

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, DECEMBER 3, 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 Al Thomas, Dick Allendorf, Bob Ellingson, Tony Wagner, Brad Wiersum, Terry Schneider, and Jan Callison were present.

4. APPROVAL OF AGENDA.

City Manager John Gunyou noted addendua to items 14A and 14C. Callison suggested moving item 13C after 14C.

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

5. APPROVAL OF MINUTES: None.

6. SPECIAL MATTERS: None.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings.

Callison attended the Choral Reflections event. She said the Music Association of Minnetonka wished to express their gratitude for the city's financial support.

Callison also reported that there was a shoreland protection ordinance listening session the previous week. She said it was a difficult session but a lot of good comments were made. Gunyou said the session was attended by about 250 people. There was close to three hours of testimony. He said a meeting summary would be mailed out to everyone who signed up at the session. The summary will also be posted on the city's web site.

Gunyou said the city has requested a meeting with the DNR to discuss removal of the buffer requirement from the ordinance. He said the department has preliminarily indicated that it plans to reconsider the other

flexibilities that were granted to the city in exchange for the shoreland buffer requirement. City staff is still planning to bring the ordinance forward for council consideration at the January 28, 2008 council meeting, but this schedule presumes that negotiations will be completed with the DNR.

Gunyou said staff is also reviewing the recent easements that were required on shorelands. If the council adopts an ordinance without a buffer requirement, presumably it would want to reconsider these previous requirements for consistency. Gunyou also said the city's natural resources manager is developing an educational program for water quality, including the voluntary use of buffers.

Wagner said it was an important meeting with residents. One thing he took away from the meeting was that there were a number of people passionate about ensuring the right thing is done for water quality. He said he wants to involve those people in the discussions. He noted the city is home to one of only a dozen certified lake managers in the country, and wanted to engage those residents in the discussions.

Schneider said there appeared to be a number of individuals knowledgeable about water quality issues. Rather than initiating a voluntary program he prefers engaging the groups upfront to incorporate their knowledge with the city's natural resources manager background to come up with a program that will be endorsed by the groups.

Wiersum said there was a difference of opinions in terms of large lakes versus small lakes. The perception is that the water quality and condition of the large lakes is improving and the condition of the small lakes is declining. The needs therefore are different. He said understanding the differences may yield different approaches and should be part of the consideration.

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 – November 26, 2007.

Allendorf moved, Wagner seconded a motion to approve the November 26, 2007 claims which includes checks numbered 208204 through 208452, totaling \$987,654.07 All voted "yes."
Motion carried.

B. Request for one-year time extension for filing of the Schoen Addition plat at 11405 and 11477 Fetterly Road.

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

C. Final approval of STRATFORD WOODS SECOND ADDITION at 5243 Black Friars Lane and 18900 Stratford Road.

Allendorf moved, Wagner seconded a motion to approve the STRATFORD WOODS SECOND ADDITION final plat that was received on September 18, 2007, subject to the following conditions:

- 1) As per the preliminary plat conditions of approval, the owners of 5136 Willow Land must consent to the dedication of standard drainage and utility easements.
- 2) Compliance with all other preliminary plat conditions, especially the specific conditions for release of the plat; and
- 3) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

D. Approval of 2007 performance pay for the city manager.

Allendorf moved, Wagner seconded a motion to approve a lump sum merit pay amount of \$1,192.66. All voted "yes." Motion carried.

E. Items concerning TOMPKINS SECOND ADDITION.

Allendorf moved, Wagner seconded a motion to reaffirm the preliminary plat and approve the final plat of TOMPKINS SECOND ADDITION that was received on July 19, 2004, subject to the following conditions:

- 1) Prior to release of the final plat:
 - a. The following documents must be prepared by an attorney knowledgeable in the area of real estate, and submitted for the city attorney's review and approval:
 - (1) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - (2) A 34-foot private driveway easement between the street right-of-way and Lot 1. The

easement shall state the maintenance responsibilities of each owner. The minimum driveway width shall be as required by the fire marshal.

- (3) A private utility easement across Lot 2 to provide services to Lot 2.
- (4) Restrictive covenants to be recorded against the individual lots with the plat. The covenants must include:
 - (a) No foundation wall of any future house may encroach into the critical root zone of the 48-inch oak on the north property.
 - (b) The floor area ratio of any future house on this site would be limited to 0.18 or 7,046 square feet.
 - (c) Any 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.
- (5) Conservation easements over the significant trees outside of the required setbacks, and a drawing of the easements for the approval of the city attorney. The easements and drawing must be recorded with the final plat. These documents must be recorded with the final plat, and a drawing of any easements must be attached to the easement deed.
 - b. Submit the following items:
 - (1) An engineering/utility inspection fee.
 - (2) An electronic CAD file of the final plat in microstation or DXF.
 - 2) Compliance with all preliminary plat conditions and including all specific conditions for release of the plat; and
 - 3) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

- 11. Items requiring Five Votes:** None.
- 12. INTRODUCTION OF ORDINANCES:** None.
- 13. PUBLIC HEARINGS:**

A. Public hearing to consider a resolution supporting an application to DEED for funds from the Minnesota Investment Fund.

Gunyou gave the staff report.

Steve Drozda from Nestle/Novartis expressed thanks for the support. He said just about a year ago Nestle announced plans to acquire the medical nutrition unit of the Novartis Corporation. At the time the employees of Nestle thought it was inevitable the business would be relocating to Glendale, California. There was a meeting in the spring involving Barb Obershaw, president of the TwinWest Chamber of Commerce, and David Yates, president of Novartis. Drozda said discussions evolved into the selection of the Twin Cities as the North American headquarters.

Obershaw said the chamber learned in 2005 Nestle may be leaving the state and possibly relocating to the central United States because the product is heavy to ship and a centralized location was desired. After many meetings through the efforts of Grow Minnesota they were successful in keeping Nestle in Minnesota. She said the headquarters is moving from St. Louis Park to Minnetonka and joining the research and development center. The plant will remain in St. Louis Park. Obershaw said a total of about 700 jobs will remain in the state.

Callison said the city was lucky to have Obershaw as the head of TwinWest for a number of years. Callison noted Obershaw is stepping down this month and thanked her for her work.

Callison opened the hearing at 6:48 p.m. No one spoke.

Callison closed the hearing 6:48 p.m.

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2007-150 supporting the application to DEED for funds from the Minnesota Investment Fund. All voted "yes." Motion carried.

B. Continued public hearing to consider applications by Jimmy's, LLC, for on-sale and Sunday on-sale intoxicating liquor licenses for Jimmy's Food and Cocktails, 11000 Red Circle Drive.

Gunyou gave the staff report.

Callison continued the hearing at 6:50 p.m.

Callison closed the hearing 6:51 p.m.

Wiersum moved, Ellingson seconded a motion to grant the licenses, and grant renewed license for 2008. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Petition requesting an environmental assessment worksheet for the Crossroads Corporate Center project at the southeast corner of the I-394/County State Aid Highway 73 (CSAH 73) intersection, for Opus Northwest LLC:

Wiersum excused himself at 6:53 p.m. due to a conflict of interest on the item.

City Planner Julie Wischnack gave the staff report.

Wagner said one concern with the project is the development will use up traffic capacity of the intersection for future improvements along the south frontage road. Wischnack said the 2030 report identified a northbound issue even without the development occurring. She agreed the development will quicken the pace for using up the capacity.

Schneider asked how approval or denial of the EAW request would impact the rest of the process for the project. Wischnack said if the council does not approve the EAW, the project would be reviewed at the next council meeting. An EAW would take approximately two months to prepare. The EAW would be presented at the same time the project is reviewed.

Ellingson noted the 300,000 square foot threshold for doing the EAW. The two office buildings are around 265,000 square feet. He asked if the size of the parking ramps should be included toward the threshold. Wischnack said there are various thresholds in the EAW requirements. There is a 2,000 parking stall threshold for parking ramps. She said there are a variety of ways a project could trigger the mandatory requirements to conduct an EAW.

Wagner asked for further clarification of his traffic question. Would approving the development at the current size from a traffic standpoint inhibit other development on the frontage road? City Engineer Lee Gustafson said the ordinance allocates a certain

number of trips for the parcel. The request is to exceed that allocation. With the proposed improvements, Gustafson said the amount of traffic meets the acceptable levels of service. The primary concern along County Road 73 is the queuing of traffic. He said with or without the development, improvements will be needed to County Road 73 by 2030. One of the improvements will be adding a through lane across the freeway. By adding the lane, the queues will be spread out to a number of different lanes. Wagner asked that specific information about the traffic along the frontage road be included when the project is before the council.

Callison said the schematic showing traffic improvements showed a roundabout. Wischnack said in the staff report prepared for the planning commission there was a preferred option of the roundabout. There are several options for the council to consider.

Allendorf asked what information would be gained by doing the EAW that isn't already known. Wischnack said the traffic analysis and air quality analysis have been done and no red flags have been found that would require further analysis. It's unlikely there is further information that would be found.

Wagner said one of the concerns identified in the petition relates to water quality and drainage, specifically the overflow from the storm water pond to County Road 73. The staff report also indicates all the runoff from ramps will be going into the sanitary sewer. He asked for staff comments on the issues. Gustafson said there are no concerns with the drainage. All city and watershed district requirements are being met. He said it is common practice to connect lower levels of parking ramps to sanitary sewers because the runoff needs to be treated due to chemicals that fall off cars.

Before opening the discussion for public comment, Callison noted the decision before the council was about the EAW. She said the project was a neighborhood issue with neighbors on both sides of the issue. She asked people to be respectful of the differences of opinion and emphasized the importance of neighbors continuing to get along whatever the end result is.

The petitioner, Jim Fredkove of 1502 Archwood Road said 44 people who live around the development signed the petition. The petition would have had more signatures but time ran out. He said everybody in the neighborhood had many questions. He said one concern was about air quality. The concern is over the types of pollutants created by cars parked in the ramps including benzene, formaldehyde, and carbon monoxide. He acknowledged cars have

catalytic converters but catalytic converters do not work until they are heated up. Therefore within the first couple of minutes the cars are emitting pollutants. Fredkove said the petitioners are concerned about how the pollution will affect property values.

Walter Rockenstein an attorney with Faegre and Benson said he was representing the developer. He said there is a reason that the EAW review rules provide thresholds. The reason is generally if a project does not hit the thresholds it's been found over an extended period of time there is not a reason to require an environmental review. The exception is for projects with unusual environmental conditions that push for a review. Rockenstein said there are no such unusual conditions in this project that warrant review. He said the council had almost every piece of information they would have if the direction was given to do an EAW. He said the one missing piece may be the depth to bedrock, and that could be provided if needed. Rockenstein said most of the pollutants mentioned by Fredkove are not pollutants of concern from automobiles. The principal auto pollutant regularly identified by the Pollution Control Agency is carbon monoxide. The study was conducted to look at the amount of carbon monoxide. In the worst case conditions with cars idling in the ramp far longer than to be expected, the level of pollution created outside in close proximity to the ramp is far below state and federal standards for violation of air quality for carbon monoxide.

Donna Fredkove of 1502 Archwood Road said the petitioners contacted the Environmental Quality Board and were told there were grounds to file the petition. Research was done with other jurisdictions. Fredkove said the Boston Metropolitan Council, the state of Washington, and a number of Canadian jurisdictions would require an environmental assessment in a case like this one. The state of Washington measures the impact of diesel fuel. They have found formaldehyde and benzene are emitted from vehicle exhaust and are potential carcinogens. She said Opus' response indicated that the majority of the pollutants would fall within 100 feet of a street. The ramps would be 50 feet from the residents' backyards. She said the emissions study was appreciated because it is something that might have allayed some people's concerns had it been in the original traffic study. However the wrong standard of 20.6 percent was used for cold starting of cars. She said in the afternoon it would be 100 percent because that's when people leave work with cars that had been sitting all day. She said another concern is where the waste from the ramps will go.

Grace Sheely of 14325 Grenier Road noted that the development in Glen Lake didn't have an EAW. She asked if projects ever reach the thresholds needed to require an EAW and when the last EAW was done in the city. Wischnack said recently an EAW was conducted for the UnitedHealth Group project. An EAW was also required in 2000 for Crescent Ridge. Schneider said an EAW was also done for the Crosstown extension years ago. He said he recalls going forward with a nonmandatory EAW during his time on the council. That EAW showed no rational reason to do an environmental impact statement. The project was eventually approved. He said nonmandatory EAWs are not routinely asked for because of the expense and because they don't provide any additional information that can't be found in the thorough staff reports that are typically done in the city of Minnetonka.

Dan Dettman of 11208 Timberline Road said the parking ramps will hold over 1,000 cars. The traffic on County Road 73 is about 10,000 cars per day. Between the hours of 7 a.m. and 8 a.m. and 5 p.m. and 6 p.m. the traffic level will increase by 10 percent. Dettman said he lives four blocks away and currently he cannot get on to County Road 73 during those times. He asked if the traffic study will be expanded to take into account other intersections. Wischnack said the traffic study does include side street access analysis. There is also information about Oak Knoll Terrace and turn lane improvements that aren't demanded by the project but would be a possible improvement by the county and city at the same time of the project.

Wendy Larson of 1600 Wilshire Drive said other projects have been proposed in the past few years and none of them pleased everybody involved. For over 30 years the guide plan has guided the area as office/multi-dwelling. In recent years the designation was changed to office. The redevelopment of Wilshire Drive can only occur if all the residents are in agreement. Larson said this is a large obstacle for any proposal. Over the years several projects have been proposed by different developers but the offers to buy the land were inadequate. Larson said this proposal is the first time the neighborhood is in agreement. The proposal originally was for a senior coop that would require a guide plan change. Nearly all the residents that lived on Archwood Road were opposed to the senior coop and wanted the office building. She said after numerous meetings the residents on Wilshire Drive felt like they were spinning their wheels. Eventually Opus came forward with a plan for an office complex. Again there was opposition for the plan. She said Opus has tried to develop a plan that will blend into the area and try to have as little impact as possible. She said the request for the

EAW is a delay tactic. As a result of the guide plan, the I394 corridor and the widening of County Road 73 the residents of Wilshire Drive have lost four houses. The neighbors to the west on County Road 73 and to the south have lost five houses. Larson said the residents most affected should be allowed to get on with their lives.

Dennis Strand of 10412 Crestridge Drive said the reason the residents on Wilshire Drive are in their current situation is because the city didn't have the courage to go through eminent domain. If the city wants to condemn property it should be for a purpose. He said residents have reached retirement age and want to move and their choice is to either sell to somebody who will rent or to a developer. The city has created the division in the neighborhood.

Don Applebee of 1501 Wilshire Drive said he has put money down for a house in the city because he wants to stay in Minnetonka. He said there is no way to satisfy everybody and it is a waste of time to try. He said the situation is creating a hardship on residents on Wilshire Drive. It is time to move ahead.

Helen Strand of 10412 Crestridge Drive said there is a high rate of cancer in the neighborhood. She is concerned with the additional pollutants. Residents in two houses east of the Strands have cancer. To the west both people have had cancer. There are residents with cancer living across the street. She encouraged the city to check out what is going on because residents' health is important.

Toni Chipka of 1601 Archwood Road said people have never before been as health conscious and aware of what is going on around them. It is the council's responsibility to set minds at ease by doing the assessment. If the project goes through, pollutants that fall on the children in the neighborhood can't be undone. Poor health can't be undone. Chipka said it is unknown what the winds will do with the contaminants. She said it is the council's responsibility to provide for a healthy environment in the city.

Eugene Fonder of 1517 Wilshire Drive said the residents have been on hold for four years. It is time to move forward.

Gordon Olson of 11102 North Oak Knoll Terrace said up until April there was a hundred car parking ramp on the west side of County Road 73. That has increased to 750. There is an accumulation situation with the additional increase of 1,000 parking spaces. The parking ramp would start at Olson's roofline. He said it is likely his

house will be exposed to a lot of pollution from the ramps. He quit smoking 18 years ago to protect his health. He said he is not against development on the property but alterations need to be made for the health of the residents.

Wagner said he has spoken with Olson, and the concerns with the location of the parking ramp are valid. He asked for an update on any changes that are under consideration for the ramp. Wischnack said an option is to drop the ramp in height and to bury part of the ramp below ground. However there is an issue with the flood plain. The city engineer has reviewed the information and determined the option is plausible.

Kathy Dettman of 11208 Timberline Road said she grew up and owns property on Archwood Road. She said residents have been made good offers for their homes over the years. Traffic and pollution in the area has to be a concern. Noise pollution already is an issue. She said the area is becoming similar to 494 and France Avenue. It would not hurt anyone to do the EAW.

Anne Malm Hossfeld of 14616 Glendale Street said the issues are citywide issues. She asked if the environment assessment for the traffic study was done prior to the planning commission recommendation. She also wanted to know who conducts the EAW. She said there are unusual conditions that should raise red flags. The emission study completed as part of the traffic study looked at the cumulative effect including emissions from the park and ride and concluded there would not be a negative impact. At the planning commission hearing there was testimony that once the park in ride was put in place with idling buses, residents could smell exhaust, were made nauseous and the quality of health declined. She said the park and ride has already affected air quality and the cumulative effect of adding traffic should be studied. The traffic is proposed to be higher than the allowance. The mitigation efforts are not intended to mitigate traffic emissions and they will only mitigate traffic flow.

Wischnack said the project analysis was conducted in October. The traffic counts were conducted prior to the bridge closing on County Road 73. The EAW is conducted by the city either in house or by hiring a consultant. In this situation the city has retained SRF for the traffic analysis. SRF also does EAW analyses.

Allendorf said a November 29 memo from SRF addresses the Metro Transit ramp and also the two ramps proposed for this

development. The increase in traffic from the mitigation roads is also addressed.

Robert Thompson of 4480 Foothill Trail, Vadnais Heights said he was speaking on behalf of his mother who lives at 1613 Wilshire Drive. Thompson said he has been an engineer for over 25 years and has prepared and reviewed a number of studies for projects. He commended staff for the thorough review of numerous issues involved with the project. He said there is no need for additional study or review.

Ed Wons of 11014 Oak Knoll Terrace said there are many positive aspects to the project. The issues are with the placement of the parking ramps. If the ramps could be moved to the center it would take them away from the flood plain and allow them to be lowered. He asked for information about the proposed buffering. Wischnack said there is a recognized wetland and for developments like this one, the city asks the developer to provide a conservation easement around the wetland and restore it to native and prairie grasses.

Roger Anderson of 13605 1st Ave N, Plymouth said he was speaking on behalf of Judy Gleason who owns the property at 1511 Wilshire Drive. As an engineer, Anderson has reviewed and prepared many EAWs. He said the information the council has is similar to what typically is included in an EAW. The EAW will not generate a lot of analytical air quality data. Instead the information already presented will be looked at. While significant, the additional traffic that could be generated by this project will not change the overall character of the neighborhood.

Roger Hanson of 16019 Temple Drive said the people who want to stay in the area are the ones who will be affected by the environment and not the people who want to move. The extra step of a studying the pollution would be beneficial.

Kevin Smith of 3525 Elmwood Place said he lost his wife to cancer 14 years ago. He moved to the city because it is a green city. He said it is not one chemical that causes cancer. All the different chemicals will cause everyone to suffer. He said when people want to build in the city's neighborhoods they could put green roofs on buildings, potentially saving 70 percent of the emissions. Asthmatic conditions would likely either go down or have less chance to increase. Callison said the applicant might agree with Smith on some of the green issues and noted the building is LEED certified.

Dennis Larson of 1512 Wilshire Drive said the staff report addresses all the issues and concludes everything is within the guidelines. He said the project should move forward.

Wagner said having the information on air quality is important because the council usually does not have that information when looking at developments like this one. He said he has concerns with the project, specifically the ramp and traffic issues. He hopes the neighborhood can work with Opus on achieving resolution to some of the issues. Because this does not meet the automatic requirements for an EAW and does not qualify as an EPA hot spot, and because it's more than 50 percent below the requirements from a traffic standpoint Wagner said he could not support the request for an EAW.

Schneider said he has looked at a number of EAWs over the years. To get to the level of a significant environmental impact requires significantly more than what this site will generate. He said there will be negative impacts as there are whenever single family homes are developed into an office structure. Staff has done a thorough job with the consultant to review the MPCA standards. He said he felt it wasn't appropriate for him to overrule the staff recommendation unless he thought there was something unusual that would trigger something unknown. In this case all the items that would be reviewed in an EAW are already being reviewed. He doesn't support a discretionary EAW, but moving forward there are issues with the overall site that have to be dealt with. There is a potential to find solutions to further reduce environmental impacts. For example, lowering the parking ramp would require mechanical ventilation of the lower level allowing total control of where the exhaust goes.

Allendorf said it is difficult to say you don't want to take another couple of months to look at something, but you have to be realistic in determining what could be learned that isn't already known. He said SRF is a well known and well respected consulting firm that does EAWs. Their report addresses the real concerns of the residents regarding health and air quality. He encouraged people to read the report.

Thomas said the SRF study shows the baseline concentrations fall well below the Minnesota Pollution Control Agency standards. Even in the worst case scenario the concentrations are below the standards. This sways him to not go forward with the EAW. Also there are not any environmental issues with this development that would trigger an EAW. He is concerned with the resident who

spoke about cancer issues in the area but it is unlikely the EAW would look at that issue. He suggested the city look into the cancer rates in the area, and if necessary, involve the appropriate state agencies. He said he has concerns with the project including the parking ramp, traffic and the building height, but he doesn't see the merit of doing an EAW.

Ellingson said he disagreed with Allendorf and Thomas' conclusions with the SRF study. The report's conclusions are based mostly on modeling techniques. It's unclear to him whether someone went out to measure the current carbon monoxide concentration and is concerned with the air quality impacts. The models are based on the parking ramps and the amount of traffic on Hopkins Crossroad and the frontage road but the freeway is not mentioned in the study. He said in driving the freeway every day there are often traffic jams during key hours and emissions from the freeway should have been included in the study. Another concern is that the amount of accidents at the intersection already exceeds the critical crash rate. He said council decisions do impact the amount of traffic in the city.

Wagner said the issues Ellingson raised would be addressed when the project is before the council. An EAW would not provide information that the council doesn't already have.

Callison said the right issues were raised but the EAW is not the right way to get at the issues. Approving the request for an EAW would only postpone addressing the issues of the proposed development.

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2007-151 that concludes there is no potential for significant environment effects from the proposed project and therefore denies the request to require environmental assessment worksheet based on the following findings:

- 1) The project does not meet the mandatory categories for an EAW as listed by Environmental Quality Board.
- 2) There has been no cumulative impact identified to justify an EAW.
- 3) Water resources issues, stormwater and wetlands, have been reviewed for compliance and impacts through the site and building plan review process.
- 4) No wetland fill is proposed by the project and therefore would not have a negative impact.
- 5) Tree removal would be mitigated by replacement.
- 6) The area is not identified as a woodland ecosystem.

- 7) The area is not identified by the Minnesota Land Cover Classification System report for Minnetonka, as a natural community.
- 8) The traffic impacts of this development have been assessed through an official traffic study.
- 9) The traffic study has identified existing conditions and mitigation measures for the impacts created by the proposed development.
- 10) Air quality, relating to the parking structures, has been reviewed and found that the project would not exceed state standards, based on the worst case scenario.
- 11) Air quality, relating to transportation improvements, would not require a hot-spot analysis, based on MNDOT criteria for project level air quality analysis.
- 12) The comprehensive plan designates this area for future office use; therefore, the project does not affect the ability of the city to implement the policies and standards of the plan.
- 13) City park, utilities, and facilities will not be impacted by the proposed development.
- 14) Provision of city services will not be impacted by this proposal.
- 15) Implementation of mitigation measures for all project aspects are controlled through various city regulations including, but not limited to: zoning ordinance, wetland ordinance, water resource protection ordinances, and planned interstate 394 district requirements.
- 16) The view of the proposed four-story building along the freeway corridor will be substantially screened by topography and existing trees, and any loss of blue sky visibility is at most minimal.

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

Wagner said when the project comes before the council he would like information about the effects of the south parking ramp on the residents of Oak Knoll Terrace. He asked that the developer comment on the neighborhood's proposed alternative for the parking ramp. He also wants more information about traffic issues on County Road 73 and on the south frontage road related to this development and future developments.

Callison called a recess at 8:47 p.m.

Callison called the meeting back to order at 9:01 p.m.

Wiersum rejoined the meeting

B. Items concerning the reconstruction of CSAH 61.

Gustafson gave the staff report.

Wagner asked for comment on how the city's costs went from \$3.3 million to \$7 million and how future road project cost estimates will be more accurate. Craig Twinem from Hennepin County said both the city and the county costs for the project have increased. It was known from the start that this would be a challenging corridor. As the design developed, retaining walls were added, materials prices have increased, right of way costs have dramatically gone up, and construction costs have also increased. Twinem said the county tends not to worry about what the cost of a project may be four or five years out and needs to be more sensitive to the city's capital improvement budgeting process. He said for future projects the county will do a better job with its communications. This project differs from the last project the county did with the city improving County Road 101. That project involved turn back dollars which kept the county and city costs down significantly. County Road 61 is not a former trunk highway and thus turn back dollars are not available for this project.

Wagner said while he understands increasing costs, had the current estimate been available when the city approved the project he may not have voted for it. It is an important corridor but the partnership between the county and the city needs to arrive at better estimates.

Thomas said using up so much of the MSA funds for this project could impact other projects. This will create pressure on the city budget that could lead to increased property taxes. He said he has always worried about pre-spending the MSA funds because the city will get to the point where something will come up and the funding will not be available. Another concern is with the agreement with Xcel Energy. He asked if staff has looked at putting a condition in the agreement for a time stipulation for burying the lines. He said the rumor in the community is that completing County Road 101 was delayed due to Xcel Energy not showing up to bury the lines. Thomas said this was unacceptable.

Gustafson said he agreed with Thomas on his observations on County Road 101. He said staff has had many discussions with Xcel and service delivery has been improved. One example is the work done on Cedar Lake Road. Xcel worked with city staff on a

day to day basis and came in under budget by about \$6,000 with work completed ahead of schedule. Gustafson said he still has concerns with Xcel but they have made strides in providing better service.

Thomas asked if the city could add a clause to agreements with Xcel stipulating a timeframe for work to be completed. Peterson said staff has had numerous conversations about the very issue Thomas was raising. The issue has been discussed at the Suburban Rate Authority that deals with utility issues. She said Minnetonka is not the only city that has had issues in dealing with Xcel working in a timely manner. The difficulty is the bureaucracy involved in working with Xcel. The arguments Xcel has in its favor is when there is a storm that causes people to lose power, Xcel has to pull staff off projects to restore power to its customers. She said she was able to negotiate language in the agreement that requires the work to be done in a commercially reasonable timely manner.

Allendorf said given the current cost estimate and that other funds would need to be borrowed from, and that the city would be spending four years worth of MSA funding, he probably would not have recommended going ahead with this project in 2004. He said just because some money has been spent doesn't mean that more money has to be wasted. He said he wasn't sure if bonding for road projects was good or bad but he would like to have that discussion without the pressure of having no money in the coffers. Although something needs to be done with this segment of road, the segment between Excelsior Boulevard and Highway 7 might have higher priority.

Gunyou agreed with Allendorf, and said if staff had known the current cost estimate, they might not have recommended approval. Staff agrees that the road from Excelsior Boulevard to Highway 7 is a higher priority given the dollars being talked about now. He suggested laying over the item until the next meeting to get more information about delaying or postponing the project. Gustafson noted the bridge that is proposed to be replaced as part of the project needs to be replaced. Allendorf said he doesn't think the city should go ahead with this project if it jeopardizes other projects.

Wiersum said what was originally estimated to be about a \$10 million improvement now has \$10 million in retaining walls alone. He asked if there was a possibility of doing fewer retaining walls. He said if he was building a house and later found out the cost would be 100 percent more than the builder's proposal, he wouldn't walk away and not build the house but would instead go with a

dramatically different house. He said there is a lot to like about the project including the trails and the utility lines will be buried but wondered if the city could afford it. He suggested continuing with improving the road but lowering the cost by doing the minimum in terms of aesthetics. His concern is roads won't be done that need to be done without tax increases.

Gunyou said staff will look at Wiersum's suggestions before the next council meeting. County staff indicated they were okay with a two week delay in terms of keeping on schedule. Gunyou said there is not time to redesign the project at this point but Wiersum's tradeoff questions could be answered. He noted many of the retaining walls are proposed to save as many trees as possible. Also without the retaining walls, more right of way would have to be acquired, which would offset the cost savings. Callison said the number of trees that initially might be removed is surprising.

Schneider agreed that had he seen the current estimates when the project was approved, he would have questioned going forward. He said he was open to looking at options including a redesign that would make the road narrower, or doing the work in segments. The more fundamental issue is being a good long range steward of taxpayer money. The challenge is funding a major road reconstruction program that is sustainable over the long term without major tax implications. Schneider said the council needs to step back and look at all the roads in need of improvements, the priorities, and the costs identified in the CIP budgeting and be honest about potential costs. He said it wasn't certain he could support proceeding with this project given the implications of the real costs and the long term funding implications for future road reconstructions.

Wiersum said he agreed with Schneider's statements. He said County Road 101 took a long time to complete but it ended up being a great looking, first class road. He said maybe the city is designing roads it can't afford. His management style is to manage what is controllable. Some of the future roads might not be as pretty but buying something that isn't affordable doesn't make any sense.

Ulrich Bonne of 4936 Shady Oak Road said in previous meetings he has voiced the neighborhood's concerns with maintaining the environmental quality of the lake and the road that leads from Hopkins Beach to the lake. He said he supports having a trail along the west side of Shaky Oak Road. The traffic bottleneck only occurs northbound during rush hour. If the intersection is really the issue, Bonne suggested a three lane road should be looked at to save

trees and reduce costs. Callison said she understood that the costs would not be significantly different between a three lane and four lane road. Therefore it is more cost effective to build a four lane road. Gustafson said Callison was correct. There would be some cost savings but essentially all the retaining walls needed for a four lane road would still be needed for a three lane road.

Wagner asked if two weeks would be enough time for staff to get the information the council was seeking. Gunyou said it was enough time for staff to get the information. He noted that other cities in the metro area are struggling with the same issues. He said major projects are funded with the cities' share of the state gas tax, and that those resources have been flat for the past ten years. Callison agreed and said what is missing is cities indicating to the state the funding system is broken and has to be fixed.

Schneider said one other piece of information he would like is the approximate sunk costs if the council decides not to proceed with the project.

Schneider moved, Wiersum seconded a motion to continue the item to the December 17, 2007 council meeting.

All voted "yes." Motion carried.

C. Appeal of a condition of approval for a variance from minimum lowest floor elevation from the designated flood elevation at 16019 Temple Drive.

Wischnack gave the staff report.

Allendorf asked given the hold harmless clause, what was the importance of specifying the elevation of the new addition. Wischnack said whenever there is a flood variance of any sort the city certifies the exact elevation of construction. This creates documentation that can be referred to if a storm causes an overflow so there is a reference point where the construction actually occurs.

Wiersum questioned if the city has a hold harmless agreement with the applicant and is convinced the flooding mechanisms provide a structurally sound house, is there a need to have a flood proof lower level. Wischnack said this is not a clear cut application of the flood proofing ordinance which is easier to apply to new construction rather than a remodel. With a remodel there can be challenges with parts of a home built below the flood plain and

whether a new addition should then be flood proof. She said there is room for interpretation in this case.

Peterson said if there is an ironclad hold harmless agreement recorded in the chain of title, future property owners would have access to the information. She said there is an argument that after 30 years the agreement is no longer applicable.

Allendorf asked if after 30 years the agreement is no longer in affect, and the city has in its files the elevation of the addition, how the city would be protected. Peterson said the protection she was thinking about relates to future homeowners. Without the documents, future homeowners potentially would not know there could be flooding issues.

Schneider said almost every mortgage transaction he has seen requires a flood plain letter that a buyer receives. He said the flood proofing doesn't make sense. The lower level that is two or three feet lower than the crawl space would flood first and there would be five and a half feet of water over Temple Lane before the crawl space floods. Also looking at the topography it appears that before the water reaches the crawl space flooding would occur on Temple Drive South, Temple Drive North, and Temple Road to the north and overflow into a wetland behind the properties. Schneider said if there is a major super storm the residents to the north would be protecting their basements with sand bags and would not want to be inviting water into their crawl spaces. He said the city should stick with the hold harmless agreement putting the property on notice there is potential for flooding. Because all the homes along the area have similar flooding potential he would be interested in seeing the long term potential for an outlet or where the water goes to other than in the pond.

Gustafson said there have not been any flooding issues related to the area.

The applicant, Roger Hanson of 16019 Temple Drive, said it's physically impossible for water to enter the crawl space doors before it comes into the basement. He said he doesn't see the necessity of the elevation certification because a surveyor can't certify the house meets the city code. That is the reason the variance is needed. Schneider said the certification would certify what elevation the floor is being built at.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2007-152 to uphold the planning commission's variance

approval from the minimum low floor elevation of 948.8 to 947.55 for the addition to the house at 16019 Temple Drive. This resolution is based on the following findings:

- 1) Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - a. The existing house has a nonconforming low floor elevation, and there is a practical difficulty in constructing the addition such that the floor elevations match the existing floor elevations of the split-level house.
- 2) The variance would meet the intent of the ordinance since:
 - a. The proposed addition would not result in increasing the flood damage potential of the structure.

Approval is subject to the following conditions:

- 1) The site must be developed in compliance with the site plan date-stamped September 14, 2007, except as modified by the following conditions.
- 2) Complete the following before the city issues a building permit for the project:
 - a. Submit the existing low floor elevations and finished floor elevation of the main level prepared by a registered land surveyor.
 - b. Submit proof of having recorded this resolution with the county.
 - c. Install a temporary rock driveway, erosion control, and tree protection, as required by the city's natural resources staff. These items must be maintained throughout the course of construction.
 - d. The property owner must enter into a hold harmless agreement with the city that the construction may increase flood risk to life and property. The agreement must be recorded with the chain of title for the property, and a copy of the recorded agreement must be submitted to the city.
- 3) Before final inspection, the applicant must submit as-built drawings and certification by a licensed professional engineer or registered land surveyor that the lowest floor elevation of all structures were constructed in compliance with the city approvals.
- 5) 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.

13. Public Hearings**C. Truth-in-Taxation Hearing.**

Allendorf was excused at 10:18 p.m.

Finance Director Merrill King gave the staff report.

Callison opened the hearing at 10: 31 p.m.

Schneider said King did an excellent job explaining how the property tax system works. He suggested extracting her presentation from the web streaming of the meeting and having a separate link to make it easier for residents to find on the web site.

Grace Sheely of 14325 Grenier Road said four or five residents who came to the meeting for the item left because of how late in the evening it was. Callison said residents could contact the council to give input. She said the meeting would be replayed on the cable station several times and a decision on the budget would not be made until December 17. Sheely said it was interesting that many residents' taxes will go up, but not because of city property taxes. She said she appreciated efforts to keep property taxes down.

Kevin Smith of 3525 Elmwood Place asked why the street lamp posts on County Road 101 did not have brackets attached to allow seasonal decorations. He asked if the brackets were part of the budget. Gustafson said the city funds for street lighting for that project came from the electric franchise fee fund. The county paid for a portion of the lights. Staff decided to leave welded brackets off because there are after market attachable brackets available that allow for multi use of the street light pole. Smith asked if the brackets have been purchased. Community Development Director Ron Rankin said the brackets are available and staff is working with the business community in the area to determine how to decorate the street light posts.

Anne Malm Hossfeld of 14616 Glendale Street said she thought the details of the budget were going to be discussed. She said in reviewing the summary revenue and expenditure pages, the total revenue was less than the total expenditures. Gunyou said the detailed budget pages are available on the city's web site, and information has been posted regularly to the web site as it becomes available. He noted last year three special meetings were widely advertised where the details were discussed. Only one resident showed up for the meetings.

Gunyou explained general fund operating revenue does balance with operating expenditures,. The totals Malm Hossfeld mentioned include capital funds. The difference in revenues and expenditures in a given year reflects the use of fund balances in the different capital funds. He suggested residents who are interested in the specifics should contact King. Gunyou also noted that paper copies of the budget are available for those who do not have web access.

Schneider said the city has tried for years to get residents interested in looking at the budget and to get more feedback. He said he was encouraged that Malm Hossfeld was interested in looking at the details. He suggested residents who are interested in the budget details should explore participating in the city's citizen academy program that provides information on all the city departments -- what each department does and how it is budgeted. He said a lot of times one needs a more comprehensive basis to understand why, as an example, the fund balance approach is used to fund capital improvements versus a pay-as-you-go approach.

Wiersum said the council recently had a budget study session where the details of the budget were discussed page by page. Study sessions are open to the public. He said attending the budget study session is a good way to get information and a good way to learn about the budget.

Callison closed the hearing at 10:43 p.m.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Thomas moved, Wiersum seconded a motion to adjourn the meeting 10:43 p.m. Thomas, Ellingson, Wagner, Wiersum, Schneider, and Callison voted "yes." Allendorf was excused. Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk