

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JULY 23, 2007**

1. CALL TO ORDER.

Mayor Callison called the meeting to order at 6:30 p.m.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL.

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

4. APPROVAL OF AGENDA.

Assistant City Manager Geralyn Barone noted four addenda to the agenda: a corrected map for item 10C showing a change from an existing stop sign to a yield sign on southbound Smetana Drive at Green Circle Drive; corrections to the exhibits for item 12B; a memo from the city attorney for item 14A; and appointments to the Southwest Transitway LRT Community Advisory Committee for item 15B.

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

5. APPROVAL OF MINUTES: May 21, 2007 regular meeting

Wiersum moved, Thomas seconded a motion to approve the minutes of the May 21, 2007 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Recognition of Desyl Peterson for receiving the Minnesota Women in City Government Leadership Award.

Callison recognized Peterson.

Peterson said she is celebrating her 23rd year with the city this month. She said the length of the tenure represents the supreme satisfaction she has had working for the community. The city has been supportive of her in allowing her to do things outside her city work as well as doing her regular city work that have added value to her life.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Barone reported on the schedule for upcoming council meetings. There is no meeting July 30. The next regular meeting is August 6.

Thomas thanked the volunteers who attended the Comprehensive Plan Steering Committee meeting with the Planning Commission and the Economic Development Authority the previous week. He said it was well attended. Callison reminded residents there is information about the comprehensive plan process on the city's website.

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 – July 23, 2007.**

Allendorf moved, Wiersum seconded a motion to approve the July 23, 2007 claims which includes checks numbered 205535 through 205854, totaling \$1,138,831.57. All voted "yes." Motion carried.

B. Agreements related to Hennepin County Environmental Response Fund Program for 10600 Wayzata Boulevard.

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

C. Resolution authorizing the installation of traffic control devices at various locations within the city of Minnetonka.

Thomas pulled the item for discussion.

He said over the weekend he saw an ambulance traveling on Williston Road going north and the traffic device that controls the light change did not appear to work as the emergency vehicle had to wait when it pulled up to the intersection. He asked how often the devices are checked to ensure they are working properly and whether they are on a regular maintenance schedule or if they are only fixed when an emergency vehicle reports the device is not working correctly.

Callison noted the city engineer was not present. Barone said she would have staff get back to Thomas with the information. Thomas said that was fine and he wanted to make sure the city wasn't just installing the devices without some type of follow through.

Thomas moved, Allendorf seconded a motion to adopt Resolution No. 2007-085 authorizing the installation of traffic control devices at various locations within the city of Minnetonka. All voted "yes." Motion carried.

D. Resolutions pertaining to levying the 2007 Special Assessments.

Allendorf moved, Wiersum seconded a motion to the following resolutions:

- 1) Resolution No. 2007-086 declaring costs for privately installed sewer and water improvement projects to be specially assessed in 2007 and ordering the preparation of proposed assessment rolls.
- 2) Resolution No. 2007-087 declaring costs for nuisance abatement projects to be specially assessed in 2007 and ordering the preparation of proposed assessment rolls.
- 3) Resolution No. 2007-088 declaring costs for fire sprinkler system projects to be specially assessed in 2007 and ordering the preparation of proposed assessment rolls.
- 4) Resolution No. 2007-089 calling for a public hearing on August 20, 2007 at 6:30 p.m. on the proposed Special Assessments of sanitary sewer, water main, nuisance abatement, diseased tree removals, and fire sprinkler system projects.

All voted "yes." Motion carried.

E. Resolution supporting a grant application for DEED Redevelopment Grant funds for the Glen Lake project.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-090 supporting a grant application for DEED Redevelopment Grant funds for the Glen Lake project. All voted "yes." Motion carried.

F. Conditional use permit for a detached garage at 4915 Highland Road for Tim and Dawn Kraskey.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-091 approving a conditional use permit for a garage over

12-feet in height and 1,000 square feet in area at 4915 Highland Road.

This resolution is based on the finding that the proposal meets all conditional use permit standards as outlined in city code. Approval is subject to the following conditions:

- 1) Before issuance of a building permit:
 - a. Submit a revised survey. The survey must include existing and proposed elevations at the corners of the proposed garage.
 - b. Submit a recorded copy of this resolution.
 - c. Submit a conservation easement 25-feet upland from the existing wetland for the city attorney's review and approval.
 - d. Install tree protection and erosion control fencing for inspection by natural resources staff. This fencing must be maintained throughout the course of construction.
- 2) A 25-foot wetland buffer must be maintained upland from the existing wetland edge. This buffer must be placed in conservation easement and the easement recorded with the County.
- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) 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.
- 5) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

G. Conditional use permit to move over 1,000 cubic yards of earth from the property adjacent to 601 Carlson Parkway for Carlson Real Estate Company.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-092 approving a conditional use permit to move more than 1,000 cubic yards of earth from the site adjacent to 601 Carlson Parkway. This resolution is based on the following findings:

- 1) The proposal would meet the general conditional use permit standards as outlined in city code.
- 2) The proposal is consistent with the master development plan and approved grading plan for the site.

Approval is subject to the following conditions:

- 1) Complete the following work before the city issues a grading permit:

- a. Install temporary rock driveways, erosion control, and tree protection fencing, subject to review by the city's natural resources staff. The temporary rock construction entrance must be located to the east side of the property away from the curve in the roadway and median area. An erosion control fence shall be placed along the entire length of Deer Creek Parkway adjacent to the site. The silt fence shall be orange in color, shall not exceed 300-feet in length, and shall be overlapped with the appropriate "J" hooks.
 - b. Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
 - c. Submit a construction management plan for staff approval that addresses the following information:
 - (1) Haul routes and hours
 - (2) Truck turning movement and routing plan
 - (3) Grading schedule and hours of operation
 - (4) Designated construction parking area
 - (5) Streets must be swept daily
 - (6) Location where fill will be deposited
 - d. Obtain an MPCA NPDES permit and provide a copy of the approved permit to the city.
 - e. Submit a stormwater pollution prevention plan (SWPPP) for review and approval by city staff.
 - f. Submit a cash escrow to the city to ensure the repair of any road damage resulting from construction traffic, as required by the city engineer.
 - g. Record this resolution with the county and return a recorded copy to the city.
- 2) The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - 3) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

H. Final approval of the WENTWORTH WOODS plat at 3212 Wentworth Trail for Horace and Avery Choape.

Allendorf moved, Wiersum seconded a motion to approve the WENTWORTH WOODS final plat date-stamped January 19, 2007, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, especially the specific conditions for release of the plat;

- 2) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat; and
- 3) Prior to release of the final plat, submit a trail easement and park dedication fee as required by staff. The final location of the trail will be determined by the city council at the time of construction.

All voted "yes." Motion carried.

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

Community Development Director Ron Rankin said the second and sixth items on the list have been brought into compliance leaving four violations to be included in the resolution.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-093 as amended ordering the abatement of the nuisance conditions. All voted "yes." Motion carried.

J. Resolution ordering the abatement of nuisance conditions existing at 13016 Inverness Road.

Rankin said the property is now in compliance. The council took no action on this item.

11. Items requiring Five Votes:

A. Conditional use permit, variance, and site and building plan review for an expansion of the Mobil gas station convenience store located at 3864 Hopkins Crossroad for Croix Oil Company.

Wiersum moved, Thomas seconded a motion to adopt Resolution No. 2007-094 approving a conditional use permit, variance, and site and building plan review for an expansion of the Mobil gas station convenience store located at 3864 Hopkins Crossroad for Croix Oil Company.

CONDITIONAL USE PERMIT

- 1) Approve the applicant's request for a conditional use permit to operate a non-service station retail facility having gasoline pumps. Approval is based on the following findings:
 - a. The proposed use meets the general and specific standards for granting of a conditional use permit.

Approval is subject to the following conditions:

- a. Submit proof of having recorded this resolution with the county before the city issues a building permit.
- b. Secure all applicable licenses and approvals from the city, Hennepin County, or other appropriate jurisdictions.
- c. This conditional use permit does not approve any signs at the site. A sign permit application must be submitted for staff review and approval. Any proposed sign must meet requirements outlined in city code.
- d. The city council may reasonably add or revise conditions of approval to address any future unforeseen problems.
- e. 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.
- f. The city council may revoke this conditional use permit if any future traffic, parking or public safety issues arise as a result of the proposed use.
- g. Violation of any of these conditions of approval or conditional use permit standards outlined in the city code will result in immediate revocation of this conditional use permit.
- h. The applicant must agree to the above conditions in writing.

SITE AND BUILDING PLAN, WITH VARIANCE

2) Approve the site and building plan, with a rear yard setback variance. Approval is based on the following findings:

- a. The applicant's proposal complies with the site and building plan review standards.
- b. The existing building was constructed in 1967 with a nonconforming rear yard setback of 8 feet. Due to the location of vehicular site entrances and existing gas pumps, the construction of an addition meeting the required 35-foot rear yard setback is not possible.
- c. The proposed addition will not extend closer to the rear property line than the existing structure.
- d. The proposal would have no negative impact on the surrounding area and would not alter the essential character of the neighborhood.

Approval is subject to the following conditions:

- a. The site must be developed and maintained in substantial conformance with the plans stamped "Received June 8, 2007."
- b. Separate building and sign permits are required.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance amending the city building code.

Rankin gave the staff report.

Callison asked if the ordinance was being referred to any of the city's boards or commissions. Rankin said that it was not and in the past none of the boards or commissions reviewed changes to the building code ordinances. He said the ordinance will be brought back to the council at a future meeting.

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

B. Ordinances amending the shoreland and other associated ordinances.

City Planner Julie Wischnack gave the staff report.

Schneider said the challenge was to look at the implications of some of the definition changes on the practicality of broader issues and not just what is in the ordinance. He said most of the changes seem reasonable and it is just a matter whether some discussion or clarification might be needed. The one area that raised a red flag was in the section of the ordinance where the definition of a steep slope has changed from being a 20 percent slope over 100 feet to being anything that is 20 percent no matter the distance. Schneider said this might be a challenge for sites such as one with a ravine where a two foot line might be at 20 percent but the rest of the slope is at a lesser percent. This could create other development or usability implications for the entire site once that piece is designated as a steep slope. He asked if he was interpreting the definition correctly.

Natural Resources Manager Jo Colleran said Schneider's interpretation was correct. The Minnesota Department of Natural Resources regulations require consideration in areas with 18 to 30 percent land slope. In some cases the regulation is at 12 percent or less if it shows a direct impact to the public water. She said over 30 percent would match the steep slope ordinance which says the site can't be built on if there is going to be any erosion. She said she has spoken with the DNR to look at the ordinance in comparison with the DNR standard and this is a situation where there is no

flexibility. If it can be shown that there will be no impact to the public water within the 18 to 30 percent then the site would be allowed to be graded in that area. She said the regulation is meant to maintain erosion control, prevent intensive clearing, and make sure the viewshed from the lake looking toward the land is protected.

Schneider said his main concern is common sense should prevail on how the two terminologies are integrated. He agrees with the bottom line of protecting the water bodies and buffer zones but he isn't sure that the current wording of the ordinance would not create unintended consequences.

Callison said in the past there has been discussion about the need to buffer around water bodies including a discussion about the possibility of buffering around Lake Minnetonka and the challenges of buffering an area where the common usage is different from the buffers. She asked if the proposed ordinance changes the pattern of land use around Lake Minnetonka and if it imposes buffers on the lake. Colleran said it does but it is not retroactive to existing land use. If someone came in and asked for a variance, site and building review, or conditional use permit, as long as there is a connection to the lake, the city would require a buffer. She said in the Lake Minnetonka area there are many lots that are legal nonconforming setbacks. There is a provision in the code to allow those principal structures that would be setback closer to the lake to have a smaller buffer based on the setback of the principal structure.

Callison said she appreciated the examples provided because of the complexity of the ordinance which is difficult for people to go through and fully understand. She said if it appears there will be a lot of public comment at the Planning Commission hearing, she hopes staff will take the time to provide further examples to make the materials understandable and to help the council be comfortable with the impacts.

Schneider said as the ordinance goes forward he would benefit from knowing what are suggested ideas and what provisions are mandated by the DNR. Colleran said staff would provide that information.

Thomas said he agreed with Schneider's point especially in regards to the city's creeks. He said he was thinking of Purgatory Creek in particular where there will be changes that haven't had to be dealt with in the past. He said there will be a lot of eye opening experiences for many residents.

Allendorf moved, Wiersum seconded a motion to introduce the ordinances and refer them to the planning commission. All voted "yes." Motion carried.

C. Ordinance amending the city code to increase the park dedication fees.

Rankin gave the staff report.

Allendorf agreed with the idea of addressing all the city fees on a more regular basis to not only make sure the city is keeping up with the times but also when fees need to be increased it doesn't look like the city is going overboard with the increase. Rankin said the intention is to address fees on an annual basis.

Thomas agreed with Allendorf that the fees should be looked at more frequently. He said in 1994 when he was on the Park Board the fees were looked at in depth and it was discovered the fees were not close to those being charged in other cities. He said there was discussion in the past involving park dedication fees and court rulings and asked Peterson to discuss the issues involved. Peterson said the rules are that the fees have to reflect the actual burden created by the development. The city has to show a subdivision of land will generate the need for the parks. She said the fees are not supposed to be used as a way of taxing people but rather as a method of covering the costs of providing the service.

Schneider said he was philosophically opposed to the approach of doubling the park fees. He said he sees the park dedication fees as more similar to the special assessment approach the city has taken than with the city's sewer hookup fees. With the hookup fees the resident is receiving a direct benefit to the individual home. However, a good park system benefits the entire community and the burden of that should be done with the general tax revenue or a bond referendum with voter approval. Schneider said the city should not take the approach some cities take in charging the latest resident with the highest fee because it's possible to get away with that. He said all that does is increase the cost of housing for the new resident. He agrees with incremental increases over time to deal with inflation but he doesn't agree with raising fees just to match neighboring cities.

Wiersum said looking at the fees that peer cities are charging makes some sense but making a basic comparison is an incomplete picture. He noted Minnetonka passed a referendum to

support parks and some of the other cities did not and those cities are relying on their park dedication fees to fund parks. He said he doesn't want to overly burden residents with an excessive fee but he wants the city to be competitive with other cities.

Callison asked Wiersum if there was more information he wanted from staff to provide a more complete picture. Wiersum said it would be helpful to know if any of the peer cities have had referenda supporting their parks and other funding sources those cities might be using.

Schneider said other information that might be useful is the amount of area for growth in the peer cities. If a city has area to expand and a shortage of parks it is different from Minnetonka which doesn't have a lot of undeveloped area or a shortage of parks.

Thomas said he understood Schneider's point that the city doesn't have a lot of area to expand and create new parks using fees. Thomas said however that the city's existing parks are highly used and that is one of the reasons the city had a referendum to have the resources available to upgrade the existing parks. He said he looked at it from the opposite direction of Schneider. With multiple dwellings comes more usage of parks which creates more wear and tear of equipment and the natural portions of the parks. He said he doesn't have a problem with the dedication of fees.

Allendorf said the discussion began with the staff report from Rankin that indicated the increase in fees was justified as what was needed to maintain the parks. He said a debate over whether it should be an assessment or an individual charge was something he didn't understand. If the costs and fees were justified, that is what the city should charge.

Callison asked if the staff had sufficient direction for when the item comes back to the council. Barone said yes and that some of the information may have made it appear that the rate was set based solely on a comparison with other cities and this was not the case.

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

- D. Introduction of an ordinance rezoning the property at 5709 Rowland Road from R-1, low density residential, to PUD, planned unit development, for a senior cooperative building for United Properties Residential, LLC.**

Wischnack gave the staff report.

Ellingson asked when the council considers a comprehensive guide plan amendment if it would be done at a separate hearing or if the amendment would be approved at the same time as the project. Wischnack said typically when a comprehensive plan amendment is requested, it is heard in one session so all the parts of the request are heard at one time. She said during the moratorium period if an application comes in as a planned unit development it is exempt from the moratorium.

Ellingson said he wasn't at the meeting when the moratorium was approved but some of the discussion at the time was that the reason for the moratorium was to not consider development proposals that required a guide plan amendment. There was then an exception made for projects submitted as a planned unit development. He asked if the exception was so broad to allow anybody to call their project a planned unit development to avoid the moratorium. Wischnack said any proposal that is a planned unit development would be considered and processed accordingly.

Ellingson said in some of the minutes from the end of May it was suggested that the group that is considering changes to the comprehensive guide plan would consider some of the proposals. He asked if anyone outside of the planning commission was going to look at this particular proposal in terms of changing the comprehensive guide plan. Wischnack said staff discussed how to consider this proposal in light of the moratorium. Because the proposal is not drastically changing the comprehensive guide plan but rather is residential guidance to a more dense residential guidance under the comprehensive plan, staff felt it didn't require a full review in terms of the comprehensive guide plan committee.

Allendorf said the comprehensive plan group has been brought together for the exact purpose of looking at potential guide plan changes and he thought what he had voted for was these types of proposed changes would be looked at on a priority basis by the group prior to the time it went through the normal planning commission process. He said an area like the southeast quadrant of I394 and the Hopkins Crossroad potentially could be looked at the same way and that wasn't the way he felt he was voting when he voted to make the moratorium more flexible.

Rankin said Allendorf raised an excellent point and there was quite a bit of discussion and follow up to the council action regarding how

the committee would be used and their consideration in certain instances. In this case the staff felt because the property is essentially on its own on Rowland Road and it isn't integrally linked to other nearby uses, it could be considered under the more conventional process. He said in the example Allendorf mentioned that was not the case because there are traffic issues that are of significant concern along I394 particularly at the intersection areas as well as land use issues. In that case a separate process would be set up to have the committee look at the project perhaps using it as a case study if an application for a change is submitted. Allendorf said he understood Rankin's answer but it wasn't his understanding that projects would be processed in this particular manner.

Callison said it was her understanding the purpose of the moratorium was about protecting natural resources and it wasn't just to stop guide plan changes. Some sites have particularly sensitive natural resources and the council wanted to make sure it had a chance to put in place sufficient safeguards. She said her memory is this is a site that has fewer of those resources. Wischnack said there are some wetlands around the site and there is flood plain area and trees on the property so initially it looked like there were some delicate resources being intruded upon with the subdivision. Staff specifically reviewed all the things being considered for new ordinances - steep slopes, impervious surfaces, shore land districts, and the tree ordinance and none of them applied to the site. Wischnack said staff looked at the site and thought about what might be in the ordinances and found that none of the new ordinances would impact the site plan review. She said staff has taken a broader perspective of the moratorium and its intentions and how it applies to this property and didn't find a problem with it proceeding.

Callison said at the comprehensive plan meeting last week there were charts presented that indicated Minnetonka had no housing that provided services for people over 55. She asked if this proposal is for senior only housing. Wischnack said it is a senior cooperative housing project and it is true the city does not have anything like that in the city at this time.

Wiersum said he heard Ellingson's question about the exception to the moratorium being too broad and the elegance of the solution was that the planned unit development provides the tools to give the city the opportunity to manage some issues that a regular application would not provide. So the planned unit development is the tool that enables a development to go forward but at the same

time provides the city some resources to better manage issues than could otherwise be done without the planned unit development. He asked if his understanding was correct. Wischnack said she concurred with the statement.

Schneider said he agreed with Allendorf about the original intent to have more interaction between the guide plan committee and the application before it is run through the process. The intent was for applications, even if they are simple and straightforward to go through the guide plan process. He said the council indicated that the applicant needed to agree to more flexibility in the time frame to allow the guide plan process to happen. This would allow the guide plan committee feedback on whether they agreed with the staff and if they did the application would move forward. If they did not agree then that would be highlighted. The fall back was the council would have full discretion because if there is a guide plan amendment a decision could be made that more study is needed and the amendment would be voted down or there would be an extension granted. He said the intent that he proposed was for all applications requiring a guide plan amendment would be handled through the guide plan committee.

Barone said that the steering committee has only met a couple of times and is still learning about the city and how it operates. She said the point is well taken about trying to make sure the applications are run through the group but for this particular development she wasn't sure the group was ready to give input.

Callison said the question was if the council felt it would be helpful to get the input from the Comprehensive Plan Steering Committee and if that was the case, the application would work through the process. Barone said the group was scheduled to meet again in September.

Callison asked for the timeline of the proposal and the deadline for council action. Wischnack said the application was submitted in April so action had to be taken by August 22.

Allendorf said the intention from the previous discussion was that applicants would be asked to give the city more time. He asked Peterson if the moratorium affects the deadline of this application. Peterson said the moratorium does not affect the timeline. The application has to be acted on within 120 days. The application could be denied based on the moratorium. An extension on the time could also be requested.

Allendorf asked Callison's thoughts on how helpful it would be to bring the application to the steering committee. Callison said she agreed with Barone in that the group is still in the fact finding stage. She said her sense was that based upon the demographic information the group has seen and the need for this type of housing in the community it was likely the committee would probably not differ too much from the staff recommendation. It would be an exercise for the committee and get them in the process but she wasn't sure there would be a substantively different result at this point.

Allendorf said he was disappointed but because this particular development doesn't affect the natural resources it could be one that goes through. He said he would be disappointed if the southeast quadrant of I394 and the Hopkins Crossroads meets the same fate for the same reason.

Schneider 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. **Continued public hearing to consider an application by Episode 689, LLC, for an off-sale intoxicating liquor license for Strong Liquor, 11048 Cedar Lake Road.**

Rankin gave the staff report.

Callison closed the hearing at 7:33 p.m.

Ellingson said he was concerned that there were too many liquor licenses for off sale in the city. He said there was discussion before when there was an additional license approved. He said he had the impression that some of the smaller liquor stores were not doing well economically and it could be there are too many liquor stores in the city.

Allendorf moved, Thomas seconded a motion to grant an off-sale intoxicating liquor license for Strong Liquor, 11048 Cedar Lake Road. All voted "yes." Motion carried.

B. **Items concerning WENTWORTH TRAIL, a four lot subdivision at 13533 and 13535 Wentworth Trail for Earl Fischer and Michael Spillane.**

Wischnack gave the staff report.

Callison opened the hearing at 7:37 p.m. No one spoke.

Callison closed the hearing at 7:37 p.m.

Schneider commended all the parties involved. He said it was a great solution to all issues brought forward.

Schneider moved, Wiersum seconded a motion to approve the preliminary and final plats of WENTWORTH TRAIL, date-stamped January 19, 2007. Approval is based on the finding that the plat would meet the required standards and ordinances.

Approval is subject to the following conditions:

- 1) The following items must be submitted to the city before the city releases the final plat:
 - a. Park dedication fees must be paid.
 - b. Payment for traffic signs and installation, as required by the city engineer.
 - c. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - d. The following documents for the city attorney's 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.
 - (3) A trail easement to provide a connection from the property to the north to the property to the south. Final trail location to be determined by the city council at the time of construction.

These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.
 - e. Any other requirements included with final plat approval.
- 2) The following must be submitted/completed prior to issuance of a grading permit or any site work is started.
 - a. Submit final grading, drainage, and erosion control plans for the city engineer's review and approval. All plans are subject to the review and approval of the city engineer. Modifications to the plans must be made as directed by the city engineer.

- b. Submit a letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid cost to comply with grading permit requirements and restore. The city will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway, and grading have been completed according to the plans approved by the city.
 - c. Submit a construction management plan for review and approval of planning staff.
 - d. All trees to be preserved must be fenced and erosion control measures installed for staff inspection. These items must be maintained throughout the course of construction.
 - e. Permits may be required from other outside agencies, including but not limited to Mn/DOT and the Minnehaha Watershed District. It is the applicant's responsibility to obtain any necessary permits.
- 4) The following must be submitted/completed prior to issuance of a building permit:
- a. Submit a grading and tree preservation plan for each lot for staff review and approval. 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.
 - b. Install a temporary rock driveway, erosion control, tree protection, and wetland protection fencing for staff inspection. The items must be maintained throughout the course of construction.
 - c. Submit a copy of the recorded plat and any easement or covenants required to be recorded.
 - d. Pay a hookup fee for sanitary sewer and water.
 - e. 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 planning director may approve a time extension to this requirement.
 - f. A fire flow test must be conducted on the new water main. If the fire hydrant flow is less than the minimum NFPA fire flow requirement of 2750 GPM, homes must be built with a sprinkler system.

- 4) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
- 5) Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 ½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
- 6) The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Settlement agreement with Clear Channel Outdoor.

Peterson gave the staff report. Peterson added that the public service announcements given to the city would be incorporated into the 8-second rotations along with other advertisements. Because this was not specified in the settlement agreement, Clear Channel representatives had agreed to submit a letter to the city explaining this.

Wiersum said that it was his understanding if a lease expired on a dynamic sign on I394 that the dynamic sign could be moved to another location. Peterson said it could be moved to another sign on I394 that already exists.

Wiersum asked if the Amber Alert would be included in the city's allotted public service announcements or if the alerts would be separate and if the alerts would be displayed as an eight second vignette. Peterson said the Amber Alert is separate from the public service announcements. Lee Ann Muller, Clear Channel Division President, of 11735 Welters Way in Eden Prairie spoke on behalf of Clear Channel. She said the company works with the Bureau of Criminal Apprehension and the Department of Public Safety on Amber Alerts. There have been three alerts in the last six months. For those alerts the first two hours were set aside to solidly run the alert. They were then put into an eight second rotation. If the situation warrants the alert would probably go back on during the prime time rush hour.

Ellingson said he thought it was a good settlement. He asked what benefit the company gets at night when there is little car traffic. Muller said the traffic on I394 and I494 is fairly well traveled at night. She said the company is following the format setup nationally modeling it after the way the program was marketed to clients.

Thomas said he supported the settlement. He noted that 11 of the 15 billboards being removed are in his ward or next to the ward. He asked when a sign is removed if there is a standard restoration that will be applied to the site or if it will be adapted to the area the sign was in. Peterson said the biggest concern was to make sure there is the ground cover to ensure there isn't erosion from taking out the footings. She said there are some locations where there is no grass. An example of this is the billboard located at Minnetonka Boulevard and County Road 101 that is planted in concrete so the restoration there will be different from the billboard located on Highway 7 next to the wetland. Each site will be looked at for the appropriate re-vegetation.

Thomas asked who on the staff will look at each site. Rankin said the planning and building inspections staff will work with public works staff.

Callison clarified with Peterson that the sign located at Highway 7 and County Road 101 will be repositioned within the requirements of the ordinance. Peterson said that was correct and the agreement allows the sign to be moved up to the 10 foot setback that currently exists in the ordinance.

Callison said the agreement doesn't specifically address the possibility of the signs using movement such as blinking and fading. She said she was told by Peterson the ordinance already prohibits that. Callison noted in the agreement that the brightness standards are specifically spelled out even though those standards too are included in the ordinance. She asked why the brightness standards were included in the ordinance and the movement prohibitions were not included. Peterson said she asked the same question to the litigation attorney who represented the city. She was told Clear Channel wanted the specificity because of a concern that the brightness standard language in the ordinance was vague and the company wanted some security over what was going to be applied. She said Clear Channel understands they have to comply with the other operational standards.

Callison asked if Peterson was comfortable with the agreement and that Clear Channel couldn't come back at some point and say they

were going to flash the sign just a little bit. Peterson said she was comfortable but asked the litigation attorney to speak on the issue. Callison said she would like a letter from Clear Channel stating the public service announcements would be shown as part of the hourly sequence rather than late at night.

John Baker of the Greene Espel Law Firm at 200 South 6th Street in Minneapolis said the firm represented the city in the litigation and the negotiated settlement. He said he agreed with Peterson that it was a reliable set of terms that protects the city. He said Clear Channel said the need to specify the brightness standards was a desire for predictability. The substance of the standards in the agreement is the same as the substance in the ordinance. There was grammatical tweaking in the last draft but prior to that they were word for word the same. Baker said it was Clear Channel's hope that it could rely upon the standards into the future and make sure there was not a possibility that a future council would decide it didn't like the requirements and thus the company would lose the value of what they were getting in exchange for taking down 15 billboards.

Muller said it was Clear Channel's understanding that the standard is that the signs would not blink or change except for an eight second instantaneous change. She said the prohibition of scrolling and blinking complies not only with the ordinance but with state regulations for off premise signs. She said Clear Channel understands the signs are not to have any motion and the company has no desire to have the signs do that. Callison asked if Clear Channel would provide a letter about the public service announcements. Muller said the letter would be provided.

Allendorf said he was confused about the stipulation that the city will not require the removal of any signs as a condition of approval to a new development or a redevelopment. He said he thought that was covered in the ordinance that prohibits two uses on one piece of property. Peterson said the ordinance may have been trumped by state law that provides basically the same thing. What the provision does is to clarify. She said that part of the state eminent domain law says that cities cannot require billboards be removed as part of a redevelopment unless the city paid full fair market value. The city can not attach a condition requiring the sign's removal. The provision is a clarification between the parties that will apply to the city as well. The city was arguing in the instance on the two signs on Tonkawood Road that it wasn't requiring the removal because the ordinance provided that there could only be one principal use on a piece of property. What the provision says is that

the city will not require in any circumstance that the signs will come down as part of a development or redevelopment. She said this was understandable on Clear Channel's part because they are giving up a lot and they want some certainty that the remaining signs will be allowed to continue. Allendorf said he thought the sentence may be superfluous. Peterson said the language mimics the state law but it clarifies that the ordinance can not be used to remove the signs.

Callison asked if there was anyone in the audience that wanted to speak on the matter. William Denton of 13531 Wentworth Trail asked in the event Clear Channel goes bankrupt if the company was bonded. Would the company be able to restore the sites if it went bankrupt? Rankin said any of the signs that are taken down will be done so through the city's demolition permit process which requires a deposit to ensure the foundation is properly removed and the site is restored. The city thus would have the financial resources available to ensure the restoration work happens. Rankin said Muller indicated the company plans to start removing the Tonkawood signs the next day and restoration work will begin in the next several days. Denton said if city staff was comfortable he was comfortable. Callison said the signs sit on a couple of poles. The poles will be taken out and the holes will be filled but extensive landscaping likely will not be needed.

Wiersum said like Thomas he was pleased that a number of the signs being removed are in his ward or in the adjacent ward.

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

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointments to the community commission.

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

- Eduardo Jimenez, for a one-year term, effective July 24, 2007 and expiring on January 31, 2008.
- Michael Kelly, for a one-year term, effective May 7, 2007 and expiring on January 31, 2008.

All voted "yes." Motion carried.

B. Appointments to Hennepin County's Southwest Transitway Light Rail Transit Community Advisory Committee.

Callison moved, Allendorf seconded a motion to appoint Sally Velick, Maria Klein, and Dave Bangasser or another representative from the Opus Corporation to the Southwest Transitway Light Rail Transit Community Advisory Committee :

All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Wiersum seconded a motion to adjourn the meeting at 8:06 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk