

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, MAY 21, 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 Tony Wagner, Brad Wiersum, Terry Schneider, Al Thomas, Dick Allendorf, and Jan Callison were present. Bob Ellingson was excused.

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou noted addendum to items 10D, 12A, 14A, and 14B.

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

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

**6. SPECIAL MATTERS:**

**A. Special recognition of Sergeant Dennis Warosh, 2007 Glen Lake Optimist Officer of the Year.**

Callison recognized Sergeant Dennis Warosh, the 2007 Glen Lake Optimist Officer of the Year. Warosh thanked the council for the recognition.

**B. Special recognition of Minnetonka Police Explorer Post.**

Wiersum recognized the Minnetonka Police Explorer Post. Officer Kelly Phillips thanked the mayor and council and the police department for their support. On behalf of the advisors she thanked the kids for their hard work and dedication. Callison thanked the Explorers for their work and congratulated them on their successes.

**C. Community values and comprehensive guide plan involvement framework.**

Gunyou gave the staff presentation. He said the steering committee was recommending a comprehensive approach to community involvement. There will be several public open houses to provide input. The city's various boards and commissions will also be involved throughout the process to react to information and ideas developed by the committee.

Gunyou said the plan also involves convening specific focus groups to deal with different areas and groups. These groups will include a mixture of residents and professionals to provide specific feedback and suggestions on a number of areas including housing, business interests, staff services, senior services, family services, schools and social services. The plan is also to give more attention to specific geographic focus areas. The residents and businesses in those areas will be invited to participate. Gunyou said one example is the I-394 corridor, an area where the city wants to prepare specific land use and service plans to address future redevelopment.

Wagner asked if the focus groups in special study areas will be given notice or if advertising will be provided to notify the residents of the meetings. Gunyou said the details have not been worked out but that a combination approach will likely be taken. Wagner noted one of the outcomes from the commissions and council meeting on April 18 was the issue of sustainable development. He asked if that is a topic the comprehensive plan committee will look at or if a focus group will be created. Gunyou said that hasn't been discussed yet, but it was an important consideration. Callison suggested her sense is that issue would be looked at more overall than at a specific focus group level. Gunyou said as specific policies and practices are discussed, sustainability could be considered. One example that may be examined is whether there is any interest to include sustainable development provisions in the building code guidelines. He said different communities have explored that approach.

Callison wondered, in light of the last council meeting's discussion on retaining walls and slopes, if the value that states "protect and improve water resources and woodlands" should be broadened. Gunyou suggested the value that states "respect the natural environment while managing growth" is meant as a catch all provision. Schneider said he would be reluctant to get too specific because a lot of the items can be done well or not so well. Retaining walls can improve tree retention if done well, but if done poorly can look ugly. He said to make that a major topic might be

getting into too much minutia. Callison said her focus was on slope protection.

Allendorf suggested when the comprehensive plan steering committee starts looking at individual areas, notices should be sent to everyone in the area. While the best effort will be made to get people out to the general open houses, he said there's nothing better to get people out than when they think their specific area is going to be affected. A mailing out to everyone within 300 or 400 feet always leaves somebody out. He said it would be worth it to spend the extra money to mail out notices to everyone in the area.

Schneider moved, Thomas seconded a motion to approve community values and comprehensive plan community involvement framework. All voted "yes." Motion carried.

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

Gunyou reported on the schedule for upcoming council meetings. There is no meeting Monday, May 28 due to Memorial Day. City Hall offices are closed that day. The next regular meeting is June 4.

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

No one appeared.

**9. BIDS AND PURCHASES:**

**A. Consideration of bids for the Railroad Quiet Zones.**

Gunyou gave the staff report.

He said the city has heard complaints over the years from residents living near railroad crossings about a federal requirement that requires trains to sound their horns at crossings. The city has no ability to affect that requirement, because it is federally regulated under the interstate commerce act. The federal government recently passed a law allowing communities to take steps to enact quiet zones so that trains are no longer required to sound their horns at those crossings. Gunyou noted council has already taken steps by including planned improvements in past CIPs that would allow crossings to be designated quiet zones. A consulting study was prepared for the three crossings that are in the city. The crossing at Dominick Drive is below the federal car traffic standards so all the city is required to do is submit it for federal review and approval. That crossing became the city's first whistle free zone last

September. The other two crossings at Crosby Road and Oakland Road require improvements to be made to prevent cars from driving around the cross arms. The trail segments will be completed at the same time those improvements are made. Construction would occur this summer and be completed by the fall. The paperwork would then be submitted to the federal government. If approved, the two crossings would then be designated whistle free zones.

Wagner said the process has taken longer than anticipated and asked if the fall is a firm timeframe or if there was a risk of further delay until 2008. Gunyou said the construction time schedule has been confirmed. The biggest delay might be the federal government approval; they do have the necessary information so approval is pending confirmation from the city that the improvements have taken place. Wagner said the trail segment has a cost of \$96,000 but is only partially being funded from the trail fund. He asked if this was a normal activity when combined with a road project. Gunyou said a set amount for the trail pieces for the two intersections was purposely put in without specifically designating how much would be trail and how much would be road construction. Staff is looking at this as a combined project.

Wiersum moved, Wagner seconded a motion to award the bid for the Railroad Quiet Zone Project No. 4427 to New Look Contracting in the amount of \$232,711.25, and amend the 2007 CIP to reflect this project cost. All voted "yes." Motion carried.

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

**A. Claims for council authorization – May 14, 2007.**

Allendorf moved, Thomas seconded a motion to approve the May 14, 2007 claims which includes checks numbered 203957 through 204342, totaling \$1,553,648.41. All voted "yes." Motion carried.

**B. Resolution receiving feasibility report and calling for public hearing for West Eldorado Trail Roadway & Utility Improvements Project No. 4988.**

Wagner pulled the item for further discussion. He asked for staff comment on the drainage as a result of the street construction. He said the staff report inferred drainage would go directly into Minnehaha Creek. Having served on the watershed district, Wagner noted this was not allowed. Gunyou said typically there is a holding pond but the topography and the slopes do not lend

themselves to that in this case. The plan is to use a concrete vault in which the drainage would be collected and then drained out. There is also a ditch that the drainage would go through before it goes into the creek so there will be no direct discharge into the creek. Callison asked if the concrete vault is below ground. Gunyou indicated it is.

Wagner moved, Allendorf seconded a motion to adopt Resolution No. 2007-062 receiving feasibility report and calling for public hearing for West Eldorado Trail Roadway & Utility Improvements Project No. 4988. All voted "yes." Motion carried.

**C. Approval of an encroachment agreement with TCG Minnesota, Inc.**

Allendorf moved, Thomas seconded a motion to approve the encroachment agreement with TCG Minnesota, Inc. All voted "yes." Motion carried.

**D. Resolution ordering the abatement of long grass nuisance conditions.**

Community Development Director Ron Rankin noted the addendum listing 28 properties that as of this afternoon had not been mowed.

Allendorf moved, Thomas seconded a motion to adopt Resolution No. 2007-063 ordering the abatement of long grass nuisance conditions. All voted "yes." Motion carried.

**E. Resolutions ordering the abatement of nuisance conditions.**

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

- 1) Resolution No. 2007-064 ordering the abatement of nuisance conditions existing at 4130 St. Marks Drive.
- 2) Resolution No. 2007- 065 ordering the abatement of nuisance conditions existing at 12920 Excelsior Boulevard.

All voted "yes." Motion carried.

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

**12. INTRODUCTION OF ORDINANCES:**

A. **Ordinance establishing certain interim development restrictions.**

Gunyou presented the staff report.

He said a number of circumstances have arisen in recent months that prompted staff to recommend the proposed moratorium. The limited moratorium will freeze the status quo and allow staff to study protection techniques for shore land, trees, grading and drainage, steep slopes, and impervious surfaces. One of the main concerns is that within the coming year the city will adopt a new comprehensive plan, so it doesn't make sense to consider guide plan changes until there is the opportunity to have a more widespread discussion of possible changes to the plan. State law allows the city to extend the moratorium for the entire year but staff doesn't think that amount of time will be necessary. Gunyou said all the necessary work can be completed in the next seven to eight months.

In addition, the ordinance has been drafted allowing the council flexibility to incrementally relax some of the restrictions as individual ordinances are developed, and that would accommodate many of the timing concerns of individual projects. Gunyou said a good example is the tree protection ordinance. Some recent proposed projects would have significant impacts on tree preservation. Once an ordinance is adopted it would be possible to review those projects.

He said the shore land ordinances have already been drafted and sent to the Minnesota Department of Natural Resources for approval. The tree preservation ordinance was previously discussed by the council at two separate study sessions. Staff feels they have good direction from council and it is now just a matter of drafting the specific ordinance, putting it out for public review and comment, and coming back to the council for approval. Gunyou said this area will be the first priority because it is the most sensitive area and it is fairly well along in the process. The grading ordinance will need minor adjustments allowing the city to take quicker action on violations where there are serious erosion issues. The two areas that will require more staff work are the steep slope and impervious surface ordinances.

Gunyou said staff isn't making the recommendation lightly and was concerned about making the moratorium too wide spread. As a result, the proposed ordinance is targeted and limited to recognize the hardships that can be caused to landowners and developers

with a moratorium. The proposed ordinance has been drafted to allow projects to proceed under the PUD ordinance. This would give the council considerable discretion and control, and provides more flexibility to protect natural resources. The recommendation is the moratorium would not apply to any properties that have received approval to date. It would also not apply to any property that is being re-platted and does not increase the number of lots. Any property that qualifies for administrative approval and does not require council action would also not fall under the moratorium. Staff is recommending that the moratorium apply to any project that requires a guide plan change.

Wagner said the city has overlaid a certain section where development can only occur if all sixteen properties are developed overall. These properties are now under contract with a proposal pending. He said he wasn't for or against that proposal at this point but he was concerned about the anxiety of the homeowners given the potential for further delay. He asked staff to walk through a scenario where a developer brings forward a proposal under a PUD and what action the council would be able to take. Gunyou replied under the staff recommendation, if a guide plan change is required like the property Wagner was speaking about does, it would be most appropriate to review the comprehensive plan before considering the guide plan change. The developer in this proposal has been advised by staff for at least the last six months that the city is reluctant to take up something as significant as a major guide plans change without a more detailed review of the entire area.

Schneider suggested looking into a compromise arrangement on the guide plan to deal with complex and challenging areas, like County Road 73 and I394. Under the proposed ordinance an application requiring a guide plan change is null and void until the new guide plan is adopted. The applicant would then have to start the process over which would take months. An alternative could be to allow an applicant to apply for the change, but only if as part of the application there is a negotiated agreement where the actual decision won't be made until the process through the guide plan committee and the council is complete. Schneider said this would be a win/win because the comp plan committee and the council would see the specifics of an application and the applicant would have the public hearing and input from the policy committee, the planning commission, and the council. With an agreement in place a final decision wouldn't be expected until after the guide plan is completed and assuming everything was in sync, final approval could be given at the same time that section of the guide plan is adopted.

City attorney Desyl Peterson said one concern with Schneider's suggestion is the state statute requiring the city to act on any application within 60 days, or 120 days with an extension. If an application comes in during the moratorium it would have to be denied. Schneider said part of his arrangement is there would have to be a negotiated extension of the approval time.

Callison pointed out the comp plan process will finish in the fall of 2008. Waiting until the comp plan is finished, and with the time involved in the application and hearing process, there could be a year and a half to two year delay for projects. She asked if a feasible alternative would be to reorder the comp plan process to study some areas more quickly. Gunyou said he was going to suggest that phased approach to address Schneider's concerns. Since there is a current project being considered in the I-394 corridor, it makes sense to keep that at the front end of the process, given that area is the highest priority special study area, so the delay wouldn't be over a year. He said the city will be working with people throughout the corridor and it would be one area that has special interest for people wishing to sell and people who don't want to see any redevelopment. Callison suggested that staff continue to look at a process that would deal with the issues.

Jean Hromatka Nightengale of 12920 Overlook Road in Dayton said she was appearing before the council to discuss how the proposed moratorium would impact her parents' property at 5709 Rowland Road. She said the proposed ordinance took her by surprise. United Properties has had her parents' property under contract since early June last year. She noted only the developers are being notified of the proposed ordinance and suggested that property owners needed notification too. If more notification of the introduction of the ordinance had been provided, more property owners might have attended the meeting. Hromatka Nightengale said the only reason she was aware of the ordinance was because of her attorney.

She said city staff has worked with United Properties and several adjustments have been made to the plat for the proposal for her parents' property. Examples of the adjustments include various walking trails, and the relocation of an apple tree. The United Properties proposal includes an attempt for housing diversity which has been an issue in the city in the past. The proposal includes a senior housing coop with 15 percent being affordable housing. Hromatka Nightengale said she and United Properties were concerned that with the moratorium the affordable housing would

be diminished by a substantial amount. She said a full year moratorium would cause an undue hardship for her parents. Her father and mother moved to St. Therese, a senior housing complex in the city, about two miles from the house they built and grew up in. They moved because of declining health and a year's delay would be difficult to deal with. They moved when the property was put under contract expecting it to be closing expeditiously. Affording the payments to St. Theresa without any income from the sale will be difficult if not impossible.

Hromatka Nightengale asked the council to consider exclusion in the ordinance for properties not requesting a subdivision. The United Properties proposal does not include a subdivision, just a request for a change from R1 to R5. Callison asked what the closing date was for her parents' property. Hromatka Nightengale replied the closing date is pending, contingent upon approval by the city. The application is on the planning commission's June 14 agenda.

Michael Halley of 14801 Minnehaha Place said he is involved with the I-394 and Hopkins Crossroad area. There are 16 properties he has under contract which assembles the entire neighborhood of the redevelopment district. With the absence of eminent domain it is a different world as far as trying to assemble properties and making a proposal. He said a lot of the owners are older and are concerned with the ordinance. The application is a PUD request and his understanding of the ordinance would give the city council a lot of latitude on what could be accepted or rejected. Halley requested amending section 3.01 to state, in the event the city council approves the PUD, and there is a related change to the guide plan, the city council would have the right for simultaneous approval. The latter would not be done without satisfaction with the PUD. Halley said he understands the risk that would create for him but it would give him the opportunity to present his case and keep the ball moving over the next year.

Allendorf asked staff to comment on Halley's suggestion. Gunyou said staff would be concerned with that approach because the guide plan change is the more significant issue. He indicated that as recently as last week staff had an inquiry about developing the south side of I-394 and the frontage road for medium density office development rather than the higher density residential use being proposed. In both of the cases being discussed, senior housing was being proposed. One of the discussion issues in the comp plan update is whether the city wants to consider directing senior housing to areas with more accessible retail support services. Both

of the projects would be isolated from any type of easy accessible support services. Gunyou said an example of where such housing may be more appropriate is in the Glen Lake area where senior housing residents can walk to the grocery store, to the pharmacy, and to the dentist. Those are the kind of things a guide plan discussion will take into consideration. He said the comp plan could be put on a faster track for these two projects, but it is appropriate for the city to consider issues like the guide plan rather than just what is under contract and what could be built tomorrow.

Jim Clark of 1665 Bluebird Lane in Mound said he is a homebuilder and runs Clark Kent Homes. He said he had three different homeowners in the city looking at a simple subdivision not necessarily looking to do a PUD. He wanted to know how it would affect these proposals for planning purposes. He asked if he came to the city with an application with a subdivision and did a PUD, would it be considered or would he have to wait a year. Gunyou said as the ordinance is currently drafted, any subdivision would be covered so it would not exclude two or three lot subdivisions. Typically the concerns are with tree loss and/or steep slopes. Gunyou said staff looked into including a small subdivision exclusion but the recommendation was not to do that. It likely wouldn't be a full year but rather a seven to eight month moratorium. He said the reason for the recommendation is that in many cases the small subdivisions have even more significant environmental issues. Gunyou suggested that if the council was interested in looking at a small project exclusion staff could bring back examples before adoption of the ordinance.

Peterson said rather than do a small lot exclusion, the PUD exception was included. She said if Clark had a two or three lot subdivision he could come in under the PUD exception. Callison noted the PUD has a certain minimum area. Peterson said under the proposed ordinance the minimum size would be waived for purposes of the ordinance. Clark thanked the council for the clarification.

Callison said staff is proposing to update ordinances in pieces and asked how developers would monitor the process to know when their development could be brought forward. Gunyou said the intention is to have widespread notification with public hearings. An attempt was made to identify the major developers that would be affected so they were aware of the introduction of the proposed ordinance. More developers could be notified before the council will consider adopting the ordinance. Callison said it might be beneficial

for developers to let staff know they have a proposal they think will be affected and want to be notified as changes are adopted.

Wiersum said the PUD option would give developers the opportunity to continue with projects and also give the city more tools in the toolbox to manage the projects more closely. He asked for more clarification on what would be allowed and not allowed by the PUD and how that ties in with the comprehensive guide plan. Gunyou said the comment about more tools in the toolbox was what staff was attempting to achieve in drafting the ordinance. He said a good example was the previous discussion on the tree preservation ordinance. The general philosophy the council was following was to provide a stricter standard but to allow more flexibility to meet the standard and not have it so prescriptive that there was only one way to achieve the goals. The approach is to provide a stick and a carrot to encourage people to do PUDs because it provides the ultimate flexibility and allows the council control over what it thinks is acceptable. A PUD allows the council the most flexibility to approve any project. By allowing projects to go forward under the PUD it allows creative proposals to be proposed and puts the council in the position to approve or not approve projects with much more latitude than if a project came forward under any other means. Peterson added that the way the ordinance is drafted, if a guide plan amendment is needed a PUD could not be used. She said one option that could be considered would be to allow further exceptions to the moratorium in certain parts of the city as decisions are made with the guide plan.

Allendorf pointed to the Rowland Road application. Because it is guided as single family and the applicant wants a guide plan change to high density he asked if that is what takes it out of the realm for coming forward as a PUD. Peterson said that is correct. Callison said it takes it out of the realm of an exception because of the guide plan but it could still be a PUD. Allendorf asked if the application had come in absent the proposed moratorium, would the city have had any tools to say that senior housing doesn't fit because it doesn't have the amenities. Gunyou said the short answer was yes because council has to review the guide plan change, therefore the council could either approve or not. Allendorf noted the council could choose to not approve the application with or without the moratorium.

Frank Koss of 3825 Cottage Lane said he had 11 years of experience on the Crystal Planning Commission so he was familiar with the process of what was trying to be accomplished by the ordinance. He said he wants to split his property into two lots and

have two new homes built. By forcing the developer into a PUD the costs would be much higher. He said the process in Crystal for a lot split was for the planning commission to gather information. If the commission wanted to look at the trees on the property they would have the city forester go to the property and report on the trees. Koss said a lot of what the proposed ordinance is trying to accomplish could already be accomplished through the existing process. He said he hoped the council and staff would look into having an exclusion for a small subdivision. He said in the interim each application should be looked at on a case by case basis and to adopt a blanket policy would put some people at a real disadvantage. Callison asked staff if there was an additional cost for a PUD under the city's ordinances. Gunyou said he did not believe that it would have to cost more. PUDs are common in Minnetonka. The argument for case by case review is why the PUD exception was included.

Wiersum said the city has had circumstances where developers have brought forward a R1 lot split or development and the city changed it to a PUD because of the provided flexibility. Theoretically a PUD could be exactly the same as a R1 subdivision under certain circumstances. The PUD provides flexibility to make sure concerns are covered. Under the moratorium a lot with no trees with a PUD could have the exact same requirements as an R1. Wiersum asked if that was a fair assessment. Callison noted staff was indicating that was correct. Wiersum said ultimately the proposed ordinance was to provide more flexibility to make sure community values are being met. Callison suggested that Koss work with city staff on his concerns because the consequences he raised may not be applicable.

Callison asked when the ordinance was scheduled to come back to the council. Gunyou replied at the next scheduled council meeting on June 4.

Allendorf said he was not a fan of moratoria and interfering in the market place. He said he didn't think he ever voted for a moratorium. But when he reviewed what was before the council he saw there is a way to look at a development and allow them to go forward with the PUD process. In some instances there is no difference between a lot split and a PUD. That gave him comfort the ordinance wasn't so strict as to interfere with the market place in areas where there would be no concern with environmental protection. Allendorf said he also valued the answer to the question that absent the moratorium, if a guide plan change comes in, the council has the right to say no to the project if it didn't fit. That is

what part of the moratorium allows the council to do. He said the moratorium has provisions to protect the average citizen so they don't get caught in some unintended consequences while at the same time gives the council the protection that they don't have to allow a project to come in under a guide plan change that wouldn't have been approved before. He liked the idea of staggering the process to look at what is a priority based on what has already gone on in the market place. He said he would support moving the ordinance ahead.

Wagner said as the council has looked at a lot of the developments coming up and ones that have come through he has been concerned that the tree and steep slope ordinances haven't been dealt with. Given the actions the council is starting to see, the moratorium is a prudent step. He was concerned for the first time the city was restricting a group of homeowners that are under contract. He said he was glad to see there will be flexibility in prioritizing where the study areas will be done and the ability to move those accordingly. He is also willing to support the ordinance moving ahead.

Schneider said he too was skeptical about doing a moratorium unless it was absolutely necessary. In most of the cases relating to the guide plan he didn't think it was necessary because the city had the ability to say no without having to go through a wide variety of justifications. But with the subtleties of getting the right outcome he said the approach of allowing for a PUD process makes sense. He is still concerned with the disconnect between timing and sequencing and providing some certainty and not knowing how long it will take to do a study area or when it might be on the agenda. Also the difficulty of having a proposal without having all the facts to evaluate the pros and cons creates a disconnect. He would still like an understanding that an application could be submitted but not be required to be acted on until the study area was finished. This would allow the applicant to do the due diligence, the tree preservation plan, look at conservation, make adjustments and do that in concert with the study area rather than waiting until after the study area is done and then trying to figure out how to respond. If early on the study says senior housing isn't to be in an area, he said the recommendation should come back to the planning commission and council for action so certainty is provided. He wasn't sure how to work that into the ordinance language but he wants to give homeowners as much certainty as possible. Gunyou said that was a good suggestion and said the staff will look into incorporating that into the ordinance. He suggested when the

ordinance comes back to the council staff would provide the council some idea about what timeframe is likely for each of the areas.

Wiersum said a headline that reads "Minnetonka Council Enacts One Year Moratorium" would sound rigid and draconian. What was really being looked at was a *flexible* moratorium that does not shut off all development but instead provides an opportunity for the city to start to reflect the values discussed at study sessions and expressed by residents in the community survey. The top two concerns in the survey were preserving natural and open space and development concerns. He said taking some action and demonstrating the city is responding to those issues is important. At the same time there are some people who have their lives tied up in the different projects and are very concerned about the timing and flexibility of the projects. Just because something has been proposed doesn't mean the council will approve those projects; so in some ways there has been no change. He said there are issues with some of the developments where if the city didn't have the flexibility of a PUD there would be no option to make them more accurately reflect the values of the community. The strength of the proposed flexible moratorium is to provide an opportunity for projects to go forward with a PUD designation but at the same time the council has more tools to deal with the projects with environmental issues. The projects with guide plan changes could be turned down without the moratorium. Allowing a PUD on smaller lot splits makes sense. Wiersum said the flexible moratorium makes sense and protects the values of Minnetonka without unnecessarily tying the hands of developers or property owners. He supports the moratorium but he wants to be careful to move as quickly as possible to limit the hardships.

Thomas said he agreed with most of the comments that had been made. He said he looked at the issue a little differently and he wasn't afraid of the word "moratorium." He understands the timing concerns for residents and developers but he looked at this as a time to step back and look at what the residents have said in the surveys and what the city is doing to meet the objectives. The moratorium gives the council a chance to take a look at the issues and take the time to do the right thing. He realizes there will be some hardships but because the future of the city is being shaped, it's important to take the time to do things the right way. He said 30 years from now when he's sitting at home in his recliner watching a council meeting that he wants to see the things decided now were the right decisions. He said when residents indicated dissatisfaction with the roads, the council reacted and aggressively worked on the road issue. He doesn't want to rush something through because the

policy will be set and he wants to be sure to shape the future of the city correctly. He said the city is on the winning side and perhaps there is a way to work things out for some of the hardship cases for this time period, but listening to residents to determine what the future of the city will be is the important thing. He said he is very supportive of the proposal and it is a good opportunity to make some hard decisions that need to be made.

Callison said she thought it had been a good discussion and the comments brought up had been helpful. Staff will rework the recommendation with some possible solutions to the concerns raised. There has been a clear message from the community that the issues should be looked at and the discussion should be broadened. The comp plan steering committee and the comp plan process allows the discussion to be broadened. She said residents want the city to look toward the long term. As the city moves forward, the council wants to make sure the right decisions are made about resources that will be lost and not easily replaced.

Schneider said if the process works as it should there will be a thorough study that might actually improve the ability for property owners and developers to get something approved. The burden won't all be on the developers to demonstrate their case. By working with the city to study the issues thoroughly, there will be answers to a lot of questions that need to be addressed.

Wiersum moved, Thomas seconded a motion to introduce an ordinance establishing certain interim development restrictions. All voted "yes." Motion carried.

### 13. PUBLIC HEARINGS:

#### A. **Continued public hearing to consider applications by Leeann Chin, Inc., for on-sale wine and on-sale 3.2 percent malt beverage liquor licenses for Chin's Asia Fresh restaurant, 11300 Wayzata Boulevard, Suite G.**

Gunyou said there is a change in ownership. The background investigations presented no reasons that would warrant denial of the license.

Callison continued the hearing at 8:17 p.m. No one spoke. Callison closed the hearing at 8:17 p.m.

Allendorf moved, Thomas seconded a motion to grant the licenses for on-sale wine and on-sale 3.2 percent malt beverage liquor

licenses for Chin's Asia Fresh restaurant, 11300 Wayzata Boulevard, Suite G. All voted "yes." Motion carried.

**14. OTHER BUSINESS:**

**A. Ordinance regulating temporary structures.**

Peterson indicated the council first discussed the item at the April 23 meeting. At that time council gave enough direction to staff to make a number of changes. Peterson said a number of questions and concerns were raised and staff has come back with three primary changes in response to the concerns.

She said the first concern dealt with how much of the small sheds and plastic pop-together type structures would be covered by the ordinance. To eliminate the impact on small structures, the revised ordinance includes a threshold of 120 square feet and any structure smaller than that would not be considered a temporary structure. The advantage is that this is the same threshold both in the zoning ordinance and the building code. If someone has a structure smaller than 120 square feet no building permit is required. It is also the threshold in the zoning code for determining what is called a storage shed as opposed to an accessory building.

Peterson said the second change concerns the issue of how the square footage is counted. The original recommendation was to include the square feet of the temporary structure in the 1,000 square feet that is allowed for accessory structures. The council raised concerns so that language was deleted. Language has been included to affirmatively state the provision so it is clear temporary structures are not counted toward the 1,000 square feet allowed in the zoning code. Peterson said upon further thought there would then be no size limit. So what is being proposed is a size limitation on the temporary structures. At first 1,000 square feet was considered, but the concern was that would be quite large. The proposal is to limit the size to 600 square feet. This number is based on a 24 x 24 standard garage style building which would total 576 square feet.

The third change was a response to the unintended consequences of having more restrictive provisions on temporary structures. The council's concern was residents would no longer put up temporary structures but would rather just store personal property all over the yard. Peterson said surrounding communities were surveyed to see how they handled the issue. Both Plymouth and Maple Grove had reasonable ordinances prohibiting outside storage of personal

property with some exceptions. Melding the two ordinances together staff has come up with the proposal that would prohibit the storage of personal property except for those uses that are traditionally expected for outside use of residential properties such as outdoor furniture, outdoor cooking equipment, and recreational equipment. There is also an exception for landscaping equipment and construction materials if they are used within three months or the term of the building permit for the property.

Wagner said one of the ordinance's requirements is during the time the temporary storage unit is not up it has to be stored away from view. He said he was concerned about the practicality of the requirement. If the landowner has nothing but a house and garage, and a temporary structure is put up for six months and they have no place to store it, wouldn't it be reasonable to allow them to store it nicely and neatly stacked up next to the house? Rankin responded the issue was discussed by staff and it is possible to compress the support tubing and the cover into a fairly small package similar to a large camping tent. The expectation is that it is important that it be stored inside rather than outside.

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2007 –18 amending City Code Sections 710 and 845.020 regarding temporary structures. All voted "yes." Motion carried.

**B. Ordinance regarding peddlers and solicitors.**

Rankin said the ordinance has gone through substantial revisions based on the May 7 council discussion when concerns were raised about several provisions being proposed. Time was spent discussing the ordinance with Police Chief Mark Raquet and others in the police department. The department received 62 complaints about peddler or solicitor behavior in 2005 and 85 complaints last year.

Based on the discussion with the police department the proposed ordinance was amended to require "a licensee entering onto residential property go directly to a door of the house unless there is an adult present outside of the house or in an open garage. At no time may a licensee go to a window or to the backyard unless invited to do so by the occupant." Rankin said the other item the police asked be included is a prohibition on an unlicensed person accompanying a peddler or solicitor.

Peterson said three items that were originally being proposed are no longer part of the ordinance. The handbill regulations, the

proposed prohibition on loud noises, and the prohibition on using a large truck are no longer included.

Thomas asked how people will be made aware of the ordinance seeing there are a lot of people that come and go out of the city who are peddling or soliciting products and services. Rankin said it is common for cities to require licensing of peddlers and solicitors so most are aware there are licensing requirement and rules. Information is made available to people through the licensing process. If someone is encountered not displaying the license badge the city follows up directly through the police or community development departments.

Callison noted that the ordinance exempts religious and nonprofit tax exempt organizations. She cited as an example, a school football team that goes door to door selling water softener salt or cards, and asked if that activity would still be allowed. Peterson said because those groups are in effect doing the activity for the school and schools are qualified organizations for tax deductible donations, the activity would still be allowed.

Wagner moved, Wiersum seconded a motion to adopt Ordinance No. 2007 –19 amending City Code Sections 630 regarding peddlers and solicitors. All voted “yes.” Motion carried.

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

**16. ADJOURNMENT.**

Thomas moved, Wiersum seconded a motion to adjourn the meeting 8:31 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk