

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, OCTOBER 22, 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, Terry Schneider, Al Thomas, Dick Allendorf, and Jan Callison were present. Brad Wiersum was excused.

4. APPROVAL OF AGENDA.

City Manager John Gunyou said there was an addendum to item 10F correcting a legal description.

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

5. APPROVAL OF MINUTES:

A. August 20, 2007 regular meeting.

Wagner moved, Thomas seconded a motion to approve the minutes of the August 20, 2007 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

B. September 10, 2007 regular meeting.

Wagner moved, Thomas seconded a motion to approve the minutes of the September 10, 2007 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

C. September 24, 2007 regular meeting.

Wagner moved, Thomas seconded a motion to approve the minutes of the September 24, 2007 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS: None.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings. The study session scheduled for October 29 is canceled. The next regular council meeting is November 5. Gunyou reminded people that the city's general election for the four ward seats is November 6. The three school districts in the city are also having elections.

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

No one appeared.

9. BIDS AND PURCHASES: None.**10. CONSENT AGENDA (Items Requiring a Majority Vote):****A. Claims for council authorization – October 22, 2007.**

Allendorf moved, Wagner seconded a motion to approve the October 22, 2007 claims which includes checks numbered 207471 through 207782, totaling \$1,512,495.84. All voted "yes." Motion carried.

B. Resolution authorizing the certification of fire alarm response fees to the Hennepin County Auditor.

Callison pulled the item. Fire Chief Joe Wallin gave the staff report.

Liz Evans of 2705 Crestwood Circle said she has lived at that address for seven years and before this winter has never before had a false alarm. Her alarm company automatically is supposed to call her to determine if there is a real emergency. She did not get a call and she deactivated the alarm. The fire trucks never arrived but an official arrived in a car and issued a certificate with a \$250 fee. Evans said she is at a disadvantage because her phone line and fire alarm line crossed and there was no way the alarm company could get through to her. She talked with Wallin and was told that issue occurs on a regular basis. Evans suggested the city provide information to residents alerting them of this potential issue.

Callison asked Wallin if it is standard procedure to send someone out even though it has been determined that the fire trucks do not need to be dispatched. Wallin said every call received is responded to. He said city records show that in Evans' situation the call was received at 6:01 p.m. and Deputy Chief Bob Eastham arrived at the

scene at 6:10 p.m. A police officer arrived at the scene just before Eastham.

Allendorf noted that Wallin indicated the \$250 fee includes the cost of calling out firefighters, sending out vehicles, and the cost of fuel. Allendorf asked Wallin if those charges were appropriate for Evans situation. Wallin said the charges were appropriate because the largest cost is the payroll and once a call is sent out, firefighters have to respond to the station, even if they do not make it all the way to the scene. Off duty firefighters were summoned for Evan's false alarm even though they did not end up at her residence.

Schneider said having heard Wallin's explanation that he thought the charge was appropriate because once the firefighters were paged out, the payroll costs were incurred. He asked what triggers the fee - does a resident or company still get charged the fee if it is determined that it is a false alarm and the firefighters have not been paged yet? Wallin said the cost is triggered with the paging out of firefighters. In the rare instances when it is determined the call is a false alarm before the firefighters have been paged out, the fee would not apply.

Callison asked Wallin to comment on the issue of a phone line getting crossed with the fire alarm line. Wallin said in a residential setting the fire alarm system sends an electronic signal over the phone line to the alarm company. Commercial properties are required to have more than one phone line or a dedicated line for the fire alarm system.

Wagner noted that the staff report showed 124 accounts. He asked if this was the total number of false alarms in the city over the past year. Wallin said the 124 accounts are only the ones that still need to be collected. Wagner asked for the rough estimate of false alarms the department responds to in a year. Wallin said it was around 400 calls a year.

Callison asked Wallin if there was a need to include more information about fire alarms in the city's newsletter or other communication resources. Wallin said information is included in the city's newsletter twice a year. Also each alarm system in the city must be registered annually with the police department and information is included with the registrations.

Schneider said that based upon the information provided he didn't think the council could waive Evans fee without a change in the ordinance.

Wagner agreed and said the fire department currently is providing information to help residents be aware of fire alarm issues. He said unfortunately with the number of false alarms every year, the city needs to recoup the costs.

Schneider said he would like to see the number of false alarms reduced. One option might be for the council to change the ordinance to require two phone lines in residential homes. City Attorney Desyl Peterson said the city is not allowed to be more restrictive than the state building code and requiring a phone line for a fire alarm system would be covered under the fire building code.

Callison said as the city tries to recruit firefighters the issue of getting called out once a day to a false alarm adds to recruitment challenges.

Gunyou noted that with implementation of the fee, there has been a reduction in the number of false alarms from nearly 700 calls a year a few years back to 400 calls a year for the past few years.

Schneider moved, Wagner seconded a motion to adopt Resolution No. 2007-136 authorizing the certification of fire alarm response fees to the Hennepin County Auditor. All voted "yes." Motion carried.

C. Ordinance amending the animal regulations.

Peterson said there was an error in the staff report. The report was correct when the ordinance was originally introduced. The proposed amendment eliminates the language that the regulations on farm animals only apply to animals that are kept outside the principle structure. Therefore the amended ordinance would apply to all farm animals whether they are kept inside or outside. The staff report suggested that the amended ordinance would prohibit farm animals from being kept in the house. Peterson said that is not what the ordinance is doing.

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2007-33 amending City Code Sections 925.045 and 925.115 regarding animal regulations. All voted "yes." Motion carried.

D. Authorization of 2007/2008 general liability insurance and workers' compensation renewals.

Allendorf moved, Wagner seconded a motion to renew the city's insurance policies through LMCIT for package policies with the following options:

- \$25,000/\$100,000 deductible for the package policies
- 100% Open Meeting law coverage
- No waiver of statutory limits and to authorize renewal of the LMCIT workers' compensation policy with managed care and a \$10,000 deductible.

All voted "yes." Motion carried.

E. Request for a one-year time extension for a preliminary plat at 2001 Yorkshire Avenue South.

Allendorf moved, Wagner seconded a motion to approve a one-year time extension. All voted "yes." Motion carried.

F. Ordinance transferring title of city-owned property and correction to a legal description for previous vacation action.

Allendorf moved, Wagner seconded a motion to:

- 1) Adopt Ordinance No. 2007-34 authorizing the transfer of city property.
- 2) Adopt Resolution No. 2007-137 rescinding resolution no. 2007-135 and approving vacation of rights of way and easements to correct a legal description.

All voted "yes." Motion carried.

G. Resolution authorizing certification of an expired special assessment deferment.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2007-138 authorizing the certification of an expired special assessment deferment at 5735 County Road 101. All voted "yes." Motion carried.

H. Resolution ordering the abatement of nuisance conditions existing at 11408 Oberlin Road & 11444 Oberlin Road.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2007-139 ordering the abatement of nuisance conditions existing at 11408 Oberlin Road & 11444 Oberlin Road. All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES:

- A. Ordinance rezoning several properties in the southeast corner of the Interstate 394/Hopkins Crossroads intersection from R-1, single-family residential, to PID, planned I-394 district.**

City Planner Julie Wischnack gave the staff report.

Allendorf said he was surprised by the height restriction because to the north there are ten or eleven story buildings and to the west is a Metro Transit parking ramp. Wischnack said the restriction came as part of the 1999 comprehensive plan process. The redevelopment guidance for the area was for it to be office property. As an outcome of the comprehensive plan process an ordinance was adopted with a special overlay for the three story limit.

Wagner thanked the staff for working with the neighborhood on the project. He said he has met with neighbors from the Archwood and Oak Knoll side of the property and asked the planning commission and staff to look at some of the concerns raised by the residents from those areas. The concerns are related to the height of the building and the setbacks on the easterly and southerly property lines.

Schneider said that when he read the staff report he became concerned with the number of variances. He said he was surprised by the three story height limitation. He said as the process proceeds and feedback is received on the proper height, he would prefer to look at an amendment to the overlay district or ordinance rather than a variance. He encouraged the applicant and staff to continue to work on the proposal to eliminate the need for the multiple variances.

Wagner said he travels the road every day to work and is concerned about the traffic on County Road 73 and the frontage road and specifically left hand turns on to Hopkins Crossroad. He wanted the planning commission and staff to come back with recommendations about the traffic concerns.

Ellingson asked if the proposal would be reviewed by the comprehensive plan committee. Wischnack said the proposal doesn't require a comprehensive plan amendment so it won't be reviewed by that committee.

Thomas said he agreed with Wagner's concerns about traffic around County Road 73. Adding more traffic will make the issues even more of a concern. He encouraged that an in depth traffic study of the area be conducted.

Callison said that tentatively the item will be heard at the November 8 planning commission meeting.

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

B. Ordinance amending Section 710 of the city code regarding increase to certain license fees.

Community Development Director Ron Rankin gave the staff report.

Thomas asked for clarification of the license classification of "limited grocery potentially hazardous and non-hazardous." Rankin confirmed the license makes a distinction between a gas station that sells pre-packaged food items and another establishment that prepares food on the premises or sells prepared food. He said staff would look for language that would be more clear.

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

13. PUBLIC HEARINGS:

A. Public hearing to consider the renewal of a Minnesota Currency Exchange License for 2008 for Action Check Cashing, 11503 Excelsior Boulevard.

Gunyou gave the staff report.

Callison opened the hearing at 7:13 p.m. No one spoke.

Callison closed the hearing 7:14 p.m.

Wagner moved, Allendorf seconded a motion to approve the issuance of a renewed Minnesota currency exchange license for Action Check Cashing, located at 11503 Excelsior Boulevard. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Presentation of the annual transit memorandum of understanding with the Metropolitan Council.

Met Council Director of Service Development John Levin gave the presentation. He said service levels over the past year have remained constant with a slight increase in the number of trips that the Met Council and Metropolitan Transit have provided in the city. Ridership numbers have been constant. There has been a significant increase in the dial a ride service. He said the Met Council has applied for a federal grant that would be used to restore route 612 in the area. The grant has been awarded and service should be operational sometime early 2008.

Allendorf said he has heard positive things about the dial a ride program but has also heard concerns from residents who do not understand how the service works. Gerri Sutton from the Met Council said there is a phone number that any resident of the city can call to request a ride up to four days in advance. A contractor for the Met Council is informed of the pickup and drop off addresses. Sutton said so far the contractor has been able to accommodate most trips but has informed her that between 9 a.m. and 1 p.m. during the week is getting tight and the Met Council may need to look at adding service during those times. If the vehicle arrives within ten minutes of the scheduled time, it is considered to be on time. Sutton said the on time performance from the first part of October indicates there were 34 late vehicles out of 1,394 trips. Allendorf said a senior with a doctor appointment wouldn't know for certain when the appointment will be over and might be concerned about how to get back home. Sutton said the dial a ride program recommends users allow extra time. If the appointment isn't finished when the vehicle arrives it will return to get the person at a later time.

Thomas said as the Met Council looks at how it will restore route 612 it should take into consideration the development in the Glen Lake area. He said when the project was discussed making public transportation available was discussed. He said when the Met Council studies where the route should go, they should check with the city to determine where there may be clusters of people that would benefit from access to public transportation. Levin said all options will be examined.

Ellingson said one issue with the previous 612 route was that the ridership was extremely low. He wondered what changed that would increase ridership. Levin said there were a number of riders on the route but in 2005 when there was a systemwide three and a

half percent service cut, Metro Transit identified the lowest productivity routes so service cuts would affect the fewest number of people. He said the Met Council will study all that can be done in terms of the service design and marketing the service to help make the route better.

Thomas said marketing is a key component particularly in areas where public transportation will likely be well used.

Callison asked about landscaping plans at the park and ride at County Road 73. Wagner said he saw work being done as he drove into the council meeting.

B. Items concerning the proposed Lake Rose Highlands development at 15407 Lake Shore Avenue.

Wischnack gave the staff report.

Callison said the proposed new tree ordinance would require more trees to be planted than previously was the case. She asked if the costs are known for the additional trees because there is a tradeoff between affordable housing and environmental concerns. Gunyou said he spoke with the natural resources staff and the cost should be around \$3,000 to \$4,000 more in order to comply with the proposed ordinance.

Callison said she appreciated that the number of trees for this proposal was reduced because a site can be overplanted with trees. She asked if there will be much of a lawn on the site. Wischnack said the idea is to replace trees on the southern half of the property. It was felt that the understory planting was the more important issue for the site. Callison asked if the proposed ordinance will require the trees to live for a certain amount of time before they can be removed. Wischnack said the idea for the conversation easement is that a tree wouldn't be removed unless it is diseased or hazardous. As for the rest of the site a final decision on how trees will be treated has not been determined. Wischnack said the new ordinance as is being proposed would function much in the same way as the current ordinance especially in the woodland preservation area.

Callison said in the past the council has discussed conservation easement issues and how much they can limit a property owner's right to use their property. Staff has indicated that in this case the easement is appropriate because there are steep slopes and the

easement is buffering Lake Rose and also because of the trees. She said if the tree ordinance is adopted it will apply to the trees on the property so she was unclear why a conservation easement is necessary to protect the trees. Wischnack said the same approach has been taken in past applications where there is a concentration of trees the city is interested in saving. Peterson said since the tree ordinance is not in effect yet the easement addresses the gap of time before an ordinance is adopted.

Ellingson asked what the consequences or penalties would be if more trees are cut down than allowed. Wischnack said if for some reason during construction a tree is removed that wasn't identified in the plan that tree would need to have mitigation for the removal.

Schneider asked if he understood correctly that there is no credit granted for the four trees being removed because of the building pad. Wischnack said Schneider was correct. There is no compensation required for the building pad and twenty feet around the building pad. The difference in the new ordinance and in this case is it involves a woodland preservation area and therefore a higher mitigation rate is being required. Schneider said looking at the plan it appears the applicants have done an excellent job in fitting the houses in with minimal impact to trees. To say the site is a pristine wooded site and all the trees must be protected doesn't seem to make sense. If it was a fully wooded area and the homes were being placed where the majority of the trees were then the higher standard should be triggered. He said he sees a disconnect in what is being defined as wooded areas versus the plan that appears to be a good development from the standpoint of placing the homes.

Ellingson asked who owned the right of way. Peterson said when it is a paper right of way shown on a plat and it is dedicated to the city it is an easement. Until the city chooses to exercise the right to use it, then the adjoining property owners get to use the land.

Callison said the proposed ordinance creates three classifications for areas with trees. This area qualifies for the highest priority classification. Yet looking at the trees in the area, 34 percent of the trees are box elder, 15 percent are cottonwood, and 22 percent are oak with only one oak tree being removed. She said she needs a better understanding as the proposed ordinance moves forward of what makes an area like this one so significant that the tree preservation is at a maximum level.

Thomas said he wanted clarification that in the future there could be some type of limited use down by the lake allowed even with the conservation easement. Wischnack said the staff proposal is for an allowance for lake access and water oriented features. This would go along with how the proposed shoreland management ordinance is being written.

Wagner said the construction management plan seemed unique for an R-1 lot split and development. Wischnack confirmed a construction management plan is not typical for a two lot subdivision. In this case staff felt it was necessary in part because of the concerns brought forward by neighborhood residents, and because the street is narrow and it will be a challenge to make sure there is adequate accessibility. Also the steep slope issue is difficult for contractors and the city has to make sure everybody understands the preservation requirements. Wagner asked if the construction management plan sets a schedule for when the houses will be done. Wischnack said some type of general outline of a schedule will be included. It likely will include a range of dates.

Allendorf moved, Schneider seconded a motion to:

- 1) Adopt Ordinance No. 2007-35 approving the proposed rezoning. This ordinance is based on the following findings:
 - a. The rezoning would be consistent with the city's guide plan; and
 - b. The rezoning would be consistent with the public health, safety, and welfare.
- 2) Give preliminary approval to Lake Rose Highlands, date stamped October 3, 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) Dedication of 10-feet of additional right-of-way behind the existing bituminous cul-de-sac.
 - (b) 10-foot-wide drainage and utility easements adjacent to public right-of-way and 7-foot-wide drainage and utility easements along all other lot lines.
 - (c) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (d) Drainage and utility easements over the 928.3 elevation.
 - (2) Pay the city a park dedication fee of \$5,000.

- b. The following items must be submitted to the city before the city releases the final plat:
- (1) An electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - (2) The following documents for the city attorney's approval:
 - (a) Title evidence that is current within thirty days before release of the final plat.
 - (b) Conservation easements over the area as drawn by staff and a drawing of the easement. The easement may allow removal of hazard, diseased, or invasive species. The easement may also allow access and water-oriented structures as permitted in the draft shoreland ordinance. The easement and drawing must be recorded with the final plat.
 - (c) A private driveway easement between the street right-of-way and Lot 2. The easement must state the maintenance responsibilities of each owner. The easement must be 20 feet wide. The minimum driveway width must be as required by the fire marshal.
 - (d) Private utility easement between public right-of-way and Lot 2.
 - (e) Restrictive covenants to be recorded against the individual lots with the plat. The covenants must include a provision restricting construction of swimming pools, sport courts, or other large accessory buildings. The covenants must also 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.

These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.
 - (3) Any other requirements included with final plat approval.
- c. The following must be completed before the city issues a building permit for Lot 1 and Lot 2:
- (1) Verify the sanitary sewer depth prior to setting the basement elevation. This verification must

be provided for the city engineer's review and approval.

(2) Submit the additional items for staff review and approval:

(a) A construction management plan. This plan must be in a city approved format and outlined minimum site management practices and penalties for non-compliance.

(b) Final grading and tree preservation plan for the lot. The plan must:

(i) comply with the preliminary grading plan as depicted on the preliminary plat;

(ii) include French drains or other infiltration techniques as approved by the city engineer.

(iii) must preserve trees designated for preservation at the time of preliminary plat approval;

(iv) show sewer and water services to minimize impact to any significant trees. No trees may be removed for installation of services. One set of new services must be installed.

(c) A tree mitigation plan. The plan must meet minimum mitigation requirements as outlined in the draft tree ordinance. However, at the discretion of natural resources staff, mitigation inches may be decreased based on: the health of trees removed; the ability to appropriately install trees on the steep slope; and/or installation of under-story shrubbery.

(d) Submit cash escrow in the amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation of the construction

management plan, other conditions of approval, or city code standards; and (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

- (3) Submit the following documents:
 - (a) A recorded copy of the rezoning ordinance, preliminary plat, conservation easement, and restrictive covenants.
 - (b) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - (c) A letter of credit or cash escrow in the amount of 150% of an estimated cost or 125% of a bid cost to complete required tree mitigation. Individual letters of credit are required for each lot.
 - (4) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
 - (5) Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot. These items must be maintained throughout the course of construction.
 - (6) Install heavy-duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.
 - (7) Pay a hookup fee for sanitary sewer and water.
- d. Minimum rear yard setback for the principal structure on Lot 1 is 220 feet as measured perpendicular from the rear line of the plat. This setback may be reduced at the discretion of staff, if the reduction has no negative impact on trees or slope.
- e. Minimum rear yard setback for the principal structure on Lot 2 is 190 feet as measured perpendicular from the rear line of the plat. This setback may be reduced at the discretion of staff, if the reduction has no negative impact on trees or slope.
- f. Notwithstanding the setback requirements above, all other zoning matters for the properties are subject to the standard R-1 requirements.

- g. Minimum floor elevation for both properties is 930.3.
- h. All portions of first-story walls as measured by an approved route around the exterior of the house must be within 150 feet of the street. If access requirements cannot be met, the house must be protected with 13D automatic fire sprinklers.
- i. During construction, the streets must be kept free of debris and sediment.
- j. The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

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

C. Items concerning a restaurant at 17523 Minnetonka Boulevard for C&R Partners LLC.

Wischnack gave the staff report.

Thomas asked what the dimensions are for the proposed patio and County Road 101. Wischnack said the proposed patio area is 20 feet by 58 feet. The setback from the right of way edge is 30 feet.

Callison said she always thought that when parking became tight on the site that the temporary or seasonal vendors that use area in the parking lot would have to leave. She found out from Gunyou that because the vendors were issued conditional use permits they would not necessarily have to leave. Wischnack said because conditional use permits were issued, the vendors have access to the site for 90 days. The two vendors share the permit. Unless the vendors are out of compliance with the conditions of the permit the city cannot remove them. Peterson said state law says that a conditional use permit runs with the property and is effective as long as the conditions are met.

Schneider said he interprets the statute to say that if conditions change the city has the right to redo the conditions as long as the new conditions are reasonable. For example instead of giving the vendors 10 spaces to use they may only let them use five. He said when he has driven by the site he sees a peak hour for the restaurant around lunch hour. But for the grocery store and hardware store he has not seen an influx of people during that time. If in the future over the lunch hour there are always empty parking spaces Schneider asked what the city could do to allow more

seating in the restaurant. Rankin said at the outset staff is taking a conservative approach in estimating the parking demand. Should changes be warranted in the future, staff will make adjustments. He said staff is concerned over the unevenness of parking demand where the west side ends up with more demand during the day than the east side where a lot of the parking is available.

In response to Callison's concerns about the seasonal conditional use permits, Rankin said the city sees the permits lapse every few years so there is an opportunity to address issues that come up.

Peterson said she has an opposite experience from Schneider's. She routinely goes to the Lakewinds grocery store over the noon hour and the parking lot is always full. Callison said this indicates that the parking is difficult to predict.

Allendorf asked how the limit on the number of seats will be enforced. Wischnack said there will be some difficulty in enforcement but if parking is an issue than the city will address the issues.

The applicant, Chris Erickson of 1225 Orono Oaks Drive in Orono, said the delivery entrance for Lakewinds is not needed so it has been eliminated. Instead of being paved the area will have trees that will provide some sound mitigation. He said the plan is to rope off an area of 95 seats leaving 105 to seat people for lunch. He said part of the need for the seating increase is it will provide variability in seating. Callison asked what the anticipated opening date is. Erickson said the goal is to open around Christmas time.

Wagner moved, Allendorf seconded a motion to:

- 1) Adopt Resolution No. 2007-140 amending the existing conditional use permit for a restaurant at 17523 Minnetonka Boulevard. This resolution is based on the following findings:
 - a. The proposed increase in seats would not increase the number of parking spaces required by city code. As such, it would not necessitate a parking variance beyond that which was already approved.
 - b. Since the previous approval, the applicant has obtained a parking agreement with Lakewinds Natural Foods. This agreement increases the number of available shared parking spaces.
 - c. A parking study conducted for the proposal concludes that the number of seats may be increased to 200 if the restaurant is open in the evening hours only.
- Approval is subject to the following conditions:

- a. Prior to release of this resolution, submit parking and access agreements/easements for review and approval of the city attorney.
 - b. The city council may reasonably add or revise conditions to address any future unforeseen problems. This includes, but is not limited to, applying further seating restrictions on the restaurant.
 - c. Any change to the approved use that results in a significant increase in traffic or parking, or a significant change in character, would require a revised conditional use permit.
 - d. The restaurant, bar area, and lounge must be limited to 106 seats from daily open until 4:30 p.m.
 - e. The restaurant, bar area, and lounge must be limited to 200 seats from 4:30 p.m. to daily close.
 - f. Spaces shown as proof-of-parking may not be paved, unless approved by the city upon showing a demonstrated need for these spaces.
 - g. Before the city issues a building permit, the applicant must agree to the above conditions in writing and record this resolution with the county.
 - h. Violation of any condition of this resolution will result in revocation of the conditional use permit.
- 2) Adopt Resolution No. 2007-141 approving a conditional use permit for an outdoor seating area, with a property line setback variance from 50 feet to 30 feet and a residential property setback variance from 200 feet to 120 feet. This resolution is based on the following findings:
- a. The proposal meets conditional use permit standards.
 - b. The proposal meets variance standards:
 - (1) The discrepancy between code-required setbacks and the city's development goals for the County Road 101/Minnetonka Boulevard corner present a practical difficulty.
 - (2) The proposed setbacks would meet the intent of the ordinance:
 - (a) Intent of the setback from property lines is to ensure adequate separation between customers and the traveling public. The proposal meets this intent. The outdoor seating area would be set back 30 feet, several feet more than the required setback for parking areas and sidewalks. The area would be further separated from the street by a landscaped area and decorative fence.

(b) The intent of the setback requirement from residential properties is to minimize the potential negative visual and noise impacts an outdoor seating area may have on surrounding areas. The proposal would meet this intent. Though 120 feet from the closest residential property, the seating area would be separated from the property by both the restaurant building itself and a paved alleyway.

(3) The proposed setbacks would not negatively impact the surrounding neighborhood.

Approval is subject to the following conditions:

- a. The proposed enclosure must meet all minimum requirements of the community development and the fire departments.
 - b. Refuse containers must be located within the outdoor patio and periodically patrolled for litter pick-up.
 - c. Any audio equipment must not be audible from adjacent properties. In the event that the equipment is audible, the property owner must resolve the issue immediately upon the request of city staff.
 - d. The city council may reasonably add or revise conditions to address any future unforeseen problems, including but not limited to noise and parking issues.
 - e. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
 - f. Before the city issues a building permit, the applicant must agree to the above conditions in writing and record this resolution with the county.
 - g. Violation of any condition of this resolution will result in revocation of the permit.
- 3) Approval of amended liquor licenses for an outdoor dining area subject to the conditions listed below:
- a. The outdoor dining area is to be separated from the surrounding area by a fence or similar structure, with the structure, access, and method of supervision to be approved by city staff.
 - b. Any outdoor sound system is to have the volume regulated to a moderate level. The city, at its sole discretion, may require any outdoor sound system to be removed.

- c. The outdoor dining area must close by 10 p.m. Sunday through Thursday, and by 11 p.m. Fridays and Saturdays.

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Reappointments to the police advisory committee.

Callison moved, Allendorf seconded a motion to approve the following reappointments to the police advisory committee:

- Cameron French, to serve another two-year term, as a student representative, effective October 23, 2007 and expiring on October 1, 2009.
- Corey Ruben, to serve another two-year term, October 23, 2007 and expiring on October 1, 2009.
- Monica Sadar, to serve another two-year term, October 23, 2007 and expiring on October 1, 2009.

All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Wagner seconded a motion to adjourn the meeting 8:12 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk