

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JUNE 25, 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 Terry Schneider, Al Thomas, Dick Allendorf, Bob Ellingson, Tony Wagner, Brad Wiersum, and Jan Callison were present.

4. APPROVAL OF AGENDA.

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

5. APPROVAL OF MINUTES: May 7, 2007 regular meeting

Thomas moved, Allendorf seconded a motion to approve the minutes of the May 7, 2007 Minnetonka City Council regular meeting. Thomas, Allendorf, Ellingson, Wagner, Wiersum, and Callison voted "yes." Schneider abstained. Motion carried.

6. SPECIAL MATTERS:

A. Recognition of outgoing senior citizen advisory board members.

The council recognized Dave Griep, Marj Harn, George Perry and Naomi Stock for their service on the senior citizen advisory board.

Stock gave thanks for the opportunity to serve. She said as she retires from the board she has been given the gift of continuing with her counseling work. She will be counseling returning veterans.

B. Review of the 2006 Financial Report with the city's audit firm of Kern, DeWenter, Viere, LTD.

Gunyou noted that the auditors work for the council in their role of auditing the city's books, reviewing staff work, and recommending improvements. He said the city has typically had clean audits and this year is no exception. The city has earned the Government

Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting for 23 consecutive years. Gunyou said this speaks well of the city's finance staff.

Steve Wischmann, a partner of Kern DeWenter Viere, presented the audit report. He said this was the fourth year the firm has audited the city.

He said the 2006 audit was an exceptionally clean audit. There were no audit scope limitations. The auditors were given free access to all the information requested. There were no disagreements with management on any accounting policies or procedures.

Wischmann said there was a new standard implemented this year called Statement of Auditing Standards Number 112, which slightly changed the required communication. The auditor is now required to notify the city if there are any audit adjustments material to the financial statements. He said there was one particular isolated adjustment relating to some capital assets that were added from prior years. The adjustment has been booked and corrected. He said there were a couple of other housekeeping recommendations that are either in process or have been corrected.

He said as far as the audit process is concerned, things that are normally found in an audit were not found to be issues for the city of Minnetonka. As an example he said the number of audit adjustments made was two and it is common to see 10 to 20 in other cities. Wischmann said this was due to the excellent work done in the finance department and noted this was good because the council can rely on the information throughout the year as well as the year end audited statements. He said another example of typical issues found that were not found in this audit is the lack of segregation of accounting duties. This indicates the city's internal control structure is excellent. As far as the budget process, the city's operating funds were within two percent of the budget.

Wischmann said the city's general fund revenues increased by about \$1.2 million, from around \$22 million to \$23.2 million. The tax levy increased by about \$650,000. There was a change in how inter-governmental fire relief aid is accounted and an increase in the city's investment portfolio income. General fund expenditures increased from around \$21.8 million to \$22.9 million. He said the revenue and cost per household numbers stayed consistent with only a slight increase in both 2005 and 2006. The revenues per

household increased from \$1,003 to \$1,056 and the expenditures from \$990 to \$1,041.

He said the fund balance in the general fund is about \$9.1 million on a \$25 million budget. From a percentage standpoint, the fund balance compared to expenditures is around 36.7 percent. Wischmann said the state auditor recommends the percentage be between 35 and 50 percent.

Wischmann said the city's enterprise funds remain relatively consistent from year to year. Revenues increased in the water and sewer fund as did expenditures. He said the bottom line is the operating income before depreciation grew from around \$2.5 million to just over \$2.6 million. The ice arena saw an increase in revenues from \$744,000 to \$773,000 while expenditures increased from \$711,000 to \$784,000 resulting in a slight operating loss. The environmental fund continues to grow, adding around \$200,000 operating income in 2006. Revenues increased at the Williston Center from \$653,000 to \$727,000 while expenditures increased from \$615,000 to \$638,000. The marina fund had an operating income of around \$32,000, down slightly from \$41,000. The storm water revenue increased from \$1,420,000 to \$1,483,000 while expenses declined slightly. He said these are very good trends as operating revenues in the city are covering the operating expenses.

He said the market value of taxable property continues to grow in an even and steady manner. Wischmann said Minnetonka's AAA bond rating is in the top three percent nationwide according to Moody's.

Thomas asked for clarification on the ice arena's revenues versus expenditures. Wischmann said the ice arena is the only enterprise fund where the expenses exceeded the revenues. This occurred in 2003, 2004, and 2006. He said in all three years it was fairly close to break even. Thomas asked if there was an extraordinary expense for the ice arena that would account for the loss. Finance Director Merrill King said in 2006 there were improvements made to the ice arena and the ice arena fund paid for a significant portion of those costs.

Callison agreed with Wischmann's comment on the quality of the city's finance staff. She thanked the staff.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou said there was an all time high attendance at the city's Summer Festival held over the weekend. Around 12,000 people attended, an increase of about 50 percent over last year when it rained throughout the day. An estimated 7,600 people were at the fireworks show. Over 400 people participated in the race. Gunyou noted Wiersum's son was the winner of the men's 8K. The food vendors reported they did well. An estimated 3,500 people attended the Ice Cream Social. 750 kids did the history maze, and about 100 children and parents were in the mini-parade which included a mini-horse this year. 200 kids made spin art pictures. 1,000 hot dogs and 75 gallons of ice cream were consumed. Gunyou read an email he received that summarized many of the comments he heard. Among other compliments, the email praised the ease of getting in and out of the civic center parking lot. Gunyou thanked the council for its continued support. Callison said the staff did a wonderful job and it was a great day. The weather was perfect, the activities were well organized and planned, and people had a good time.

Gunyou reported there is no council meeting July 2. City hall is closed July 4. The next regular meeting will be July 9.

Callison said the Miracle Field at Bennett Park held its groundbreaking. Also the Clear Spring Road Residences serving people with disabilities had its dedication. The buildings are open and people will be moving in shortly. Finally ICA is holding the dedication of its new facility. She said she stopped by earlier in the evening and council members and staff were invited to take a tour of the facility. She said it was a wonderful facility and it is hard to believe ICA was able to work out of its old building for as long as it did.

Wiersum thanked the staff for its enthusiasm and hard work put into the Summer Festival and Ice Cream Social.

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

No one appeared.

9. BIDS AND PURCHASES: None.

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

A. Claims for council authorization – June 11, 2007.

Allendorf moved, Thomas seconded a motion to approve the June 11, 2007 claims which includes checks numbered 204646 through 204937, totaling \$1,984,689.62. All voted "yes." Motion carried.

B. Claims for council authorization – June 25, 2007.

Allendorf moved, Thomas seconded a motion to approve the June 25, 2007 claims which includes checks numbered 204938 through 205238, totaling \$1,297,446.25. All voted “yes.” Motion carried.

C. Resolution declaring existence of public right-of way for Highland Road.

Allendorf moved, Thomas seconded a motion to adopt Resolution No. 2007-072 declaring existence of public right-of way for Highland Road. All voted “yes.” Motion carried.

D. Agreement with Xcel Energy to provide overhead utility line burial.

Allendorf moved, Thomas seconded a motion to approve the agreement with Xcel Energy to provide overhead utility line burial. All voted “yes.” Motion carried.

E. Contract with Close Landscape Architecture for Glen Lake streetscape planning.

Thomas asked for an outline of the opportunities residents will have for input on pedestrian, street, landscaping and other concerns that will be happening in the near future.

Community Development Director Ron Rankin said the streetscape planning work will include plans for new sidewalks, street lighting, and landscaping throughout Glen Lake as well the makeover of the Glen Lake plaza area. In putting together the request for proposal staff specifically asked for the consultants to plan extra meetings to spend time with businesses, area residents, and council and EDA members as the planning process goes forward. There was a meeting with the consultant last week to discuss how things will proceed if the council approved going ahead with the contract. The consultant agreed to move quickly to start getting some ideas put together and drawings done to provide materials for people to react to.

Callison said there was a pedestrian study conducted in the area with a lot of resident participation. She asked if this project will incorporate the results of that study. Rankin said yes and there has been discussion about reconvening that group. Allendorf

encouraged staff to update the city's website with information on the project. Rankin said that would be done.

Thomas moved, Ellingson seconded a motion to approve the contract with Close Landscape Architecture for Glen Lake streetscape planning. All voted "yes." Motion carried.

F. One-year extension of the FETTERLY VIEW final plat approval at 11519 Fetterly Road for Richard and Jill Heimerl.

Allendorf moved, Thomas seconded a motion to approve the time extension. All voted "yes." Motion carried.

G. Resolutions ordering the abatement of nuisance conditions.

Rankin said both properties are still in violation as of this afternoon.

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

- 1) Resolution No. 2007-073 ordering the abatement of nuisance conditions existing at 5109 Baker Road.
- 2) Resolution No. 2007-074 ordering the abatement of nuisance conditions existing at 16304 Temple Drive.

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

Rankin noted nearly half of the properties on the list had been brought into compliance. Of the properties on the attachment listing 17 properties, 1, 6, 7, 9, 11, 12, 14, 15, 16, and 17 were still in violation.

Allendorf moved, Thomas seconded a motion to adopt Resolution No. 2007-075 ordering the abatement of long grass nuisance conditions. All voted "yes." Motion carried.

I. Labor agreement between the city of Minnetonka and Teamsters Local #320 – police sergeants and communications manager.

Allendorf moved, Thomas seconded a motion to approve the agreement. All voted "yes." Motion carried.

J. Proposed order for liquor license stipulation for The New Cellars Liquors and Wines, Inc.

Allendorf moved, Thomas seconded a motion to issuing a Finding of Fact, Conclusion, and Order for The New Cellars Liquors and Wine, Inc.:

<u>Establishment</u>	<u>Fine</u>	<u>Suspension</u>
<u>US Liquor & Wine</u>	<u>\$350</u>	<u>None</u>

All voted "yes." Motion carried.

K. CommonBond request for additional funding for Crown Ridge Advantage Center.

Allendorf moved, Thomas seconded a motion to approve the additional \$2,500 in Crown Ridge Advantage Center funding. The source of the funds will be from the Livable Communities Account. All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Preliminary and final plat, with a variance, for a two-lot subdivision at 17224 Lake Street Extension.

Wagner moved, Schneider seconded a motion to:

1) Approve the STAGEBERG ADDITION preliminary plat, date-stamped May 8, 2007, with a lot width at the right-of-way variance from 80 feet to 0 feet for Lot 1.

Approval is based on the following findings:

- a. The proposal meets the required standards and ordinances for a preliminary plat.
- b. The proposal meets the required standards for a lot width at the right-of-way variance in Section 300.10, Subdivision 5(h)(2)(b).
- c. The property cannot be subdivided into three lots and meet minimum city code requirements.

Approval is subject to the following conditions:

- a. The following items must be submitted to the city before the city releases the final plat:
 - (1) An electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - (2) The following documents for the city attorney's approval:
 - (a) Title evidence that is current within thirty days before release of the final plat.
 - (b) A private driveway easement between the street right-of-way and Lot 1. The easement must state the maintenance

responsibilities of each owner. The easement must be 34 feet wide, and the minimum driveway width must be as required by the city engineer and the fire marshal.

- (c) A private utility easement between the street right-of-way and Lot 1.
- (d) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat.
- (e) Submit a document, in recordable form, agreeing to deed the property right for further subdivision of Lot 2 to the City of Minnetonka.
- (f) These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.

b. The following must be completed before the city issues a building permit:

- (1) City approval of a grading and tree preservation plan for each lot. The plans must be in substantial compliance with the building pads shown on the preliminary plat and must preserve trees designated for preservation at the time of preliminary plat approval. The city may require adjustments in the house pad location to maximize tree preservation. The sewer and water services must be shown to minimize impact to any significant trees.
- (2) Install and maintain a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot, as required by the city's natural resources staff.
- (3) Submit a copy of the recorded plat and any easements or covenants required to be recorded.
- (4) Pay a hookup fee for sanitary sewer and water.
- (5) Submit a letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the city planner may approve a time extension to this requirement.

- c. A 13D automatic fire sprinkler system and a curbside street address along Lake Street Extension must be provided for the new home on Lot 1.
 - d. The grading for the new home on Lot 1 must be revised as to not impact the critical root zone of the two oak trees along the common lot line between Lots 1 and 2.
 - e. The floor area ratio of Lot 1 must not exceed 0.19. Therefore, the floor area of the new home cannot exceed 4,297 square feet, which includes the above-grade floor area, attached garage, and half the area of an exposed basement.
 - f. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
 - g. Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 ½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
 - h. Before the city makes a final inspection of the house, the drive must be paved from the street to the house on Lot 1. A driveway setback of at least seven feet must be maintained from the side lot lines. The city may approve a time extension if weather prevents paving of the drive.
 - i. 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 plat approval will be void.
- 2) Approve the STAGEBERG ADDITION final plat, date-stamped May 8, 2007, and subject to the following conditions:
- a. Show the following on the final plat:
 - (1) A ten-foot-wide drainage and utility easement along the east lot line of Lot 2.
 - (2) A drainage and utility easement over the 903.0 floodplain elevation on the northwest corner of Lot 1.
 - b. Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat.

- c. Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance amending a master development plan and approving final site and building plans for Minnetonka Christian Academy at 3500 Williston Road.

City Planner Julie Wischnack gave the staff report. She said consideration for final site and building plans for the building would be discussed at the June 28 planning commission meeting.

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

13. PUBLIC HEARINGS:

A. Public hearing to consider an application by Episode 689, LLC, for an off-sale intoxicating liquor license for Cedar Lake Liquor, 11048 Cedar Lake Road.

Rankin gave the staff report. He said the license would be one of 10 off sale licenses the city council has approved for operation in the city. All the application information is in and has been submitted to the police department for its report. The report will be brought back to the council July 23.

Callison opened the hearing at 7:10 p.m. No one spoke.

Callison continued the hearing to July 23, 2007.

Allendorf moved, Thomas seconded a motion to continue the hearing to July 23, 2007. All voted "yes." Motion carried.

B. Public hearing to consider a resolution authorizing the issuance of a revenue note by the city of Independence (Opportunity Partners project).

Gunyou gave the staff report. He said similar authorization has been done on other occasions. There is a federal limit on how much debt can be issued every year. In this case there is no

exposure to the city but there is a limit to what can be issued under the city's name. Because there are plans to issue other debt, the city of Independence has expressed a willingness to issue a revenue note if Minnetonka approves it. There will be no financial obligation to the city.

Callison opened the hearing at 7:12 p.m.

Bruce Bester of Opportunity Partners at 5500 Opportunity Court said the organization is pleased to be part of the community. They are looking forward to the remodeling and renovation of their headquarters which will allow them to continue to provide great services to persons with disabilities.

Callison closed the hearing at 7:13 p.m.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2007-076 authorizing the issuance of a revenue note by the city of Independence (Opportunity Partners project). All voted "yes." Motion carried.

14. OTHER BUSINESS:

- A. Items concerning the operation of a medical use at 16200 and 16184 St Hwy 7 for Bill and Lesli Kramer:**
- (1) Amendment to an existing master development plan;**
 - (2) Conditional use permit, with variance.**
 - (3) Parking variance.**

Wischnack gave the staff report. She said the location of the property is in the Tonkawood office condominium area, is currently under construction and the project is nearing completion. Staff has found there is reasonable use as an office building but there was no finding that there is reasonable hardship created by the property. Wischnack said medical use often has more visitors and parking during the day than an office use might have. She said staff does not believe the amendment to the master development plan is reasonable. The site is located directly behind some single family homes. The presence of a medical clinic would likely contribute to traffic congestion. The existing parking contains about 84 spaces. With the proof of parking area there would be 97 spaces. The requirement for office use is 95 spaces. The requirement for medical use is 103 parking spaces. The planning commission recommended denial of the request at its last meeting.

Wagner asked if it was normal to have proof of parking where there is a landscaping effort that makes it hard to undo without a lot of effort. Wischnack said proof of parking is used as a tool to not over pave properties without having knowledge that the space is needed for parking. The optimal situation is that it is easily built and installed. She said there is no standard by which proof of parking is issued. Usually there is a site design with an area suitable but in this case there is quite an elevation change.

Allendorf asked for an update on the buffering and landscaping of the project. Wischnack replied the landscaping has caused quite a bit of questioning from the neighbors in the area. The replanting has begun but is not complete. The area around the storm pond has been replanted. The preceding Friday, Wischnack said she received an email from staff inspecting the site indicating 54 conifers required for the project had been planted.

Callison said she understood the landscaping is not complete although it is better than it was before. She asked if neighbors could expect more plantings. Wischnack said that was correct, the screening is done but there is more landscaping to do on the site.

Callison said another issued raised by the neighbors is if decks will be built as part of the construction. Wischnack replied patio doors have been installed on the building. She indicated this is not illegal. The property owner approached the city about installing decks but an application to review the deck requests has not been approved or considered. Callison asked if the approval process would be administrative or if it would have to go before the planning commission and council with notice to the neighbors. Wischnack said it would have to go through site plan review at the planning commission level. This does not prompt a public hearing request but because of the interest staff would do a courtesy notice to the neighborhood to let residents know what has been proposed.

Wiersum said he received a number of calls from neighbors about the development. The biggest issue raised had to do with the screening and the storm water pond. There was an initial requirement that no one would access the storm water pond from Highwood Drive to take out trees but that did happen. He asked if the developer had been cooperative with staff as issues had been raised and if the project was on schedule. He said the development had taken longer than anyone envisioned. Wischnack said as staff discussed the project with the property owner there was an expectation planting would take place earlier in the season. She said while the property owner has been responsive, the schedule

has not been optimal. Staff is continuing to work to get compliance, especially on the landscaping. Wiersum said if the issue of proposed decks comes forward he would like to see notice provided to the neighbors as a courtesy.

Wagner asked for clarification about an exception for chiropractic care under the medical uses definition. Wischnack said the exception was included in the declaration provided by the developer and is not a city requirement. Wagner asked if chiropractic care is considered a medical use and if the declaration is incorrect. Wischnack said she considers chiropractic care a medical use. Callison pointed to the definition provided at the beginning of the staff report.

Wiersum asked if there is a restriction when there is a medical use office adjacent to R1 low density housing. Wischnack said that is a requirement of the conditional use process for medical use. The standard is medical use offices cannot be located adjacent to residentially used properties. Wiersum asked if there were a problem therefore since chiropractic qualifies as a medical use and there is a stipulation allowing chiropractic and the development is adjacent to R1 housing. City Attorney Desyl Peterson said the stipulation is not the city's stipulation. It is something the developer put into their declaration for the condominiums so the city is not bound to that stipulation. Wiersum asked if the developer would still have to apply for a conditional use permit if someone proposed to use the offices for chiropractic services. Peterson said that was correct. Wischnack said the requirement applies to uses over 2,000 square feet.

Gunyou clarified the distinction between medical uses and other uses is primarily related to the volume of traffic and parking required.

Ted Engler of 16121 Highwood Drive said his property is located right behind the development. He said he spoke on behalf of the neighbors adjacent to the properties who support the staff recommendation.

Callison said that a denial seemed to be appropriate given the ordinances and issues of parking on the site.

Wiersum moved, Thomas seconded a motion to adopt Resolution No. 2007-077 denying the proposed conditional use permit, master development plan amendment, and variances. Denial is based on the following findings:

- 1) The applicants' proposal does not meet the standards of the master development plan. Amendment of this plan is not reasonable as previous approval of the Tonkawoods Office Condo development was largely based on the understanding that the operation of medical uses would be strictly prohibited on site.
- 2) The proposal does not meet conditional use permit standards, as the site is located adjacent to low density residential properties.
- 3) The existing property only meets parking requirements through the use of proof-of- parking. With the proposal, the property would not meet parking requirements.
- 4) A parking variance is not reasonable as the variance standards would not be met:
 - a. The property owner has not demonstrated a hardship, as the owner has reasonable use of the property. The owner has the opportunity to operate office uses on site but not a medical clinic.
 - b. The property has been zoned and developed consistent with the property owner's original request. Therefore, any difficulties or hardships are self-created.
 - c. The proposed operation of a medical clinic on the subject property may increase traffic volumes in the area and would create higher demand for parking on a site that has already been granted relief from ordinance parking standards with the original PUD approval.

All voted "yes." Motion carried.

B. Ordinance regulating dynamic signs.

Gunyou said the city has traditionally been far more conservative than many communities in the allowance of signage. Forty years ago the city adopted a sign ordinance that did not permit any type of illuminated, flashing, or moving signs, illuminated revolving beacons, zip flashers or similar devices in any part of the community. There was an accommodation for public service messages and time and temperature messages. Shortly thereafter the Minnesota Supreme Court upheld the Minnetonka ordinance providing for the amortization of billboards that allowed cities to buy out and eliminate billboards over time. State statute changes subsequently reversed that ability of cities to eliminate billboards. Gunyou said 40 years ago Minnetonka was ahead of its time as the city often is on aesthetic and natural resources issues. He noted 20

years ago a city sign task force discussed community image and the importance of providing guidelines and incentives to set a high standard of aesthetics in the community, particularly along transportation corridors. Around 10 years ago when the city's last comprehensive plan was adopted, one of the policies was adopted to maintain and improve its visual image - particularly among major road corridors.

Gunyou said the city has a long history of caring about aesthetics. The staff recommendation was to significantly expand the allowance of signage permitted in the city, but in a way that recognized this traditional interest in the visual environment. The city council and planning commission previously held a joint study session on the issue, and directed staff to strike a reasonable balance between allowing newer technologies while still protecting the values and aesthetics of the community.

Wischnack presented the staff report. She said one issue identified early on in discussions was that the signs couldn't be defined with certain words like "electronic" or "electronic display." What was agreed upon was the term "dynamic," which includes various types of displays and certain aspects of signs. As the discussion progressed as to what the city's options were, two extremes were considered: the prohibition of any dynamic display and also not having any restrictions to dynamic signs. She said what was being proposed falls in the middle of the extremes. By proposing an overlay to existing sign regulations, there will not be any changes to the base standards that property owners have today for signage. The ordinance is also performance based, rather than technology based to allow for future flexibility.

Wischnack said to develop the proposed ordinance a lot of research had to be done. The city hired SRF Consulting to research issues and provide a report that included expert opinions and outlined safety considerations. She said a lot of the planning commission discussion focused on how there can never be definitive proof of the causal relationship between dynamic signs and highway accidents. There are a lot of things that cause accidents and often the direct cause is never known. However, the studies did not present the absence of the effect of dynamic signs on accidents. Studies indicated that drivers are affected by sign transitions.

Wischnack said the size limitations in the proposed ordinance are the same for all zoning districts and only allow static displays. Signs would be allowed to show different messages every 20 minutes

excluding time and temperature signs, which are allowed to change every three seconds. The transition from one message to the next must be instantaneous. She said there was discussion about legibility issues, particularly about the font size of the letters used in messages. The proposal is for a graduated minimum font size that increases as the speed limit on the roadway increases. She said the size of the dynamic portion of a sign was also discussed. The basic idea of allowing for signage is to provide a way-finding feature. Advertising is a secondary function. This is the rationale behind proposing the requirement that a portion of the sign be permanent.

Wischnack said the issue of brightness was another difficult issue to address. The proposed ordinance sets the standard as "no sign may be brighter than necessary for clear and adequate visibility". This mirrors the standard established by the Wisconsin Department of Transportation. The ordinance requires the sign owner to adjust the sign if it is out of compliance. If there is a dispute about whether the sign is out of compliance, a three person panel will decide the matter. She said there is also an incentive section of the proposed ordinance that is in addition to the tentative settlement agreement, which encourages the replacement of nonconforming signs. The incentive allows for two sign faces to be removed for every dynamic sign installed, an increase in the frequency of change, and 100 percent of the sign to be dynamic.

Wischnack said the planning commission asked staff to further research and consider minimum display times. The commission agreed with the need to have a defined hold time, and discussed allowing the messages to change more frequently than twenty minutes. Staff had safety concerns, particularly in situations where there would be multiple dynamic signs in a row and the cumulative frequency of change would be a concern.

Wischnack said the planning commission also had a detailed discussion on the maximum dynamic portion of a sign to be allowed. By allowing people to use 35 percent of their existing signs as dynamic the important aspect of way finding is maintained. Concerns of the effects on neighborhoods were also discussed. Some of the signs are not located in major corridors of the city. There are pockets of neighborhood commercial centers where the signs are surrounded by homes and the dynamic nature becomes more of a concern.

Ellingson asked if the size of the Mid Country Bank sign located on Highway 7 currently exceeds the requirements of the ordinance.

Gunyou said it does exceed the size limit. He said the sign was inappropriately signed off on by staff, and was built too large. If the bank wishes to change the sign to a dynamic display, the city could require the bank to resize the sign correctly.

Ellingson said the Minnwest Bank sign currently has flashing messages that change frequently. He asked if the proposed ordinance would limit the changes to 20 minutes. Peterson said initially when the sign went up the bank was told to close it down because the city didn't allow moving or flashing signs. The bank pointed to the exception in the ordinance for time, temperature, and public service announcements, and agreed to only show public service announcements. She said if the bank is only showing public service announcements then technically they probably are in compliance with the current ordinance. Callison said she drove by the sign earlier in the day and it was not changing messages at all.

Wiersum said that in some of the examples shown in the staff report the dynamic portion of the signs was well above the 35 percent allowance. He asked if the proposed ordinance would require the signs to change or if they would be grandfathered in. Peterson replied the structural aspects would be allowed to continue as a nonconforming use. The ordinance would require the signs to comply with the operational requirements such as the minimum text size. Gunyou cited the Minnwest Bank sign as an example. Under the proposed ordinance the sign would not be allowed to change the public service announcement every four seconds, or to scroll messages.

Roger Brown of 645 Faculty Drive in Brookings, South Dakota said he works for Daktronics, a sign manufacturer. He asked if the font size requirements apply only to dynamic signs or to all types of signs. Callison confirmed with staff that the requirements apply only to dynamic signs. Brown said he supported the operational requirements of off premise signs. He said the eight second hold time with static images is appropriate. But he said the on premise sign regulations were out of whack. By requiring specific font sizes, twenty minute hold times, limiting the amount of a sign that can be dynamic, he said the city was denying the market for the signs. He urged the council to require the industry standard for on premise signs which includes a hold time of one to two seconds. Callison noted one person's out of whack is another person's ahead of their time. She expected that people will continue to put the signs up in the city.

Schneider said staff did an excellent job in balancing new technology and the interest of the sign business with the overall aesthetics of the community. He said while not ideal, the changes in the proposed ordinance have made great strides in accommodating how the city deals with these types of signs and changes in technology.

Wiersum said he likes living in a community that has sign standards. The aesthetics of the community are better because the city has been somewhat restrictive on signs. He said the staff work and the input the council provided has led to a good proposed ordinance. He said if the city is insufficiently restrictive the community would end up with a lot of signs that people don't like and at the same time the owner has invested a lot of money. There would be no way to go back at that point. He said the proposed ordinance is prudent in accommodating new technology while at the same time not turning the city into the wild, wild west.

Allendorf said he respected the work of the planning commission and the issues they pointed out to the council. As he looked at the issue of minimum display time he didn't have a standard in his mind that tells him 20 minutes is the right standard. He said he thought it was better to error on the side of being more restrictive and if it is found that more frequent changes are better, it is unlikely people would complain. Similarly the issue of limiting signs to 35 percent dynamic is a good starting point.

Wagner thanked the staff for its work and for the improvements to the aesthetics of the city in eliminating legacy signs with the proposed settlement. He said the ordinance moves in the right direction and with the work of staff and the consultant he is comfortable with the ordinance.

Callison thanked Daktronics for its expertise in helping staff craft the ordinance, and she recognized that it didn't end up entirely the way the company wanted it to. She said the ordinance reflects the community and its long history of regulating signs and safety and aesthetics concerns. The ordinance may not contain the standards that other communities would adopt, but it fits Minnetonka well. She said when the issue arose with Clear Channel's lawsuit, a lot of the emails she received expressed concerns of the impact of dynamic signs, and asked that they not be allowed to be the defining characteristic of the community. She said she appreciated the work of the staff and the planning commission.

Schneider said he appreciated Clear Channel working with the city on the issue. He said as he observes the signs on I394, the one that is the most attractive and pleasing is the new dynamic sign that has better quality than the typical poster signs.

Schneider moved, Wiersum seconded a motion to adopt Ordinance No. 2007-21 amending City Code Section 300.30 regarding dynamic signs. All voted "yes." Motion carried.

Gunyou noted the staff has reached a tentative settlement with Clear Channel, and that the council had previously reviewed that potential settlement. The settlement likely will be brought back to the council at the next meeting after the details are worked out. He agreed with Schneider that the negotiations with Clear Channel helped bring the city to where it is, and complemented the company for coming to the table with an open mind.

Callison thanked John Baker, who was assigned by the League of Minnesota Cities to represent the city on the lawsuit and help work on the ordinance.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Student representative appointments.

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

- Tess Komarek, as a park board student representative, to serve the remainder of a two-year term, effective June 26, 2007 and expiring on January 31, 2008.
- Cameron French, as a police advisory commission student representative, to serve the remainder of a two-year term, effective June 26, 2007 and expiring on October 1, 2007.
- Robbie Rosenthal, as a community commission student representative, to serve a one-year term, effective June 26, 2007 and expiring on January 31, 2008.
- Gauri Subramani, as an EDA student representative, to serve the remainder of a two-year term, effective June 26, 2007 and expiring on January 31, 2008.

All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Wagner seconded a motion to adjourn the meeting 8:05 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk