

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JUNE 4, 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 Terry Schneider, Al Thomas, Dick Allendorf, Tony Wagner, and Jan Callison were present. Brad Wiersum and Bob Ellingson were excused.

4. APPROVAL OF AGENDA.

City Manager John Gunyou described the addendum to items 10E, 14A and 14B.

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

5. APPROVAL OF MINUTES:

A. April 9, 2007 regular meeting.

Allendorf moved, Thomas seconded a motion to approve the minutes of the April 9, 2007 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

B. April 23, 2007 regular meeting.

Allendorf moved, Thomas seconded a motion to approve the minutes of the April 23, 2007 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Presentation of award for 50th anniversary campaign from Minnesota Association of Government Communicators.

Callison presented the award to Community Relations Manager Jacque Larson who accepted on behalf of the 50th Anniversary Volunteer Committee.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported there is a study session June 11. There is no meeting June 18. The city's annual Summer Festival and Ice Cream Social is June 23. The next regular council meeting is June 25.

Callison noted a few recent openings and events. The park and ride on County Road 73 and I394 opened earlier in the day. Callison said it is a substantial expansion of the capability of the park and ride in the city. Four council members were present for the opening. There was also a groundbreaking at Minnetonka High School for the new girls' softball complex. Last week there was a groundbreaking at Fingerhut for Welsh Companies.

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

Beverly Baker of 12900 St. David's Road said she sent the mayor an email May 21 about some problems her neighborhood is seeing regarding the ICA food shelf. Baker said there have been violations from the operations plan and asked for an update. Callison understood there was a meeting last week with St. David's. Baker said the issues were not cleared up at the meeting. Community Planner Julie Wischnack said staff was waiting for the outcome of the meeting before helping to resolve outstanding matters. Baker asked when she would hear from staff. Wischnack responded later in the week.

9. BIDS AND PURCHASES:**A. Consideration of bids for replacement of the Ice Arena A evaporative condenser.**

Gunyou said the replacement of the cooling tower for the ice sheet is in the adopted CIP. He noted the city received very favorable bids.

Wagner moved, Thomas seconded a motion to award of the base bid and two alternate bids to Cool Air Mechanical in the amount of \$110,517. All voted "yes." Motion carried.

B. Consideration of bids for the Cedar Lake Road sidewalk project.

Gunyou said the item is also in the CIP and favorable bids were received.

Wagner moved, Thomas seconded a motion to award the bid for the Cedar Lake Road Sidewalk Project No. 4765 to Concrete Idea, Inc. in the amount of \$184,325.15 and to amend the 2007 CIP for the Cedar Lake Road Sidewalk Project No. 4765 and the Quiet Zone Project No. 4427 to reflect the revised project cost and transfer of excess funding, respectively. All voted "yes." Motion carried.

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

A. Claims for council authorization – May 29, 2007.

Allendorf moved, Thomas seconded a motion to approve the May 29, 2007 claims which includes checks numbered 204343 through 204645, totaling \$801,702.58. All voted "yes." Motion carried.

B. Resolution accepting plans and specifications and authorizing the advertisement for bids for the Bren Road East Improvements Project No. 4314.

Allendorf moved, Thomas seconded a motion to adopt Resolution No. 2007-066 accepting plans and specifications and authorizing the advertisement for bids for the Bren Road East Improvements Project No. 4314. All voted "yes." Motion carried.

C. Resolution accepting plans and specifications and authorizing the advertisement for bids for the Highland Road and Old Excelsior Boulevard Storm Sewer Improvements Project Nos. 06607 and 06606.

Allendorf moved, Thomas seconded a motion to adopt Resolution No. 2007-067 accepting plans and specifications and authorizing the advertisement for bids for the Highland Road and Old Excelsior Boulevard Storm Sewer Improvements Project Nos. 06607 and 06606. All voted "yes." Motion carried.

D. Conditional use permit for an educational institution at 12007 Excelsior Blvd.

Allendorf moved, Thomas seconded a motion to adopt Resolution No. 2007-068 approving a conditional use permit for a charter school to be located within the existing church building at 12007 Excelsior Boulevard. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Submit yearly enrollment numbers to the city prior to July 15th of each year. Any significant increase in school enrollment would require review by the city council.
- 2) Daytime church activities, such as funerals, must be scheduled so as to not conflict with the peak traffic times of the school.
- 3) Install and maintain signs which clearly identify the entrance only and exit only accesses along Nelson Drive.
- 4) Obtain a permit from the city's recreation department for group use of a public park.
- 5) Obtain any permits or licenses required by the city's environmental health division.
- 6) Comply with all state and federal requirements (MN Statute 121A.035) to develop a crisis plan for the facility, as required, and in conjunction with the Minnetonka Police Department.
- 7) All external doors must be signed to meet requirements for emergency response.
- 8) The building must meet all minimum building code requirements for schools.
- 9) Record this resolution with the county.
- 10) The city council may reasonably add or revise conditions to address any future unforeseen problems, including parking and increased traffic through surrounding residential areas.
- 11) 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.
- 12) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

E. Resolution ordering the abatement of long grass nuisance conditions.

Dennis Larson of 1512 Wilshire Drive said he would like the Minnesota Department of Transportation added to the list due to conditions along the I394 corridor. He said there is waist high grass and weeds on the MnDOT property on the interchange along the south frontage road from County Road 73 to Ridgedale Drive. Larson asked why MnDOT doesn't have to adhere to the ordinances.

Callison noted that the process requires notice to the property owner to give them the chance to come into compliance before the city can go onto the property, cut the grass, and assess the owner. City Attorney Desyl Peterson said the city ordinances do not apply

to MnDOT because the city is considered a subdivision of the state. As a result the state is not subject to local ordinances unless it chooses to be. Callison said the city could pass along resident concerns and said it was appropriate for people to contact their state legislators. She said it was helpful for Larson to bring his concerns to the council's attention. Schneider said the concern isn't just an issue in Minnetonka but is a metro area issue. He speculated it might be due to budget cuts and cutting back on easy things like mowing frequency.

Thomas asked that when the council gets the report listing properties if the staff could separately identify residential properties from business or development properties. He said looking at the last report for the fourth ward, over half of the properties were residential developments and it would be helpful to him to get a breakdown. Staff agreed to do so.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2007-069 ordering the abatement of long grass nuisance conditions. All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Preliminary plat for a two-lot subdivision with variances at 3515 Meadow Lane (McKelley Addition).

Al Rashid of 3525 Meadow Lane said he attended the planning commission meeting and remains concerned about the trees on the lot. The lot has five or six healthy pine trees that are about 20 years old and are around 30 feet in height. There are also some maple trees on the lot. He said there is nothing from the applicant that indicates what type of architectural design will be built. The area consists of homes that are ranch style homes and all but one are single story homes. Rashid said the neighbors would like some assurances that the property will be maintained from an environmental standpoint. He noted that a nearby property is a perfect example. It is an environmentally sound property that didn't require a bigger footprint or a lot split.

Callison asked for staff to report on the property. City Planner Julie Wischnack presented the staff report. She said the city's McMansion policy came into play quite well in addressing the mass of the home in terms of restrictions placed on the proposal. The house size on one of the lots will be limited to 2,990 square feet under the policy. The house size on the other lot will be limited to 3,069 square feet. Wischnack said limitations on mass and size is

important because the city doesn't dictate architectural style. This is determined by calculating the floor area ratio of homes within 400 feet of the home site and also 1,000 feet along the same street. This calculated average establishes the maximum floor area ratio for the new home site. She confirmed there are some significant trees on the south side of the property and staff is encouraging the developer to maintain those trees. The tree protection is reviewed by the city's natural resources staff and a staff consultation occurs to ensure the maximum amount of tree protection does occur. There is one tree in particular on the Meadow Lane side of the property that is specifically identified for protection.

Callison asked if staff will work with the developer as the building plans are submitted to locate the house on the lot to try to maximize tree preservation. Wischnack replied yes and said that is a common practice used especially with lot divisions that are not developments where multiple properties are developed at the same time. For those types of developments other tree preservation tactics are used like tree conservation easements. This proposal is simply a lot division so the developer will be consulted as the home is sited.

Callison also wanted clarification about how large the house could be if the McMansion policy was not in effect. Wischnack said the house size would be around 6,000 square feet if the lot was not divided and no variances were needed.

Wagner said the McMansion policy gave the city the ability to set the footprint if it was decided trees should be preserved. He asked if this would be valuable in this instance. He also asked if the area was classified as a small lot area. Wischnack said whenever there is a variance case there is the ability to put reasonable conditions on the variance application. The city hasn't been doing exact building footprints in other circumstances but it is something that could be considered. She said this area does not qualify as a small lot consideration. Wagner then asked if the subdivision will turn the area into a small lot neighborhood. Wischnack said the small lot subdivision setbacks are on a lot by lot basis, not necessarily on a residential neighborhood basis.

Allendorf indicated he didn't know what the ordinance said about a developer's right to cut down trees on property under or around the footprint. Wischnack said there is an allowance for tree removal within the building pad area and 20 feet beyond the building pad area. Anything outside the building pad area needs to be replaced and there is a ratio of replacement trees required. Allendorf asked if the consultation will involve looking at the 20 foot area and maybe

reduce it if there are trees that should logically be saved in the area. Wischnack replied that anytime there is consultation, city staff always tries to promote the saving of any tree regardless if it is in the building pad area or outside the area. Proper placement on the lot is definitely a negotiation and when tree replacement is required, the requirement is part of the building permit process.

Thomas asked Wischnack to review the qualifications for a small lot neighborhood area. Wischnack said the small lot area requirements under the R1 zoning district allow for certain setback reductions in cases where the lots are below 15,000 square feet. Since this lot size is 23,200 it does not qualify.

Peter Lytle of 3502 The Mall said he had no position on whether the project was appropriate or not, but he wanted to encourage the city to start thinking differently about development in terms of energy sustainability. He said there is less than 50 years of sustainable timber left in the country. There are around 900,000 homes that need to be replaced or remodeled in Minnesota. He said moving forward we need to start thinking about what will be done about landfills, shade trees, and sustainable energy. He invited the council to tour the remodel he is doing in the city. He said the home would be the world's most eco-friendly and is a model for the council to start thinking about what can be done to preserve the environment. He said the proposal before the council could be a nice model for what happens going forward. If the home is torn down much of the material can be recycled. If trees are lost other types of landscaping like rain gardens can be used. Permeable surfaces that allow water to go into the land rather than runoff also can be used. He noted many of these things are currently in the city's regulations and building codes and he encouraged the city and developer to start thinking differently.

Lytle said a green home will sell for five to 10 percent more than a traditional home and will typically sell within two weeks as opposed to 13 to 14 months. Every time a property like this is redeveloped there is an opportunity to redevelop it with a social consciousness that is not only about McMansions but also about what is good for future generations. Every time a new home is built, its longevity has to be given consideration. The traditional lifespan of most homes is less than 30 years - 10 years for roofs and windows and seven to 10 years for siding. He said as proposals are reviewed they should be reviewed for durability and sustainability and the effect on the overall community. Lytle indicated when his family chose their particular home, they looked at seven states and 120 homes. They picked Minnetonka for the spirit of the community, the building

regulations, and the proximity to various pieces of infrastructure, and he said he would hate to see that diminish on the pure standpoint of profitability. He said he also understands as populations grow more housing has to be provided, thus housing will become denser and denser.

Lytle said sustainability and the integrity of the community can be preserved because it has worked in other states. He said Minnesota is one of the most ecologically sound states in the country. The path the state and other states are taking will cause an erosion of natural resources and at some point policy has to be created that thinks about those issues. He noted in Wayzata a McDonald's was recently removed and there were 72 dumpsters of materials hauled to landfills even though there was an arrangement to remove chairs, refrigerators, brick and wood. He said as the city thinks about this project it is important to think about what else can be done to make the project even better. If a tree is torn down can photovoltaics be used? If a building is torn down can deconstruction services be called on to come in and take apart the house to reuse the wiring, windows and cabinetry? Can the shingles be taken to a place that grinds them up for bituminous? What else can be reused that betters the community in the long run?

Callison said the updates to the comprehensive guide plan give the city the opportunity to consider those types of questions. She said the comprehensive plan committee is interested in looking at Lytle's property to get more information about his ideas and thanked him for speaking.

In response to Rashid's comments, Callison said the city council doesn't have the authority to deal with architecture and that staff is aware of his concerns regarding the trees and will be working on the issue if the project proceeds.

The developer, Thomas Fretham of 4930 Baker Road, said the site of the first proposed home has been moved so that it is inside the footprint considerably more than before. On the south side the other footprint had already been moved in for the preservation of trees. He said that none of the windows on the main level of the current house on the lot are conforming to egress or energy standards. The insulation in the walls and attic is substandard. The foundation in the basement is porous and there is water infiltration at times. If the roof were to be replaced, the roof trusses would be nonconforming. There is no way in or out of the basement that conforms to code. There is no firewall between the garage and house. The house is heated with fuel oil and the oil tank is out of

code. He said there are numerous nonconforming items that brought him to the decision that the house could not be refurbished but needs to be restarted from top to bottom.

Allendorf moved, Schneider seconded a motion to approve the preliminary plat (McKelley Addition) date-stamped April 27, 2007. Approval is based on the following findings:

- 1) With the exception of variances for lot area and lot width at front setback, the proposal meets all standards and ordinance requirements for lot division.
- 2) The proposal meets the required standards for granting of a variance, because:
 - a. There is a unique hardship to the property caused by the existing lot area, which is disproportionately large relative to other lots in the surrounding neighborhood, and lot width at setback, which would prevent subdivision of the lot similar to other lots in the neighborhood.
 - b. The variances would meet the intent of the ordinance because the lot area and lot width at setback would be consistent with other lots in the neighborhood.

Approval is subject to the following conditions:

- 1) The following items must be submitted to the city before final plat approval:
 - a. Amend the plat to include:
 - (1) The plat must be titled McKelley Addition; Parcel A must be renamed Lot 1 and Parcel B must be renamed Lot 2.
 - (2) Ten-foot-wide drainage and utility easements adjacent to the public street right-of-way and seven-foot-wide drainage and utility easements along all other lot lines.
 - (3) Location of existing sewer and water services shown on the survey so that the location of new services may be determined.
 - (4) Label the 28-inch white pine at the front property line of Lot 1 to be preserved.
 - b. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - c. The following documents for the city attorney's review and approval:
 - (1) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - (2) Restrictive covenants to be recorded against the individual lots with the plat. The covenants

must include the conditions that have not been met as of the release of the plat.

These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.

- d. Pay a park dedication fee of \$2,375.
 - e. Any other requirements included with final plat approval.
- 2) The following must be completed before the city issues a building permit:
- a. An additional sewer and water service may be required to be installed.
 - b. Submit a grading plan for each lot. The plans must be in substantial compliance with the building pads shown on plans date-stamped April 27, 2007.
 - c. A temporary rock driveway, erosion control, tree protection, and wetland protection fencing must be installed subject to review and approval of the city's natural resources staff.
 - d. A copy of the recorded plat and easements required to be recorded.
 - e. A letter from the surveyor stating that boundary and lot stakes have been installed, as required by ordinance.
 - f. A hook-up fee for sanitary sewer and water.
 - g. All garbage and debris be removed from the property.
- 3) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
- 4) Based on the McMansion policy, the largest homes that can be built on the newly divided lots are as follows:
Lot 1: 2,990 square feet
Lot 2: 3,069 square feet
Included in the calculation of floor area ratio shall be:
- Area of above ground living spaces
 - Area of attached garages
 - 50% of floor area of walkout or lookout basements (full basement square footages will not be included).
- 5) A driveway permit is required for Lots 1 and 2 to connect the new driveways to the street.
- 6) The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:**A. Introduction of ordinance regulating dynamic signs.**

Peterson said the framework for the proposed ordinance remains the same as was discussed at the council's May 14 study session. The ordinance would overlay the existing sign ordinance and the city would not pick and choose who gets to have dynamic signs; rather everyone will be allowed to have the signs under the same criteria. The only restriction on location is that it has to be on a monument or pylon sign rather than a side of a building. As far as the operational mode of the signs, the requirement is that the image be static. No video or flashing type of signs or signs with a sequential message would be allowed. Peterson said one new provision deals with the font size. What is proposed is taken directly from the International Sign Association, an industry group representing sign makers and users. The minimum font size would be based on the speed limit of the adjoining road.

She said the proposal is that 35 percent of the sign face can be dynamic. At the study session there were concerns about this restriction and Peterson said staff will continue to work on the issue. As far as display time, the proposed ordinance would allow changes every twenty minutes with the exception of time and temperature. Time and temperature are given an exception because they become inaccurate if changes are not allowed on a more frequent basis. This decision was upheld by the Eighth Circuit Court of Appeals, the federal court that governs Minnesota.

Peterson said the general standard developed by the Wisconsin Department of Transportation was incorporated as the brightness standard for the ordinance. Two other standards not discussed at the study session were put into the ordinance. Both were taken from other regulations in Indiana and Ohio dealing with the vision of motorists and interference with traffic control signs.

Peterson said another provision not discussed at the study session is how the proposed ordinance applies to existing signs. The proposal is existing signs would have to meet the operational requirements. If an existing sign can't meet the physical requirements, particularly the 35 percent rule, it would be allowed to continue as a nonconforming development. The font size requirement would have to be met as much as possible in order to continue to operate, but the sign would be allowed to continue even if the minimum font size could not be met.

She said the incentives provision has now been detailed. That provision applies to the nonconforming off premise signs in line with the settlement agreement the council approved on a conceptual basis. The city received comments from one representative of the sign industry as well as comments from Clear Channel. Those comments will be addressed going forward and at the public hearing in front of the planning commission.

Callison asked for clarification of what a dynamic sign is. Peterson responded quite a bit of time was spent on the definition. The basic idea is that it includes anything that changes or moves, regardless of what manner is causing that to happen, other than physically moving it. She said the proposed ordinance will be heard by the planning commission on June 14.

Schneider said there was some debate among the council about whether 35 percent was the right ratio for the dynamic versus the fixed portion of a sign. He said he was not comfortable with the 35 percent ratio and that he felt it should almost be reversed so that more of the sign is dynamic rather than fixed. The reason for this goes to a corollary of the people who want to have a time and temperature function but are restricted in what else that type of sign can do. If the ordinance allowed for a sign that is 65 percent dynamic, half of the dynamic could be time and temperature and the other part could have a fixed message that doesn't change more often than 20 minutes. Making the dynamic area smaller will force people to choose to have one type of sign or the other. He said the time and temperature function is valuable to the community and he would like to see it maintained wherever possible. He said he hopes his concerns will be discussed at the planning commission.

Thomas moved, Wagner seconded a motion to introduce the ordinance and refer to the planning commission. All voted "yes." Motion carried.

B. Ordinance adopting a Planned Unit Development master development plan and approving final site and building plans (phase I), with flood plain and wetland alteration for Opus Corporate Center expansion, at 5700, 5720, 5740 Green Circle Drive and 10350 Bren Road West.

Wischnack gave the staff report. She said originally there was discussion about a skyway connecting the two areas over the existing Green Circle Drive. The revised proposal is to move Green

Circle Drive to the west. Because of the movement, there are site plan considerations.

She said the applicant is requesting site and building plan approval. The entire project with phase two includes about 360,000 square feet of office space. The first phase will have about 104,000 square feet and the second phase will have about 150,000 square feet. This is comparative to what was approved last year. With the removal of an existing building to the north, there is about the same amount of square footage being proposed by the site plan.

The second request is to amend the master development plan and to do the rezoning for the 5700 Green Circle parcel that wasn't previously in the plan area. The master development plan needs to change to accommodate the changes in the building location as well as the phase one location.

Wischnack said the third request is the preliminary plat combining all four of the parcels into one large property. The fourth request is a flood plain and wetland alteration that requires wetland setback variance and some buffer impacts because of the new road location. The wetland impacts will be following the Wetland Conservation Act requirements and is currently going through that review process. The flood plain impacts will also be mitigated by replacement like wetland areas are. She said there probably will be no net loss in terms of flood plain and wetland in the area. It is also felt that buffering and the increase in management of the areas will create a better result than what is currently in existence.

Allendorf asked if there are other commercial developments that asked to move and rebuild a city street or if this is precedent setting. Community Development Director Ron Rankin responded there have been others done for traditional redevelopment. He cited as an example West Ridge Market where there was more of a traditional grid street layout with one street looping through the development and older streets torn out and not replaced. Rankin said the city was more directly involved in that redevelopment project while with this project is being done privately.

Schneider pointed to the parking spaces on the far southwest portion, which are of a considerable distance from the building and likely will be empty the majority of time. He asked if there has been an evaluation of doing proof of parking and to keep the area green and put in parking only if needed. Wischnack said the proposal does have a proof of parking plan. She said when the parking ramp

goes in there will be experience gained so there could be a possible revision for phase two.

Thomas agreed with Schneider and recommended the planning commission look at the proof of parking issue. He said driving down I494 and looking at Best Buy where Richfield approved a proof of parking plan, he sees the parking area next to the freeway where only 30 to 40 percent is ever used. He said the city should look at more green space if possible. Wischnack said there has been a new process during the review of developments. This is to refer to the new Institute of Transportation of Engineers parking generation manual that uses a better estimate of actual parking use on properties. She said this is quite enlightening especially in a comparison to what is required in code.

Thomas moved, Wagner seconded a motion to introduce the ordinance and refer it to the planning commission. All voted "yes."
Motion carried.

13. PUBLIC HEARINGS:

A. Items pertaining to the West Eldorado Trail Roadway & Utility Improvements Project No. 4988.

City Engineer Lee Gustafson presented the staff report. He pointed out because of the terrain there will be an installation of a storm sewer grit chamber within the cul-de-sac area. A second one may be added further south. The storm sewer will discharge into a drainage ditch that will help treat the water before it flows into Minnehaha Creek. He said this should adequately treat the water from the new roadway and from the new development.

Gustafson said the estimated project cost is \$677,000 and the proposal is to specially assess \$420,000 to the petitioning properties. The assessments will be divided over a 15 year period with interest accumulating on the unpaid balance. Additional connection charges would occur when and if the nonpetitioning properties are subdivided. These properties would be charged a hook up fee of around \$61,698 per unit at today's rates when connected to sewer and water. Hook up fees will generate the difference in the project cost or approximately \$247,000. He said a portion of the project cost includes upsizing the storm sewer to accommodate a future pond outlet north of Wentworth Trail. The approximate \$10,000 cost would be paid out of the storm water fund. This is standard procedure when the city upgrades storm

sewer lines, sanitary lines or water mains when doing a development.

Wagner asked if a decision had been made on a specific property to the north about not connecting it to West Eldorado Trail and connecting it to Forest Lane instead. Gustafson said it was not required nor was any right-of-way dedicated as part of either subdivision or the property to the north. He said there is substantial elevation change on the property to the north and the decision has been made to serve it entirely from the north. Wagner asked if the property owner ever grants a personal easement to connect to West Eldorado Trail, would they be subject to any hook up fees. Gustafson said yes and that they would be subject to hook up fees regardless of which way they are served.

Allendorf asked what exactly the \$10,000 storm water fund amount will be used for. Gustafson said the \$10,000 is for just the cost of increasing the pipe size. The excavation and the other work involved in installing a pipe will be mostly paid for by the developer. Allendorf asked if the amount is sufficient. Gustafson said yes.

Callison opened the hearing at 7:35 p.m.

Mike Spillane of 13535 Wentworth Trail said given the schedule if any thought had been given to how he will access his home during the process. He indicated where the road will be is where his driveway currently is located. Gustafson said as with all construction projects, city staff will work with the property owner to make certain when deep excavation work begins by his house that the work starts after people at the residence go to work and is completed prior to the residents return. If there is a situation where the work cannot be finished in front of the driveway, the property owner will be asked to park on the street. Callison asked that Spillane be given the name of a staff person serving as the principle contact for him. Gustafson said that would be done and the inspector's cell phone number will be provided. Spillane said being in the construction business he knows the work in front of his house could not be completed over one day and will take some time. Callison asked for a staff person to meet with Spillane at his property. Gustafson replied that could be done.

Avery Chope who lives in San Francisco said he appreciates all the work staff has done on behalf of his family and thanked the city.

Callison closed the hearing at 7:39 p.m.

Wagner moved, Thomas seconded a motion to adopt Resolution No. 2007-070 ordering the improvements and authorizing the preparation of plans and specifications for West Eldorado Trail Roadway and Utility Improvements Project No. 4988. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Items pertaining to 6001 Shady Oak Road for True North Investments:

Appeal of the planning commission's approval of a minor amendment to an existing master development plan.

Wischnack presented the staff report. She said the movement of the building to the north is one consideration. The building has changed from 3,100 square feet to around 3,800 square feet. The building occupancy types have changed from fast food restaurant to fast food restaurant and retail. This requires some changes to the parking lot. Wischnack said there is a lot of history behind the proposal with multiple hearings and considerable testimony taken.

She said staff feels the proposal is reasonable for a number of reasons. The proposal allows for adequate pedestrian and vehicle circulation throughout the site. There is visibility from Shady Oak and Red Oak Circle to the site to the east. Visibility is maintained even with the small expansion to the building. Also there is a decrease in parking spaces due to the mixed uses. She said most importantly the proposal is in compliance with the site and building plan review criteria.

Wischnack said the proposed resolution is similar to the planning commission's decision and documents the conditions for approval.

Callison cited the increase in the size of the building and asked if the building would be taller, longer, or wider. Wischnack said the building will get longer going toward the north.

Steve Champlin a partner of the law firm of Dorsey & Whitney LLP at 50 S 6th Street, Minneapolis, said he represented Three Putt LLC and the Jennings family. He said he first wanted to focus on why the Jennings family cared about the matter. He said the Jennings had been concerned with the True North development for over a year and had spent many hours on the matter. The Jennings have invested a lot of money to purchase and develop Jimmy's. Champlin said for the location, the lack of visibility for passing

customers and those trying to find Jimmy's are a major concern for the success of the business. He said if the True North development proceeds it substantially aggravates the situation to a degree that the Jennings feel they could lose their entire investment. They also have traffic and parking concerns.

Champlin said the Jennings purpose has never been to frustrate the development or to make life difficult for the city, but they believe the development could go forward on many bases that would not be nearly as harmful as what is proposed. They believe the city hasn't properly considered their concerns. Champlin said by ordinance the city permits planned unit development districts. Under the ordinance the districts are supposed to be five acres, which doesn't apply to this situation because if one is adjacent to another development it can be less than five acres as long as it functions as an extension of another development. In 1988 a PUD for the True North and Jimmy's site was created that included a part A and part B. Champlin said his side contends that a single PUD was created. The PUD in 1988 established building locations, floor area ratios, parking spaces, and a cross parking easement between the two sites. The Jennings bought and developed Jimmy's in reliance on the PUD. He said the city repeatedly has recognized the two sites were to function together. Champlin pointed to the July 24, 2006 council minutes that read "the proposed plan meets the city's goal for the two individual properties to function as one large site, the applicant's goal for development, and Jimmy's American Grill owners' goal for visibility."

Champlin said at that time the city approved a conditional use permit for a fast food restaurant space, certain variances, and final site and building plans. The fast food restaurant was to be 3,100 square feet. The city approved grading, drainage, and certain parking studies. All of those were based upon a fast food restaurant, 3,100 square feet, and being located in a particular location. The Jennings objected because the plan did not recognize their cross easement rights established by the PUD, it took away parking, and it located the building in a way that affected visibility. True North submitted the revised plan, moving the building to a place that reduced further the visibility of Jimmy's from Shady Oak Road. It increased the size of the building by 30 percent and changed the use from fast food restaurant to a fast food restaurant retail mix. No new parking studies were submitted. No other new information was submitted or reviewed by the planning commission. Champlin said the planning commission regarded the changes as minor.

He said the Jennings had the same legal concerns with the new plan as with the old and with additional concerns. Ordinance section 300.27, the site and building plan ordinance, requires approval conditioned on protecting adjacent property owners and specifically calls for preservation of view. He said the planning commission was aware of the requirement but concluded "the proposed changes would not negatively impact the site or surrounding area." Champlin said that conclusion is not a reasonable conclusion and no relative studies support the conclusion. He said information was provided at the planning commission hearing that showed visibility was significantly different and affected.

Champlin said the Jennings had a licensed architectural firm put together a series of 3-D pictures that show how the visibility is affected similar to what was shown to the planning commission but in a more understandable form. He said he delivered the document by messenger on May 31 but the material did not make it into the council packet. He said it shows as one drives along Shady Oak Road, there are only flashes of visibility to the point where Jimmy's is only briefly visible but at certain times is completely blocked from view. He said there is no question the changing of location and size has affected the ability to see the restaurant.

Champlin stated in regard to parking issues, not only are the cross easement rights ignored, but the planning commission didn't inquire into the specific uses. He said if the original PUD is a single PUD, changes should not have ever been approved because one of the two owners objected. If the PUD is two PUDs, then the Jennings had vested rights in the True North PUD and had a right to continued use of the property as originally contemplated, including the cross parking. To the extent they suffer a substantial loss, the Jennings are deprived of a public property right without just compensation. Champlin said this is something the city could be held responsible. Alternatively, the Jennings are third party beneficiaries of the original PUD agreement and the agreement cannot be changed without their consent. He said all this is backed up by Minnesota law and was not a reach.

Champlin said the Jennings have never said they unalterably wish to stand on their legal rights. They believe there are many options that would permit True North to have what it essentially wants and still address the Jennings major concerns. Champlin said the Jennings do not need to get everything they are legally entitled to be satisfied. He asked the council to deny the amendment, send the matter back to the planning commission, and give the parties a

further chance to work things out. He said new proposals were made to True North as recently as the previous Thursday. He said the alternative to not denying the amendment is really not in anyone's best interest.

Peter Coyle of Larkin Hoffman law firm at 7900 Xerxes Ave S, Minneapolis, spoke on behalf of True North. He said the building was adjusted specifically to respond to often stated objections by the appellants that when the building was shifted to the south it was blocking the view of the Jimmy's building from the intersection. They also objected that it encroached in an existing access easement which continues to encumber the site. Coyle said True North responded to the repeated objections by shifting the building out of the easement area entirely enhancing the view from the corner.

He said that in respect to the parking issue, the council rescinded the requirement for a shared parking easement. After many months of trying to secure a parking easement, one could not be produced and the council ultimately determined that it should no longer be a requirement. Coyle said there were multiple parking studies done and in all instances the plans put forth by True North were found by the city's parking consultant to meet the city's code. He said only the Jimmy's site required a parking variance and the ownership of True North did not object to the variance at the time because they wanted to be cooperative and good neighbors.

Coyle said in respect to the uses of the site, it's a mixed PUD and the uses have been found by staff to be appropriate for the site. While the building is somewhat larger, it is designed and will be used in a way that the parking demands of the site are actually reduced over the parking requirement previously approved by the council. He said True North would like to get the project finally moving so they can get on with the second building. It's been over a year since they appeared before the council to get the project going. The first building has been completed, but the easement and view issue have not been resolved. The plan before the council conforms in full with the city's code and the hope is it will resolve any lingering concerns.

Schneider said the item had been discussed in numerous meetings and there was a legitimate desire to make the site function as a single unit. To a certain extent part of that is workable - there is an access drive that serves both sides. There isn't quite the integrated parking arrangement that the site could have had, but the council recognized that was not doable quite a while ago. He said a

significant amount of time was focused on increasing the view angle of the site from the Shady Oak Road intersection. After a number of iterations, he said this site plan accomplishes that to a better extent than any previous plans. While the building is slightly longer to the north, there is less of a gap between the two buildings to provide visibility. He said he would challenge anyone traveling Shady Oak Road to look sideways to take a glimpse of Jimmy's from that perspective and the visibility is as good as it can be.

Allendorf said from July 2005 to now he can't remember if Jimmy's has ever agreed to a site plan for the southerly building. He said whenever the building has been on the southern side as opposed to where the building is moved now there have been objections due to the private easement. He said he wasn't sure if his memory was entirely correct. Peterson said to her knowledge there has never been an agreement in terms of what has been presented to the city. Allendorf asked if True North was asking for any variances. Wischnack said there are no variances being requested.

Callison said there is no evidence the parties can work out their differences. She agreed with Schneider that the traffic on the site is integrated and the parking is not what was wished for, but she thought the proposal reduces the demands on the site for parking which is a benefit for Jimmy's. She said it is Jimmy's that really needs the parking and needs to have the overflow. The real issue is the loss of visibility or preservation of views and that is a matter of degree. There's no building that could be put on the westerly portion of the site that would not obstruct Jimmy's to some extent. That's the nature of how the parcels relate so it's a matter of degree. Callison said it was at a point where the project needs to get moving and the city couldn't do any more than it has already done. She said that both sides will benefit from the other and if there is a development on the western property that is drawing in business it is a positive for Jimmy's.

Thomas agreed with Callison and said it boils down to a visibility issue. He said it was a tough layout for the restaurant but he thinks the city has done all it can do, especially when the building going in doesn't need any variances. The city has been trying to compromise on its end to make it a win-win for both sides knowing there hasn't been a lot of agreement between the two landowners. He said the city has negotiated the best deal possible and the parking will benefit the restaurant and the project needs to move forward.

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2007-071 upholding the planning commission's approval of the minor amendment to an existing master development plan at 6001 Shady Oak Road (Minnetonka Crossings) All voted "yes." Motion carried.

B. Ordinance establishing flexible interim development restrictions.

Gunyou gave the staff report. He noted that state law allows a moratorium to last for a year but it is expected most of the necessary work will be completed within seven to eight months. The recommendation is to enact the full year to allow flexibility to incrementally relax some of the restrictions as ordinances are adopted. He said the shore land ordinances have already been written and are being reviewed by the Minnesota Department of Natural Resources. Tree preservation has been discussed on a couple of different occasions by the council, and staff is preparing specific ordinances to bring to the council for its consideration. A grading ordinance needs minor work, mostly to allow for quicker action to be taken for violations. Limited work has been done on the steep slope and impervious surface ordinances, so those will take more time.

Gunyou said staff recognizes moratoriums can cause hardship to land and property owners, so the proposed ordinance has been drafted to be flexible. Any project that comes forward as a planned unit development could still be considered, giving the city more control while allowing more flexibility to preserve natural resources on a case by case basis. He noted the council discussion at the May 21 meeting indicated concern over a freeze on those projects requiring a comprehensive plan amendment. The original staff recommendation was any guide plan amendment would be restricted. In response to council concerns, staff now recommends that those projects could be moved forward if they are accompanied by a PUD.

Gunyou said there has been confusion about the change. He indicated that the two letters received from the developers impacted by the change may no longer be germane at this point. Staff doesn't think it makes sense to preemptively exempt projects, as requested by the developers, since they can still move forward as PUDs. This doesn't guarantee approval. The guide plan amendment process is a fairly lengthy process, and even without the interim restrictions, it would still take months to go through the guide plan review.

Wagner asked if the PUD requirement will give the city enough flexibility to steer projects with tree preservation and steep slope issues. Gunyou said there is good direction from the council on tree preservation, so even though an ordinance has not been adopted, as projects come forward there is adequate background for staff to work with potential developers. The steep slope ordinance will have to be developed moving forward, but a recent project gave staff insight into some of council's concerns. There is a growing understanding that some projects are so complex that the existing standard of 35 percent needs to be reconsidered. He said because a PUD allows for review on a case by case basis, it will allow staff to gain better knowledge to draft the ordinances.

Gunyou emphasized that even though the proposed ordinance allows projects to come forward as PUD's, there is no guarantee or obligation for the council to approve or deny those projects, especially those considering guide plan changes.

Wagner asked staff to give an overview of the overall comp plan schedule. Wischnack said the general outline is for the comp plan to be complete by the end of 2008. A lot of the process time is to allow for Met Council review of the plan. She said the Met Council's review process accounts for around seven to eight months of that timeframe. Currently the city is going through a lot of discussion and analysis of existing conditions. This should continue through September. From September until November there will be discussion on future land uses. Review of the drafts of chapters will begin after December and will continue through February. There will be public open houses throughout the process and especially when the drafts are written in the spring of 2008. Callison said there is information on the city's web site for people who want to follow the process.

Allendorf said the comp plan review committee will be in a position to look at specific areas and future uses in September. He asked absent the proposed moratorium, if somebody came in with a proposal requiring a comprehensive plan change what the timing would be. Gunyou replied there really is no difference in timing as a result of the moratorium. Comprehensive plan changes take more review than typical development projects. Wischnack said for the comprehensive plan process there are two pieces, the city's part and the Met Council's part. The first step is city approval of the comprehensive plan amendment which is usually accompanied by a plat. Typically the normal 60 day review period is extended to 120 days. She said that is the time when the comprehensive plan is

considered and if approved, is presented to the Met Council which then takes another 60 days for review. So in total there is a six month timeframe. Allendorf said if a project came through under a PUD with a suggested comprehensive plan change and the council moved a specific area forward because of resident concerns there wouldn't be lost time from the process whether the moratorium was in place or not. Wischnack agreed with Allendorf that the timelines are similar and the proposed moratorium wouldn't create a negative impact on property owners.

Wendy Larson of 1600 Wilshire Circle said she was speaking on behalf of many of her neighbors and had those in attendance stand up. She said the neighbors appreciate the time given to them by the city with letters, phone calls, and meetings. They also appreciate the language now in 3.01 for more flexibility to go forward with a development under a PUD. She said the neighborhood has been waiting a long time for a development that worked for individual homeowners as well as the collective neighborhood. This is the first time in quite a few years that there is an agreement on a proposal. She said the Ridgehaven Commons proposal is a wonderful opportunity for the residents who have been living with not knowing which direction they will be going, and also for those people moving into the neighborhood. She said it is a great area and the proposal is a win-win situation for all involved. She hopes when the proposal comes before the planning commission and the council it will move forward as soon as possible so the neighbors can get on with their lives.

Dennis Larson of 1512 Wilshire Drive said the proposed moratorium differs from what was originally presented at the last council meeting. He noted he was involved with Allendorf on the last comprehensive plan committee. He recognized Wagner for listening to all the neighbors' concerns. He said he hopes all the processes can move forward. Callison noted it is a long process with no guaranteed outcome.

Mark Nelson who works with United Properties said he is working on a development on Rowland Road that was accepted by the city. He said he appreciates that the moratorium has flexibility with the PUD process but the ordinance caught his company by surprise. The proposed development was scheduled to be before the planning commission the following week. He said the current code is a good code, and is both protective and restrictive. He said it has taken time to come up with a plan that meets all the city's regulations and asked how the PUD requirement would affect the project. Callison clarified that the project had been submitted but

not yet approved. She asked Wischnack to respond to Nelson's question. Wischnack said if the ordinance was adopted the applicant would need to amend the application to include a rezoning for planned unit development. She said Callison was correct in the statement that the application had been accepted but not approved. Callison asked about the timeframe for the resubmitted application. Wischnack said there would be a requirement for a published formal notice so it would take a minimum of 15 to 20 days for the item to get on the next agenda.

Schneider asked since it is a city requirement that the applicant amend the application if the fees could be waived. Wischnack said that could be done. Peterson noted that only applies to applications already in the process and not for new applications.

Wagner thanked Larson for the nice comments. He also thanked staff for making adjustments to the ordinance and Allendorf for summarizing the timelines. He said the comprehensive planning process validates what land uses the city should have.

Schneider said due to the challenge on homeowners of putting together a redevelopment area, the flexibility is important. He said that the timing may sound difficult but having the guide plan being actively reviewed by a formal committee could move things forward more progressively, although it still doesn't guarantee approval. Two years in the future when the guide plan is adopted and a developer brings forward a project requiring a change in the guide plan, there would be a higher burden of proof on the developer. From a timing standpoint this has the ability to provide for a more fair hearing for an alternative land use. He said staff has come up with appropriate wording to allow for flexibility yet maintain council control to make the ultimate decision.

Callison added schedules are always susceptible to slipping, so it is possible that the timetables won't move as quickly as discussed.

Allendorf said the city has assembled a qualified group to take on the task of looking at changes to the comprehensive plan so the timing of the ordinance is good.

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2007-20 establishing flexible interim development restrictions.
All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointments and reappointments to the senior citizen advisory board.

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

- David Carroll, to be reappointed to the senior citizen advisory board, to serve another two year term, effective June 4, 2007 and expiring on May 31, 2009.
- Florence Dockendorf, to be reappointed to the senior citizen advisory board, to serve another two year term, effective June 4, 2007 and expiring on May 31, 2009.
- Kaye Fredensborg, to be reappointed to the senior citizen advisory board, to serve another two year term, effective June 4, 2007 and expiring on May 31, 2009.
- Lois King, to be reappointed to the senior citizen advisory board, to serve another two year term, effective June 4, 2007 and expiring on May 31, 2009.
- William Lurth, to be reappointed to the senior citizen advisory board, to serve another two year term, effective June 4, 2007 and expiring on May 31, 2009.
- Donna Bloom, to be appointed to the senior citizen advisory board, to serve a two year term, effective June 4, 2007 and expiring on May 31, 2009.
- Ann Drier, to be appointed to the senior citizen advisory board, to serve a two year term, effective June 4, 2007 and expiring on May 31, 2009.

All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Allendorf seconded a motion to adjourn the meeting at 8:34 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk