

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, AUGUST 6, 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 Bob Ellingson, Tony Wagner, Brad Wiersum, Terry Schneider, Al Thomas, Dick Allendorf, and Jan Callison were present.

4. APPROVAL OF AGENDA.

Assistant City Manager Geralyn Barone noted three addenda: item 14A- an email from a resident with comments about the proposal; 14B- a memo from City Planner Julie Wischnack with an attached email and waiver from the applicant; 14C- a copy of M.S. 462.358 provided by Schneider as background information for the discussion. Callison asked if there was a rescheduled date for the Applewood Pointe item. Barone indicated not at this time.

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

5. APPROVAL OF MINUTES:

A. June 4, 2007 regular meeting.

Wagner moved, Thomas seconded a motion to approve the minutes of the June 4, 2007 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

B. June 25, 2007 regular meeting.

Wagner moved, Thomas seconded a motion to approve the minutes of the June 25, 2007 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS: None.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Barone reported on the schedule for upcoming council meetings. There is no meeting August 13. The next regularly scheduled council meeting is August 20.

Barone said both fire and police personnel were sent out to assist in the I35W bridge collapse rescue efforts. About a dozen fire personnel were sent to the site. Five police officers and three reserves were sent out during a three day period helping mainly with perimeter control. She noted Deeann Bloom, a community service officer, is the state animal coordinator for disasters. There were no pets involved in the bridge collapse but Barone pointed out Bloom's role for the council's information.

Thomas reminded people Tuesday, August 8 was National Night Out. Barone said there are many neighborhood groups holding events throughout the city. She estimated there were over 100 such groups.

Callison congratulated LSS, a business in the western part of the city on Highway 101. They celebrated their 25th anniversary and she attended the event.

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. Ordinance amending the city building code.

Allendorf moved, Wiersum seconded a motion to adopt Ordinance No. 2007-23 amending City Code Section 500. All voted "yes." Motion carried.

B. Agreement with the city of Wayzata to provide environmental health services.

Allendorf moved, Wiersum seconded a motion to adopt the agreement with the city of Wayzata. All voted "yes." Motion carried.

C. Resolution appointing election judges for the primary election on September 11, 2007.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-095 appointing election judges for the primary election on September 11, 2007. All voted "yes." Motion carried.

D. Conditional use permit to build a detached garage greater than 12 feet in height at 11900 Live Oak Drive.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-096 approving a conditional use permit for a garage over 12 feet in height at 11900 Live Oak Drive. 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. Record this resolution with the county before the city issues a building permit.
 - c. Install tree protection and erosion control fencing for inspection by natural resources staff. This fencing must be maintained throughout the course of construction.
- 2) Seven conifer trees must be planted on the east side of the proposed structure to provide a vegetative screen to the neighboring property to the east of the subject property.
- 3) The applicant must comply with all standards required by electric utility service provider.
- 4) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 5) 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.
- 6) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

E. Conditional use permit to install wireless telecommunications antenna and equipment on the existing telecommunications tower at 2863 Hedberg Drive.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-097 approving a conditional use permit, with variance, for telecommunications antennas at 2863 Hedberg Drive. This resolution is based on the following findings:

- 1) The city code recognizes telecommunications facilities as valuable public resources.
- 2) The proposal meets all of the conditional use permit standards.

Approval is subject to the following conditions:

- 1) Record this resolution with the county before the city issues a building permit.
- 2) The site must be developed and maintained in substantial conformance with the plans date-stamped June 29, 2007.
- 3) The exterior surface of the antennas and external coaxial cable must be painted to match the existing water tower.
- 4) The exterior of the equipment shelter must be painted to match the existing principal building.
- 5) Any trees removed for placement of the equipment shelter must be replaced. Three additional evergreen trees must be installed. The species and locations of the trees are subject to natural resources staff review and approval.
- 6) Antennas must comply with all building and electrical code requirements and must be designed and certified by an engineer.
- 7) No external messages or on-site employees are allowed.
- 8) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 9) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

F. Resolutions ordering the abatement of nuisance conditions.

Community Development Director Ron Rankin said the property at 13808 Spring Lake Road is now in compliance.

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

- 1) Resolution No. 2007-098 ordering the abatement of nuisance conditions existing at 2912 Bay Street.
- 2) Resolution No. 2007-099 ordering the abatement of nuisance conditions existing at 14018 Excelsior Boulevard
- 4) Resolution No. 2007-100 ordering the abatement of nuisance conditions existing at 17136 Town Line Road.

All voted "yes." Motion carried.

G. Acceptance of grant for global positioning satellite systems for fire department vehicles.

Allendorf moved, Wiersum seconded a motion to accept grant from Fireman's Fund Insurance Company in the amount of \$5,480.00.

All voted "yes." Motion carried.

11. Items requiring Five Votes:**A. Conditional use permit and variances to demolish an existing home and build a new home within the floodplain at 2504 Bantas Point Lane.**

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2007-101 approving a conditional use permit and variances for construction of a new house at 2504 Bantas Point Lane. Approval includes the following:

Lot Variances

- Lot area 15,000 square feet to 3,730 square feet
- Buildable area for a small lot:
- Minimum size from 2,400 square feet to 438 square feet
- Minimum dimension (length/width) of buildable area from 30 feet to 2 feet and 12 feet
- Lot width 110 feet to 65 feet
- Lot depth 125 feet to 64 feet.

Building Variances

- Front yard setback 20 feet to 7 feet
- Flood plain setback 20 feet to 0 feet
- Shoreland setback 35 feet to 22 feet and 25 feet to 18 feet
- Hard surface coverage 30% to 40.7 %
- Required low floor elevation from 933.5 to 932.25 for the attached garage
- Required elevation of driveway from 932.5 to 931.2

Approval is based on the following findings:

- 1) There are practical difficulties caused by the extremely small size of the lot and the presence of floodplain and a shoreland setback encroaching on approximately 50% of the lot. Together, these factors make construction of a home, which is compatible to the surrounding neighborhood, difficult.
- 2) The lot variances would be required to construct any new home on the site.
- 3) Numerous variances have been approved for various homes in the surrounding neighborhood, including similar front yard, shoreland, and flood plain variances.
- 4) The construction of a modern home would make the property more compatible with others in the surrounding neighborhood and would not alter the essential character of the neighborhood.
- 5) The existing structure's low floor elevation is not located at least two feet above the floodplain elevation of 931.5 as required by ordinance. The proposed home, with the

exception of the attached garage, will meet ordinance requirements for low-floor elevation separation from floodplain, thus, eliminating a nonconforming situation on the subject property.

- 6) The principal structure shoreland setback is being increased from 17 feet to 22 feet, thus, reducing an existing nonconformity.

Approval is subject to the following conditions:

- 1) Submit/complete the following before the city issues a building permit:
 - a. Submit proof of having recorded this resolution with the county before the city issues a building permit.
 - b. Submit a construction management plan; this plan must outline parking and construction access and stockpile and material storage.
 - c. Install temporary rock driveway, erosion control, tree protection and lake protection fencing, subject to review by the city's natural resources staff. These items must remain in place throughout the course of construction.
 - d. Submit a grading plan showing how the elevated garage floor will be achieved. The grading plan must also show that the proposed structure's crawl space can accommodate a compensatory volume of floodplain being filled.
 - e. The property owner must submit an emergency evacuation route from the structure directly to land above the designated 100-year flood elevation, subject to staff approval.
- 2) Proposed home must be redesigned to reduce the overall square footage from 1,988 square feet to 1,940 square feet in order to comply with McMansion policy.
- 3) Pervious pavers must be used for the driveway and pathways.
- 4) The existing storage shed must be permanently removed from the subject property.
- 5) Maintain a low floor elevation above 933.5 for all new living space and a low floor elevation of 932.25 for the attached garage.
- 6) Structure must be designed to comply with ordinance 300.24.9(j).
- 7) Install and maintain a 10-foot buffer of native vegetation adjacent to the shoreline. A 10-foot conservation easement must be dedicated over the vegetative buffer and must be recorded with the county.

- 8) Revegetate areas where demolished structures are removed.
- 9) Permits may be required from other outside agencies, including but not limited to the United States Army Corps of Engineers, Minnesota Department of Natural Resources, Minnehaha Creek Watershed District, and the Lake Minnetonka Conservation District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
- 10) This variance will end on December 31, 2008, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

All voted "yes." Motion carried.

B. Grant to purchase thermal imaging cameras for the fire department.

Schneider moved, Allendorf seconded a motion to accept the grant from the U.S. Department of Homeland Security for an 80% match to purchase three thermal imaging cameras and amend the 2008-2012 CIP to meet the matching requirements and take advantage of this unexpected opportunity to purchase cameras for all five fire stations. All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance increasing the electric franchise fees.

Barone gave the staff report. Callison asked if there was a date that the ordinance is expected to come back to the council for further action. Barone said it likely will come back at the August 20 meeting.

Allendorf asked if the money that comes in goes into a designated account earmarked specifically for the next burial project. Finance Director Merrill King said there is a dedicated fund specifically for the fees and only the costs related to the underground burial are expensed against the fund.

Thomas said the burial of the lines on some of the high priority projects has taken a long time and he would like to see the fees not to continue to increase simply because the costs are escalating. He said the council should perhaps discuss looking at a cap or other options at some point. Barone said the fees are reviewed annually

through the CIP process giving the council the opportunity to review project costs and what that means for the franchise fees.

Callison said she was on Williston Road earlier in the day and it was a chance to see a road where the power lines were buried. She said the area looks nice with the way the vegetation is growing back.

Wagner moved, Wiersum seconded a motion to introduce the ordinance to increase the electric franchise fee. All voted "yes." Motion carried.

B. Ordinances correcting the non-conforming use ordinance and the sign ordinance.

City Attorney Desyl Peterson gave the staff report.

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

13. PUBLIC HEARINGS:

A. Public hearing to consider a resolution vacating a public drainage and utility easement at 1904 and 1910 Linner Road for David Gartzke.

City Planner Julie Wischnack gave the staff report.

Callison opened the hearing at 6:49 p.m. No one spoke.

Callison closed the hearing at 6:49 p.m.

Wiersum moved, Allendorf seconded a motion to adopt Resolution No. 2007-102 vacating the drainage and utility easement. Approval is subject to the following conditions:

- 1) Prior to release of this vacation resolution submit proof that appropriate documents have been filed with Hennepin County for combination of the properties at 1904 and 1910 Linner Road.
- 2) This resolution does not approve location of pool any where on the subject property. Appropriate building permit applications must be submitted for staff review and approval.

All voted "yes." Motion carried.

14. OTHER BUSINESS:**A. Items concerning a two-phased office redevelopment project at 5700, 5720, and 5740 Green Circle Drive and 10350 Bren Road West for Opus Corporation.**

Wischnack and Rankin gave the staff report.

Callison asked for an update on the park dedication fee, an issue not resolved at the planning commission hearing. Wischnack said there is a standard condition regarding the park dedication fee. She is continuing research. The phrase "if applicable" is included as a catch all phrase in the case that staff finds the fee needs to be paid.

Schneider said that the item before the council required four votes. Since the vacation of the right of way requires five votes, he asked if there might be issues given the different voting requirements. Peterson said if the vacation is not approved, the plan would be to go with the public right of way. The applicant would have to come back to the council to get a revised approval. The applicant would be responsible for maintaining the street. Schneider asked if the right of way that would go through the middle of the Opus site would be vacated as part of the plat rather than a separate vacation. Peterson said at that point the two would be separated because the primary concern has been from the homeowner's association. It is anticipated that the rest of the vacation would not be controversial. She said Schneider could add a condition to address his concern.

Allendorf said he was concerned with the driveway issue. He asked for clarification in the process if Opus Corporation and the condominium association could not come to an agreement. Wischnack said because staff was concerned about future maintenance issues a condition was included in the recommendation that states if resolution is not struck between the association and the Opus Corporation, Opus would have to come back to the city.

Allendorf asked what the developer and association specifically had to agree on and if the city should anticipate a further process through the planning commission and city council. Wischnack said multiple signoff is required to allow the extension of the roadway to the new public street. Because the agreement is needed there have been ongoing discussions about payment to the association for future maintenance costs. The president of the association has indicated no agreement has been struck. Peterson said if it is

vacated the property would go back to the homeowners association and it would require 75 percent of the people to approve acceptance of the property.

Allendorf said it seems the city is getting into the position of going through an approval process with the high likelihood the whole thing would have to come back. Wischnack said an option would be for the council to strike the condition if it feels comfortable with accepting it as a future public street. Allendorf asked the disadvantage of striking the condition. Wischnack said the condition was to address staff concern about servicing a property benefiting one property owner.

Wagner said it appeared that the driveway is in the right of way that is being vacated. He asked if the city could not transfer the right of way to Opus and require them to maintain the driveway. Peterson said the city does not have the right to transfer public right of way. All the city can do is vacate it and there are laws as to who gets it.

Wagner asked staff to review the proof of parking requirements. Wischnack said the proof of parking required under the current phase one proposal is for 552 stalls. 486 spaces are being proposed. The south area located next to the driveway entrance is what is deemed proof of parking as well as the striping in the parking lot itself. If an adjustment is needed it would be fairly simple to re-stripe the bituminous. She said in the phase two plan there is a little more green space involving a small area on the perimeter of the site. Wagner said in the planning commission testimony ideas were raised related to different native vegetation and plants that staff was working with the developer on. He noted as the city goes through the comprehensive plan process one of the things being looked at is how to give more consideration to the wetlands and how to reduce runoff, along with opportunities for energy efficiency. He applauded Opus for seeking the LEED certification at the silver level, and any additional landscaping features to reduce runoff would be appreciated.

Thomas asked if the park dedication fee had been paid and what the amount of the fee was. Wischnack said it isn't clear how the park dedication was originally handled when Opus was approved. Research is needed defining what exactly the agreement with the city originally was. Thomas asked if the public improvements are actually listed item by item in the stipulations. Wischnack said the stipulation is in the stamped plan section of the documents. The construction plan set is documented in the developer's agreement.

Callison said there have been concerns from the residents over the recent change from a stop sign to a yield sign at Green Circle Drive and Smetana Drive. She asked if there is intent to monitor the area to see if more problems are caused than solved. City Engineer Lee Gustafson said the situation has been monitored. Originally, the intersection was a yield condition. Stop signs were added to the Opus area after road improvements were made in 1999. A short time later the intersection was changed from a yield condition to a stop condition. The problem that arose, especially with commercial vehicles without a rear window, was having a vehicle come to a stop and the driver having to turn their head 130 to 140 degrees. The city received complaints that a lot of vehicles were not stopping because once they did the driver could not see if anybody was coming. Gustafson said that as a vehicle is coming south it is actually at a high point. It is easier to see oncoming traffic because of the elevation and the driver can make a better judgment about which gap to pick for merging into traffic. Staff strongly felt this was a much better situation than people coming to a stop and pulling out blindly.

Callison asked if there were geometric improvements that might be options for the intersection. Gustafson said a variety of different solutions were looked at. Unfortunately, there is a bridge at the high point that would need to be relocated and replaced if the area was changed into a standard T intersection. There is also a wetland south of the area that would need to be filled.

Schneider said the intersection appears to be unsafe with either a stop sign or a yield sign. A yield sign still requires a driver to look out the back of their vehicle. He asked if there was a possibility to redirect two lane traffic into one lane so when a vehicle approached the intersection it would have to be in the right lane and the traffic coming off the yield would have a free lane to merge. Gustafson said staff agrees it is not a perfect situation at the intersection and would like to look at all situations under a master plan for the entire area. Not only would geometric safety concerns be looked at but also capacity concerns. He said staff wants to make certain that whatever is decided upon, future changes are not needed.

Callison asked if there was a timeline for the broader look and whether it was part of the comp plan process or if it was an independent process for the whole Opus area. Gustafson said it was both part of the comp plan process and taking a look at the Opus area by itself. Callison said it would be helpful to understand the traffic better on Green Circle Drive by doing comparisons with other roads in the city. Gustafson said under phase two of the

project traffic will increase to around 1,250 vehicles per day. In comparison the area of Oakland Road that was reconstructed in the mid-1990's has 1,300 vehicles per day. On Essex Road just north and south of where Oakland Road splits off and heads over to I494 there are 2,000 vehicles per day. Lake Street Extension between Baker Road and Shady Oak Road has about 1,100 vehicles per day. Dominic Drive between Shady Oak Road and the railroad crossing has 1,400 vehicles per day. Covington at Vine Hill has 1,100 vehicles per day. Scenic Heights Drive just north of the Crosstown has about 1,400 vehicles per day.

Callison asked what opportunities there will be for continued neighborhood involvement if the project goes forward. Wischnack said staff would continue to work with neighbors throughout the construction phase of the proposal. Information about the timing of events, where the construction is going, and hours of operation are important to the neighborhood. As the construction plan is developed staff has committed to meeting with the neighborhood prior to its adoption.

Callison asked what the specific hard surface coverage numbers are. Wischnack said the proposal for phase two is 61 percent and for phase one it is 58 percent. The city maximum is 85 percent for hard surface.

Wiersum asked if it was feasible to put a traffic control device on Green Circle Drive. Gustafson replied that prior to the change to a yield sign drivers were driving through the stop sign. He said if stop signs were added to Green Circle Drive drivers would wonder why they are stopping and it would create a situation where many drivers might slow down but not stop. There are very few areas within Opus that have stop signs and the mode is free flowing. A traffic signal would likely cost over \$300,000. Traffic would be controlled a little better but Gustafson said he didn't know what benefit would actually be gained. Wiersum agreed drivers would not come to a complete stop but slowing cars down to 10 miles per hour versus 35 miles per hour would be an improvement. Gustafson said Schneider had the right idea that the best solution would be a good geometric improvement to increase safety.

Thomas said he was glad the entire area will be reviewed. He said the neighbors brought up a couple of issues to him. One involved the new proposed driveway coming out of the condominiums. The neighbors felt the slope might cause sliding problems in the winter. Another issue was a dangerous intersection at the south side of Green Circle Drive on to Bren Road. Gustafson said staff felt very

confident that there will be a significant flat area for the proposed driveway. The amount of space in the area will allow the grades to be massaged to make everything work well. He said staff will look at the entire area including hazardous intersections as part of the master plan to see if geometric improvements can be made.

Callison said the engineering report provided by the applicant states the new driveway intersection with Green Circle Drive must be as close to the crest of the road as possible to allow for maximum sight distance to the south. She asked if that recommendation was being incorporated in the plans before the council. Gustafson said it is being required as a condition. Not only will city staff look at it but a consultant will also look at it to make certain there is good sight distance for people accessing the condo area and the driveway.

Dave Bangasser of 10350 Bren Road West is the vice president of project management for the Opus Corporation. He identified the issues that have arisen: one building versus two; and the location of the road. Last year the council approved a plan that had two buildings connected by a skyway. After approval the corporation's founder, Gerry Rauenhorst, asked why the plan included two buildings and if the possibility and feasibility of moving the road was studied to enable the expansion of the building. The corporation came up with ten quick alternatives that might be an option and Bangasser said five of them were thought to have merit. In January, city staff was approached to see if any of the five options were worth pursuing. Staff felt the option before the council was feasible. Bangasser said it not only is feasible but it is a better plan.

Bangasser said there is a mental barrier involved with two buildings that creates separate groups. Part of the Opus culture is bringing professionals from different disciplines together working as one team. Bangasser said working in two buildings creates a different culture and the mentality of "we" and "they." Currently, the company is in four buildings, three within the business park and one in Edina. One building would allow central amenities like one dock, central conference spaces, and places for people to come together and interact. He said the proposal includes benefits for the city. The road would have more gentle curves, the sightlines would be greater, and there would be more of a parkway feel. There will be a new road and a new bridge. The bridge will be more architecturally pleasing than the existing bridge.

Bangasser said the company heard at neighborhood meetings that the pond has low water levels and the plan includes dredging the

pond. The company met with the board of the 5697 Green Circle Drive building whose driveway will be extended. Bangasser said people naturally are apprehensive about change and when the present office building was developed there was opposition. Last year when the company came forward with its plan there was opposition to the plan. He said the company has attempted to be a good neighbor, attempting to listen and address concerns.

He said the condo owners would prefer Green Circle Drive to be a private residential street but it never has been. It's a public road within a mixed use business development. The traffic study indicated that after phase two is built, traffic on the road is projected to be less than it was a few years ago when three buildings were fully occupied. The company is attempting to encourage the traffic on to Bren Road which is quicker and more convenient to get to either Highway 169 or Shady Oak Road.

Bangasser said staff recommended the elimination of the exit from the phase two parking ramp. The company was concerned and hired Walker Parking Consultants to help research the recommendation. Walker recommended against the elimination but Opus is prepared to accept the elimination of the exit as a concession to the neighbors. Bangasser said the company reserves the right after giving it a try and finding it does not work, to re-evaluate and look at alternatives.

He said the extended driveway is approximately 250 lineal feet of additional driveway. The company has offered to pay for all costs associated with the driveway including 33 years of maintenance. Sightlines would be significantly better. He said the grades for the new driveway can be handled quite easily and the company doesn't feel there will be a problem with winter conditions.

Another concern Opus heard is the disruption and access during construction of the new road. Bangasser said the company is committed to building the new road first and in order to maintain traffic in an uninterrupted fashion as possible, has agreed to leave out a portion of its building construction. He said the only caveat to encouraging traffic on to Bren Road is with the wetland mitigation there will be some times when construction vehicle traffic on Green Circle Drive will be required.

Bangasser said the condos are on the quiet side of the new building. All of the parking and main entrances are on the far side. He said Opus is the ideal neighbor for the condos because when most of the owners are home during the nights and weekends the

company is practically deserted. The company has committed to improving the buffer for the winter. It is relocating 15 trees that are currently between 12 and 20 feet tall and installing around 250 new trees. The cooling tower will provide screening of the dock and the tower itself will have a brick screen wall around it.

Bangasser said Opus has committed to doing sustainable design for this project. The main entrance and the dock area are being redesigned in order to save more trees. Proof of parking has been proposed. The current proposal shows three and a half stalls per thousand square feet of office which is less than the city's code provision of four per thousand and is well below the current market conditions for office space. In response to Wagner's question about proof of parking stalls in the southeast corner, Bangasser said there are 34 stalls. He said narrow stalls do not work very well as that tends to lead to vehicles taking up two stalls. The company considered permeable pavement and a number of sustainable design solutions as part of the quest for LEED certification. The clay soils however are not conducive to permeable pavement. He said the catch basins will be designed with sumps in them in order to trap the large particulates that come with storm water runoff.

Allendorf asked how Bangasser would categorize the possibility of reaching an agreement in the negotiations between Opus and the condominium association concerning the driveway. Bangasser said the company has proposed a reasonable offer in paying for all the costs and paying for 33 years of maintenance. He said there is some sign of encouragement but from past experience it is very difficult to get the required two thirds majority needed for the driveway extension. It is difficult enough to get two thirds of the people to show up. He said he hopes the company's offer is attractive and the offer to make the project as painless as it can be will result in getting the approval. Callison asked if Bangasser was comfortable with the staff recommendation on the item. Bangasser said the company is comfortable with the recommendation.

Ellingson asked what the concern is about not having an exit on to Green Circle Drive. Bangasser said the exit was always intended to be a secondary exit. The 1,000 car ramp is proposed because the company may need that down the road. The assumption is if the ramp can be made smaller it will minimize the need for a second exit.

Maria Klein of 5627 Green Circle Drive said the residents of the Green Circle Drive condominiums wanted to thank the mayor and the council members who visited the area the previous week. They

also appreciate that the Opus Corporation intends to be a good neighbor and is trying to address concerns.

Klein said the residents have many concerns about the proposal. The residents of Minnetonka recently stated the attribute they value most about living in the city is the preservation of green spaces. The city affirmed these values by suspending new development projects until the city ordinances protecting green space can be strengthened. She said the current project is a new proposal and the building moratorium should apply to the project.

Klein said the proposed realignment will significantly disrupt the residents and affect permanent changes on the neighborhood landscapes and natural areas. The residents do not see the tree replacement and wetland mitigation as improvements to the neighborhood.

Klein said at the July 12 planning commission meeting Steve Lillehaug, assistant city engineer, said moving Green Circle Drive offers no benefit to the city. Residents do not oppose nor have they ever opposed the plan approved by the city last year. She said Opus has stated employees need to be in the same building in order to perform together at their best. Collaboration is enabled by many methods. Klein works at the Arboretum which recently added a second building with a skyway. There is also a third building a quarter of a mile down the road. Since working in the two buildings she said the situation has not caused any serious communication or collaboration breakdowns but rather trotting back and forth between buildings gives people the type of break chiropractors recommend and goes a considerable way toward reaching the minimum daily requirement of 10,000 steps.

Klein said she had a concern for longer term community wide developments. Last month Callison appointed her to the Community Advisory Council of the Southwest Transitway Project. The two currently favored routes go right through the Opus area. She said it would appear the proposed realignment of Green Circle Drive will converge on the LRT route complicating the entrance to and from both the Opus parking areas and the proposed LRT station site. It would also put pressure on all vehicles entering and exiting on to Bren Road East. Although LRT implementation is at least eight years away, the committee has entered the phase in which the final route will be selected, stops and a stations will be located and engineering details will be planned. If the Opus route is chosen all roads, trails, and driveways on this particular stretch of Bren Road would have to be re-engineered in the not too distant

future. Klein said the decision today will have far reaching consequences.

She noted the residents would definitely welcome an overview of the intersection situation and the development of a master plan for safety.

Callison complimented Klein for all the work the residents have done and for the presentation.

Callison asked staff to respond to a couple of points Klein had raised. She asked how the development moratorium applies to the Opus application. Wischnack said the proposal is not a true subdivision. It is consolidating parcels into one parcel. Also Opus applied well in advance of the moratorium. Peterson said the moratorium allows development to go forward as a PUD and that is what is being proposed.

Callison asked Peterson to comment on the statement that there is no benefit to the city from the development and therefore it should be denied. Peterson said generally when there is an application before the city, whether there is benefit to the city or not is irrelevant. The landowner has the right to request certain things related to the development of the property. It is up to the city then to examine the application with respect to the ordinances. She said there is a little bit of an unusual curve to this application because the city doesn't have any obligation to relocate Green Circle Drive. Therefore the council has more discretion in reviewing that issue.

Allendorf said he heard the city engineer mention a possible benefit to the city in moving Green Circle Drive as it will be flattened out and the sight lines will be better. Gustafson said the developer stated those benefits but he concurs. There will be a brand new road and bridge. There will be a more aesthetically pleasing roadway. There will be better curves as the current road has substandard curves that don't meet current design standards. Traffic will flow through the curves much more safely.

Linda Allen of 5697 Green Circle Drive, the secretary of the association's board of directors, said when Opus attended the July 23 board meeting the offer was for 20 years of maintenance. At the meeting last Thursday the offer was for 30 years. Tonight the offer was 33 years. Bangasser said when the company first set out to pay for maintenance it ran the numbers for 20 years for present value that included a list of things to consider such as snowplowing. For 20 years on a present value basis the total came to around

\$15,000. Opus proposed giving the association \$25,000. Looking at \$15,000 for 20 years and projecting that out with the \$25,000 amount, Bangasser said he believes it equates out to around 33 years of maintenance. Callison suggested the neighbors focus on the \$25,000 amount and not how many years of maintenance it may be. Bangasser agreed.

Schneider said he was confused with the wetland mitigation section of the staff recommendation. At one point the report talks about the wetland mitigation being a one to one basis. It also talks about buffer zones and public value credits. He said he was aware the Wetland Conservation Act requires a two to one replacement. He asked for reconciliation on what was being proposed and how that meets the Wetland Conservation Act requirements.

Natural Resources Manager Jo Colleran said the Wetland Conservation Act does require a two to one mitigation for wetland fill. The first one to one refers to new wetland credit. The second part of the one to one can be upland buffer or storm water treatment but it has to be the same amount. In this case, approximately 13,000 square feet is being filled. The proposal is for mitigation for new wetland credit of the buffer area of 14,000 square feet and also mitigation for the flood plain loss.

Ellingson asked if there was a need for wetland mitigation in the previous plan approved last year. Colleran said there was no wetland impact with the skyway.

Allendorf said the city has done a better job in major developments in requiring a travel demand management plan that not only is in place but has some means of follow up and a person at the company to implement the plan. He asked what is being done in this case. Rankin replied there is a travel demand management planning requirement associated with the new headquarters expansion. Talks haven't gotten so specific where the precise methods to be used in the plan or identifying a particular person are in the plan but it is the intention to have it evolve to that point. Rankin said throughout future developments in the Opus area and other parts of the city there will hopefully be future benefit of active monitored real plans for all the expansions. Allendorf said he assumed Opus was made aware of the services of the I494 Corridor Commission to help flesh out the plan. Rankin said the commission's help has been regularly used.

Schneider said the residents' concerns about the significant change in the layout were valid particularly in the road realignment. The

project itself is essentially the same. The square footage and the traffic generation are not changing. The question is whether a major modification of a road system is the right decision. He didn't think the amount of traffic will change. It's more the perception of how someone gets to and from their condominium and how that impacts the alternative alignment. He said one comment from the applicant shifted his thinking. The idea that the previous design had all the residents cutting through the campus, going under a building is significantly worse than the potential character of the new proposal. If it is adequately buffered along the site there will be one side of the entire route that would be open space, wetland, and trees as the resident drives home. If adequate landscaping is done on the right side of the road there will be a parkway feel. He said long term, even though it is a disruptive endeavor to make the proposal happen, the feel of being able to drive through a parkway setting will be an asset to the residents that live in the area. If it were a blank slate, he said he would run the road along the outside allowing a drive through the open space area.

Wiersum said having an approved project is significant. He could relate to the challenges the applicants face because he hates it when the boss has a better idea, but he isn't sure he buys the one building versus two buildings benefit. He said he also thought maybe the applicants hadn't been creative enough because as a kid his family used to drive in Chicago under the post office on Highway 41. One building can be created without realigning Green Circle Drive. He said what is really being discussed is the disruption to a community of people who live in a mixed use development area. People who live in a mixed use development should expect more change than a pure residential community. At the same time, there will be major disruption to a neighborhood when there is a perfectly good, approved alternative on the table. At the planning commission hearing the applicant indicated that if the proposed plan is rejected, the approved plan would move forward. He said he was leaning toward the status quo on Green Circle Drive because he wasn't sure that the difference in what is being proposed is worth the price the area will be expected to pay for when the change is relatively modest.

Allendorf said he agreed with Schneider's point that the projects are not that different in the massing and height of the buildings. He said he thinks the moving of Green Circle Drive will be a real benefit to the project and the city. From a disruption standpoint Opus is attempting to mitigate the disruption by keeping the current road in place as long as possible. The traffic issues on the north side are separate from the project. They came in at the same time because

it was an opportune time to bring the issues up but they are not attributable to the plan. The disruption argument was heard when the city considered phase one and looking back people didn't like phase one but now say it isn't quite as bad as they thought. He said that often occurs in development proposals. He sees benefits to the neighborhood and to Opus and he said he'll support the new plan.

Thomas said he still has a concern about the proof of parking. He is reminded of driving down I494 and looking at the Best Buy property and seeing 20 cars where there are 500-600 spaces. He said he wants to make sure proof of parking is used to create as much green space as possible. He also is concerned with the road alignment. In the approved plan there were no complaints from the neighbors. There are concerns with the new plan. Therefore it may be better to just go with the first plan. He said he was concerned with the safety of the intersections and it was a good idea to take a look at roads in the development and comprehensive plans. He said if you don't work in the area and become familiar with the roads it is nearly impossible to find where you are going. Because there will be more people coming into the area and more business the study of the intersections is really needed.

Wagner agreed with Thomas more discussion would be helpful. He said he would go with the staff direction on the proof of parking but still has concerns about paving the entire area right away. He wanted to add a stipulation directing staff to work with the applicant on the issue. There will be financial benefits to having a new road and new bridge. There are cons however with the wetland mitigation and concerns for the neighbors when there already is an approved plan. He said it is a well designed plan and he applauds the developer for working with the neighbors to decrease as much runoff as possible and for seeking LEED certification.

Ellingson said it is a fortunate situation because there are two well thought out plans to consider. He said the sentiment he has heard is people would prefer to drive through the campus rather than on a new road. One concern in the new proposal that came up at the neighborhood meeting is the new building will be closer to the condominium building. Another concern is in the original plan for the parking ramp there are two exits on to Bren Road that would solve staff concerns about not wanting an exit on to Green Circle Drive. The first plan also did not require any wetland mitigation. He said there are advantages to the first plan and that plan has the neighbors' support. He therefore would be in favor of supporting the original plan.

Schneider asked for confirmation that the building is changed and moved to the north from the original plan. Wischnack indicated the size of the two buildings is very close. Schneider noted the building does shift slightly north in comparison with the original plan.

Callison said one challenge of the process is keeping an open mind until the point where the council begins its discussion of a proposal. She said this was a proposal where it was easier to keep an open mind because both sides were very articulate. One of the challenges is weighing the issues and determining which issues are real, and which issues are legitimate concerns people. She said looking at this project the concerns that likely will occur involve the road. The buildings meet the city's standards for site and building plan review. She agrees with Allendorf that the safety of the intersection goes beyond the realignment of the road. It is an existing condition that needs to be solved and the city is committed to solving the issue. She takes the statements about the city's value for wetlands and natural resources seriously and in this case she has confidence in the staff indicating the wetland resources are degraded and don't function well. There is the chance to not just stay with the status quo but to improve it and do something better. She agreed there will be disruption to the neighborhood but appreciates Opus' commitment to reducing the disruption by building the road first. She also appreciated Gustafson's comments about what the product will be. The product will be a road that on one side will be open space that will be consistent with the city's values as opposed to a road today that goes through a commercial area. She struggled the sense of loss of place that people are struggling with, but the sense of place will be rediscovered and furthered by a development of consequence that will reaffirm Minnetonka's commitment to open space and natural resources. She said it is fortunate to have a corporation willing to put the resources in to make the second proposal an advantage.

Barone suggested having the developer answer Wagner's question about whether they are willing to work with the city on the proof of parking. Bangasser said they are willing to work with the city and look at exact counts and projections and proof of parking.

Allendorf asked Bangasser to confirm that Opus is OK with the staff recommendation requiring the agreement with the homeowner's association. Bangasser said the reason he is OK with the recommendation is he doesn't believe the agreement will fail because of lack of effort on Opus' part. They have displayed an effort to meet the concerns raised by the extended driveway and to

alleviate them with design and paying for the costs. The part he can't control is the requirement for a two thirds majority.

Thomas asked for clarification for what happens if the council was to approve the project and the homeowners do not approve the agreement. Wischnack said there would be two after effects. One is that Opus could go back to the original plan with the skyway. The second option would be for Opus to approach the planning commission with an amendment to the site plan review and gain the commission's and the council's approval through an extended process to do a public street amending the preliminary plat. Thomas asked if the long process played out if there would be any taking of land from the condominiums for a roadway. Wischnack said there would be no acquisition required. It would either be city right of way that the residents would be traveling through or through an easement from the city.

Allendorf asked for the specific language in the staff recommendation that addresses the agreement condition. Peterson pointed to the stipulation. Wischnack said if there is a need to amend the condition she suggested amending it to say "receive approval from the property owners to relocate the driveway access to newly constructed Green Circle Drive. If no approval is received, no right of way would be dedicated and the city street would be extended to the property line." That would be a method to prevent requiring the applicant to come back to the planning commission and city council. She said it would provide two options but not require a secondary process. Peterson said she would add a requirement that Opus would maintain the new public right of way because it wouldn't be something the city would want to do since it only serves one property owner.

Schneider said if the proposal goes forward it should be with specificity. If a public road is OK it should be as the base with the alternative being a private drive with more green space and trees.

Allendorf said the amendment would benefit the condo owners, Opus, and the city because the proposal wouldn't have to come back to the planning commission and council.

Peterson clarified if the proposal was adopted the prior plan is no longer on the table. The new proposal would replace the master development plan approved last year. If the proposal was approved and Opus were not to like how the process turns out they would have to come back to get it changed back to what was approved last year.

Allendorf moved, Schneider seconded a motion to:

- 1) Give preliminary approval to the OPUS CAMPUS ADDITION, date stamped July 2, 2007. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:
 - a. Complete the following before final plat approval:
 - (1) Show the following on the final plat:
 - (a) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines.
 - (b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (c) Drainage and utility easements over wetlands, floodplains, and public stormwater ponds, as determined by the city engineer.
 - (2) Pay the city a park dedication fee, if no park fee has been paid previously.
 - (3) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
 - b. The following items must be submitted to the city before the city releases the final plat:
 - (1) An engineering/utility inspection fee.
 - (2) Payment for traffic signs and installation, as required by the city engineer.
 - (3) An electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - (4) If the developer is constructing any public improvements, the developer must submit a signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements. This agreement must include an escrow to ensure that the developer completes all public improvements and complies with all city regulations. This escrow must be a letter of credit or cash deposit. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.

- (5) 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) Conservation easements over wetland and wetland buffer areas and a drawing of the easements. The easements and drawings must be recorded with the final plat.
 - (c) Provide declaration and restrictive covenants over all mitigated wetland areas per the Wetland Conservation Act (WCA), for review by the city's natural resources staff.
 - (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. These covenants must first be submitted for the city attorney's approval.
 - (e) Any other requirements included with final plat approval.
- (6) A drainage and utility easement must be granted over the alternate stormwater plan and the stipulations of its use must be provided in a separate document approved by the city attorney.
- c. The following must be completed before the city issues a grading permit or any site work is started.
- (1) Approval of final grading, drainage and erosion control plans by the city engineer. If the developer is building the streets and utilities, the developer must submit final street and utility plans for the city engineer's approval.
 - (2) A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site must be submitted to the city. 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.

- (3) All trees to be preserved must be fenced and erosion control measures installed, as approved by the city.
 - (4) Approval of a construction and traffic control management plan by the city planner.
 - (5) The applicant must submit evidence of the watershed district approval, in specific, approval of the floodplain alteration on Outlot A (owned by the city). The city may require revisions to the preliminary plat to meet the district's requirements.
 - (6) NPDES permit required from Pollution Control Agency.
- d. The following must be completed before the city issues a building permit:
- (1) All conditions provided in the site and building plan review.
- 2) Adopt Ordinance No. 2007-24 approving the following for the Opus Corporate Expansion at 5700, 5720, 5740 Green Circle Drive and 10350 Bren Road:
- A rezoning from B3 (5700 Green Circle Drive) to PUD, planned unit development;
 - A master development plan and final site and building plans (Phase I); and
 - A conditional use permit to move over 1,000 cubic yards of material.
- a. The ordinance is based on the following findings:
- (1) The use would be the same as the existing office use on the site. Opus would replace the existing office buildings in the area.
 - (2) The plan would contain adequate parking.
 - (3) The site would be adequately landscaped.
 - (4) The height of the building would be consistent with the existing Opus building and buildings located in the area.
 - (5) As demonstrated in the Supporting Information section of the staff report, all minimum zoning ordinance standards would be met or mitigated by replacing natural areas.
- b. This rezoning is subject to the following conditions:
- (1) Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan date stamped June 6, 2007.
 - Grading plan date stamped June 6, 2007.

- Landscaping plan date stamped June 6, 2007.
 - Building elevations date stamped June 6, 2007.
 - Wetland and Floodplain mitigation plans, as amended - July 3, 2007.
- (2) Before starting any site work or obtaining a grading permit, complete the following work:
- (a) The installation and maintenance of temporary rock driveways, erosion control, tree protection, and wetland protection fencing for each lot must be installed, subject to review by the city's natural resources staff.
 - (b) Submit final site, grading, drainage, utility, roadway and erosion control plans for staff approval. These plans must include cross sections.
 - (c) Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
 - (d) Submit copies of the watershed district permit, in particular the approval of the floodplain mitigation for Outlot A. The city may require revisions to the approved plans to meet the district's requirements.
 - (e) Submit a construction and traffic control management plan for staff approval.
 - (f) Site storm sewer plans are required to be submitted for review and approval including complete storm sewer design calculations, profiles for all storm sewers, and the necessary revisions for the alternate storm sewer as noted in the May 25, 2007, memo from BARR Engineering.
 - (g) Receive approval from the property owners to relocate the driveway access to the newly constructed Green Circle Drive. If no approval is received, Opus must construct a new cul-de-sac to access the condominium properties and must agree to maintain it perpetually.

- (h) A development agreement documenting the improvements and corresponding securities.
- (3) The following must be submitted to the city before the city issues a building permit:
 - (a) Final landscape and irrigation plans for staff approval. Landscaping plans must equal 1% or greater of the total project value. Additional trees between the roadway and the trail must be provided and approved by the natural resource staff.
 - (b) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping.
 - (c) An illumination plan for staff approval.
 - (d) All required hook-up fees.
 - (e) Final utility plans are required to be reviewed and approved by the city engineering staff.
 - (f) Revisions to the grading plan must include curbs and/or barriers to prevent traffic southbound from driving on non-roadway areas.
 - (g) All utility services must be abandoned as required by the engineering department.
 - (h) Plans must be in substantial compliance with items outlined in the "Green Circle Drive Realignment" dated June 6, 2007, and bridge memorandum dated June 22, 2007.
 - (i) Additional traffic improvements in the area will be necessary over time. The city will further outline those responsibilities during a land use analysis of the entire Opus area, and will determine appropriate participation of property owners compliant with all applicable state statutes. This will be completed prior to Phase II of the site plan.
 - (j) Complete roadway, bridge, retaining wall, and pedestrian plans need to be

- provided for review and approval by the engineering department.
- (k) Phase II of the site plan includes a parking ramp. This parking ramp will be an entry ramp off of Green Circle Drive, to encourage the use of Bren Road.
 - (l) Record this ordinance with the county.
 - (4) Prior to certificate of occupancy, complete a travel demand management plan.
 - (5) The property owner is responsible for replacing any required landscaping that dies.
 - (6) All rooftop and ground-mounted mechanical equipment and exterior trash and recycling storage areas must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
 - (7) Approval does not include the signs shown on the drawings. Separate permits are required from staff.
 - (8) With the exception of security lighting, lights within the building must be turned off by 11:00 p.m. unless there is an emergency situation or a room is being cleaned.
 - (9) Work with city staff to reduce the number of parking spaces that are actually paved and instead provide proof-of-parking for the remainder of the required spaces. The final plan must be approved by staff. Spaces shown as proof-of-parking may not be paved unless approved by the city upon showing of a demonstrated need for these spaces.
 - (10) Phase II would require site and building plan review.
 - (11) Construction must begin by December 31, 2008, unless the planning commission grants a time extension.

The above plans are hereby adopted as the master development plan and as final site and building plans (Phase I).

- 3) Adopt Ordinance No. 2007-26 approving the proposed change in the wetland overlay district boundaries. Also recommend the city council approve wetland alteration with

wetland buffer impacts and floodplain alteration. This ordinance is based on the following findings:

- a. The floodplain impacts are also mitigated in the same sub-watershed area.
- b. The wetland and floodplain impacts meet the standards of the city code.
- c. The mitigation area for the wetland is being compensated within the same sub-watershed district as the wetland being altered.
- d. The wetland will ultimately have a higher function and value.
- e. The application meets the standards of the conditional use permit criteria.

This approval must meet the following conditions:

- a. Obtain approval from all appropriate agencies before construction.
- b. Obtain approval and comply with the requirements for the Wetland Conservation Act replacement plan as presented in the plans dated July 2, 2007 and as amended.
- c. Provide a plan which indicates specific wetland species and location/elevation. Additionally, at least 50% of the species must be herbaceous or biomat.
- d. Provide information to ensure adequate hydrology of the mitigated wetland area.
- e. Applicant must provide wetland conservation act forms, including: affidavit of land ownership, declaration of restrictive covenants, and consent to replacement wetland.
- f. Applicant must provide wetland monitoring reports, annually, for a period of five years or until the technical evaluation panel accepts the mitigated wetland. At the end of the monitoring period there shall be no more than 15% invasive species present.
- g. Applicant must provide a cash escrow in the amount of \$7,500 (\$1,500 per year x 5 years) to ensure compliance with the wetland monitoring schedule.
- h. Applicant must provide a letter of credit for 150% of the estimated cost or 125% of the actual bid for the wetland and flood plain replacement to be constructed. The letter of credit will be reduced based on establishment of the replacement wetland.

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

Callison called a recess at 9:12 p.m.

Callison called the meeting back to order at 9:21 p.m.

B. Items concerning a proposed senior housing cooperative to be known as Applewood Pointe at 5709 Rowland Road, for United Properties Residential, LLC.

The item was tabled at the request of the applicant.

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

Rankin gave the staff report.

Wiersum said he understood the comparison with other cities and that comparison has some merit but the relevant question is if there is a real need to increase the fees. He said something wasn't quite right. Either the city was asleep at the switch to allow the gap to get as big as it is in comparison with peer cities or there is a question about how big the need is.

Barone agreed there was a lapse in bringing an increase before the council earlier. She agreed with Rankin that it was better to bring proposed fee increases to the council on an annual basis. The need continues to be there. Every year the city adds to its trail system. Parks have been added since the park referendum was approved. There continues to be neighborhoods underserved with parks. As the population demographics shift it might affect some of the changes that will be made in the park system. She said each new resident uses a share of the existing park system and the fees acknowledge that. The comparison data with other cities is not the only basis for the proposed increase.

Wiersum said the city has a great park system and he is exceedingly proud of the parks and trail system. His sister from California was out visiting him. He said it was fun to have someone from another state seeing the amenities the city has. He wants to continue to strongly support the city's parks and continue to expand the trail system.

Wagner said he supports the increase and is glad to see the fees will be reviewed on an annual basis. He met with staff in early July looking at what he considers fairly large trail gaps. The gaps are not inexpensive to fill.

Schneider said when he was on the League of Minnesota Cities Board they worked closely with the legislature in adopting restrictions and a definition of park dedication fees. Prior to the change communities were using park dedication fees for general fund revenue. The League was concerned about being told what to do by the legislature but realized there were abuses and there needed to be guidelines established. The current statutory language was a compromise allowing cities some control but with accountability tied to that. He doesn't believe the city is acting in faith with the intent of the law.

He said the city has always maintained an attitude that the park dedication fee was not a major significant source of the park revenue fund. Park funding was supposed to come from general fund money allocated out of the CIP and tax revenues. Part of that was because much of the community was already developed so the tax base was a better source of funding. He said the approach of saying the increase is fully justified because the resident is buying into the current system is not what was intended by the state statute. The statute indicates that the city must show a nexus between the actual impact of the new future residents coming in with their direct impact on the park system. Whatever those residents need they should be paying for. They shouldn't be paying for everything that has been done to date because that is in essence priced into the value of their lot when they buy it. Schneider said he had not seen that math showing the nexus in the proposed increase. He said he would support an increase even to the amount proposed if he saw it was being arrived at from the right direction.

Barone said the percentage of the annual revenue from park dedication fees varies depending on the amount of development but is usually between five and 20 percent. It isn't a large majority of the revenue. Given the community values and the emphasis placed on open space preservation, the city will continue to expand amenities that benefit new residents coming. With infill development things are more complicated and different than communities that have completely new neighborhoods.

Thomas said when he was on the park board the park dedication fund was around \$100,000. Barone said currently it is around \$400,000. Thomas said the original intent was to take \$150,000 from the general fund that would become the park dedication fund. The money received from the developments percentage wise was fairly low. This was before the referendum passed. He said

accounting wise five to ten percent coming in from the dedication fund from development as opposed to the general fund fits the language of the statute. He said every time an improvement was made to a park, maintenance was increased. The city has higher operational needs than it did in the past. He said a park at the west end of the city which hasn't even officially opened already has sustained damage to the bathroom along with erosion. As neighborhoods change the parks will also need to be changed to accommodate the residents. He supports the increase but agreed it was a good idea to look at increases on a regular basis.

Barone said the funds for park dedication are used for capital expenses. Increased maintenance costs are handled through the city's operating budget. She said having passed the referendum and undergone park renewals, staff plans to take a longer term view of planning capital improvements.

Allendorf asked if the asset/liability formula included in the council materials is a formula that will hold up if the legislature says the city can only charge what the real capital costs are. Barone said although the chart was prepared by the city manager, her understanding was it was a common economic formula applied in other areas. Allendorf said if it really costs \$6,141 dollars why the proposed increase is only \$5,000. Barone said the park board's comfort level was to stay in the range of what other communities are charging. Allendorf said making a comparison with other communities seems beside the point but rather the fee should reflect the real costs.

Callison said the council could approve the increase and look at best practices or other ways to get at the correct fee amount and methodology.

Schneider said he always is reluctant to be critical of staff recommendations but in this case he was doing so from a principle standpoint. He said there have been several communities in the past five years or so that have been sued over their dedication fees and had to go through and redo their calculations. There is an acceptable standard practice in determining the nexus issue. He said this doesn't do that. One city had to refund around \$150,000 back to developers because the city couldn't justify what they were doing. He doesn't think Minnetonka will be in that situation because there isn't that much activity going on, but he thinks the city should arrive at the fee the correct way. Barone said the staff will look at what occurred in those communities. She wondered if the communities were subsidizing their general fund with park

dedication fees and using the fees for other purposes. In Minnetonka's case the fees are used specifically for park uses.

Grace Sheely of 14325 Grenier Road said as a person who has paid the park dedication fee it is really important that the fee be very public so everyone is aware of what it is. When she paid the fee to build her house it was a hidden fee that wasn't something that could be planned for until the permit for the house was pulled. If a person wasn't a developer the fee wasn't something they would be aware of to anticipate and plan for.

Callison said the fee is in the ordinances. Barone added information about the fee could be added to the city's many brochures along with its web site. Peterson said the city does not have the legal right to charge for the park dedication fees on any building permit. The fees can only be charged on a subdivision of land. Just because a person is coming in for a building permit doesn't mean they will have to pay the fee.

Allendorf said he hoped staff would take up Callison's suggestion of looking at best practices on how to get a handle on the exact costs. He said once the exact costs are determined the rationale of going under the cost would be difficult to accept.

Wagner moved, Thomas seconded a motion to adopt Ordinance No. 2007-25 amending Section 400.030, Subdivision 2 of the City Code concerning park dedication fees. Ellingson, Wagner, Wiersum, Thomas, Allendorf and Callison voted "yes." Schneider voted "no." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointment to the community commission.

Wagner moved, Thomas seconded a motion to appoint Laura Stotts to the community commission, for a one-year term, effective August 7, 2007 and expiring on January 31, 2008. All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Wiersum seconded a motion to adjourn the meeting 9:45 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk