

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, FEBRUARY 26, 2007**

**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, Tony Wagner, Brad Wiersum, Terry Schneider, Al Thomas, and Jan Callison were present.

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou reported three addendums to the agenda: 13A- requesting a stipulation regarding noise issues; 13B- attaching the city's expenditure policy; and 14A- regarding additional affordable housing units.

Ellingson arrived at 6:33 p.m.

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

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

**6. SPECIAL MATTERS:**

**A. Acknowledgement of state board & commission award recipient Paul Lehman.**

Thomas recognized Paul Lehman for receiving the state board and commission award for his work and leadership during his eight year term on the Park Board.

Lehman thanked the good work of all the people involved with the Park Board and said that the award represents all the work of the staff and other board members. He said he is enjoying his new appointment to the Planning Commission.

**B. Recognition of outgoing commission members Doug Britain, Dewey Hassig and Friende Mills.**

Allendorf recognized Doug Britain's service on the Planning Commission. Britain was not present to receive his award.

Wiersum recognized Dewey Hassig for his work on the Community Heritage Commission. Callison presented Hassig his award.

Wagner recognized Mills for her service on the Park Board. Callison presented Mills her award.

**C. Recognition of Pat Kehr who reached 30 years of service in 2006.**

Schneider recognized Kehr for his 30 years as a city employee.

Kehr said he was very proud to work for the city, noting the city is well respected and that having grown up in Minnetonka it is nice working in the community. He noted his family was present and said the people in the city remind him of his family and that the 30 years have gone by quickly.

**D. Proclamation designating 2007 the Year to GET READY.**

Ellingson read the proclamation designating 2007 the Year to GET READY.

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

Gunyou reported on the schedule for upcoming council meetings. The joint council meeting with Hopkins has been tentatively rescheduled for March 27. The next regular council meeting is March 5. The city's Eco Fair is March 17 from 8:30 a.m. to 1 p.m. Callison noted there will be a legislative transportation hearing in the council chambers Wednesday, February 28 at 7 p.m.

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

No one appeared.

**9. BIDS AND PURCHASES: None.**

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

**A. Claims for council authorization – February 12, 2007.**

Allendorf moved, Wiersum seconded a motion to approve the February 12, 2007 claims which includes checks numbered 202183 through 202536, totaling \$2,578,500.23. All voted "yes." Motion carried.

**B. Claims for council authorization – February 26, 2007.**

Allendorf moved, Wiersum seconded a motion to approve the February 26, 2007 claims which includes checks numbered 202537 through 202869, totaling \$2,176,908.06. All voted "yes." Motion carried.

**C. Contract with U.S. Bank Merchant Payment Services for services related to city customers using credit cards for payments to the city.**

Allendorf moved, Wiersum seconded a motion to approve the consolidated contract with U.S. Bank Merchant Services. Allendorf, Ellingson, Wiersum, Schneider, Thomas and Callison voted "yes." Wagner abstained. Motion carried.

**D. Moratorium ordinance regarding electronic signs.**

Allendorf moved, Wiersum seconded a motion to adopt Ordinance No. 2007-08, a moratorium ordinance regarding electronic signs. All voted "yes." Motion carried.

**E. Reconveyance of tax-forfeited land within the city of Minnetonka.**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-030 authorizing the reconveyance of certain tax-forfeited land originally conveyed to the city of Minnetonka to the state of Minnesota. All voted "yes." Motion carried.

**F. Resolution amending the ICMA RC Deferred Compensation Plan and Trust.**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-031 amending the ICMA RC Deferred Compensation Plan and Trust. All voted "yes." Motion carried.

**G. Resolution supporting statewide transportation funding.**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-032 requesting the Minnesota legislature to pass a statewide comprehensive transportation funding package in 2007. All voted "yes." Motion carried.

**H. Resolution pertaining to the 2007 Street Rehabilitation Program Phase 2**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-033 receiving the feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the 2007 Street Rehabilitation Program, Phase 2 Project No. 5617. All voted "yes." Motion carried.

**I. Consideration of Supplemental Agreement No. 1 for the 2006 Fiber Optic Cabling, Project No. 2005-067.**

Allendorf moved, Wiersum seconded a motion to approve the Supplemental Agreement No. 1 with ColliSys for the 2006 Fiber Optic Cabling, Project No. 2005-067, in the amount of \$39,156.72. All voted "yes." Motion carried.

**J. Final approval of the REEDS ADDITION plat at 3140 County Road 101.**

Allendorf moved, Wiersum seconded a motion to approve the REEDS ADDITION final plat that was received on January 18, 2007, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat;
- 2) Submit for the city attorney's review and approval, a sidewalk and trail easement over the 10-foot drainage and utility easement adjacent to County Road 101; and
- 3) 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.

**K. Final approval of the DEVISSER ADDITION plat at 13801 Spring Lake Road.**

Allendorf moved, Wiersum seconded a motion to approve the DEVISSER ADDITION final plat that was received on January 17, 2007, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat;
- 2) The wetland buffer adjacent to the wetland must be reestablished as required by natural resources staff.
- 3) 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.

**L. Preliminary and final plat for a two-lot subdivision known as the HELEN COOLEY ADDITION at 2202 Meeting Street for H & W Family Limited Partnership.**

Jonathan Adam, the applicant, said that late in the day he had received an email from the engineering staff about the change from a 15 foot easement on the north side of the lot to a 10 foot easement and there already was an easement in place for the 12 foot right of way. He noted those issues were resolved.

City Planner Julie Wischnack confirmed Adam's statement. She said the council will see the item again at the final plat stage with the proper easements dedicated with the plat.

Allendorf moved, Wagner seconded a motion to give preliminary approval to a two-lot plat known as HELEN COOLEY ADDITION at 2202 Meeting Street. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:

Approval is subject to the following conditions:

- 1) Revise the final plat to show:
  - a. Dedication of additional right-of-way to ensure a uniform 12 feet behind the existing Meeting Street curb or as required by the city engineer.
  - b. Ten-foot-wide drainage and utility easements next to the public street right-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines.
  - c. A 15-foot wide drainage and utility easement along the north property line of Lot 1 or as required by the city engineer.

- d. Utility easements over existing or proposed public utilities, as determined by the city engineer.
  - e. Drainage and utility easements over the pond on Lot 2.
- 2) The following items must be submitted to the city before the city releases the final plat:
- a. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
  - b. The following documents for the city attorney's approval:
    - (1) Private driveway easement over Lot 1 for the benefit of Lot 2.
    - (2) Title evidence that is current within thirty days before release of the final plat.
    - (3) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.
    - (4) The restrictive covenants must note that storm water ponding will be required on Lot 2 upon further subdivision of the property. These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.
  - c. Any other requirements included with final plat approval.
- 3) The following must be completed before the city issues a building permit:
- a. Submit the following for staff review and approval:
    - (1) A grading and tree preservation plan. The city may require adjustments in the house pad location to maximize tree preservation. The sewer and water services must be shown to minimize impact to any significant trees.
    - (2) A copy of the recorded plat and any easement or covenants required to be recorded.
    - (3) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance
  - b. If required by the city engineer, existing runoff rate from the site must be maintained. Infiltration techniques such as infiltration trenches, French drains, or rain gardens may be utilized.

- c. Retaining walls must be constructed on Lot 1 in the general location indicated on plans date-stamped January 10, 2007. The walls are intended to minimize tree loss at the front of the property.
  - d. City approval of the installation of a temporary rock driveway, erosion control and tree protection fencing.
  - e. Pay a hookup fee for sanitary sewer and water. The estimated fee at the current time is \$60,444.52.
  - f. All portions of the first story walls as measured by a fire department approved route around the exterior of the building must be within 150 feet of the street. If access requirements cannot be met, the house must be If access requirements cannot be met the building must be protected with 13D automatic fire sprinklers.
- 4) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
  - 5) Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 ½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
  - 6) The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

All voted "yes." Motion carried.

**M. Resolution approving the elimination of a parcel from the Glenhaven Tax Increment Financing District.**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-034 approving the elimination of a parcel from the Glenhaven Tax Increment Financing District within the Glen Lake Station Housing Development and Redevelopment project in the city of Minnetonka. All voted "yes." Motion carried.

**N. Twelve-month extension of a two-lot preliminary plat at 15616 Highwood Drive.**

Allendorf moved, Wiersum seconded a motion to approve a twelve-month extension of a two-lot preliminary plat at 15616 Highwood Drive. All voted "yes." Motion carried.

**O. Two-lot subdivision of the existing property at 13400 McGinty Road East for Peter Knaeble.**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-035 approving a lot division at 13400 McGinty Road East. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:

- 1) The following items must be submitted to the city before the city releases this resolution:
  - a. Submit the following documents for the city attorney's review and approval:
    - (1) Ten-foot-wide drainage and utility easements next to the public street right-of-way and seven-foot-wide drainage and utility easements along all other lot lines.
    - (2) Drainage easements over the proposed rain garden at the rear of Parcel B.
    - (3) Restrictive covenants to be recorded against the individual lots with the lot split resolution. The covenants must:
      - (a) include a maintenance agreement for the rain garden on Parcel 2. The rain garden may not be filled or altered to change its purpose.
      - (b) include the conditions that have not been met as of the release of the resolution.

These covenants must first be submitted for the approval of the city attorney.

These documents must be recorded with the lot split resolution, and a drawing of any easements must be attached to the easement deed.
    - b. A park dedication fee of \$2,750.00.
    - c. Title evidence that is current within thirty days before release of the lot split resolution for the city attorney's approval.
  - 2) The following must be completed before the city issues a building permit:
    - a. Submit the following for staff review and approval:
      - (1) A grading and tree preservation plan subject to staff approval. The grading plan must include:
        - (a) a retaining wall on the east side of the house. The wall is intended to minimize fill and maintain the existing drainage pattern.

- (b) a rain garden to compensate for all additional impervious surface on the site. All additional stormwater resulting from additional impervious surface must be managed on-site. A swale must be created to direct water into the rain garden.
    - (2) Rain garden cross sections, construction details, and infiltration calculations for the existing soils to verify correct sizing.
    - (3) A copy of the recorded resolution and a copy of any easements or restrictive covenants required to be recorded must be submitted to the city.
    - (4) A hook-up fee for sanitary sewer and water.
    - (5) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
  - b. During house construction, no trees may be removed within 15 feet of the east property line of Parcel 2 as shown on Exhibit A of this resolution, except if within 15 feet of the proposed house or services.
  - c. During house construction, no trees may be moved southeast of the line shown on Exhibit A of this resolution, except if within 15 feet of the proposed house or services.
  - d. The city may require adjustments in the house pad location to maximize tree preservation. The sewer and water services must be shown to minimize impact to any significant trees.
  - e. A driveway turnaround must be included on Parcel B.
  - f. Install a temporary rock driveway, erosion control and tree protection fencing subject to review and approval of natural resources staff.
  - g. All portions of first story walls as measured by an approved route around the exterior of the building must be within 150 feet of the street. If access requirements cannot be met, the building must be protected with 13D automatic fire sprinklers.
- 3) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
  - 4) 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 1/2 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.
- 5) This resolution must be recorded by the county within one year, unless the city council approves a time extension. If the council does not approve the extension, the lot division approval will be void.

All voted "yes." Motion carried.

11. **Items requiring Five Votes:** None.

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

13. **PUBLIC HEARINGS:**

- A. **Continued public hearing to consider applications by Christos Four, LLC, for on-sale and Sunday on-sale intoxicating liquor licenses for Christos Greek Restaurant, 15600 State Highway 7.**

Gunyou said that there were two additional items since the last discussion of the council when the hearing was opened. The police investigative report on the application included no information that would warrant denial of the licenses. Staff also recommended a stipulation that the granting of the license is subject to staff approval of a plan to mitigate noise coming from the placement, storage, and collection of trash and recyclables.

Tom Whelan, 4261 Winchester Court said he was present to speak on behalf of the applicants, Gus and Carol Parpas. Whelan said he was a customer of the applicants' other restaurants in Minneapolis and St. Paul and that they were cordial business people, ran a class operation and gave back to the community. He said that he is excited for the restaurant's opening.

Callison closed the public hearing at 6:56 p.m.

Schneider moved, Wagner seconded a motion to grant the licenses for on-sale and Sunday on-sale intoxicating liquor licenses for Christos Greek Restaurant, 15600 State Highway 7. All voted "yes."  
Motion carried.

- B. **Ordinance amending the city charter regarding compensation and expenditures.**

City attorney Desyl Peterson presented the staff report.

Callison opened the public hearing at 6:58 p.m. No one spoke.

Wiersum moved, Allendorf seconded a motion to continue the hearing to March 5, 2007. All voted "yes." Motion carried.

**C. Removal of outlot status, and public hearing to consider vacating public drainage and utility easements at 12909 and 13001 Hideaway Trail.**

Wischnack presented the staff report.

Wagner asked about the lot sizes of the parcels and if they were dividable as a lot behind a lot.

Wischnack replied that staff had looked at possible subdivisions and all the options would require multiple variances.

Callison opened the public hearing at 7:02 p.m.

Liz Coleman, an attorney representing the applicants, noted that the resolution did not include the removal of the outlot status.

Wischnack said that the vacation resolution only documents the vacation of the easement. She said a resolution was not needed for removing the outlot status that could be accomplished by a motion.

Callison closed the public hearing at 7:04 p.m.

Wagner moved, Wiersum seconded a motion to:

- 1) Adopted Resolution No. 2007-036 the vacation of the public drainage and utility easements. This resolution is based on the following findings:
  - a. The petitioners are owners of the land abutting said easement, and therefore are proper petitioners.
  - b. The City no longer needs a portion of this easement.
  - c. Vacating this easement is in the public interest.
- 2) Approve the removal of the outlot status of Outlot A, Hideaway 2nd Addition.

All voted "yes." Motion carried.

**14. OTHER BUSINESS:**

**A. Items concerning the redevelopment of Petters International (Fingerhut) at 4400 Baker Road for Welsh Construction, LLC.**

Wischnack presented the staff report.

Thomas asked if the proposal to reduce lighting at 10 p.m. was a written stipulation.

Wischnack replied it was not a stipulation or a condition placed on the applicant. The Planning Commission asked that the issue be looked at.

Thomas said he would propose making it a condition because it was important to have the proposal in writing. Thomas asked the staff's perspective on why a 10 foot height variance should be given on the building.

Wischnack said staff felt the impact of having a more elongated building with a parking deck was more intrusive to the site. She said the practical difficulty with that proposal is not only that there is a much larger structural intrusion, but also that there would be an impact to the natural environment, specifically at the entrance area of the site.

Thomas asked the reasoning behind allowing two monument signs instead of the standard one sign.

Wischnack said the city code only allows one sign per development, but allows variances in certain situations. When two parcels are created on a large lot area, it is difficult for one sign to serve the entire property. In this situation it is even more of a safety issue because of the access onto 494 and Baker Road.

Allendorf followed up on Thomas' concern about the lighting issue on phase two of the property. He said the stipulation could be memorialized in an agreement between the applicant and the city. He asked what the city's authority is to make a stipulation on a property that wasn't before the council.

Wischnack said the Planning Commission discussed whether the requirement should be made as a condition of approval. Since there were no proposed changes to the southern portion of the property, it was difficult to make the connection between what is being proposed and what is being required. She said the commission then discussed how to make the lighting better. She

said the proposal to turn off some lights at a set time was a good resolution to the issue.

Allendorf said he was uncomfortable stipulating something on property that wasn't before the council, especially if there was not an agreement. He then asked if the city's ordinance with its current height restriction recognized the current nature of office building development.

Wischnack indicated the Planning Commission did discuss the issue of ceiling height and if the current 45 foot height was outdated with today's construction methods. She said the commission heard testimony that the height restriction was a lower standard. She agreed it was important to follow up on determining what the restriction should be to reflect the current building standards.

Wagner asked if the parcel needed a master development plan to protect the city should there be a split into another parcel, in order to avoid issues raised in another recent situation.

Wischnack said because this was not a planned unit development, a master development plan is not required in the process. She said that city staff learned from the other situation the importance of documenting cross parking arrangements, specifically what needs to be in the documents in terms of access and cross parking arrangements.

Callison asked for confirmation that a third sign would not be allowed on the building.

Wischnack said that other than the necessary address signage on the buildings, the applicant had not requested any other signs on the buildings.

Callison asked Wischnack to provide more information on the required travel demand management plan.

Wischnack said that a travel demand management plan addresses when traffic arrives on a property and tries to manage the times of day people enter the transportation system in the area. She said the plan is required before the final plat is submitted. She said the long range corridor plan is even more important and will have even more impact.

Callison noted that the ordinance requires 746 parking stalls. For this proposal there would be 1,215 parking stalls, a substantial

increase in what is required and thus a likely indication that there will be more traffic generated than what the ordinance contemplates. She asked if the traffic study used the right numbers in terms of generation of traffic from the building.

City engineer Lee Gustafson said that staff was comfortable with the numbers. He said the issue was brought up at the Planning Commission. Information provided indicated when Fingerhut was in full operation there were a significantly higher number of trips than this proposal, so the traffic shouldn't be any worse than when Fingerhut was in full operation.

Callison asked if staff was comfortable with a condition of the corridor traffic study report that the building be fully occupied before the study is completed so that the traffic flow can be incorporated into the report.

Gustafson said that staff is comfortable with the condition so that the traffic can be analyzed.

Allendorf clarified that the number of parking stalls will also service the phase two proposed building so that the number is not relevant to the traffic study for what was now before the council. He said the number of employees should not be confused with the number of trips generated. Some of the neighbors of the distribution facility were concerned because the trips generated when Fingerhut was fully operational were mostly a.m. and p.m. trips only; thus the neighbors could avoid the area during those times. The trips generated by an office scenario would likely be more spread out and there may be more trips.

Dennis Doyle of 7807 Creek Ridge Circle in Bloomington said he was the CEO of Welsh Companies, the developer of the project. The company plans to occupy the 99,000 square foot building for its corporate headquarters. Doyle said Petters Group Worldwide has also made a ten year commitment to the site to keep its headquarters in the city. He said his company hopes to thrive enough to eventually expand into the third building.

Mike Schraad with Welsh Construction, 7707 Creek Ridge Circle in Bloomington said he has had discussions with Sgt. Kevin Anderson of the police department about the proposal to deactivate every other light. Once that is done the police department will do a drive through to make sure there are no dark spots. There has been past history of criminal activity as the backside of the site is sheltered from the road. The area is normally patrolled and thus adequate

lighting is needed for safety and security. Schraad said the proposal to shut down lighting at 10 p.m. is a work in progress.

Ellingson said a neighbor raised a question about why the land was being subdivided.

Schraad said technically there are currently two lots. He said the subdivision allows the most flexibility for the development in the long run.

Wiersum asked if control is lost over the closure of the access points if the property is subdivided.

Wischnack responded that the right is not lost because the county controls the access to properties through the access permitting process.

Schneider said he agrees with modifying the lighting and asked if the feasibility of an every other light scenario was looked into.

Schraad said the fallback position was to remove the lamps if the lighting could not be controlled internally.

Schneider said he supports the height variance. He noted the broader issue of the practicality of the current ordinance which uses standards developed in the 1970's and 1980's needs to be reviewed again. He indicated the issue is being examined by other metro cities.

Callison said the planned use of the building will be similar to what it has been in the past. She recognized that there are legitimate neighborhood concerns over the next phase of the project. She is pleased that a corridor study will be done before that takes place and there will be enough time to get the information needed on a street that already needs traffic improvements to function better.

Wagner moved, Wiersum seconded a motion to:

1) Approve the site and building plan, with variances, dated December 22, 2006.

Approval is based on the following findings:

a. Height Variance

(1) The impact of the height of structure is mitigated by the diminished building width.

(2) The height variance would not allow an additional story, rather a four-story structure, as contemplated within the B1 Zoning District.

(3) A building redesign to conform to the measured building height requirements would further impact the natural features on the property.

(4) The hardship derives from the site topography and existing parking lot locations.

b. Parking Variance

(1) The parking lot setback variance from an interior lot line is addressed by a cross parking/access agreement.

(2) The parking lot setback variance is appropriate as there is a hardship presented by the existing access location

(3) Additional accesses onto Baker Road would present safety issues.

c. Signage Variance

(1) The variance for signage would allow an additional monument sign for the property.

(2) The hardship presented for the additional sign is presented by the unique size of the parcel for this area and zoning district.

Approval is subject to the following conditions:

a. Construction must begin by December 31, 2008, unless the planning commission grants a time extension.

b. Before starting any site work or obtaining a grading permit, complete the following:

(1) 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.

(2) Approval of final grading, drainage, utility, and erosion control plans by the city. The developer must work with staff to determine if the water infiltration and other water quality best management practices are being incorporated into the drainage plan.

(3) Submit a stormwater pollution prevention plan, for staff approval.

(4) Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with

- grading permit requirements and restore the site.
- (5) Submit copies of the watershed district permit. The city may require revisions to the approved plans to meet the district's requirements.
  - (6) Submit a construction management plan for staff approval.
  - (7) All construction plans must be amended, as required by the city engineer.
  - (8) All changes indicated in the traffic memorandum dated January 3, 2007, must be completed.
  - (9) Compliance with comments received from the city stormwater consultant (Barr Engineering) in letter dated January 17, 2007).
  - (10) Revision, modification or documentation regarding the middle access, to improve the line of sight, must be submitted and approved by the city and county.
  - (11) Consideration of Phase II will not occur until a corridor study has been completed.
  - (12) The property owner should assume that Phase II or a corridor study could require removal or restrictions for the north and/or south access points to the property.
  - (13) The property owner shall provide shields for lighting to lessen impacts on surrounding property in areas where lighting will be replaced (northern portion of property).
- c. The following must be submitted to the city for staff approval before the city issues a building permit:
- (1) 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. Additional screening is required on the berm to mitigate the height of the building.
  - (2) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping.



- entrance, with dimensions satisfactory to the city engineer.
- (2) Provide documentation that there are no conflicts with the existing access control that pertains to the northern access.
  - (3) Pay the city a park dedication fee.
  - d. The following items must be submitted to the city before the city releases the final plat:
    - (1) An electronic CAD file of the final plat in microstation or DXF on a CD disk.
    - (2) The following documents for the city attorney's approval:
      - (a) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
    - (3) Any other requirements included with final plat approval.
- 3) Approve the sign plan, with variance, date stamped December 22, 2006.  
Approval is based on the following findings:
  - a. Currently, the property contains two monument signs.
  - b. A variance is required if more than one monument sign is located within a development.
  - c. The property is of unique size for this zoning district.Approval is based on the following conditions:
  - a. The following must be completed prior to issuance of a sign permit:
    - (1) As-builts of the western monument sign.
    - (2) Verification that the signs do not contain electronic display.
- 4) Approve an amendment to the water resources plan.
  - a. The plan currently designates an area near Baker Road as wetland area, watershed no. 545.
  - b. The applicants have retained a wetland expert to verify the existence of wetland on the property.
  - c. The property was not found to contain any wetland areas, thus changing the water resource plan documentation.

All voted "yes." Motion carried.

Callison called a recess at 7:48 p.m.

Callison called the meeting back to order at 8:02 p.m.

- B. Items concerning proposed changes to the three-phase redevelopment project in Glen Lake, for Glen Lake Redevelopment, LLC:**
- 1) Amended project approvals.**
  - 2) Amended and restated contract for private redevelopment.**
  - 3) Agreement regarding the relocation of the Gold Nugget Restaurant.**

Gunyou introduced the item, noting that a little over a year ago the council approved a comprehensive redevelopment of the Glen Lake area. He listed progress that has been made to implement the plans:

- Property has been acquired
- Buildings have been demolished
- Xcel Energy and city have worked together to remove vacant buildings on Xcel properties
- Developer paid to have Xcel re-route power lines
- City assisted Alano with moving into a new building

Gunyou said the condo market has softened considerably, and as a result, phase one and phase two have been delayed by the slowdown. The developer is only proposing a change to site B, the Exchange Building. Gunyou noted there are projects throughout the metro area that are being delayed because of the slow down in the condo market. He said Minnetonka was fortunate to have a developer who is willing to proceed with an alternative plan, which isn't the case with other projects in the metro area.

Gunyou suggested that as the council looked at the details of the plan, it was important to keep in mind that the new plan was fundamentally similar to the project that was previously approved. The only substantial difference was the proposal to change site B from condos to apartments. Although the same number of affordable housing units was proposed by the developer, the higher number of apartments meant the percentage of affordable units was less.

He said the EDA asked the developer to consider increasing the number of affordable units before it came to the council. In response, the developer agreed to increase the number of affordable units included in site B by two. The percentage is now similar to what was previously approved.

Gunyou said other numerous changes have improved the public benefits of the development package. One example is that there is now more certainty in the link between the reopening of the Gold Nugget restaurant with the TIF reimbursements to the developer.

Wischnack and community development director Ron Rankin presented the staff report.

Rankin addressed concerns raised about the switch from condominiums to apartments. He said the city has tracked information to address concerns about rental housing leading to increased crime and decreased property values. The police department has indicated that historically there is no difference in the incidence of crime between rental housing and owner occupied housing of the same density. Similarly, the assessing department determined that throughout the city in neighborhoods with apartments in close proximity to houses, property values have not decreased, but have actually increased at a rate similar to single family homes in other neighborhoods.

Rankin said studies have shown that the vacancy rate of apartments in the city is decreasing and is now around five to six percent. He said it was important to note that the proposed affordable housing units are not part of any formal federal or state program. Rather there was an arrangement worked out between the EDA, the city and the owners as a way to provide affordable housing over the 15 year term. He said the arrangement is similar to requirements used in the past for other buildings that have used tax exempt financing. Rankin also noted that while the city has been successful in providing affordable ownership opportunities, it has been around five years since affordable rental units have been added to the city's housing stock.

He said the EDA made other significant improvements to the proposal. In response to a concern that the mid-range priced units at site B might be lost with the change from condos to apartments, the developer has promised that in addition to the affordable units being provided at site A, an arrangement will be worked out to provide mid-priced units there as well. Ten mid-priced units have been pledged.

Rankin said another significant change is the city is first in line for \$500,000 in TIF reimbursement for installation of a traffic light at Woodhill Road and Excelsior Blvd. The plan still calls for the installation of that light, but in the event that Hennepin County does not permit that signal to be installed, there are now a number of

other traffic and pedestrian improvements that the money can be used for.

The EDA also requested and the developer subsequently agreed that the look back period for site B improvements be extended from 10 years to 15 years. Any capital expenses the owners make within two years of any future conversion from apartments to condos would not be counted in the look back provision. The EDA also has required the cost estimates for this part of the project be confirmed as well.

Mark Ruff of Ehlers and Associates, a financial advisor to the city, addressed the TIF aspects of the proposal. He said TIF was necessary to make this portion of the project happen. Significant costs have already been incurred by the developer to acquire the property on the site and to begin demolition. Other phases of the proposal rely on site B because in order for the shopping center to be demolished, the tenants have to be relocated.

Ruff said that in multi-phase redevelopment projects, market conditions typically change over time. He said when the proposal was looked at a year ago everyone was aware changes could occur, likely in phase three. There are places throughout the Twin Cities facing similar circumstances for condo developers and a variety of replacement uses ranging from hotels to more commercial industrial type of uses are being explored. Ruff said some of those options were considered for this proposal but the economics did not work. The advantage Minnetonka has is that there is both a good short term and long term market. Ruff said in reviewing the developer's numbers, the building will have to be 100 percent occupied in the first few years just to break even to pay operating expenses and the debt. There is no immediate profit to be made and thus it is a long term investment for the developers.

Ruff said there is a reduction in the amount of tax increment expected because phase three will be started much later than originally anticipated. Since there is a specific term on the TIF district the delay will likely mean the developer faces a greater chance of not recovering all of the land development costs. At this point in time Ruff indicated there could possibly be a \$400,000 reduction in the increment. He said with increasing interest rates and with values skyrocketing there will be a reduction in the return to the developers. The good news is that the development agreement protects the city's interest. He said the city has very little at risk because of its control, and with the ability to determine if this is something the city decides not to undertake, it will not

significantly impact the financial situation. The developer has taken the primary risk for the tax increment.

Ruff addressed concerns about what happens if only phases one and two are constructed. He said there are significant negative financial ramifications to the developer if phase three were not to occur, not only because of the clock ticking on the TIF district, but because the developer will have invested significant amounts of money in the costs of acquisition and demolition and relocation of tenants. If there is no development there is no increment to repay the costs. Phase three produces a little less than half of the TIF-somewhere in the neighborhood of \$4.1 million. Therefore it isn't a front-end loaded project.

Gunyou asked Rankin to discuss the reopening of the Gold Nugget. Rankin said there is a separate agreement that will require the Gold Nugget to be relocated at the north end of the remaining shopping center building as soon as possible after demolition of the north side of the center.

Peterson noted some technical changes to the resolution regarding the vacation of Excelsior Boulevard easements.

Allendorf asked for clarification on the look back provision going from 10 to 15 years and the conversion of apartments to condominiums and how that would be controlled or prevented.

Rankin said if the developer decides to convert the apartments to condos and there are extraordinary expenses in preparation for making the conversion happen, then those would not be counted as expenses to be deducted from their position under the look back provisions. The developer agreed to this provision.

Allendorf said he is not against the conversion but that the city should not pay those costs. He asked if there is a provision that an affordable apartment be converted to an affordable condo.

Rankin said the agreement does require if the 13 affordable one bedroom apartments are converted that they are sold as affordable condos.

Schneider clarified that the current projections for the TIF include no inflation. Therefore Ruff's statement that the shortened timeframe for the TIF would likely result in fewer dollars for the developer to pay back expenses would mean the developer

wouldn't get everything back. However, there is a greater possibility he would get most of his income back.

Ruff confirmed that it's unlikely no inflation would occur on values over a period of time but with declining tax rates there isn't a significant increase in tax increment. He said it has been his firm's basic underwriting criteria not to build inflation into projections. If there are steady tax rates and increasing value the developer may see the increases. Ruff said that it's important to keep in mind that phase three is predicated on a certain amount of condos being sold at a certain level and if the market doesn't come back, the average value may have to be decreased and may require starting at a lower base. That's part of the uncertainty involved.

Gunyou added that inflation was a significant point of contention during the negotiations, with the developer questioning whether the city was being too conservative. Staff decided to take the most conservative position.

Wagner asked for an update on business rents and transfers from the old location to the new location that were discussed at the EDA meeting.

Rankin said that the developer provided information indicating the rent for tenants relocated from the Glenhaven Shopping Center to the new retail space would average \$18 per square foot. The rent at the current location is around \$16 per square foot.

Wagner asked if there is a condition of approval specifying the order that the sites must be worked on.

Rankin said there is not such a requirement. As a matter of practicality, with the way the developers have lined up the financing, staff is confident that the Exchange Building will be well under way prior to the June 30 deadline.

Wagner asked Ruff to talk more about the city's risk if phase three does not go forward and what the incentive is for the developer to move ahead with that phase. He said he was concerned about the back loading of a lot of the affordable housing to phase three.

Ruff responded in the original agreement it was considered that the demolition of the retail building was an important step because the city wanted to see the whole development and not just one or two buildings. No tax increment assistance will be paid until the retail building is demolished. The developer will have significant front

end costs, approximately \$1.8 million, on phases one and two that will not be reimbursed until the retail building is demolished. If the demolition occurs and the developer qualifies for the TIF assistance for phases one and two and decides not to go ahead with phase three with the \$4.2 million costs and land valued at \$3 million it would leave a shortfall of \$1.2 million. The developer would not qualify for reimbursement of any overhead costs and profit on the land development of around \$750,000.

Wagner noted that if the developer were to default, the city could buy back the land under certain conditions.

Gunyou said the city is being made whole with what's going ahead initially. The developer is the one primarily at risk and therefore has a very strong incentive to complete the third phase because that is where he is made whole. The city's risk is not on the public improvements but on the Alano relocation. It is not a risk to taxpayers, because it was paid for out of the city's special development account. That account would be reimbursed by the TIF, and the city is counting on the fact that the projections are conservative to make sure that happens.

Allendorf asked Wischnack for clarification on the height and mass difference between what was being proposed with a turret and what is now being proposed.

Wischnack said the turret's height was proposed to be between 86 to 94 feet, equating to about a quarter of the building being consumed by that height. The new building's height will range from 66.8 to 69.5 feet depending on the topography. The roofline height changes approximately seven feet.

The applicant, Tom Wartman of 14400 Excelsior Boulevard, said it had been his vision for two years to have a revitalized Glen Lake area. He thought he had a well designed plan a year ago but the market place changed so fast that the 32 condo unit plan could not go forward. He emphasized that the quality of the construction was being retained in the switch from a condo building to a class A apartment building. Wartman said the building will be both aesthetically and artistically pleasing to the community. The additional units were needed to make the project financially feasible.

Callison said there had been extensive public input on the issue. The Planning Commission hearing took several hours of public testimony and the EDA held two meetings on the issue. Callison

said there had been many emails and all the council had heard from people. She said the input was very helpful and noted that the law requires the council to make decisions based upon the impacts of the project in accordance with city ordinances.

Cal Sathre, 14601 Atrium Way, said he has lived in Golden Valley and Eden Prairie for around 40 years. He moved to the Glen Lake area 11 years ago and is concerned about the appearance of the area. If the development doesn't go through, existing businesses will close and no one wants that to happen. The overall scope of the development needs to be kept in mind. He said the council's decision should be made on sensible business reasons to approve or disapprove the proposal and urged people not to allow petty personal feelings to stand in the way of a progressive development. Being 89 years old he said he hopes to see the project finished.

Ivan Fox, 6008 Pinewood Lane, said reality was the elephant in the room that was being ignored and that the reason everyone was present is the project is falling apart. His experience as a financial software developer has given him knowledge of warning signs that doom projects. He said this project has two signs that guarantee failure. The first sign is major scope changes in the middle of the project. The condo market is oversaturated and thus the scope change allowing the building of apartments and the loss of affordable units. By changing the scope the developer is admitting the project has become risky.

The second sign is malfeasance by the developer. Wartman should have foreseen the downturn in the condo market. He has destroyed fragile shoreline environment in violation of the agreement. He also violated the agreement by tearing down site B buildings before relocating the Gold Nugget restaurant and Alano. Fox said Wartman failed to pay the city \$665,000 for the eminent domain take and relocation of Alano. The eminent domain process will cost another \$450,000 or more leaving the city responsible for over \$1.1 million not counting the traffic light and other improvements. The original December 31 start date for construction has not been met. Instead of relocating the Gold Nugget, Wartman purchased the restaurant and led the council and community to believe it would be relocated in early 2008. Fox said the Gold Nugget will not reopen until 2009 or 2010. He said the city council has bent over backwards for the developer. The council broke several of its own rules including setback zoning and height restriction codes. The council was also breaking another rule and guideline by allowing TIF use for the purpose of building affordable housing by accepting a lower affordable housing standard.

Callison asked staff to clarify some misstatements that were made. She said she didn't believe that buildings were torn down before the permits were issued. Rankin confirmed that the demolition did not occur before the permits were issued.

Callison then asked if there were two eminent domain proceedings or one, and if Wartman had failed to pay for the proceedings. There was one proceeding and Peterson said that it was fully paid for by the developer. Peterson said the issue was whether a guarantee had been received, and confirmed that it had been received.

Callison said she understood the trigger of the relocation of the Gold Nugget wasn't based on the construction of site A but tearing down the existing center. She asked Rankin to clarify issues about the relocation. Rankin said the agreement calls for the Gold Nugget to be reestablished within six months of the demolition of the north end of the shopping center. He said it is a great advantage to the developer to have the retailers relocated and the demolition completed as soon as possible. The developer approached staff about relocating the Gold Nugget in other locations in the vicinity but parking requirements made those locations not workable.

Callison asked Wischnack to review the setbacks. Wischnack said site B had been previously approved for setbacks of nine and 20 feet. That has now been revised to 15 and 20 feet so the building setback variances are less than before. The parking lot setbacks originally were approved between two and four feet, and now it is zero on the northwest and south and two feet on the east. The floor area ratio request is for 111 percent and the hard cover surface is being requested at 87 percent – a difference of two percent.

Jane Guyn, 4838 Woodridge Court, said she and her husband are landlords that have seen a tremendous interest in their rental property and haven't had any times of vacancy. She spoke in support of the project saying it is consistent with the Sierra Club's anti-sprawl initiative to impact global warming and thus it was an important first step in reducing carbon emissions in the city. She said it was equally important for the city to create an environment that supports the creation and success of small businesses.

Chris Pears, 15230 Highland Bluff, said it was critically important to have an area to bring his family to that has a small village type of environment. He said that having worked in the investment world for ten years where markets change, he knows it is important to be

flexible and responsive to changes in the market. This is an opportunity to create something special.

Maurice Ansolabehere, 14901 Glendale Street, asked if the city requires a range between 10 to 20 percent for affordable housing.

Callison said this project is at 17 percent and it is a self imposed requirement. The city doesn't have a strict policy but negotiates a number for each project.

Gunyou confirmed that there is no formal requirement but typically projects fall within the 10 to 20 percent range depending on other aspects of the project.

Wagner said the EDA has its own policy specifically when TIF is involved and the band is between 10 and 20 percent.

Thomas agreed and said there is no requirement but that two years ago the EDA had a lengthy discussion on the matter. He said the EDA came up with its policy of setting a 10 to 20 percent goal to strive for with the upper percentage if TIF is involved and the 10 percent if no TIF is involved.

Mark Mathison, 14017 Brandbury Walk, urged the council to go forward and said there were no substantial reasons to resist the necessary approvals.

Grace Sheely, 14325 Grenier Road, asked the council to step back to when the project was originally approved. She said the council based its decisions on the affordable housing component at that time. Justifications on all the other parts of the project were made because of the affordable housing piece. She said that a lot of the affordable housing has been lost. She questioned what happens if a conversion from apartments to condos occurs. She said that her discussions with people in the real estate market indicate that the condo market will not come back until 2011 and was concerned that the mid-range units would never be built. She questioned why the TIF discussion ends with the demolition and not the building of site A. She raised concerns about the floor area ratio and that the building will be too big for the lot. Sheely said she is concerned there will be a pond with a fountain on site C and no language has been included to prevent that.

Julie Eddington, an attorney with Kennedy and Graven, said that if the apartments are converted to condos the redeveloper will execute an affordable for sale housing agreement similar to the

agreement that would be in place for site A. The requirements would last for 30 years and the requirement would likely be incorporated into the agreement that goes with site A so it would last as long as those restrictions.

Rankin responded to the question on the deadline for the construction of site A. Rankin said the issue was discussed at great length in the negotiation of the agreement and it was decided it was not appropriate to put in a specific deadline at that point. He said there is great incentive in the way the agreement is structured for demolition to happen as soon as possible and for work to proceed on developing site A.

Peterson responded to the question of who is at risk for the site C property. She said the developer has already reimbursed the city for the amount deposited in court. The actual award is guaranteed in a security agreement that the city has with the bank that has provided financing for the Exchange property.

Carol Grams, 13901 Kinsel Road, introduced herself as Councilmember Ellingson's wife. She said her parents moved to the city in 1953 because it was a garden and that a lot of people live in Minnetonka due to its green qualities and lower density. She is concerned about the future of Glen Lake and further development. She said that site C should have been a city park and Glen Lake is the clearest lake in Hennepin County. She feels the only recourse is to reach out and find people to run for city council on a slow, responsible growth platform with authentic citizen participation.

Jon Buggy, 14508 Woodhill Circle, said as a 14 year resident and an architect he supports the proposal for four primary reasons. 1) The land use, density, and proposed buildings are a compliment and enhancement to the neighborhood; 2) The development will provide much needed economic investment in a neighborhood that badly needs it with physical and social improvements as well; 3) The pedestrian connections are currently void and the project makes them better; 4) Although change is hard, neighborhood vitality will be improved by attracting new businesses.

Paul Ansolabehere, 4475 Gaywood Drive, showed pictures of vacant buildings in Minnetonka. He cited the city of Cincinnati, American Prosecutors and FEMA studies on vacant buildings that showed there is more crime associated with vacant buildings. The studies showed there is three times more likelihood of a fire call and 10 times greater chance of a police call to vacant building sites.

There are four to five times the prosecutions of youth crimes committed on vacant building sites. Ansolabehere said that it is ironic that other cities are passing ordinances banning trans fat and that Minnetonka is assisting the relocation of a hamburger restaurant. He said that once the decision is made the community will have to heal and that in five years people will look at it as an awesome place to live and visit

Sathre asked why there has been such importance placed on relocating the Gold Nugget.

Callison thanked all those who spoke and all those who have provided input in the process.

Schneider said in making his decision, he asked himself and his wife if the building being proposed fit the neighborhood better than the previous building proposal. Both agreed that the new proposal fits the area better and will be more of an asset. He said the extra size of the building did not bother him because of this reason.

Schneider said he still isn't entirely pleased with the affordable housing number but said he was taken aback by the resident who maintained he only approved the original proposal for the affordable housing. Schneider said he approved the proposal because of the importance of redevelopment and revitalization of the Glen Lake area. He called the new proposal a good compromise and thinks the housing market will turn around and the project will work.

Allendorf agreed with Schneider that the project was about more than affordable housing. He stated that of the variances being asked for, four of them are similar to the original proposal. There are two additional variance requests. One is the lot area coverage. The other bigger one is in the floor area ratio. He asked what the two were meant to protect.

Wischnack said floor area ratio and lot coverage protect a couple of different things. Storm water is one issue with lot coverage. She said staff felt that lot coverage is addressed by the improvements for storm water treatment in the area. She said floor area ratio is meant to protect the neighborhood character. The analysis compared the size of the building to other areas in the city and other projects, and concluded that the proposal is in line with those other projects.

Allendorf said he asked himself whether he would have voted for the project that was previously before the council if it was the

project now being proposed. He said since the use is still multi-family and it wasn't up to him to judge if an apartment building is more appropriate than a condo building, he would have voted for it.

Allendorf said in reviewing his notes from a year ago he couldn't recall any resident objecting to the mass of site B. All the conversation dealt with the mass of site C and how it should have been scaled back. The council members were the only ones who addressed the look of site B by questioning the height of the turret. They decided it wasn't up to them to critique the architect. Looking at the floor area ratio of the new proposal, Allendorf said it was more in character with the neighborhood and so he would have voted for it originally.

Allendorf said the people who didn't like the Glen Lake project then are not going to like the Glen Lake project now because they don't want the area to change and develop.

Wiersum said that he asked himself two rhetorical questions in order to come to his decision. What really has changed? And why did the council approve the project a year ago? He said the tough decisions on the project have already been made. It was challenging and difficult to choose to use eminent domain but the decision was made for the right reasons. The decisions were made on the setbacks with the feeling that any one of the buildings individually may not have been approved with the setbacks, but the package as a whole provided an opportunity to revitalize an important part of the city.

Wiersum said that hasn't changed. What has changed is the condo market. And although the market for entry level housing has decreased, the demand for apartments has improved because people need places to live. He said in business you have to be adaptable and flexible to change. The project was in the best interest of Minnetonka residents and that tough decisions were made in good faith.

Wiersum acknowledged everything has not gone perfectly on the project. He said he regrets the tree cutting, but the objective of the project remains solid. He said it is fortunate that the development team includes someone who knows how to run apartments.

Wagner said looking back to how the council got to this point he recalled a study session two years ago that examined what could be done since the grocery store had closed. At the time it wasn't about affordable housing, it was looking at how to instill the long

term viability and vibrancy of Glen Lake. The council looked at providing enough residents to support businesses in the area and that was the basis for the approval a year ago. Affordable housing was a critical component, as well as moving the businesses on site A, and keeping the vitality of the area.

Wagner said he looked at his likes and dislikes of the project and was happy that there was a plan B that includes a good apartment building with over 20 percent affordable units. He said resident concerns about starting site B before site C were addressed as were the look back provisions related to conversion and also the capital costs. The business front validation was also addressed. Wagner said he did have issues with sunk costs and building something that someone might not want and with the back loading of the affordable housing. If site A doesn't go forward the affordable housing is down to the 13 percent range. He is also disappointed that the rental affordability was cut down to 15 years. He said a lot of the resident input reinforced the original project purpose of revitalizing the area. Although affordability and risk remain a concern, the greater benefit of the project outweighs his concerns.

Thomas agreed with Wagner that the council originally concluded something needed to happen in Glen Lake. He said many of the businesses told the council if something was not done they would not make it. The area would become a blighted area and the whole idea was to find some way to revitalize Glen Lake. Revitalizing the shopping center isn't all that will likely be done as further improvements may come down the line.

Thomas said he liked the new design for the Exchange better than the original proposal with the turret. He said the council listened to the concerns of residents about relocating the Gold Nugget and getting it reopened as soon as possible and addressed the concerns as best as they could. The changes put into the plan regarding the look back provisions, the capital costs and expenditures of the conversions if they happen, and the increase in affordable units are all positives. Thomas said the pedestrian plan is also an important piece of the puzzle. Other positives include keeping existing businesses and attracting new ones and keeping the rental rates reasonable.

Ellingson said it was clear everyone who spoke really loves Glen Lake and those who live there appreciate all that is there. The underlying reason people care so much is because of the meaningful social interaction that the neighborhood provides. Residents can go to the grocery store and the Gold Nugget and talk

with people they know. He said he had a couple of objections with the project. One is with the big building on the lake. The lakeshore in the city of Minneapolis is mostly public parks. In the suburbs more of the lakeshore is privately owned and lined with single family houses.

Ellingson said the area was zoned for single family homes and that has been inappropriately changed. It isn't appropriate to have the building on the lakeshore because of the natural beauty of the area. He said he was concerned that all of the buildings are too big. If a building is too big for a lot it can be made smaller but the council decided not to do that and instead decided to grant variances for setbacks and now for floor area ratio. He said it was inconsistent to adopt the McMansion policy for single family homes that says that if you have a normal sized lot there are no restrictions but if a variance is requested, restrictions can be put in place on the size of the house through the floor area ratio. This proposal goes in the opposite direction since the city has a policy that puts a restriction on the floor area ratio but for economic reasons to make the apartment building work a variance is being given.

Ellingson said the existing big buildings in Glen Lake did not require any variances and had some green space around the buildings. He said he appreciated all the hard work to revitalize the area but is worried about whether the building on the lake will be built and that the tax increment is decreasing. He said too much is being sacrificed to make the economics work and that the economics really are not there.

Callison said it has been challenging to look at a piece of the project while keeping the big picture in mind. She agreed with Schneider and Wagner it isn't true that the project had been approved based only on the affordable housing. Such a statement diminishes the project down to one issue and this allows people to pick away at the issue and find a way it won't work.

Callison said the project was approved because it was agreed the area needed revitalization and there were pedestrian and traffic improvements that were important as well. Approval was also predicated on relocation of Alano and the Gold Nugget, which put a huge financial burden on the project. Addressing those concerns made the project much more difficult.

Callison said affordable housing was also considered but was not the sole reason for approval. Concerns about back loading the affordable housing in site A are addressed because the TIF isn't

paid if only the first two projects are completed. She said what the city gets is nearly the same percentage of affordable housing along with some mid-range housing that is also important in the community. Callison also agreed that the new styling of the building is an improvement over the original plans and that it fits the neighborhood better.

Callison said the claim that there wasn't authentic public participation diminishes the statements of all the people who supported the project. She said this was a disservice to the whole process that involved a tremendous amount of public participation and a tremendous commitment from people on all sides of the issue.

She admitted there is still risk with the project. It is a huge undertaking with tight financing and she complimented the developer for taking the risk. The variances are appropriate and are not driven by economics any more than any other project with a budget.

Allendorf moved, Wiersum seconded a motion to:

- 1) Approve the amended project approvals, including adoption of all ordinances and resolutions:
  - a. Adopt Ordinance No. 2007-09 approving the proposed master development plan amendment. This ordinance is based on the following findings:
    - (1) The rezoning would provide additional residential opportunities to support the surrounding commercial area.
    - (2) The residential uses would be consistent with the high density land use to the south.
    - (3) The rezoning would be consistent with the public health, safety, and welfare.
    - (4) The rezoning would be consistent with the proposed guide plan designation;
    - (5) The proposed development would not have an adverse impact on neighborhood traffic or property values.
    - (6) The proposed development is consistent with the purposes of the PUD district, particularly the provision of affordable housing, the more efficient and effective use of land and public facilities through mixing land uses and assembly and development of land in larger parcels, and the high quality of design.

- (7) The three phases of this development are being developed as one integrated project. The proposed variances in the development are justified by the following:
- (a) The unique hardship to these properties is the deteriorated nature of the Glen Lake commercial area.
  - (b) An additional hardship is that the zoning code was developed before the “new urbanism” concept became prominent and, therefore, does not accommodate the reduced setbacks and mixed uses inherent in that planning technique. The Glen Lake area has been identified by the Economic Development Authority as an area where more dense development is appropriate to encourage affordable housing. The planning concept of “new urbanism” is one way to implement more dense development.
  - (c) Neither of these hardships was created by the landowner.
  - (d) The variances would meet the intent of the ordinance and would not alter the essential character of the neighborhood because they allow reasonable development that is creative and attractive and that is similar to other high density developments in the area.
- (8) The variances on Site B are further justified by:
- (a) The east side of the property is adjacent to a single-family home that is guided for future commercial redevelopment and the landscaping on that side will be an improvement over existing conditions.
  - (b) The west side of the property is adjacent to an electrical substation that will suffer little or no impact from the variance.
  - (c) Moving the building to the east helps minimize the detrimental effect that the substation has on the property; and
  - (d) The property is shallow in depth and double-fronted on the north and south by public streets. To avoid commercial parking directly across from the residences on the Stewart Lane side,

the commercial parking was placed on the north side, causing the building to be moved further to the south.

(e) The floor area ratio and lot coverage variances are appropriate for the site in that the site is being developed at a dense, urban development standard, which is not addressed by current zoning standards.

(9) Economic consideration is not the sole basis for the variances. Although the sizes of the buildings are generated by the financial needs of the tax increment district, there are significant public benefits that result from the coordinated development of the three sites, and that serve as justification and trade-offs for the variances. These public benefits are discussed in the staff report. The economic impact on the developer is only one consideration in the analysis.

b. Approve extension of approvals for the following:

(1) Preliminary plat approvals for one year from the date of approval - February 26, 2008.

(2) Site plan approval for Site C until December 31, 2007.

c. Adopt Resolution 2007-037 modifying Resolution No. 2006-006, removing section 4.01, 2, from the conditions as it is not required for the vacation of the right of way:

~~revising the legal description to show the north line of the vacation as the northerly curb line.~~

2) Adopt Resolution No. 2007-038 approving the amended and re-stated Contract for Private Redevelopment.

3) Approved the agreement regarding the relocation of the Gold Nugget Restaurant.

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

## **15. APPOINTMENTS and REAPPOINTMENTS:**

**A. Appointments to the EDA, park board, police advisory committee, and the senior citizen advisory board.**

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

- Bill Yaeger, to the EDA, to serve a six-year term, effective February 26, 2007 and expiring on January 31, 2013.
- Amber Greves, to the park board, to serve a two-year term, effective February 26, 2007 and expiring on January 31, 2009.
- Kyle Gallagher, to the park board, to serve a two-year term, effective February 26, 2007 and expiring on January 31, 2009.
- Darrell Ansel, to the police advisory committee, to serve the remainder of a two-year term, effective February 26, 2007 and expiring on October 1, 2008.
- David Carroll, to the senior citizen advisory board, to serve the remainder of a two year term, effective February 26, 2007 and expiring on May 31, 2007.

All voted "yes." Motion carried.

**B. Resolution appointing commissioners and Technical Advisory Committee members to the Bassett Creek Water Management Commission.**

Callison moved, Wiersum seconded a motion to adopt Resolution No. 2007-039 appointing Kristine Sundberg as commissioner and Tony Wagner as alternate commissioner to the Bassett Creek Water Management Commission to serve a term of office beginning February 1, 2007 and ending on January 31, 2010, and appointing Lee Gustafson as member and Liz Stout as alternate member to the Bassett Creek Technical Advisory Committee. All voted "yes." Motion carried.

**16. ADJOURNMENT.**

Thomas moved, Wiersum seconded a motion to adjourn the meeting 10:23 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk