to the north.
  - c. The floor area ratio of the redevelopment site and the existing campus to the north, combined, would be reasonable and about the same as the Cloud Nine project to the north.
  - d. With the exception of the variances, the plans would meet the required standards and ordinances for a master plan and site and building plan approval for Phase I.

e. The proposal would meet the required standards for a variance, because:

(1) The setback variances to the north only affect the UHG building to the north, and should be considered as internal to the overall project.

(2) The westerly building setback variance is justified because:

(a) The Phase I office tower could be built without a setback variance to Blue Circle Drive under the office zoning, which only requires a 35-foot setback. The office district setback is more appropriate here because the surrounding uses are office and there are tall buildings in the area.

(b) There is a practical difficulty in moving the building further east to avoid the variance, since the easterly ramp is already at the minimum setback and moving the buildings easterly would create a variance on the east side.

(c) The variance is a point intrusion into the setback area.

(3) The floor area ratio variance is justified for four reasons:

(a) At 79%, the impervious surface coverage would be under the 85% allowed by City Code and would decrease from current conditions with Phase I.

(b) There are other buildings in the area with similar building heights.

(c) Traffic impacts would be mitigated by the recommended improvements.

(d) If the redevelopment site is combined with the existing site to the north, the floor area ratio would be only 74%, which would not need a variance. This is reasonable justification because the two sites are intended to function as one corporate campus. While the northerly site could be developed in the future, it is unlikely that any future development on this site would exceed the allowed floor area ratio for both sites combined.

Approval is subject to the following conditions:

a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:

- Master development plan, date-stamped October 19, 2006, subject to the changes on the drawing on page A42-e of the staff report.
- Phase I site plan, date-stamped November 3, 2006
- Phase I grading and drainage plan, date-stamped October 19, 2006
- Phase I landscaping plan, date-stamped October 19, 2006
- Phase I building elevations, date-stamped October 20, 2006
- Building material board, date-stamped October 20, 2006

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

b. Phase I Conditions

- (1) Before starting any site work or obtaining a grading permit, complete the following work:
  - (a) The installation and maintenance of temporary rock driveways, erosion control, and tree protection fencing, subject to review by the city's natural resources staff. During construction, the streets must be kept free of debris and sediment, and any tree protection and erosion control fencing must be maintained.
  - (b) Approval of final grading, drainage, utility, and erosion control plans by the city. The developer must work with staff to determine if there are opportunities for water infiltration and other water quality best management practices that could be incorporated into the drainage plan.
  - (c) Submit a stormwater pollution prevention plan, for staff approval.
  - (d) Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.

- (e) Submit copies of the watershed district permit. The city may require revisions to the approved plans to meet the district's requirements.
  - (f) Submit a construction management plan for staff approval, including provisions for a temporary access for Time Warner to their site.
- (2) The following must be submitted to the city for staff approval before the city issues a building permit:
- (a) The developer must agree to one of the following options to ensure installation of a third lane on Bren Road East from Data Park Drive to Smetana Drive and improvements to the Green Oak Drive/Bren Road East intersection before occupying the Phase I building:
    - (i) Assessment option: Sign a waiver of assessment appeal and submit a petition requesting that the city build this project.
    - (ii) Pay-as-you-go option: Submit a petition requesting that the city build this project and sign a developer's agreement to pay the construction costs as they are incurred by the city.
    - (iii) Payment-up-front option: Submit a petition requesting that the city build this project and provide cash up front, with amount to be determined by staff based on the estimated project cost.

The city will credit UHG's payments for the above projects toward UHG's share of any future area-wide roadway and traffic improvement costs in the Opus II Park.
  - (b) The developer must submit a signed agreement with the city for the construction of Data Park Drive and any public utility work. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements. This

agreement must include a letter of credit or cash deposit to ensure that the developer completes all public improvements and complies with all city regulations. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids. Construction plans must be submitted to the city for staff approval. Construction plans must reflect the drawing on page A42-e of the staff report.

- (c) Final landscape and irrigation plans for staff approval. 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. Larger trees will be required along Blue Circle Drive, especially to screen the truck loading area. The larger trees must have a diameter of at least 3 inches for deciduous trees and a height of 10 feet for evergreens.
- (d) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping.
- (e) An illumination plan for staff approval.
- (f) All required hook-up fees.
- (g) Evidence of the release of the obsolete access easements to 9705 Data Park Drive (Time Warner site) and a copy of a deed for a new access easement to 9705 Data Park Drive for the relocated access drive.
- (h) Copy of the recorded resolution vacating the north-south, public utility easement running through the center of the site,

- and relocation of the existing storm sewer and fiber optic cables.
- (i) Payment for public and on-site traffic signs and installation, as required by the city engineer.
  - (j) Record this ordinance with the county.
  - (k) The project architect must verify the required volume of water for the building and ensure that there will be adequate fire flow to the building.
  - (l) A sign must be added at the Phase I ramp exit to Blue Circle Drive saying "No Right Turn."
  - (m) Revised plans for the parking ramp to restrict access from Blue Circle Drive to an exit only, as shown on the drawing on page A42-e of the staff report; however, the location of the access drive to the ramp may be moved further north. The existing lane may be two lanes, subject to the condition that the city may require removal of one of the lanes if a traffic problem develops in the future.
  - (n) Revise plans for Data Park Drive to make the changes generally shown on page A42-e of the staff report. These changes are summarized as follows:
    - (i) generally change from a four-lane, divided road to a two-lane divided road with turn lanes;
    - (ii) Add a round-about or other turn-around design, as approved by staff, at the easterly end of the drive;
    - (iii) Revise the median openings as shown on the drawing; and
    - (iv) Revise the crosswalks as directed by staff.
- (3) The following must be completed, subject to staff approval, before the city issues an occupancy permit:
- (a) City construction of improvements to the Green Oak Drive/Bren Road East intersection, including a signal and the

- widening and realignment of Green Oak Drive.
- (b) City construction of a third lane on Bren Road East from Data Park Drive to Smetana Drive.
- (c) A Traffic Demand Management Plan be prepared and implemented subject to staff approval. Implementation of this plan is a condition of the city's approval of this project.
- (4) The property owner is responsible for replacing any required landscaping that dies.
- (5) All rooftop and ground-mounted mechanical equipment and exterior trash and recycling storage areas must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- (6) Approval does not include the signs shown on the drawings. Separate permits are required from staff.
- (7) Connect the existing trail at the southwest corner of the site into the proposed on-site trail/walkway system.
- (8) Construction must begin by December 31, 2007, unless the planning commission grants a time extension.
- c. Phase II Conditions
- (1) Site and building plan review by the city council of the final site and building plans. Before approval of the site and building plans, an overall study of the traffic and utility capacity in the Opus II Park must be completed by the city. As a result of that study, the city may require additional conditions to ensure the construction of any public improvements needed for the Phase II project. Also, the final site plan may have to be revised to accommodate right-of-way needed to improve the Bren Road interchange.
- (2) The following conditions must be completed before occupancy of the Phase II building.
- (a) Bren Road West must be expanded to three westbound lanes from the

Highway 169 interchange to Green Oak Drive.

- (b) The Highway 169 bridge over Bren Road must be widened and improved, as required by the city and MnDOT, including the addition of a free-right-turn lane from eastbound Bren Road to southbound Highway 169.
- (c) Addition of a third lane on Bren Road East, from Green Oak Drive to Data Park Drive, including widening the one-lane drive that connects Bren Road East to Data Park Drive.

Based on traffic studies done at that time, the city council may revise or add to the specific traffic improvements listed above as part of the site and building plan review for Phase II.

- (3) The north-south storm sewer must be relocated, subject to staff approval. The storm sewer must not be relocated between the Phase II building and ramp if there is going to be a covered vestibule over the line, unless specifically approved by the city engineer.
- 3) Give preliminary approval to the DATA 100 3RD ADDITION plat, date-stamped August 31, 2006. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:
- a. Complete the following before final plat approval:
    - (1) Show the following on the final plat:
      - (a) 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, except for the common lot line between the two lots.
      - (b) Identify private and public utility lines and provide utility easements over existing or proposed public utilities, as determined by the city engineer.
      - (c) Drainage and utility easements over public storm water ponds, as determined by the city engineer.
      - (d) If needed, additional right-of-way for a round-about at the east end of Data Park Drive.



- d. 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.
- 4) Adopt Resolution No. 2006-142 vacating a public drainage and utility easement at 9701 Data Park Drive. Approval is subject to the following condition:
  - a. Relocating the existing stormwater pipe and recording a new public easement for that pipe before releasing this resolution for recording. The location of the pipe and approval of the easement document is subject to staff approval.
- 5) Adopt Resolution No. 2006-143 approving a conditional use permit to move 1,000 cubic yards/acre or more of earth.

All voted "yes." Motion carried.

- 14. **OTHER BUSINESS:** None.
- 15. **APPOINTMENTS and REAPPOINTMENTS:** None.
- 16. **ADJOURNMENT.**

Thomas moved, Wagner seconded a motion to adjourn the meeting at 8:57 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Laura L. Ronbeck  
Acting City Clerk