

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MAY 7, 2007**

1. CALL TO ORDER.

Mayor Callison called the meeting to order at 6:32 p.m.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL.

Councilmembers Bob Ellingson, Tony Wagner, Brad Wiersum, Al Thomas, Dick Allendorf, and Jan Callison were present. Terry Schneider was excused.

4. APPROVAL OF AGENDA.

City Manager John Gunyou noted the addendum to items 10E and 14A.

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

5. APPROVAL OF MINUTES: April 25, 2007 board of review meeting

Wiersum moved, Thomas seconded a motion to approve the minutes of the April 25, 2007 Minnetonka City Council board of review meeting. Ellingson, Wagner, Wiersum, Thomas, and Callison voted "yes." Allendorf abstained. Motion carried.

6. SPECIAL MATTERS:

A. Community survey results.

Gunyou said the city has used Decision Resources for several years. He said it's valuable to conduct the survey every year to be able to see trends. As examples he pointed to the downward trend in road repair in previous surveys and the upward trend in this year's survey as a result of actions taken in the last year or two. Another area is in neighborhood speeding as positive results have been seen as a result of changes the city has made. Gunyou said working with Bill Morris of Decision Resources is also useful because he does surveys for a number of communities around the metro area. This allows for insight on how Minnetonka compares to the other communities.

Morris presented the survey. He said the survey responses were gathered by professional interviewers over the telephone during the first two weeks of March. The typical respondent took 25 minutes to complete the questionnaire. Seven percent of the respondents took over an hour to go over the questions. Morris said the results of the study are projectable to the entire city's adult residents to within plus or minus five percent in 95 out of 100 cases.

Morris said 98 percent of residents rate the quality of life in the city as either excellent or good. One percent was more critical and one percent was unsure. In comparison with other communities it puts Minnetonka on par with Eagan, Eden Prairie, Woodbury, and Shoreview.

Residents were asked what they liked most about Minnetonka. Morris said the one thing that came through in this survey that wasn't present in previous surveys was the generalized category "location" dropped from 31 percent to 17 percent. Morris said residents instead are pointing more to specific things, particularly in the category of natural environment (like the city's rural setting, parks and trails, and the lake) as things most liked about living in Minnetonka. In the past, the natural environment has always been one of the highest characteristics of the city that residents have pointed to; however, this time there was a dramatic increase in the number of residents focusing on the natural environment. Morris said because residents are beginning to focus on specific attributes the data is richer to interpret.

Morris said the survey also asked what residents liked least about living in Minnetonka. He said "nothing" was at the top and constituted the booster core. The booster core moved from 29 percent to 39 percent. He said 39 percent is the highest found anywhere he has surveyed. That percent is six times higher than the metropolitan area's suburban norm. Things people pointed to as liking least were high taxes at 14 percent, which Morris said was moderate in comparison to neighboring communities; too much growth was mentioned by 11 percent; and traffic congestion, a perennial problem, was mentioned by 10 percent. He said in general the major finding was what constitutes the booster core. There was a dramatic increase in people who have lived in the city less than five years saying there was nothing they disliked about the community. Normally in the past this has been equally divided between people who have lived in the city for over 20 years and those who have lived in the city less than five years.

For city services, police protection was rated excellent or good by 93 percent, a seven percent increase from the previous survey (which Morris said was statistically significant). Satisfaction ratings for pavement repair jumped 15 percent; trail maintenance was up five percent; park maintenance was up six percent; and community planning jumped 21 points in the favorable rating. The 79 percent favorable rating is an unusual finding and indicates a real support for what people are seeing. The favorable rating for animal control of 79 percent is among the highest in the metro area; fire protection rose by nine percent to 88 percent; and water and sewer service was up four percent to 93 percent; recreational programs were up six percent to 86 percent favorable; recycling percent was up to 96 percent favorable; senior services was up 7 percent; and snowplowing remained the same at 92 percent favorable. Across the board, Morris said city services either stabilized, remained at a high level, or improved.

In terms of best practices for general city services, Minnetonka now ranks at the top across the metro region.

When residents were asked whether or not they would favor or oppose a property tax increase to maintain city services at the current levels, counter to the trend found across the metro region, there was stabilization with 47 percent saying they favored an increase to maintain services; 40 percent opposed and 13 percent were unsure. Morris said what he has found since last fall's elections in cities where he is re-polling and doing over-time comparisons, there is a general 15 percent drop into a significant minority of people who favor a property tax increase to maintain services. He said the data indicates that Minnetonka residents feel they are getting a good value for the services the city provides.

Residents were asked what they would do with a one percent budget increase. A year ago 46 percent wanted it put into street maintenance while 21 percent wanted it put towards police and fire. Morris said the intensity shown last year in respect to streets is back to the normal level as defined since 2004. In the current survey 35 percent said street maintenance with police at 37 percent.

For the value of city services, 82 percent rated this as either excellent or good. Fifteen percent rated the value more critically. Last year the favorable rating was 70 percent. Morris said this confirms the lack of major hostility to a property tax increase to keep city services at their current levels.

Morris said there were changes from last year when residents were asked whether they would favor or oppose higher density development if the proposed development had clustered buildings and affordable housing. A year ago 44 percent said they would be more likely to support a development that included clustered buildings even though it would be high density. This year 46 percent indicated support. However the intensity has changed. The "much more likely to support" has moved from 16 percent to eight percent. Similarly a year ago 39 percent indicated they would be more likely to support a development that included affordable housing, while this year that number is down to 37 percent. The intensity, however, has decreased from 17 percent to seven percent saying they would much more likely support a development that included affordable housing. Morris said this change comes across in a number of other questions about housing mix and other issues.

When asked if there is an adequate mix of housing for all parts of the life cycle, 71 percent indicated that there is more than enough, a 15 percent increase. Breaking it down demographically, Morris said residents who said they were much less likely to support affordable housing more often said the adequate mix of housing is about right. Residents were asked over the past four surveys whether or not developers should be required to provide a broader housing range. In 2006, 61 percent favored that approach and 28 percent opposed it. Now 54 percent indicate support and 41 percent oppose.

Allendorf asked what the council should get out of the responses to the affordable housing questions. Morris said in part what the responses indicate is that the development of affordable housing is an issue that will require greater communications. Residents are becoming concerned about the issue.

In the area of recreational programs, 33 percent participated this year with respondents overwhelmingly indicating satisfaction with the programs. Morris said the three percent that reported dissatisfaction indicated dissatisfaction with the calls of referees and other idiosyncratic issues.

Residents were asked how much contact they had with city staff and what kind of rating they would give based on what they have heard or seen. In 2006, 68 percent rated city staff as either excellent or good with 13 percent rating it more critically. This year, 74 percent rate city staff as excellent or good and six percent rating it fair or poor. Morris said the shift from negative to positive is

statistically significant. When the numbers were cross tabbed against the respondents indicating first hand contact with city staff during the past year, the favorable rating went from 74 percent up to 91 percent.

Callison asked if it was significant to see a shift from excellent to good in a number of categories. Morris replied that it could be but a four percent shift is statistically insignificant. He said he is finding that suburban residents across the metro region are becoming far more stingy in their grading with excellent ratings going down in most communities. He said that could be attributed to the mood residents are in right now and this will have to be further analyzed over the next 12 months to see if the same pattern occurs.

Morris said that the city has always done well in the area of city hall customer satisfaction ratings. This year a new pattern has been established. Overall, all the areas in the category are above the 91 percent favorable threshold. He said this is seen very rarely and the average in terms of positive responses is now the highest in the metro area. The threshold for what constitutes good solid customer service in the public sector is 80 percent favorable, and the city is well above that number.

The survey indicated that the greatest public safety concern continues to be speeding. Morris said the 47 percent of residents indicating they have no public safety concerns is the highest in the metro area.

An open ended question asking about the primary source for information about the city had 78 percent answering the *Minnetonka Memo* by name. Morris said that result was unique in the metropolitan area. He said some cities approach that number if city mailings and a generic response about a city's newsletter are included. The 78 percent who specifically named the *Minnetonka Memo* indicates the effectiveness, the reach, and impact of the city's newsletter.

The number of cable television subscribers decreased in the past year from 74 percent to 67 percent, with more people going to satellite TV. Twenty-nine percent indicated they viewed city council meetings either frequently or occasionally. In comparison with other cities 29 percent is a good core audience. Morris said it is rare to see that number go above 30 percent.

The survey indicates that 80 percent have access to the internet. Of those who have access, 55 percent have visited the city's web site.

Morris said this is an amazingly high number and both the content and ability to navigate the site had higher evaluations than seen in the past.

When residents were asked what they were most concerned about in terms of redevelopment, Morris said two things came across very clearly: loss of open space and the impact of redevelopment on the natural environment. Residents were asked to rank goals that may be included in the comprehensive plan. Two goals dwarfed the others: protecting and preserving natural resources and public safety. When asked to rate the city's efforts on each of the goals, 50 percent rated public safety a nine or 10 with 39 percent rating natural resources a nine or ten. Morris said these numbers were high in comparison with other cities. He said in general when the numbers are looked at in terms of comprehensive plan development typically the nines and tens together add to between 25 and 30 percent.

Morris said overall the survey shows an excellent evaluation by residents of the community as a whole. Residents feel well connected to the city operation. In addition, core values are coming into play and the city is acquitting itself well on those core values. The evaluations indicate a high favorable rating of the city's job of protecting natural resources. Residents are consistently rating city services as either good or excellent and at the same time, contrary to what is being found across the metro area, residents are willing to invest more tax funds if it is necessary to maintain city services at the current level. Morris said what residents seem to be saying is they want to maintain the excellence and are willing to invest in it but to do so prudently. He said the reservoir of good will is still there and has expanded with almost 50 percent of residents considering themselves to be boosters.

Callison thanked Morris for the report. She said it is always fascinating to hear the data and his conclusions.

Gunyou said that the city is talking to Morris about doing a business survey that would be similar but less extensive to get a better picture of things of interest to the business community.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings. There will be a study session May 14. The next regular council meeting is May 21.

Callison said the city has started its pilot program to recycle organics. She said residents using Randy's Sanitation or Waste Management who wish to participate in the program can contact the haulers to get a bin delivered to recycle for composting all sorts of materials from meat and food scraps to pizza boxes to dryer lint. The program is being funded in part by Hennepin County.

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

No one appeared.

9. BIDS AND PURCHASES:

A. Consideration of bids for the Park Renewal improvements at Wilson Park.

Gunyou gave the staff report. He said staff is not recommending the alternate bid for a picnic shelter because it is over the budgeted amount. Staff does believe that part can be done with city staff at a later date.

Wiersum said the budget for the improvement was \$285,000. The engineer's estimate was \$225,000 for the base bid and \$50,000 for the picnic shelter which totals \$275,000. The base bid came in at \$180,000 and the alternate bid came in at \$40,000 and thus the total bid is less than the engineer's best estimate of the base bid. Given these numbers he asked if the council shouldn't therefore consider doing the entire improvement. Gunyou said there are other things included in the \$285,000 budget, including playground equipment and various site amenities like landscaping and architectural fees. This bid is only one component of the total project cost. Wiersum thanked Gunyou for the information.

Wiersum moved, Allendorf seconded a motion to award bid #2007-001-PW to Quiring Trucking and Excavating, LLC for Park Renewal improvements at Wilson Park with a base bid of \$180,509.35. All voted "yes." Motion carried.

B. Consideration of bids for the 2007 Emergency Vehicle Preemption Project No. 07301.

Gunyou presented the staff report.

Wagner moved, Thomas seconded a motion to award the bid for the 2007 Emergency Vehicle Preemption Project No. 07301 to

Electrical Installation & Maintenance Company in the amount of \$25,245. All voted "yes." Motion carried.

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

A. Extension of the moratorium ordinance regarding electronic signs.

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2007-14 extending the moratorium ordinance regarding electronic signs. All voted "yes." Motion carried.

B. Resolution authorizing grant agreement for the 2008 Safe and Sober campaign.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2007-055 authorizing a grant agreement for the 2008 Safe and Sober campaign. All voted "yes." Motion carried.

C. Ordinance correcting the legal description for a portion of the Glen Lake rezoning.

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2007-15 amending Ordinance No. 2007-09 regarding a legal description. All voted "yes." Motion carried.

D. Ordinance amending city code 830.025 regarding lodging establishments.

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2007-16 amending city code 830.025 regarding lodging establishments. All voted "yes." Motion carried.

E. Resolution adopting a city council policy regarding the use of the civic center amphitheater.

Allendorf moved, Wagner seconded a motion to adopt Resolution 2007-056 adopting a city council policy regarding the use of the civic center amphitheater. All voted "yes." Motion carried.

F. Resolution accepting plans and specifications and authorizing the advertisement for bids for the Cedar Lake Road Sidewalk Project No. 06606.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2007-057 accepting plans and specifications and authorizing

the advertisement for bids for the Cedar Lake Road Sidewalk Project No. 06606. All voted "yes." Motion carried.

G. Resolution approving items pertaining to Old Excelsior Boulevard storm sewer improvements.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2007-058 receiving the feasibility report, ordering the improvements, authorizing preparation of plans and specifications, and authorizing easement acquisition for the Old Excelsior Boulevard Storm Sewer Improvement Project No. 06606. All voted "yes." Motion carried.

H. First amendment to the redevelopment agreement for the Deephaven Cove residential project.

Allendorf moved, Wagner seconded a motion to approve the first amendment to the redevelopment agreement for the Deephaven Cove residential project. All voted "yes." Motion carried.

I. Final approval of the Data 100 3rd Addition (United Health Group) plat at 9701 Data Park Drive for United HealthCare Services, Inc.

Allendorf moved, Wagner seconded a motion to approve the DATA 100 3RD ADDITION final plat that was received on April 11, 2007, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat.
- 2) Additional right-of-way to adequately accommodate a round-about will be required in conjunction with Phase II site plan review. The amount of additional right-of-way shall be as determined by the city engineer. There may be additional variance applications considered during the Phase II site plan review.
- 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.
- 4) All resolutions vacating drainage and utility easements and establishing new easements must be recorded with the plat.

All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance regarding peddlers, solicitors, and handbills.

City Attorney Desyl Peterson presented the staff report. She said changes to the ordinance were being proposed primarily because of complaints and concerns raised by residents and city enforcement staff about people who go door to door soliciting and peddling.

Peterson said the proposed addition dealing with handbills is in two places, one in the peddler amendments and the other in a stand alone ordinance that will be in the general miscellaneous crime provisions of the ordinance code. Over the years there have been requests from council members, staff and citizens that the city prohibit people from putting flyers on windshields of cars, particularly when they are in parking lots as those items blow off and end up littering the city. There is a court decision at the 8th Circuit Court of Appeals that prohibits cities from imposing that type of prohibition. Peterson said the court is concerned due to freedom of speech issues. The court is concerned a city is placing itself in the position of deciding what kind of messages are given to people and thus is prohibiting someone from giving information to a recipient who wants the information.

Peterson said she recently found an Edina ordinance that says vendors cannot distribute handbills without permission of the property owner. This gets to the court's concern that the city can't get in the middle of the person who is giving information and the recipient. The assumption is changed from everybody wants the information unless they put up a sign indicating otherwise to a presumption the property owner doesn't want the information unless the vendor first gets permission from them to deliver the information.

Community Development Director Ron Rankin said he wanted to emphasize Peterson's comments regarding handbills, because the city has had a number of complaints in that area. The complaints are not only about instances where materials are placed on vehicle windshields that end up as blowing litter but also due to an increase in the number of people hanging items on mailboxes, door boxes, or stuffing them in doors. Rankin said most of the complaints come from material advertising a particular product like magazines and cleaning products. Far fewer complaints are about people doing some form of solicitation or promoting a cause. He said there have been instances where somebody is characterized as a trainee who later is encountered by the police department doing sales work

without the city's required registration. It is later discovered they tried to avoid the licensing process because they have something in their criminal background that probably would have disqualified them from getting the registration.

Peterson said the handbill ordinance is intended to get at commercial advertisements and not noncommercial activities such as political advertising or religious information.

Thomas asked for more details on how the proposed ordinance deals with handbills placed on the mail box or in the newspaper delivery tube. He said most people get commercial flyers placed in their newspaper delivery tube for services like tree stump removal or tree trimming. He asked if that would violate the proposed ordinance. Peterson said those items would not be allowed to be placed in the tubes unless it was something the resident wanted, like a newspaper. Thomas asked if that would prohibit the *Sun Sailor* from putting the newspaper in the tube since it is a free paper and people do not subscribe to it. Peterson said she didn't consider the newspaper a commercial advertisement, although it is full of advertisements. Thomas said the ordinance should clearly indicate if the newspaper can be delivered in the current manner and if the city wants to allow flyers in the newspaper tube.

Allendorf asked Rankin if the city receives nuisance complaints from people who receive flyers in their newspaper tube. Rankin said the city does not; mostly the complaints are about flyers hung on mail boxes or other places where they tend to blow or drop off. Allendorf said he finds value in some of the flyers and other residents likely do as well, so he would not support prohibiting that type of handbill from being put in the delivery tubes.

Wiersum asked if the proposed provision prohibiting a person from using a vehicle to conduct regulated activity that is more than a single unit vehicle or with a gross vehicle weight of 12,000 pounds or more would apply to companies that do door-to-door business like Schwanns or Simon Delivers. Peterson said there is an exception for route sales.

Callison questioned the practicality of expecting people to put a placard in their car indicating they wished to have informational flyers placed on their car. Peterson said the reverse of that is equally impractical expecting people who do not wish to have the flyers placed on their cars to put a sign in the car indicating this. Callison asked if the provision prohibiting loud noises like the ringing of bells would that mean that the Good Humor man is done

in Minnetonka. Peterson confirmed that the Good Humor man's bell would indeed not be allowed.

Wagner said he was concerned that the handbill section of the ordinance was a little over regulatory. He agreed with Thomas that some of the informational flyers are useful.

Callison agreed with the concern that the proposal creates too much regulation. She understands staff deals with unhappy people and with the litter issue but she gets people who come to her house and she either uses the information or gets rid of it. She doesn't think we live in such a sanitized environment that the city can't allow any of that type of activity. People have remedies that they can enforce privately. She said she could support some of the proposal, but she had concerns with the provisions attempting to regulate the behavior of people. She was also concerned with the handbill system where people had to post signs allowing delivery.

Thomas agreed with the mayor, especially with the proposed handbill restrictions. He said people should be allowed to put information in the newspaper delivery tubes. He doesn't want to get too overly regulatory with the behavior of people. He said people can make their own decisions on what they get. He questioned how the city would notify residents of the provisions of the ordinance and said it would take people time to learn what is allowed and what is not allowed. He said when people come to the door that they should be allowed to give their pitch and you can always say "no thank you" and shut the door. If the person puts their foot in the door and gets the door closed on them, that is part of the sales process.

Callison said she believes the market regulates itself. If a person is offensive people won't buy from them and then they wouldn't return. She noted it was the first reading of the ordinance and the council hadn't provided Peterson with precise direction on specific provisions that may or may not be acceptable. Callison said she thought provisions 12 through 16 of the proposed ordinance were too precise and unnecessary regulation. Others on the council agreed with the mayor. Peterson said she would make revisions and bring it back to the council at the next meeting.

Allendorf moved, Wiersum seconded a motion to introduce the ordinance. All voted "yes." Motion carried.

13. PUBLIC HEARINGS: None.

14. OTHER BUSINESS:**A. Conditional use permit and site and building plan review for park improvements at 3717 County Road 101 for Bennett Family Park.**

City Planner Julie Wischnack gave the staff report. She highlighted the changes that had occurred since the planning commission review. She said most notably the requested lighting of three of the fields has been dropped. The applicant submitted a letter to amend what was being asked for in the conditional use portion of the request.

Wischnack said there was much discussion and public testimony at the planning commission meeting about noise issues. She said a lot of the noise issues had to do with the lighting of the fields and extension of time that play would occur on the property. There was also a concern about the public address system used at the park. There was a lot of testimony about the P.A. system, including the amount of use and the objectionable nature of what the use was. Staff subsequently learned of another violation following the previous testimony and assurance from Bennett Family Park that P.A. use would be in conformance with the permitted uses. In response to this pattern of violations, staff recently informed Bennett that no P.A. permits would be issued for the next year.

She said the other issue regarding noise is the city regulates noise according to Pollution Control Agency standards. There has not been any indication that the decibel level at this location has been necessary to monitor.

Wischnack said part of the conditional use permit included removal of the easement buyback provision in the 2002 requirement. There was previously a conservation easement provided to the city over the wetland portion of the property. In 2002 there was a buyback provision put in the easement document stipulating Bennett could pay \$50,000 to buy back the easement area. Staff recommended that the buyback provision be removed to assure the neighborhood there wouldn't be any future development of the property in that area. The applicant agreed to the provision being removed.

Allendorf asked what specific violations and incidents in the past led staff to recommend not giving a P.A. permit for one year. Wischnack said there was a lot of public testimony at the planning commission indicating abuse of the P.A. system. The city had not previously received those complaints through normal channels.

There was a lot of documentation at the commission meeting regarding noise violations with the P.A. system. Two weekends ago, the P.A. system was used on a regular basis outside the parameters of the permit issued. Because of the ongoing issues of complaints and the recent violation, staff informed Bennett that no permits would be issued for one year. Allendorf asked whether it was more than the single incident two weeks ago. Wischnack replied yes.

Thomas asked if there had been no project in front of the city what would have happened and what enforcement mechanism exists for P.A. permit violations. Gunyou responded generally a permit to use a P.A. system is for a specific period of time like an hour during opening day. What has been happening at Bennett Park is the P.A. system is used throughout the weekend for various purposes beyond what the permit was issued for. Typically when a complaint is received, it is addressed with the people in charge and that usually results in an improvement. An improvement did not happen in the Bennett Park case. Gunyou said staff felt the ongoing nature of the violations needed a more direct approach. As a result, the city notified Bennett that no P.A. permits will be issued for the next 12 months for any purpose. Also they were notified that any future violations would result in a city court fine.

Thomas asked if it was known why they didn't comply. Gunyou did not know.

Dan Hunt of 18316 Woolman Drive said he served on the Bennett Family Park Board and on the East Tonka Little League Board as a fundraiser. He provided a background of Bennett Family Park.

In 1955 the park began hosting little league games. For over 50 years the park has assisted the community needs for baseball and softball. In 2006 the Bennett Family Park began providing services for East Tonka Little League. In 2006 there were 778 players and currently there are about 802. Participation in the Minnetonka Girls Softball Association and Tonka Babe Ruth are also growing. Hunt said all told the park services over 1,600 players from Minnetonka and surrounding areas.

Hunt said he was a coach and has two boys playing baseball. He said he has lived in the city for 13 years and has met all his friends at the park. All the money to run, maintain, and improve the park is done internally through the player fees and special events like a Twins Night where 5,000 people will be taken to the Twins/Nationals game. There also is a golf event.

Hunt said there are over 300 parents who volunteer the majority of their free time to help coach kids, keep the park safe and clean, participate on the boards and work in the concession stands. He said the park is a huge no-cost asset to the city. The new Miracle Field has personal meaning to Hunt, who said he would love to have his two kids help other kids who may be dependent on others to help swing a bat, or run to a base or learn the game of baseball.

Hunt said he understood the noise issue and in 2008 the Minnetonka Girls Softball League is moving to the high school. He said those games are relatively loud so there will be a reduction in noise. A neighborhood liaison, Chris Gabler has been named to help communicate with the neighbors. Hunt said \$1 million will be raised for the project from a variety of sources, including money and in-kind services from the Miracle League, Harmon Killebrew, Subway and other corporate sponsors, BFP board members, existing tenant leagues, and constituents. Minnetonka and other small neighboring cities will be asked to contribute as well. He asked for CUP approval and appealed the recommendation to restrict the use of the P.A. system for a year because opening day is critical to promote the park and all the events.

Gunyou noted that noise issues are administrative matters that typically do not go to the council. He understands that the 2008 opening day ceremonies will occur one week after the 12 month period expires, so it should not be affected. Gunyou clarified the comment that communities will be contributing toward the Miracle Field. The city of Minnetonka is not providing any direct funding to the park for any of the improvements. The city has included \$95,000 in the CIP budget for Minnetonka High School to help support the planned girl's softball expansion.

Thomas asked when Bennett Family Park was notified of the misuse of the P.A. system, why the misuse wasn't stopped. The president of Bennett Family Park, Robert Lietzke of 17714 Susan Drive said on opening day weekend the sound system was used outside the times in the permit for opening day. He said it was an egregious error that caused much furor with the surrounding neighbors and resulted in the city receiving many letters and complaints over the issue. He apologized on behalf of Bennett Family Park. He said he didn't blame city staff for their actions because on the surface it seems to be the logical answer. He asked the city to look below the surface because the sound system was used to promote the sale of products to benefit the youth. He asked not to be punished for caring too deeply, for trying to make a

difference, and for trying to make the community a better place for the kids. He appealed to the council to find a different solution.

Callison said the conditions of the proposal had changed substantially since the lengthy planning commission public hearing. She asked testifiers to focus on what was before the council.

Carl Adamek of 3640 Larchwood Circle thanked Bennett Family Park and its directors for the apology. He clarified comments on the use of the P.A. system, pointing out that on three occasions in the past 10 months, representatives of the board of directors said the appropriate use for the P.A. system was for emergency purposes only.

John Powers of 3611 Rainbow Drive said he was in favor of the Miracle Field and its goals. He was concerned that Bennett Family Park would be able to provide a workable field because the land is problematic and will require ongoing maintenance of the field to make sure people with disabilities have an adequate playing surface. Living close to the park, Powers said the existing noise is at a level that he cannot be inside his home without being part of Bennett Family Park at all times that activities are going on. He expressed concern about the expansion of field number five. He questioned if noise issues would be mitigated with the departure of girls softball because a lot of the noise comes from the parents cheering on their children. He recognized nothing could be done about the cheering but said something should be done to dampen the sound as it comes out of the bowl. He thanked the planning commission, city staff, and the city council for listening to and the courtesy shown to the neighbors.

Bob Jasper of 125 Mound Avenue in Tonka Bay, who sits on the Bennett Family Park board of directors, said he wanted to clarify that no one is moving the girls softball from Bennett Family Park because of noise issues. He said Bennett Family Park supported the move to the high school so that the girl's league could have its own home. Bennett Family Park gave a large portion of the proceeds received from the Hwy. 101 expansion project to the girl's project. Jasper said there were no complaints of the noise until the fall when the plans came forward. There were two neighborhood meetings and Jasper said he committed that the P.A. system would not be misused. He said there was a misunderstanding and it was not made clear to a volunteer how the system should be used. Jasper said there were no complaints until the past weekend when the formal complaints came forward, which Jasper said were very valid.

Robert Lear of 3632 Larchwood Circle encouraged the council to take the planning commission's recommendations. He complimented the professionalism of those involved in the neighborhood meetings and how nice it was to feel like he had been heard. He also thanked Bennett Family Park for hearing the neighbors' concerns.

Wiersum said he supports the proposal and most people like Bennett Family Park. The issue came down to what was in the best interests to all involved. He said a Miracle Field in Minnetonka was a win. He said he was biased because he has two special needs children who may be too developmentally disabled to benefit from the field, but it was something close to his heart. A lot of issues - the lights, the potential expansion into the easement, the issue of noise - perhaps were not well communicated prior to the application occurring. He said he could see from Bennett Family Park's perspective that because there were no complaints there was not a problem. But the process enabled and empowered people to speak up and communicate. With the appointment of a neighborhood liaison to the Bennett board, a platform has been created for better communication and better relations across the board. He said Bennett Family Park is a true asset to the community and at the same time it is positioned and surrounded by a neighborhood. Wiersum said the proposal was a win for Bennett Family Park, a win for the neighbors, and a win for Minnetonka. With the relatively short season and with the move of the girl's softball league to the high school, there will be a reduction in the intensity of use of the park. In net, he said the number of decibels will be reduced. He thanked all involved for the give and take and for all that was learned.

Thomas agreed the Miracle Field is a great asset to the city. He said over his time on the council the city has put money into Bennett Family Park so there is an obligation for support. He would not have supported the proposal had the lighting been included. He also supported the deletion of the buyback and the administrative handling of the noise violations. Regardless if the P.A. system was used with good intentions, when a violation and notification occurs, the violation must cease and not be ongoing.

Allendorf said with the removal of the lights and the buyback provision, what was really being looked at was the addition to a structure and grading for two fields. He supports those provisions.

Callison said it was a much better atmosphere than was at the planning commission hearing. It was helpful to focus on the Miracle Field that is a real asset to the community. In regard to the noise issue, she said what was important was the history of the use of the P.A. system and the applications made and how it has been used during the course of the season. She said there has been a clear message delivered. Callison thanked the volunteers at Bennett and said the field is a labor of love for those who work there and they have put in a lot of time and effort. She doesn't discount the neighbor's concerns but she appreciates the effort that goes into Bennett Park to keep a private ball field operating in the city.

Wagner moved, Wiersum seconded a motion to:

1) Adopt Resolution No. 2007-059 approving a conditional use permit for recreational use of property at 3717 County Road 101. Approval is based on the finding that the proposal meets the required conditional use permit standards.

Approval is based on the following findings:

- a. The proposed use is consistent with existing and past use of the property and is not considered out of character for the area.
- b. Grading and tree removal impacts are mitigated by conditions placed on this permit.
- c. The property consists of approximately 25 acres of which 1/3 is wetland and open space area, which maintains appropriate open space for this use.

Approval is subject to the following conditions:

- a. All events at the park must adhere to the permitting process for use of the public address system. However, for a period of one year from the date of this resolution, no public address permits will be issued to this property.
- b. The city may reconsider the conditional use permit for failure to follow the conditions placed on this permit.
- c. A Bennett Family Park Board shall provide a yearly, designated neighborhood representative to act as the neighborhood liaison. The liaison will be the point of contact for the city to solve complaints or issues raised by the neighborhood including, but not limited to: parking, trespassing, noise, etc.
- d. The conservation easement document provided to the city in 2002 must be revised to remove the "buy back" provision to ensure appropriate open space is maintained to balance the site activity.

- 2) Approve the site and building plan for property located at 3717 County Road 101. Approval is based on the following conditions:
- a. Prior to approval of a grading permit and building permit the following would need to be completed:
- (1) Record this resolution with the county before the city issues a building permit.
 - (2) All plans must be approved by the city engineer, specifically, hydrology calculations and improvements to mitigate new impervious surfaces.
 - (3) The applicant must receive written permission from property owners to the north if grading will occur on their property. If no written permission is provided, the grading plan would need to be revised.
 - (4) Construction must be in substantial compliance with the following plans:
 - Grading Plan – date stamped December 22, 2006
 - Building Plans – date stamped December 22, 2006
 - Buffering/Landscape plan, date stamped February 12, 2007.
 - (5) On all natural areas that exist on the property, vegetation will remain, excluding replanting areas identified northwest of field #5 and southwest of field #3.
 - (6) There would be allowance for replanting of native vegetation in the tennis court area and removal of buckthorn or other invasive species as part of a restoration plan as approved by staff.
 - (7) The applicant must agree to the above conditions in writing.
 - (8) Any additional permitting required from other agencies is the responsibility of the property owner.

All voted “yes.” Motion carried.

Callison called a recess at 8:25.

- B. Conditional use permit to move over 1,000 cubic yards of earth at 18511 and 18517 Ridgewood Road for Rod Peterson.**

Callison called the meeting back to order at 8:35.

Wischnack presented the staff report.

Wagner asked Wischnack to comment on the amount of the escrow and if she was confident given the history of the project if \$10,000 would suffice. Wischnack said that whenever there is a project like this staff tries to estimate from past knowledge or past projects how much it would cost the city to come in and do the project. In this case she feels \$10,000 would be adequate to deal with remediation in an emergency situation. It would not be enough to restore or build retaining walls or any of the kind of things that would be done during the building construction process.

Wiersum asked how much a loaded dump truck of dirt weighs because the amount of dirt being moved is a large amount. He said it was fortunate Ridgewood Road needs to be reconstructed. He asked how staff would feel if the road was brand new and 430 truck loads of dirt with trucks that weigh 40,000 to 60,000 pounds were going over the road. City Engineer Lee Gustafson responded he was very happy knowing that Ridgewood Road will be reconstructed next year. If the trucks were going down a brand new street he would have a lot more concern and conditions would have to be imposed to address weather conditions, environmental conditions and maybe even the subsurface of the soil to estimate how much give is in the pavement. It is even possible a restriction would have to be put on during certain times of the year outside of spring to make sure the soil is really dry. Gustafson pointed out the cul-de-sac is brand new and the planning staff checked it out today. With a letter of credit on hand, if the cul-de-sac is destroyed the city will require the applicant to rebuild it.

Thomas noted the staff report indicated numerous violations on the site including grading work done without an approved permit and a lack of erosion control. He asked if those issues have been resolved and if the erosion control has been dealt with. Wischnack said staff feels the violations on site have been addressed. The citation was issued to the property, which is not a common thing for the city to do for a construction site. Stop orders were issued when compliance was not being met by the contractor. Gunyou noted that there are new players working on the site, different from the previous ones that caused the majority of the problems.

Thomas said the issue has caused a disruption in the neighborhood, it has seemed to go on and on, and the neighbors want the issue resolved one way or another. He asked if staff was

confident the drainage issue of the new dirt coming in would not negatively affect the other houses in the area and the wetlands on the property.

Jo Colleran, the city's natural resources manager, said the city engineer has reviewed the plan and found it to be acceptable with regards to the drainage pattern as it would flow around the new proposed homes and the existing homes, as well as the wetland. The proposed retaining wall is the only solution anyone has been able to come up with to stabilize the slope. Currently there is a trench at the bottom of the hill, heavy duty silt fence and no green grass growing on the 24 foot slope. A good rain would blow it out. The solution being proposed is to bring in the earth to build the retaining wall.

Thomas said he was concerned with the heavy evening rain, and he asked how much of the hill isn't there anymore and has washed its way down. Colleran said those were valid concerns and it has washed out and impacted the wetland. The contractors were required to hand dig the sediment out of the area. The wetland buffer seed mix is starting to green up now and the hope is the sooner the slope is stabilized, the sooner the ongoing problems will be resolved. Thomas noted with the golf course development across the road and the Highway 101 construction, the area has taken a beating construction-wise.

Allendorf indicated when he was out at the site he saw straw in a round formation just before the drop in the hill. Colleran said it was a biolog similar to a coconut weave that can be staked into the slope to help slow the velocity of the water coming down the slope so there is not a cascading effect.

Ellingson asked knowing all the problems that have occurred on the site if there was something the city should have done differently a couple of years ago that would have prevented the problems. Wischnack responded there were a number of things done to improve the situation where there are lots with steep slopes. She pointed to the Wilson Street development that dealt with the issue of slope control and the installation of retaining walls at a certain point in the process. For that project the city required the retaining walls be installed up front and the developer was on notice that was part of the development process. She said when working with the developer that is an assumed item; however, staff has learned it can't assume that the developer will correct the drainage or erosion control in an appropriate manner to keep it stabilized. Another

change is the requirement of an escrow up-front for grading. That is a change in policy.

Ellingson asked if staff looked into things like only allowing two houses instead of three or changing the slope ordinance to decrease the percentage to not allow buildings when there is a slope like this one.

Wischnack said the subdivision capability of property is always on the fence in terms of what is buildable and what is not. She agreed that 24 percent is not an unbuildable slope. There are always improvements that can be made to the ordinance but 30 percent and beyond is considered unbuildable. Wischnack indicated there are more stipulations that could be placed into the ordinance to deal with slopes between a certain percentage or have more conservation easement requirements, and there is always room for improvement in terms of ordinance standards in which steep slope developments are reviewed.

Ellingson pointed out in the final grading plan, the retaining wall will be four to 13 feet tall. He asked if there were safety issues with a 13 foot wall and if there were examples in the city with a similar-sized wall for a single family house.

Colleran displayed a photo of Deephaven Cove, a townhome development across the street from Bennett Family Park. The photograph showed a 10 to twelve foot tall wall. Wischnack added fencing may be required under the uniform building code, but she wasn't sure if it would be required for this single family lot application. She said it wouldn't be uncommon to see a fence or safety net but she wasn't sure if it would be required under the building code.

Robert Beam of 4300 Forest Road in St. Bonifacius, the new project engineer, said he was present to answer any questions.

Wagner said considering the community survey results showing open space and natural resources concerns as the top two resident concerns, it is a good idea as the city goes through the comprehensive plan process that the issue involving the 20-30 foot grade slopes be looked at to see what other types of tools might be utilized.

Thomas agreed with Wagner that this was the time to look at and perhaps fine tune the slope ordinance.

Allendorf said this issue was more than the degree of the slope. The issue also involved contractor implementation of a plan. He said he didn't want to overreact on the one issue.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2007-060 approving a conditional use permit to move over 1,000 cubic yards of earth at 18511 and 18517 Ridgewood Road. This resolution is based on the following findings:

- 1) The proposal would meet the general conditional use permit standards as outlined in city code.
- 2) The proposal would meet minimum engineering requirements.
- 3) The conditional use permit, with stringent conditions, would allow the development to be completed more quickly than it would be otherwise.
- 4) The conditional use permit would give the city the opportunity to place greater controls over the work done on the properties.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, complete the following:
 - a. Submit a tree preservation plan for each property.
 - b. Submit a specific construction management plan for each property. This plan must outline erosion control measures, a street sweeping plan, construction parking, haul routes, and haul hours. Haul hours are limited to weekdays only.
 - c. Submit an erosion control escrow in the amount of \$10,000.
 - d. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:
 - (1) the property will be brought into compliance within 48 hours of notification of a violation;
 - and
 - (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
 - e. Submit an additional \$5,000 escrow to compensate for any road damage as a result of construction.
 - f. All property corner stakes must be reset for staff inspection.
 - g. Submit revised plans for the retaining wall, soils data, and any other information as required by the city's building official.

- h. Record this resolution with the county and return a recorded copy of this resolution to the city.
- 2) Prior to final inspection of either house:
 - a. Submit an engineering report associated with the retaining walls, as required by the city's building official.
 - b. Submit either one of the following:
 - (1) As-built plans that include the foundation, retaining walls, two-foot contours and any other item as required by the city engineer; or
 - (2) Cash escrow in an amount to be determined by the city engineer and natural resources staff. The escrow dollars will not be released until all required as-builts have been submitted.
- 3) Construction of retaining walls must commence before any fill is brought onto the site and prior to footing inspections for either house.
 - a. The retaining walls must meet all building code requirements.
 - b. Construction of the retaining wall must meet all other requirements of the city's building official and building plans reviewer. These may include, but are not limited to:
 - (1) An engineer on site during construction of the retaining walls.
 - (2) As required by the city's building plans reviewer, an engineering report must be submitted following installation of the walls.
- 4) As defined by natural resources staff, groups of trees adjacent to the Ridgewood Road must be protected during construction.
- 5) Additional trees, shrubbery, and/or other plantings must be installed adjacent to the retaining walls to soften the appearance of the walls. The number, location, and species of trees, shrubbery, and/or other plantings will be determined by natural resources staff.
- 6) No tree removal is permitted within the wetland or the 25-foot wetland buffer.
- 7) A swale must be graded between the houses to direct overflow from the street.
- 8) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 9) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 10) The applicant must agree to the above conditions in writing.

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

C. Ordinance amending the zoning code regarding nonconforming uses.

Peterson presented the staff report. She said the Minnesota Legislature changed the laws governing nonconforming uses. The law now says the city must allow nonconforming uses to be replaced and improved. Previously it was understood that the philosophy of nonconforming uses was that they should eventually go away and not be replaced if they had been destroyed by more than 50 percent of their value. The proposed amendment attempts to define replacement and improvement. It also attempts to define expansion, which the state law says does not have to be allowed. Peterson proposed a change to the drafted amendment deleting the word "building" in part "d" of the definition of expansion. The city does have nonconforming uses that are not buildings.

Peterson said she went to case law to come up with the definitions of "improvement" and "expansion." For the definition of "replacement" the staff is recommending that it be fairly restrictive. "Replacement" is defined basically as replacing exactly what was there. This was done to include all construction except exact duplicates into a review process. Peterson said this means that anything that is being replaced can be replaced with just a building permit if it is exactly the same as what was there before. If an improvement is being proposed, then there will be a review approval.

Schneider arrived at 9:17 p.m.

Peterson noted the proposed amendment also proposes to define the difference between nonconforming land uses and nonconforming land developments, which are usually dimensional kinds of things like sizes of lots, setbacks, etc. Land uses and land developments would be treated differently because the land uses are no longer allowed. Two have been identified in the city; one is the old Chuckwagon Catering, and the other is billboards. Those would be treated more restrictively than nonconforming land developments. Either could be replaced with exactly what is currently there but if there is an improvement proposed for a nonconforming land use, that would need to go through a conditional use permit process. This would allow the opportunity to add conditions to try and minimize the impact.

Peterson said the state law provides that cities may allow expansions of nonconforming uses. The amendment includes a provision that the only way there can be an expansion of a nonconforming land use would be by a variance granted by the city council, not a variance granted by the planning commission. Peterson said this is a higher level of scrutiny that requires the applicant to meet the standard that it is an undue hardship in order to get a variance.

Peterson noted for nonconforming land developments there would be a lower level of scrutiny. For those to have an improvement, it would require a site plan approval either through the planning director or planning commission. Likewise, an expansion would require a variance approved by the planning commission.

Allendorf asked Peterson to apply the proposed amendment to a real life example - a billboard company wants to change two billboards, one on 394 and the other on 494. Peterson said if the company wanted to come in and raise the height, as an example, that would be considered an expansion under the definition. The council could say no and the company would have to prove an undue hardship justifying they have the right to expand. The council would have a great deal of discretion to say no because variances are asking to do something the law prohibits.

Allendorf asked what would happen if the company put electronics on the billboard. Peterson said there would be debate over whether that is an improvement or an expansion. She said she has considered arguments on both sides and can not say based on the court decisions today how that would be determined. Allendorf said he would like the ordinance to have enough teeth so the city could prevent having billboards changed to electronic. He asked if there was any language that could get at that issue. Peterson said the difficulty is trying to follow what the courts have already said and she isn't certain she could come up with a definition that would give the council any greater level of specificity.

Ellingson asked Peterson if the billboard companies were behind the changes in the state law. She said yes.

Callison asked about a situation where a building doesn't change if the city has the ability to regulate it more heavily than in the past. Peterson said the state law added language that says the city has the ability to control nonconforming uses, so language could be added to deal with specific nonconforming uses in a way to mitigate

the impact. Callison asked if that language should be added to the ordinance if it could be dealt with on a case by case basis if it becomes more of a problem than it is. Peterson replied since only two particular uses have been identified, the council may want staff to consider those particular uses and whether there are some specific criteria related to them that could be added to the ordinance. That would require some looking at. Callison said the one nonconforming use that is not a billboard does raise neighborhood issues in terms of screening and fencing.

Wiersum moved, Ellingson seconded a motion to adopt Ordinance No. 2007-17 amending the zoning code regarding nonconforming uses. All voted "yes." Motion carried.

D. 2008-12 Capital Improvements Program.

Gunyou gave the staff presentation.

Wagner said that during the CIP study session, Callison asked staff to look at different ways staff could reduce the carbon footprint. He asked if in the replacement of vehicles and roofs if there was any further discussion at the staff level about solar technology and higher mileage vehicles. Gunyou said the city formed an energy committee that is looking at those issues. He said Assistant City Manager Geralyn Barone is heading that committee. Barone said the city is working with a consultant on the issues because staff doesn't necessarily have the resources and knowledge needed.

Thomas moved, Allendorf seconded a motion to adopt Resolution No. 2007-061 adopting the 2008-12 Capital Improvement Program be approved. All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointments to the community commission.

Callison moved, Wiersum seconded a motion to appoint the following to the community commission:

- Anne VanHorne, as a student representative for a two-year term, effective May 7, 2007 and expiring on January 31, 2009.
- Courtney Wieden, as a student representative for a two-year term, effective May 7, 2007 and expiring on January 31, 2009.
- Barb Westmoreland, for a two-year term, effective May 7, 2007 and expiring on January 31, 2009.
- Melissa Williamson-Herren, for a two-year term, effective May 7, 2007 and expiring on January 31, 2009.

All voted "yes." Motion carried.

16. EXECUTIVE SESSION:

A. Executive session to discuss proposed settlement of the billboard lawsuit.

Wiersum moved, Thomas seconded a motion to go into executive session after adjournment. All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Wagner seconded a motion to adjourn the meeting 9:22 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk