

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, AUGUST 20, 2007**

**1. CALL TO ORDER.**

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

**2. PLEDGE OF ALLEGIANCE.**

All joined in the Pledge of Allegiance.

**3. ROLL CALL.**

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

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou noted an addendum- a memo from the city planner clarifying a condition of the resolution for item 14A.

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

**5. APPROVAL OF MINUTES:** July 9, 2007 regular meeting

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

**6. SPECIAL MATTERS:**

**A. Recognition of Minnetonka as a Governor's Fit City.**

Minnesota Finance Commissioner Tom Hanson presented the award to the city. He said the purpose of the program is to recognize cities committed to creating and maintaining an environment supportive of active living. Currently there are 36 cities designated as a Governor's Fit City. Callison accepted the award. She said the renewal of two of the city's parks were on the evening's agenda, an indication of how committed the city is to fitness in the city.

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

Gunyou reported on the schedule for upcoming council meetings. There is a study session August 27 to discuss preliminary budget

direction. There will be no meeting September 3 and city offices will be closed for Labor Day. He said Reich Park will be hydro seeded during the week. Callison reported 125 neighborhoods participated in the National Night Out. The parties she visited were very positive and city staff attended all 125 gatherings.

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

No one appeared.

**9. BIDS AND PURCHASES:**

**A. Consideration of bids for the West Eldorado Trail Roadway and Utility Improvements Project No. 4988.**

Gunyou gave the staff report. He noted the number of bidders was more than usual and an indication of the softness of the contracting market.

Wiersum moved, Thomas seconded a motion to award the bid for the West Eldorado Trail Roadway and Utility Improvements project to G.L. Contracting, Inc. in the amount of \$490,785.60. All voted "yes." Motion carried.

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

**A. Claims for council authorization – August 13, 2007.**

Allendorf moved, Wagner seconded a motion to approve the August 13, 2007 claims which includes checks numbered 205855 through 206259, totaling \$2,832,013.90. All voted "yes." Motion carried.

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

Allendorf moved, Wagner seconded a motion to:

- 1) Adopt Ordinance No. 2007-27 amending City Code §300.29, Subd. 3 regarding non-conforming uses,
- 2) Adopt Ordinance No. 2007-28 amending City Code §300.30, Subd. 9 regarding sign regulations.

All voted "yes." Motion carried.

**C. Resolution receiving feasibility report, ordering the improvements in, authorizing preparation of plans and**

**specifications, and authorizing easement acquisition for the Ridgewood Road Reconstruction Project No. 07404.**

Callison pulled the item from the consent agenda and asked for more information. City Engineer Lee Gustafson gave the staff report and included a brief comment on the future reconstruction of Dominick Drive.

Allendorf asked what part of Dominick Drive will be involved. Gustafson said the entire road will be looked at.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2007-103 receiving the feasibility report, ordering the improvements in, authorizing preparation of plans and specifications, and authorizing easement acquisition for the Ridgewood Road Reconstruction Project No. 07404. All voted "yes." Motion carried.

**D. Ordinance increasing the electric franchise fees.**

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2007-29 increasing the electric franchise fee. All voted "yes." Motion carried.

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

Community Development Director Ron Rankin reported that the property at 5883 Stoneybrook Drive remains out of compliance.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2007-104 ordering the abatement of long grass nuisance conditions. All voted "yes." Motion carried.

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

Rankin said both properties are still in violation.

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

- 1) Resolution No. 2007-105 ordering the abatement of nuisance conditions existing at 14206 Glen Lake Drive.
- 2) Resolution No. 2007-106 ordering the abatement of nuisance conditions existing at 15313 Oric Avenue.

All voted "yes." Motion carried.

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

12. **INTRODUCTION OF ORDINANCES:**

**A. Ordinance authorizing the sale of Outlot B, Vista.**

Gunyou gave the staff report.

Callison asked if any of the city's boards or commissions will look at the proposed ordinance. Gunyou indicated it will come back directly to the council.

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

**B. Ordinance amending the animal regulations.**

City Attorney Desyl Peterson gave the staff report.

Schneider asked how the proposed ordinance would affect Leona Jondahl's farm with numerous farm animals. Peterson said when the farm animal ordinance was initially adopted there was a grandfather clause for a person who owned farm animals. Therefore Jondahl is protected and the proposed ordinance would not affect her.

Wagner asked if there are a number of households that currently have multiple animal permits. Peterson replied there are not. The proposal is a request from the police department to prevent potential problems.

Thomas said the part of the ordinance likely to get the most attention is the park board reviewing the park regulations. He asked if the web site could be used as a mechanism for getting resident comments to the board. Parks and Trails Manager Perry Vetter said the process, particularly in regards to discussion about the city's leash law, will include a focus group, information in the Minnetonka Memo and on the city's web site, and at some of the parks. Thomas said he thought the focus group was a good idea. He asked if temporary signs could be put up in some of the parks alerting residents of hearing dates. Vetter said that is part of the plan. He said residents wishing to email him with comments could reach him at: [pvetter@eminnetonka.com](mailto:pvetter@eminnetonka.com).

Wiersum asked what the dividing line was for a large and small animal. Police Chief Mark Raquet said small farm animals are defined as 100 pounds or less. Wiersum noted the proposed ordinance allows a person to have five small animals, except fowl, per half acre for over six months. The ordinance also allows a person to have five small animals of any age per half acre. He asked if this would allow a person to have five fowl and five non-fowl small animals or if a person is limited to five animals in total. Peterson said the ordinance allows a person to accumulate up to ten.

Callison said it was her understanding there is not a multiple animal permit but the proposed ordinance contains a clause referring to an owner of pre-existing property obtaining such a permit. Peterson said that provision would need to be changed before the ordinance returns to the council. Callison asked how the ordinance deals with the noise created by chickens and roosters. Peterson said roosters are not allowed. Callison said the ordinance prohibits roosters if they make any noise off the properties. Chickens are considered fowl.

Callison asked if there are issues driving the proposed ordinance. Peterson said the ferret provision is straight forward. The city requires dogs to be vaccinated so the same should apply to ferrets because of public health issues. There has been an instance of a person having farm animals inside their house. If there is no limit to the number of farm animals allowed that could raise public health issues.

Thomas moved, Allendorf seconded a motion to introduce the ordinance and refer to the police advisory committee. All voted "yes." Motion carried.

### **13. PUBLIC HEARINGS:**

#### **A. Public hearing to review park renewal master plan for Kinsel Park.**

Vetter gave the staff report.

Ellingson said there was good turnout for both of the neighborhood meetings. He was impressed with the staff ideas, particularly the boardwalk connecting both sides of the park. He said the rain over the weekend washed out the trail again likely because the drainage feature in the pond got covered up with leaves and debris. He asked if it might be more appropriate to put in asphalt or look at

some other option on that portion of the trail to prevent washouts. Vetter said the city has raised the issue to the Nine Mile Creek Watershed District. With continual erosion problems the watershed district installed an overflow culvert. Vetter said as far as permeable surfaces, asphalt is the same as crushed aggregate so it wouldn't increase the hard surface within the park. The city will address this with the watershed district.

Ellingson said the watershed has a maintenance agreement with Prairie Restoration for plantings. He asked if the city could coordinate mowing and other plantings. Vetter said the city does the trail side mowing throughout all the parks and the watershed district had planted within the mowing zone. The city will work with the district to coordinate the district's efforts to comply with the city's maintenance practices.

Callison opened the hearing at 7:07 p.m.

Randall Neal of 14203 Glen Lake Drive said he would like to see the trail continue following the lake rather than coming up north and asked for clarification of the plan. He also asked if the shelter is going to be covered. Vetter said the existing shelter will be removed and a covered seated area will be added. Rankin said the intention is to have the trail connection to the park on the south end of the Kinsel Point site proceeding up the west side. The site plan showed an optional connection along the north side of the Kinsel Point condominium building between the condominium and the town homes on Glen Lake Drive. He said this was an optional plan and the city is not sure if the plans are to make the connection or not. Callison asked who will make the decision. Rankin said the southerly connection is part of the approved site plan as is the westerly connection up the hill. Whether the northerly connection is made is up to the developer in consultation with the city. Neal indicated he was opposed to the additional connection.

Tom Wartman with Kinsel Point Development said both options were designed for the trail and he would be happy to further discuss with Neal and the city whether the north side connection will be made. He thanked Vetter and the city for the park plan.

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

Thomas moved, Ellingson seconded a motion to direct staff to proceed with Phase II (design and construction) of park renewal. All voted "yes." Motion carried.

**B. Public hearing to review park renewal master plan for Lone Lake Park.**

Vetter gave the staff report.

Thomas asked if the nature trail still exists. Vetter answered yes and it is a guided tour trail. The cases that hold the descriptions were rebuilt and reinstalled last winter. Thomas asked if there have been any more problems with off-the-road bikes. Vetter said the public was educated about the damage that was being done and the problem has been reduced. He said it helped getting the park off of a mountain biking website listing it as one of the best areas in the Twin Cities.

Thomas asked why Frisbee golf was eliminated. Vetter said through the neighborhood meetings the support was not there to put Frisbee golf back in the park. It was difficult to maintain from a maintenance perspective. He said a number of years ago there was an Eagle Scout whose project was to restore the Frisbee golf course area. Signs were installed informing people to play around the area while it was being reestablished. Vetter said the areas were trampled and destroyed. The scout came back and restored the areas again only to see them destroyed again. Construction fences were then installed and they were torn down, so Frisbee golf was permanently removed.

Wiersum said in general he likes boardwalks but they do require more maintenance and they don't last as long as other amenities. He asked what is being done to proactively manage the boardwalks and docks. Vetter said the city is being selective in the materials being used. The materials either have to be made of high grade treated lumber or synthetic materials. The city also is starting to categorize and inventory all the assets which will allow staff to set reoccurring inspection and maintenance programs.

Callison opened the hearing at 7:26 p.m.

Michael Hoffman of 11601 Lone Lake Ridge asked for more information about the enhanced buffer in the northern area and the perimeter fence around the soccer field. He added for years one of the main uses of the park was Frisbee golf. The demographic at the park board meeting was not the demographic that plays the sport. Callison agreed with Hoffman but the concern was the damage occurring. Hoffman agreed and said he was disappointed and frustrated with the damage being done. Vetter said the enhanced buffer will involve strengthening the plantings on the north side of

the existing parking lot. Residents like a better buffer because that way they won't see activity in the park. It also benefits the park user who won't see houses from the park. Callison asked what plants will be used. Vetter said a variety of deciduous trees will be used. In response to the fence around the soccer field, Vetter said once the field is irrigated the fence will prevent damage caused when a vehicle drives on to the field.

Allendorf asked for the history of the Frisbee golf damage. Vetter replied in addition to the damage there was concern about the conflicts of use. There were emergency calls for people picnicking who were hit by Frisbees. Another safety issue involved the course layout - some of the course's holes were played across roads. Also, Bryant Regional Park, located a mile and a half south of the park, has a free Frisbee golf course.

Callison closed the hearing at 7:32 p.m.

Wiersum moved, Ellingson seconded a motion to direct staff to proceed with Phase II (design and construction) of park renewal. All voted "yes." Motion carried.

**C. Public hearing to consider resolutions for special assessments of 2006-2007 projects.**

Gunyou gave the staff report.

Wagner asked how the different time frames for the assessments are established and if the city loses money on the longer periods for payment. Gustafson said the timeframes are determined by the costs and staff's assessment of the person's ability to repay the costs. Gunyou said an annual interest fee is charged and a few years ago the city started making adjustments to reflect the market. Wagner said it appears there is a fixed interest rate of 6.75 percent. He said he would like the rate tied in with the prime rate.

Callison opened the hearing 7:36 p.m. No one spoke.

Callison closed the hearing 7:36 p.m.

Allendorf said intuitively he, like Wagner, wonders why the interest rate isn't tied in with an index. But he said as long as staff is confident that the city isn't losing money he is OK with the current process.

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

- 1) Resolution No. 2007-107 adopting special assessments for privately installed sewer and water.
- 2) Resolution No. 2007-108 adopting special assessments for Nuisance Abatement Project Nos. 4894N-80, 4894N-81, 4894N-82, 4894N-83, 4894N-84, 4894N-86, 4894N-87, 4894N-88, 4894N-89, 4894N-90.
- 3) Resolution No. 2007-109 adopting special assessments for Nuisance Abatement Project Nos. 4894N-77 and 4894N-97.
- 4) Resolution No. 2007-110 adopting special assessments for Nuisance Abatement Project Nos. 4894N-95 and 4894N-96.
- 5) Resolution No. 2007-111 adopting special assessments for Nuisance Abatement Projects No. 4894N-91.
- 6) Resolution No. 2007-112 adopting special assessments for Nuisance Abatement Project No. 4902.
- 7) Resolution No. 2007-113 adopting special assessments for Retrofit Fire Sprinkler System Project No. 4874F-9.

All voted "yes." Motion carried.

#### 14. OTHER BUSINESS:

**A. Appeal of the planning commission's conditions of approval as part of the applicant's request for multiple variances to demolish the existing home for the construction of a new home at 16930 Gray's Bay Boulevard for Chad Badiyan.**

City Planner Susan Thomas gave the staff report.

The applicant, Chad Badiyan of 16390 Gray's Bay Boulevard, said he had a number of points to make regarding his preference of a 2.2 foot setback as opposed the Planning Commission's recommendation of a 4.5 foot setback. The existing structure has a two foot setback. Also the previous variance has a two foot setback and that variance is still in effect until the end of the year. The Badiyans are applying for a new variance even though the footprint of the variance is smaller than the previous one because it is a new construction project. Finally, the proposed structure is based on footings and the foundation of the existing structure. The proposed new structure would not increase the nonconformity of the west side. There would be less disruption for adjacent properties, it is more environmentally friendly, and it would lower the construction costs.

Badiyan pointed to the Planning Commission's July 12 minutes that noted if the existing foundation was used the existing 2.2 foot variance would be granted. He said the neighboring property to the west is an unbuildable and unlandscaped 10 foot easement for lake access. He said increasing the setback from 2.2 feet creates a hardship, requires alteration of the plans that were developed in collaboration with the city over a seven month period. The issue of the 2.2 foot setback wasn't raised until two days before the variance application was due. Shaving the 2.3 feet would require a lot of design effort.

Badiyan said he knows his application is 150 feet over the city's McMansion policy but he feels the home isn't excessively large. Basements are not included in the square foot calculations in the policy. The Badiyan's house is a walk out and thus half of the lower level is included in the calculations. Now that the Badiyans know the McMansion policy is being imposed they are consulting with their architect to reduce the square footage based on the 2.2 foot setback because of the effect the 4.5 foot setback would have on the design.

Badiyan indicated on a map that there are several small lots in the Gray's Bay neighborhood that required multiple variances and many of the side yard setbacks are in the two foot range.

He said one of the distinguishing features of the property is the lakefront and the charming boat house and beach. The request for the removal of the boat house and beach came from an environmental group. Badiyan said it was important to point out that Gray's Bay is not a natural habitat as indicated in the March 27, 2006 minutes of a planning commission meeting. The bay includes both a man made dam and a boat launching marina. He said the boat house significantly enhances use of the lake providing electricity, water, light, an air pump, changing and storage areas. Removing the house would reduce lakeshore recreation and property value. He said the apparent rationale for the removal relating to hard cover surface coverage is flawed. The proposed plan including the boat house falls within the hard surface coverage of 34.2 percent granted in the variance and there is no precedence for the removal of boat houses in the neighborhood.

Badiyan said the apparent rationale of removal of the beach as part of the conservation easement is also flawed. He said water runoff is not a problem because sand is an excellent buffer against runoff. The sand is walled in to prevent any drift. The yard is well landscaped. The elevation difference between the house and the

lake over about a 30 foot span is one foot three inches. The previous variance permitted the beach to remain on the property with the conservation easement behind the beach. The beach is a common feature of many lake homes. It provides a play area for children and allows parents to easily watch when the children are playing in or near the water. Removal of the beach would also decrease the property value. He said a 25 foot conservation easement is unprecedented in the neighborhood and too large for the property. The Badiyans are not opposed to installing a easement for wildflowers and conservation but if they are allowed to keep the beach it would make the property much more useable.

Badiyan said he had been working with the city staff for six months in the spirit of finding common ground. Concessions were made incorporating many city requests into the design including the removal of a large deck, the installation of the 25 foot conservation easement, a smaller footprint size and the installation of nonpervious pavement for the driveway and other pathways. He said they were shocked to find the three amendments to the variance.

Hamid Azadegan of 17559 Toft Cove in Eden Prairie said he was involved as the Badiyan's architect since the first remodel project. He said if the two foot setback was allowed there would be a much less invasive procedure. With a four foot setback there would be just four feet to dig which would not allow for the new foundation, waterproofing and backfill. Keeping the foundation intact would also keep the cost lower.

Azadegan said the plan calls for over 520 square feet of the house in the truss attics therefore there is no additional mass to the house. It is hidden within the trusses. If the purpose of the McMansion policy is to reduce the size of the house, removing the 520 feet would not achieve this purpose.

As for the elevation difference Azadegan said from the lowest floor to the existing grade is at most about 3.5 feet. If the westerly wall could be kept intact it would help in construction.

Callison said the letter appeals specific conditions but does not appeal the 25 foot buffer requirement. She asked Peterson if the buffer requirement was therefore before the council. Peterson said if the requirement were not being appealed it was not properly before the council at this time. Callison asked Peterson to confirm that the appeal was not in the letter.

Wagner asked for the staff's view on the 10 foot access easement to the westerly border where the two foot setback is located. Ms. Thomas said staff sees it as additional visible space between the two structures. Looking through the approved variances on Gray's Bay Boulevard staff has not in the past recommended approval nor has a variance been approved for the construction of a new home within that distance. Several have been approved for additions to existing structures but not for the construction of a new home.

Wagner asked if the staff agreed with Azadegan that if a new foundation has to be built there would be more disruption than using the existing footings. Ms. Thomas said she respectfully disagreed. There may be an opportunity to build the foundation wall prior to removal of the existing wall. In terms of long term maintenance the 4.5 foot setback is most appropriate.

Wagner asked for confirmation that staff agreed at one point to the conservation easement behind the sand. Natural Resources Manager Jo Colleran said she doesn't specifically recall and his statement came from the planning commission's minutes. She said at a 2006 study session the shoreland ordinance was brought to the council and buffer issues were discussed. Based on that discussion the new shoreland ordinance being proposed requires a 25 foot buffer in redevelopment, new subdivision of land, conditional use permit, variance or site and building plan review. This is consistent with that assuming the principal structure meets the required setback if the structure needs a variance. If the setback were 40 feet then the required buffer would be half of the distance of where the principal structure would be setback. Callison noted that the reference from the minutes was that staff's position was not to require buffers on Lake Minnetonka. It was the council that thought Lake Minnetonka should not be exempted from the possible improvement of water quality that buffers represent.

After looking at the letter from the applicant Peterson confirmed Callison's point was correct that the letter only appeals the west side yard variance, the removal of the existing shed and the removal of the sand. Therefore the buffer issue was not properly before the council.

Allendorf asked for clarification from Azadegan about his statement about the trusses counting towards the McMansion policy. Allendorf said it was his understanding there was a provision in the policy allowing the council to review proposals. Azadegan pointed to the area above the garage within the trusses and said removing the area would not create any difference in the elevation of the house.

If removal of the area was required Azadegan said a full truss with no space would be incorporated. Allendorf said the McMansion policy attempts to deal with volume and the looks of volume regardless of how the inside space is being used. Callison said the Planning Commission discussion revolved around whether a person could take a floor out to come to a calculation and then later add a floor. Ms. Thomas said Callison was correct. Anything with over a seven foot clearance regardless of whether there is a floor is considered as part of the total square footage of the structure.

Allendorf said if the two peaks in the proposal were flattened or removed the floor area ratio would be reduced. Ms. Thomas clarified that would be correct if the clearance in the upper area of the garage was less than seven feet.

Azadegan said the idea of building a wall within the foundation and then removing the existing foundation wall in the dimensions being discussed would be next to impossible.

Schneider said there was confusion over whether the variance had expired or was still in existence. He also asked if the staff report anticipates the footings staying in or not because there was information included about a brand new home. Ms. Thomas said in the materials staff received from the applicant there was no information about the existing foundation remaining in place. There was information about demolition of the existing home and reconstruction of a home on the site. She said she didn't have the information with her to confirm if the variance expired. It appears the original approval of the variance occurred in 2004 which would mean the variance expired at the end of 2005. If an extension was asked for, the extension would have expired in 2006.

Peterson said that the applicant mentioned other variances in the area. She reminded the council that other variances do not necessarily establish a precedent as long as they are different. She said Ms. Thomas indicated the other variances did not involve construction of new homes. In addition there are different policies in place since the 2004 variance was granted. Therefore the council is not bound by the action taken in 2004.

Schneider asked who the beneficiary of the 10 foot access easement was. Badiyan said the beneficiaries were the neighbors a few homes down across the street. Schneider asked Badiyan if his property was a direct beneficiary of the easement. Badiyan said he did not believe it was.

Callison said it was her understanding that an easement for lake access is not the same as an easement for construction. If work had to be done on the property the applicant wouldn't have the right to go on the neighbor's property in order to do construction on their home. Peterson said that was correct.

Callison said she thought it was significant the proposal involved new construction. Typically with new construction the city looks at how the situation can be improved and does not just replicate what exists.

Wiersum said in neighborhoods with substandard sized lots located by a lake there have been many circumstances where there are multiple variances to choose from. Typically the houses are built or expanded with variances. The question becomes when several variances are okay and when there are too many. He said the application potentially is getting into that realm. If the council acted on the application for new construction there would be no consideration given to the foundation. If the applicant had a different intention then a new application is needed and further work with the staff is appropriate.

Schneider said when he read the staff report he made the assumption the proposal was for a brand new home. Looking at the floor plan he thought it could be redesigned to address the 4.5 foot setback. He sees merit in maintaining the existing foundation rather than trying to dig a new foundation close to another property. He said there is potential for a continuation to have the applicant work on issues with guidance from the council. He doesn't see the shed as a major issue. He said there is work that could be done with an environmental consultant to look at reducing the amount of sand or confining it to a smaller area to get some of the buffer. Also removing the square footage from the garage shouldn't be a major issue. As the application is now he could not approve it but there were compelling arguments for tweaking the plan to get it closer to workable.

Callison asked staff to confirm the deadline for action on the item. Ms. Thomas said council had until mid-October to act on the application.

Allendorf said he agreed with Schneider. He doesn't see the need to remove the shed because it is part of the lake experience and it benefits the house. He said a few years back the council saw a similar sand area that was reduced and still served the purpose of allowing children to play in the area and meet the city's objective of

protecting the lake. As for the McMansion issue Allendorf said he originally did not have a problem with the 150 feet but he would like to see a revised proposal that uses the existing foundation. He said he was less clear on his opinion of the setback issue than he was the sand and shed issues.

Wagner said he would be willing to take into account the existing footings on the 2.3 foot setback. Although he understands the staff concern over long term maintenance he said usually the council views setback related to distance from other property and he considers the other property to be the next house. Considering the disruption that would occur using new footings he would like staff to work more with the applicant. He said he would like to see the proposal comply with the McMansion policy because the policy was adopted to prevent conflict between neighbors. As for the buffer issue Wagner said he was flexible but he thought it was an important part of the new policy and he would like to see that adhered to.

Wiersum agreed with Wagner on the McMansion policy. On small lots the policy is even more relevant. The purpose of the policy was to address oversized homes on lots where they don't fit and that is what this application is proposing. He requested the applicant talk to the owner of the 10 foot buffer to make sure there is acceptance in maintaining the home on the 2.3 feet.

Thomas said what concerns him most is the buffer to the lake and the protection of the wetlands. At one point the city looked at Gray's Bay and thought it should do its part in protecting Lake Minnetonka. He agreed the McMansion policy should be adhered to.

Callison said there appeared to be consensus for the applicant to work further with staff. She said she looked at the proposal for a 5,200 square foot structure and felt storage space could be built into the space and there are ways the shed would not have to be left on the property. The McMansion policy tries to tame the impetus towards large structures. She said the two foot setback would create problems with neighbors and new construction provides the chance to solve problems and not reinforce them.

Ellingson inquired what the council was expecting the applicants to work out with staff. He said if there was a vote there might be the votes to uphold the Planning Commission. Callison said she heard some members willing to give on the four foot setback and on the shed. If the application went back to staff more work could be done and the applicant would have the chance to make the changes that

would permit them to have a project accepted by at least five council members.

Wiersum clarified he was not comfortable with a 2.3 foot setback for new construction. If the application was resubmitted with the existing foundation he would be open to the existing setbacks.

Schneider agreed with Wiersum. He said he came into the discussion anticipating upholding the Planning Commission recommendation with the idea the application was for all new construction. The discussion had changed the dynamics. He said the easement granted for access only gives the right for certain properties to have rights to the access but the underlying property is still owned by the neighbor who could grant an additional easement for maintenance purposes only. He encouraged the applicants to talk to the neighbor to negotiate an easement for the maintenance.

Callison said the applicant mentioned being accommodating to the city. She noted that eight variances were being requested. She said the city had been very accommodating at looking at six variances while recognizing it is a small lot.

Peterson asked for clarification from the council on what they considered existing foundation and what was being considered new foundation. When looking at the footprint of the existing house versus the footprint of the new house there is quite a bit of difference. Even if only the west line is being looked at there is still a change occurring. She also wanted an indication there were five council members who agreed with continuing the application for further work. Schneider said he was not anticipating the entire existing foundation was being used but the variance is on the west wall and that foundation has some benefit of being reused instead of rebuilt.

Wagner said if the council did take action on the application it could be approved in two ways: if the applicant did use the existing westerly foundation the setback could be two plus feet. If the applicant chose not to do that the setback would have to be 4.5 feet.

In response to Peterson's inquiry if there were five council members who agreed with continuing the application for further work, Allendorf said he thought the setback difference had to do with the McMansion policy. Now he was hearing there are two issues. If one issue was about the setback, he would be for 4.5

feet. He said he wasn't supportive of a 2.3 foot setback when he knew new construction could bring the setback to 4.5 feet and would lower the house size.

Schneider said he was coming from the point of view of requiring compliance with the McMansion policy by reducing the square footage by 150 feet. The applicant could do that however they choose.

Gunyou noted the planning commission setback discussion was related to the McMansion policy. The stipulation added was to clarify the confusion about the possibility of allowing the 4.5 foot setback and still having a violation of the McMansion policy. The other factor is whether or not the existing foundation can even be used for the load bearing construction. He wasn't sure if the applicant had even looked into that feasibility. He suggested that council first discuss whether there were five members willing to consider the two foot difference.

Wiersum said he thought the discussion indicated there was not a proposal before the council that would be approved. There was speculation about what the applicant might come back with involving the new foundation. He said he could not say he would approve or not approve what might come back to the council. The choice therefore was to either uphold the planning commission's decision or give the applicant the chance to come back with an amended proposal that possibly could be approved by the council.

Gunyou asked for more definitive staff direction if council wanted staff to continue to negotiate with the applicant. If five council members were willing to look at a two foot setback, then staff would work with applicant on that. If the council was not willing to look at a two foot setback in any form, then staff needed to know that.

Callison said whatever was decided the application needed further work to be approved.

Wiersum said he was not comfortable with a 2.5 foot setback. He prefers 4.5 feet because of the number of variances.

Wagner said he was comfortable with 2.5 feet as long as there was a condition that staff had validation the foundation could handle that.

Callison confirmed with Schneider that he was comfortable with 2.5 feet assuming the foundation is appropriate.

Thomas said he was not comfortable with 2.5 feet and the number of variances.

Allendorf said he was not comfortable with the 2.5 feet.

Ellingson clarified it was actually 2.2 feet and he supported the 4.5 foot setback.

Gunyou clarified that if the council voted to uphold the planning commission then the application would be approved with the recommended conditions. The applicant could then decide whether to proceed under those conditions.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2007-114 upholding planning commission's decision to approve the applicant's request for the following variances at 16930 Gray's Bay Boulevard with conditions:

- lot area variance from 22,000 square feet to 7,796 square feet;
- lot width at right-of-way from 80 feet to 79 feet;
- lot width at front yard setback from 110 feet to 71 feet
- side yard setback variance on the east side from 7 feet to 6.3 feet;
- side yard setback variance on the west side from 7 feet to 4.5 feet;
- front yard setback variance from 20 feet to 1.1 feet;
- impervious surface coverage variance from 30% to 34.2%;
- a floodplain setback variance from 20 feet to 0 feet;

Approval is based on the following findings:

- 1) The subject property is a nonconforming lot of record that has been used as a single-family residence many years containing a home that was built in 1949 with nonconforming setbacks. The unique circumstances are the subject properties' substandard lot area, lot width, and presence of floodplain. The construction of a new home compatible with the surrounding neighborhood is greatly encumbered by these site features.
- 2) The Gray's Bay Boulevard right-of-way extends unusually far into what would appear to be the front yard of the subject property. The actual roadway edge of Gray's Bay Boulevard is located 28 feet from the front property line of the site. Given the proposed structures setback from the actual roadway, and the existence of similar setbacks on neighboring properties, staff feels a front yard setback is reasonable.

- 3) The proposed home would make the subject property more compatible with surrounding homes and would not alter the essential character of the neighborhood.
- 4) Although the hard surface coverage on the subject property would increase with the applicant's proposal, through the removal of the existing driveway from the right-of-way and demolition of the storage shed, the overall hard surface coverage between Gray's Bay Boulevard and the lake will actually be reduced.
- 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 will meet ordinance requirements for low-floor elevation separation from floodplain, thus, eliminating a nonconforming situation on the subject property.

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 revised survey and grading plan, subject to staff approval. The proposed home must be redesigned to: 1) maintain a 4.5-foot side yard setback from the west property line; and 2) comply with the McMansion policy.
  - c. Submit a construction management plan; this plan must outline parking and construction access and stockpile and material storage.
  - d. 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.
- 2) Pervious pavers must be used for the driveway and pathways. Retain the pervious area under the deck.
- 3) The existing driveway, storage shed and sand blanket must be permanently removed from the subject property.
- 4) Revegetate areas where driveway, storage shed and sand blanket are removed.
- 5) Place no fill between the new garage foundation and the east side property line.
- 6) Maintain a low floor elevation above 933.5 for all new living space.
- 7) Install and maintain a 25-foot buffer of native vegetation adjacent to the shoreline. A 25-foot conservation easement

must be dedicated over the vegetative buffer and must be recorded with the county.

- 8) 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.

Allendorf said he heard support for allowing the applicant to keep the shed and reworking the sand blanket. Schneider said the motion could be amended to delete or modify those two conditions. Allendorf agreed the motion could be amended but suggested the council should determine if there were enough votes and leave the motion as is. Callison said it was easier to amend the motion. Thomas agreed with Callison because not all the council agreed on the sand and shed conditions. Gunyou said if the main motion was to uphold the planning commission, the council could vote on an amendment to the conditions, and then the motion would still be before the council.

Schneider moved to amend the motion to delete the stipulation for the removal of the shed so the condition would read: 3) The existing driveway, storage shed and sand blanket must be permanently removed from the subject property. 4) Revegetate areas where driveway, storage shed and sand blanket are removed. Allendorf seconded the motion.

Callison asked if it would take four votes to approve the motion. Peterson said normally an amendment takes only four votes for approval but ultimately it would take five votes to approve because it would change the planning commission's actions.

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

On the main motion All voted "yes." Motion carried.

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

16. **ADJOURNMENT.**

Thomas moved, Wiersum seconded a motion to adjourn the meeting 8:48 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk