

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JANUARY 28, 2008**

1. CALL TO ORDER.

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

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL.

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

4. APPROVAL OF AGENDA.

City Manager John Gunyou noted addenda to items 14A and 14D.

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

5. APPROVAL OF MINUTES:

A. December 17, 2007 regular meeting.

Schneider moved, Allendorf seconded a motion to approve the minutes of the December 17, 2007 Minnetonka City Council regular meeting. Allendorf, Schneider, Ellingson, Wagner and Callison voted "yes." Wiersum voted yes abstaining from item 14A. Hiller abstained. Motion carried.

B. January 7, 2008 regular meeting.

Schneider moved, Allendorf seconded a motion to approve the minutes of the January 7, 2008 Minnetonka City Council regular meeting. Allendorf, Hiller, Schneider, Ellingson, Wagner and Callison voted "yes." Wiersum voted "yes" abstaining on item 12C. Motion carried.

6. SPECIAL MATTERS: None.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings.

Callison gave a reminder that the Caring Youth nominations are due January 30. Information is available on the city web site.

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

Louise Fines of 4110 Avondale Street said she was representing a group of people attending the meeting representing Laura Soelberg's right to have a garage sale. She said she had a petition to give to the council. Callison said a court hearing on the matter was scheduled for February 12, and noted it was inappropriate for the council to intervene in that process.

9. BIDS AND PURCHASES: None.

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

A. Claims for council authorization – January 14, 2008.

Allendorf moved, Wiersum seconded a motion to approve the January 14, 2008 claims which includes checks numbered 209076 through 209458, totaling \$1,661,454.65. All voted "yes." Motion carried.

B. Claims for council authorization – January 28, 2008.

Allendorf moved, Wiersum seconded a motion to approve the January 28, 2008 claims which includes checks numbered 209459 through 209813, totaling \$1,383,920.75. All voted "yes." Motion carried.

C. Twelve-month extension for filing of the HELEN COOLEY ADDITION at 2202 Meeting Street.

Allendorf moved, Wiersum seconded a motion to approve a twelve-month extension of the final plat approval. All voted "yes." Motion carried.

D. Final approval of APPLEWOOD POINTE OF MINNETONKA for United Properties Residential, LLC.

Allendorf moved, Wiersum seconded a motion to approve APPLEWOOD POINTE OF MINNETONKA final plat date-stamped December 24, 2007, subject to the following conditions:

1) Compliance with all preliminary plat conditions, including the specific conditions for release of the plat; and

- 2) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

E. Proposed orders for tobacco license stipulations.

Callison pulled the item. She said for two of the items there were two violations related to one sale. Those violations involved situations where a minor sold to another minor. Staff recommended the instances be treated as one violation, but as a second offense. Callison raised the option of a fine for the first violation to avoid giving the advantage of a lower fine for simultaneous violations. Schneider said when he read the council packet he agreed with Callison's point, but because the violations involved two aspects of the same incident the recommendation was appropriate.

Callison noted the item was on the consent agenda and asked the council if there was support to pull the item from consent and give the involved businesses a chance to respond. Wagner, Allendorf, Ellingson, and Hiller said they agreed with Schneider. Wiersum said he agreed with Callison.

Schneider moved, Wagner seconded a motion to approve issuing the Findings of Fact, Conclusion, and Order for each of the establishments listed below:

<u>Licensee</u>	<u>Establishment</u>	<u>Offense</u>	<u>Fine</u>
Erickson Oil Products, Inc.	Freedom Valu Center #57 17516 Highway 7	1 st : 9/19/06 2 nd : 6/26/07	\$500
Koehnen's Amoco	Koehnen's Amoco 17415 Minnetonka Blvd	1 st : 6/26/07 2 nd : 6/26/07	\$500
Snyder Drug Stores, Inc.	Snyder Drug Store #5066 14625 Excelsior Blvd	1 st : 9/19/06 2 nd : 9/19/06	\$500
Speilmann Standard, Inc.	Speilmann's Amoco 2711 Hopkins Crossroads	1 st : 6/28/07	\$250

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

11. Items requiring Five Votes:

A. Advance purchase of a sewer cleaning jet-truck.

Wiersum moved, Wagner seconded a motion to approve the amendment to the 2008-12 CIP for the accelerated purchase of the hydraulic sewer jet for the utility division. All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES: None.

13. PUBLIC HEARINGS:

A. Public hearing to consider applications by Applebee's Restaurants North LLC, for on-sale and Sunday on-sale intoxicating liquor licenses for Applebee's Neighborhood Grill & Bar, 12653 Wayzata Boulevard.

Gunyou gave the staff report.

Callison opened the hearing at 6:42 p.m.

Wiersum moved, Hiller seconded a motion to continue the hearing to February 25, 2008. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Items concerning Crossroads Corporate Center at the southeast corner of the I-394/County State Aid Highway 73 (CSAH 73) intersection, for Opus Northwest LLC:

Wiersum excused himself at 6:44 p.m. due to a conflict of interest.

Gunyou noted the item was previously before the council in December. The proposal was subsequently revised by the applicant, who has now asked the council to reconsider the new proposal. The staff report was revised based on the applicant's changes.

Wischnack gave the staff report.

Wagner asked for more information about construction management of the project and any after hour lighting requirements for the parking ramps. Wischnack said there is a required construction management plan that documents the developer's and contractor's commitment about hours of operations, construction issues and access to the site. The plan will be provided to area

residents. The lighting is at zero foot candles at the property line in both the previous proposal and the current proposal. Wischnack said further work could be done with the applicant to further reduce the lighting needs on the site.

Wagner said a few residents asked about enclosing more sides of the parking ramps. Wischnack said because of building and fire code regulations the proposed ramps are likely at the maximum without requiring sprinkling for the entire structures and also providing mechanical ventilation.

Wagner asked for staff comment on the location of the northeast ramp. The previous proposal had a 20 foot setback. The current proposal meets all the current guidelines with a 50 foot setback. Wischnack said there would be less visibility of the ramp the further to the north the ramp is located. Staff found adequate hardships with the previous proposal and supported a variance.

Allendorf said he serves on the I494 Corridor Commission and although the proposal is not located on I494, commission staff is available for traffic demand management (TDM) plan review as well as monitoring. He asked if city staff talked with the commission staff about their willingness and availability to look at the TDM plan. Community Development Director Ron Rankin said he talked with Melissa Madison the executive director of 494 Commuter Services about the information Opus provided outlining the TDM plan commitment for the development. He said Madison felt Opus' proposal includes all the key components of an effective TDM plan and is interested in working with Opus in evaluating the plans as the details are fleshed out.

Callison asked for clarification on the staff recommendation for fencing by either the south or east parking ramp. Wischnack said the staff recommendation was to eliminate the fencing. Callison also asked for clarification on the recommendation for the number of access points. City Engineer Lee Gustafson said the recommendation was for two access points primarily because the previous proposal had two access points. That scenario was approved by the council so staff used that as direction that two access points were acceptable to the council. He said the new proposal would work with either one or two access points.

Callison said another concern raised by the neighborhood was safety on County Road 73. At the previous meeting there was discussion about bypasses. She asked if staff looked further at the issue. Gustafson said no further work had been done since the last

council discussion. If the council approved the proposal staff could meet with the county to review potential changes to County Road 73. Wagner said as part of that process he would like the discussions to include neighborhood groups.

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

Tom Shaver from Opus Corporation said the company has worked with residents and the city to address concerns. He said a lot of time has been devoted to putting together a TDM commitment. There was a neighborhood meeting on January 15 and the proposed screening on the parking ramps addresses the latest concerns.

Dennis Larson of 1512 Wilshire Drive said he looked at his notes from meetings held 20 years ago. The recommendation for the three story building height limit involved concerns raised by the fire department. Larson said one concern he had was if snowplowing service would still be provided if Wilshire Drive becomes a private drive. Wischnack said maintenance would be provided up until the redevelopment occurs.

Jim Fredkove of 1502 Archwood Road said he didn't understand how the original proposal was approved by the planning department with parking ramps adjoining R-1 neighborhoods with no reasonable screening or buffering. He said residents on Archwood Road and Oak Knoll Terrace have worked hard to mitigate the issue but it has been an uphill battle and this decision will set a precedent for future developments. The ramp on the northeast side could be lowered even further. Fredkove said his property value will be negatively impacted by the project. He noted in the proposed approval the developer has until December 2009 to start the project. His understanding is the project would start in spring of 2008. He asked if all the homes will be demolished immediately when the development work begins. Callison asked Fredkove if he preferred a fence between his property and the ramp. He said he and his neighbors prefer a fence on the northeast side. Wischnack confirmed Callison's understanding that there are 45 trees proposed along the east side of the ramp. The trees will be a couple of rows deep.

Wischnack also confirmed the December 2009 date is the latest the development work can start per the city ordinance. The developer is proposing an earlier start date. Shaver said the intent is to begin work in spring or early summer. Demolition and full preparation to the entire site will be done at that time. Callison asked if Opus was

agreeable to screen the east side of the ramp with a fence. Shaver said a fence or a full enclosure or both is acceptable. He said the company is also willing to move the position of the ramp back to the original proposal if that is desired.

John Peterson of 1409 Wilshire Drive said about half of the residents on the surrounding streets moved in after the guide plan was approved. Those people all had the opportunity to learn that there was going to be an office development on the site.

Dennis Strand of 10412 Crestridge Drive said section 3-9 of the comprehensive plan requires the city to act to protect land values and quality of life of affected neighbors while allowing reasonable use. Section 3-11 requires sensitive building placements, appropriately scaled structures and buffers from incompatible types of land development. He asked the council to discuss how the project fits in with those sections of the comprehensive plan.

Donna Fredkove of 1502 Archwood Road said PUDs require approval by a supermajority. The reason for this is because PUDs are a deviation from standard land use planning. She said the guide plan requires the office to be low intensity. It also requires preservation of the rustic characteristic of single family homes. She said the development is not low intensity and will not preserve the rustic characteristic. Currently the ramp will be visible from her screened porch. Moving the ramp further north would hurt her neighbor. One of the biggest problems with the process is that it has pitted neighbors against each other. She said the process favors the developer because they have more resources than homeowners. She asked for reforms in the process to give more voice to homeowners.

Julie Cole of 11014 Oak Knoll Terrace said she brokered the idea of purchasing the wetland. She inquired how much Opus would pay for the wetland. There is a property on Archwood Road that would be part of the Belmont Road vacation. She inquired if the property owner will get the land. Cole said the project will put more traffic at an already dangerous intersection. A poor precedent would be set for future development by putting parking ramps right next to R-1 housing. The project may also create drainage problems in the neighborhood. Wischnack said the cost of all the parcels is \$53,500. She said there are no proposed vacation proceedings east of the project area.

Allendorf asked how Opus is compensating the city for the parcels. Wischnack said the company is purchasing the parcels. Wagner

asked if the Archwood Road property owner had the right to petition the city for vacation because of the Belmont Road vacation. Wischnack said the owner has the right to petition.

Walter Rockenstein an attorney representing Opus said three issues were raised at the December 17 council meeting. The traffic issue has been addressed by reducing the size of the building and with the traffic management plan commitments. The building size has been reduced. The company has tried to further improve the buffering by moving the south ramp further back and agreeing to put in solid facing. They will also put in trees and fencing if that is what is decided. Rockenstein said the proposal complies with all the ordinances except for a variance requested by the city and the neighborhood to lower the ramp.

Gordon Olson of 11102 Oak Knoll Terrace said that of those in attendance the city staff, the council, the developers are all paid. Residents are volunteers. He said traffic is a direct byproduct of density. The proposal will increase density by adding 1,000 plus parking spaces. Olson said throughout the process he offered reasonable, logical, and cost effective alternatives to make the project more palatable to affected residents. Residents have asked for examples of other areas where parking ramps are adjacent to R-1 property. The one example they were given is 13911 Ridgedale Drive. That is a poor example because the two story parking ramp is about 35 feet down a steep embankment below the backyards of the R-1 property.

Donald Applebee of 1501 Wilshire Drive said no matter what is decided not all the neighbors will be satisfied and it is time to move forward.

Callison closed the hearing at 8:02 p.m.

Hiller said he was unclear on the process for moving the easterly parking ramp further north and providing for more enclosure of the ramps if there was a consensus to do so. Callison said the council discussion might clarify if there was consensus for those items.

Wagner said in his conversation with the neighbors, the southerly residents on Oak Knoll want a solid ramp wall. He indicated there is not a consensus on what should be done with the location of the north easterly ramp. He said he would also like to have a council discussion on the lighting of the ramp.

Allendorf asked Wischnack to comment from a planning standpoint the better location for the north easterly parking ramp. Wischnack said less of the ramp will be visible to the residents as the ramp is moved to the north. She said the amount of setback is subjective.

Schneider said that while he understood the applicant's desire to come to the council with a proposal that didn't require a variance, he thought it was counterproductive to the neighborhood for the council not to grant a variance for a 20 foot setback to reduce the exposure of the higher end of the ramp on the south and to allow the ramp to fit better on the site.

Allendorf said the residents have not given themselves enough credit for improving the project. He said the neighbors should compare the original proposal with the current one. Changes have been made to make the proposal as friendly as possible for a parking ramp to be located next to R-1. History has shown that property values located next to similar projects have not gone down.

Schneider said he previously supported the project with reservation over the height of the parking ramp. The question was over the tradeoff of having the project die and having someone else come along with a project with more parking lots and lights and buildings closer to the residential properties. The amended proposal is for a significantly reduced density project and improvements to mitigate the impacts of the parking ramps. He didn't agree with the suggestion to add a fence along the north ramp because over time fences have maintenance issues. He said the parking light issue is challenging because common wisdom says not to sacrifice safety of those who might have to work late and come out to a dark site. There are possible alternatives such as requiring those who work late to move their cars to the lower levels of the ramp that can be lit. Another alternative is to limit the number of lights that are on. He said he was comfortable allowing staff figure out solutions to the lighting issues. He agreed with Allendorf that the neighbors have been heard and many of their suggestions have been implemented.

Hiller said he thought the parking ramps were appropriate given the options. He agreed the neighbors will suffer a loss because the ramp will impede their view. He said the traffic issues have been reasonably resolved with the lower density and other traffic mitigation. He said it was an impressive process involving Opus, the council and the residents. The participation of residents and Opus' willingness to address issues resulted in a better development.

Ellingson said the neighbors did have a positive impact in the process and the developer showed cooperation in addressing concerns. He said he wouldn't have necessarily guided the area for office but the decision was made in the past and should be respected. He originally voted against the proposal because of concern with additional traffic, pollution and the height of the building. The developer responded to those concerns. He encouraged the neighbors to remain involved.

Wagner agreed with Schneider that the lighting issues are best left for staff to address. He originally voted against the project because of traffic density and the overall density of the entire project. He said the area is one of the most planned areas of the city and in essence there was a contract with the neighborhood related to the development that the original proposal violated. He agreed the neighborhood had a positive impact on the process. The density was reduced by 30,000 square feet. The traffic was reduced by 18 percent. The screening of the ramps has improved. There have been other small improvements like burying the power lines. The current proposal follows the guide plan and ordinances. He said residents that live south of the development are concerned with additional traffic but Hopkins Crossroads will never again be a small county road because of the nature of the city's development. He said he didn't agree with the ordinance that requires only a 50 foot setback for a parking ramp located next to residential and will encourage the council to look at the ordinance in the future. He said the proposal has been improved and meets the city's ordinances.

Callison said she looked at the number of changes that have been made to the project. Originally a residential project was proposed but was opposed by many of the neighbors. Utilities have been placed underground. Fences and a vegetation buffer have been added. Concerns over maintenance of the pond led to a maintenance agreement. A proposed roundabout was eliminated. The southern ramp was lowered. A story of a building has been removed. The ramps will each have one side enclosed. The ramp was moved to the west. A complaint that Opus wouldn't meet with residents led to a special meeting to make sure information was shared. She said there has been a lot of give and take in the process to adjust the project. The intent of the comp plan is to recognize that different land uses may conflict but to try to work out the differences so the conflicts are minimized. She said the council spent a lot of time trying to minimize the conflicts. Although the project is not ideal, it is reasonable and meets the ordinances and the comp plan guidelines. She said she didn't support the neighbor's purchase offer because it would break up the parcel and

would give one neighborhood control over another. She is reluctant to move the ramp to the north because it would benefit some and impact others. She would support a fence being added to the north side because it is important to the neighbors.

Allendorf moved approving the project with the changes in the addendum; with a 30 foot variance for the east parking ramp; and to include a fence as part of the development. Schneider seconded the motion. Wagner amended the motion to change the variance to 15 feet. There was no second to Wagner's motion.

Schneider suggested including a fence on the property line to be maintained by the homeowners.

Bergit Carlson of 1412 Archwood Road said the neighbors had not discussed a fence. Schneider suggested not including a fence but adding more trees. Wischnack said more trees could be added to the landscape plan.

Allendorf moved , Schneider seconded a motion to:
approve the project with a 30 foot variance for the east parking
ramp; give staff discretion to determine the proper lighting for
the ramps and to

1) Adopt Ordinance No. 2008-02 authorizing the purchase and
sale of certain property in the area of I-394 and Highway 73.

Approval is based on the following findings:

a. The city will retain drainage and utility easements
over all areas as required by the city engineer.

b. The applicant will reimburse the city for all costs
associated with the purchase and sale of the
properties in question.

2) Approve the preliminary plat date-stamped September 28,
2007, with revisions shown in the staff report. Approval is
based on the finding that the plat meets the required
standards and ordinances and is subject to the following
conditions:

a. Complete the following before final plat approval:

(1) Submit proof-of-ownership of each of the
properties within the proposed plat.

(2) Show the following on the final plat:

(a) The following drainage and utility
easements:

(i) 20-foot easement over storm
sewer outlet from the wetland on
the south end of the site.

findings in the January 28, 2008, staff report. Approval includes the following variance:

Flood plain separation requirement for the south ramp.

This ordinance is based on the following findings:

- a. The rezoning would be consistent with the City's guide plan.
- b. The rezoning would be consistent with the public health, safety, and welfare.
- c. The proposal would meet the required standards and ordinances for a site and building plan approval.
- d. The proposed variance associated with the development is reasonable. The proposed reduction in exposed height of the Building I (South) parking structure is appropriate:
 - (1) This reduction in height, in response to neighborhood concerns, results in a non-conforming floodplain separation. The conflict between aesthetic value and technical requirement results in a practical difficulty.
 - (2) The triangular shape of the subject property and the ponding area create a unique circumstance. The reduction of the exposed, above grade portions of the structure is not a common issue for other redevelopment properties.
 - (3) The reduced flood separation can be mitigated through appropriate building design.
 - (4) The subject site is currently residential properties guided for office development. As such, while the redevelopment of the site itself may alter the visual character, the floodplain separation variance itself would not.

The rezoning, master development plan, and final site and building plans are subject to the following conditions:

- a. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan dated December 20, 2007
 - Grading plan dated December 20, 2007
 - Landscaping plan date-stamped January 8, 2008
 - Building elevations for Building I (South) date-stamped January 23, 2008
 - Building elevations for Building II (North) date-stamped January 23, 2008
 - Utility plan date-stamped November 1, 2007.

The above plans, as modified by the conditions below, are hereby adopted as the Crossroads Corporate Center master development plan and as final site and building plans.

- (1) The site plan must be revised to reflect:
 - (a) Sidewalk locations mutually agreeable to the applicant and city staff. These locations should include:
 - Along the frontage road;
 - A connection from Oak Knoll Terrace North; and
 - A connection into the office development.
 - (b) A minimum 35-foot setback from the delineated edge of the wetland on the south side of the site.
 - (c) The proposed trail adjacent to the stormwater pond must be outside of the required 25-foot wetland buffer if impervious. The trail may be inside the wetland buffer if impervious.
- (2) Parking structures:
 - a) The south parking structure must:
 - (i) Meet all requirements (excluding low floor) of the Floodplain District Ordinance 300.24.9.h for an accessory structure.
 - (ii) Be flood proofed and flood protected in accordance with all current building codes.
 - (b) The south façade of the Building I (south) structure must be fully enclosed.
 - (c) The east façade of the Building II (north) parking structure must be fully enclosed.
- (3) The landscape plan must:
 - (a) Meet minimum value requirements as outlined in city code.
 - (b) Not include Colorado spruce. Black Hills or Norway spruce must be substituted.
 - (c) Include additional native tree plantings south and east of the stormwater pond.
 - (d) Include wetland buffer seed mix acceptable to the city's natural resources manager.
 - (e) Include 10 trees that will be added to the eastern portion of the property adjacent to the northerly parking ramp, either on

- the adjoining owners or the Developer's property.
- (4) The utility plan must include:
- (a) Appropriate "Private" labels on all on-site utilities.
 - (b) Include a sanitary manhole 10-feet south of the existing watermain service location for the apartment located east of the subject site.
 - (c) Include a watermain gate valve on the south property line.
 - (d) All old sanitary, watermain, storm sewer, services, and other utilities on-site must be removed. Plans must label these removals and indicate all disconnects, necessary plugs, caps, bulkheads, etc.
 - (e) Existing overhead utility lines within existing Belmont Road right-of-way must be buried.
- (5) Area soil borings provided by the developer indicate the current water table at approximately the 928 and 931 elevations. It should be understood that further evaluation must be made to clearly identify the water table elevation in the immediate area of the parking ramp. The plans must accurately reflect this elevation, and all building code and permitting requirements must be met.
- (6) The property owner must enter into a hold-harmless agreement with the city, which documents that the city is not liable for flood damage as a result of granting a variance from the minimum low-floor elevation. The agreement will be drafted by the city attorney, and filed with the property's chain of title.
- (7) No drainage of the wetland is permitted. A licensed engineer must provide certified plans and details showing how this wetland elevation will be protected. The plans must also include details outlining measures to protect the wetland throughout the construction process.
- b. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.

- (1) The following must be submitted for the grading permit to be considered complete:
 - (a) The following documents for the city attorney's review and approval:
 - (i) A maintenance agreement. The agreement must:
 - Identify maintenance standards for landscaping at the east and southern portions of the property abutting parking structures.
 - Identify replacement procedures for materials that are damaged or die.
 - (b) Final grading and drainage plans, accompanied by all associated calculations and borings. Final plans must meet all the requirements of the city engineer.
 - (c) Final site, utility, and erosion control plans for staff approval. Final plans must meet all the requirements of the city engineer.
 - (d) Final landscape, tree replacement, and irrigation plans. Final plans must meet all requirements of the city's natural resources manager.
 - (e) A stormwater pollution prevention plan for staff review and approval.
 - (f) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance.
- (2) Prior to issuance of a grading permit:
 - (a) 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 applicant. Through this document the applicant 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.
- (b) Submit a letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid cost to comply with grading permit requirements and restore the site.
 - (c) Install a temporary rock driveway, erosion control, and tree and wetland protection fencing for natural resources staff inspection. These items must be maintained throughout the course of construction.
 - (d) The final plat must be released by the city and filed with Hennepin County for recording.
- (3) Permits may be required from other outside agencies including, but not limited to, Bassett Creek Watershed District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
- c. Prior to issuance of a building permit, the following must be submitted:
- (1) A park dedication fee of \$77,975.63.
 - (2) A letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid cost of all required landscaping.
 - (3) A final illumination plan. The plan must include shielded light fixtures and shorter light standards on the top decks of each parking structure.
 - (4) All required hook-up fees.
 - (5) Proof of having recorded this ordinance with the county.
 - (6) A waiver of assessment appeal signed by the applicant and a petition requesting that the city construct the roadway improvements.
- d. Prior to issuance of a certificate of occupancy, the applicant must submit a travel demand management plan for staff review and approval.
- e. The property owner is responsible for replacing any required landscaping that dies.
- f. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage

- areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- g. Appropriate traffic control signs, as determined by the city engineer, must be installed at site access point(s).
 - h. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
 - i. Construction must begin by December 31, 2009, unless the city grants a time extension. Failure to begin construction will render this approval null and void.
- 5) Approve the applicant's appeal of the maximum trip generation outlined for the properties at the southeast corner of the I-394/CSAH 73 intersection. Approval is based on the following findings:
- a. By city code, developments that exceed the established maximum of p.m. peak hour trips established by the PID ordinance may be constructed if:
 - (1) Concurrent road system improvements are installed and paid for by the developer; and
 - (2) The roadway improvements achieve a level of service (LOS) at area intersections consistent with LOS that would have existed without the excess trip generation.
 - b. Though the applicant's proposal would generate more vehicle trips than specified in the PID ordinance, the vehicle trips would be mitigated by infrastructure upgrades. The applicant must bear all costs associated with the infrastructure upgrades.
 - c. Upgrades to the surrounding roadway infrastructure will maintain levels of service consistent with levels of service that would have existed without the increase in trip generation.

Allendorf, Hiller, Schneider, Ellingson, Wagner and Callison voted "yes." Wiersum was excused. Motion carried.

Callison called a recess at 8:36 p.m.

Callison called the meeting back to order at 8:50 p.m. Wiersum returned.

B. Review of park renewal master plan for Big Willow Park.

Parks and Trails Manager Perry Vetter gave the staff report.

Wagner said one of the neighborhood comments concerned a connection with the Babe Ruth fields south of the park across Minnetonka Boulevard. The connection has also been discussed as part of the Minnehaha Creek visioning plan. Vetter said the connection was discussed at the neighborhood meetings at both Big Willow Park and Guilliams Park. The resources needed require a partnership and thus it is better suited for the creek corridor project that involves partners such as Hennepin County, the Three Rivers Park District and the watershed district.

In reading the connection comments Wiersum said there is a safety concern crossing Minnetonka Boulevard. He asked if currently there is a crosswalk and if not if there is an interim step that could be considered to enhance safety. Vetter said Minnetonka Boulevard is a county road and due to the speed limit, the county will not allow a crosswalk anywhere except for a controlled intersection. The nearest crosswalk would have to be at County Road 73 or Shady Oak Road. The alternatives are either an overpass or an underpass.

Allendorf asked if the interaction between the two parks has increased over the years because in the past there was not a lot of people interacting between the parks. Vetter said there is not a lot of scheduled interaction but he has heard several families have multiple children involved in different organizations that use the two parks. Allendorf said the two parks are about a quarter of a mile apart so before the city spends a lot of money on an overpass he would like to figure out how many families would benefit from a connection. Gunyou said as the corridor planning proceeds there will likely be a greater need to have a connection between the two parks, and that such a project would require regional resources.

Callison said the lighting was upgraded for the fields in the recent past. She asked if there has been any feedback from the neighbors. Vetter said the lighting was installed by the Big Willow Baseball Association around six years ago. Vetter said he has only had one complaint related to when the lights were left on all night.

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

C. Review of park renewal master plan for Guilliams Park.

Vetter gave the staff report.

Allendorf said when the girl's softball field was proposed there were concerns from the neighbors in the northeast townhouse project. He asked if there have been complaints from the residents about noise from the field. Vetter said there have been a number of complaints. There have been times when staff has had to go in and make sure people are not using the fields outside the operating policy. Vetter said lighting was proposed for the Babe Ruth field a few years ago but was rejected by the Park Board.

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

D. Items concerning the reconfiguration of lot lines at 5121 and 5125 Baker Road (proposed Lots 1 and 2, Minnetoga Estates).

Wischnack gave the staff report.

Callison said it was unusual to have the driveway access on properties that are not part of the division. She asked if there was permission from the property owners. Wischnack confirmed the property owners have granted permission. Wiersum said he too thought the driveway access was unusual. Wischnack said proper documentation of the easement is required before any permitting will be issued.

Maressia Twele of 12567 Jorissen Road said her new home will be located at 5121 Baker Road. She has owned the property for 14 years. The driveway easement has been in place but is being updated. She asked for clarification on the change to R-1. Wischnack said while the city's moratorium is in place all property that is subdivided must be rezoned to preserve the qualities of the residentially zoned area. She said Twele's property currently meets the standards. The change is required for the city's documentation for future issues. Callison added the change is in recognition of the moratorium and the city does not want the property to remain a PUD with different standards than the neighbors.

Schneider moved, Ellingson seconded a motion to:

- 1) Adopt Ordinance No. 2008-04 approving the proposed rezoning from R-1 to PUD. This ordinance is based on the following findings:

- a. The rezoning would be consistent with the city's guide plan;
 - b. The rezoning would be consistent with the public health, safety, and welfare.
 - c. The rezoning, and resulting subdivision, would be consistent with the intent of the current development moratorium.
- 2) Grant preliminary approval to Minnetoga Estates, date-stamped December 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) All existing drainage and utility easements shall be vacated and new drainage and utility easements shall be dedicated on the proposed plat as required by the city engineer as follows:
 - (a) Drainage and utility easements are required at, or above, the 100-year flood elevation (899.0-foot) or above the delineated wetland, whichever is greater.
 - (b) Drainage and utility easements required for all public utilities, 20-foot minimum width centered on the utility.
 - (c) Drainage and utility easement required for access across 5113 and 5117 Baker Road, 20-foot minimum width centered on proposed and existing driveway easement.
 - (d) Drainage and utility easements required on side and rear property lines, 7-foot and 10-foot respectively.
 - (e) Drainage and utility easements required to be rededicated for 5125 Baker Road.
 - (2) Private easements shall be obtained and established by deed as required by the city engineer as follows:
 - (a) Private driveway access easement across 5113 and 5117 Baker Road, 20-foot minimum

- width centered on proposed and existing driveway.
- (b) Private utility easements for private utility lines across 5113 and 5117 Baker Road, 20-foot minimum width centered on proposed utility or 10 feet beyond outside edge of parallel utilities (30-foot easement required for joint sanitary sewer forcemain and water service line).
- (c) Temporary construction easements encompassing all construction limits including, but not limited to, utilities, grading, tree removal, silt fence installation.
- (3) All existing and proposed topography, elevations, contours, easements, proposed features, delineations, etc. shall be based on a certified survey (in lieu of the city topography mapping). Respective city benchmarks shall be used and labeled on the plans.
- (4) City of Minnetonka standard construction details shall be used and shown in the plans.
- 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 must be prepared by an attorney knowledgeable in the area of real estate, and submitted for the approval of the city attorney:
- (a) Title evidence that is current within thirty days before release of the final plat.
- (b) Restrictive covenants to be recorded against the individual lots within the plat. The covenants must include conditions that have not been met as of the release of this plat.
- 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. A grading permit is required for extension of
the private drive extension from Lot 3, Block 1,
Marga Estates to proposed Lot 1, Block 1,
Minnetoga Estates. Unless authorized by
appropriate staff, no site work may begin until a
complete grading permit application has been
submitted, reviewed by staff, and approved.

(1) The following must be submitted for the
grading permit to be considered
complete:

(a) Soil borings are required for
several areas to ensure proper
design including wetland
(impacted areas), driveway (fill
areas), and house pad.

(b) Final site, roadway, utility, and
erosion control plans must be
submitted for staff review and
approval.

(i) The utility plan must
include appropriate
"Private" labels on all
sanitary sewer forcemain.

(c) A stormwater pollution prevention
plan for staff review and
approval.

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

(2) Prior to issuance of a grading permit:

(a) 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 applicants.
Through this document the
applicants 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.
- (b) Install a temporary rock driveway, erosion control, and tree and wetland protection fencing for natural resources staff inspection. These items must be maintained throughout the course of construction.
- (3) Permits may be required from other outside agencies including, but not limited to, Nine Mile Creek Watershed District (grading and erosion control permit), Minnesota Department of Health (water service permit), Minnesota Pollution Control Agency (sanitary sewer permit), Minnesota Pollution Control Agency (NPDES permit), Army Corp of Engineering, and Minnesota Department of Natural Resources.
- d. Complete the following before issuance of a building permit for proposed Lot 1, Block 1, Minnetoga Estates:
- (1) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
- (2) Submit the following documents:
- (a) A recorded copy of the rezoning ordinance, preliminary plat, and restrictive covenants.
- (b) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
- (3) Install a temporary rock driveway, erosion control, and tree protection and wetland protection fencing for each lot. These items must be maintained throughout the course of construction.

- (4) Install heavy-duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.
- (5) Pay a hookup fee for sanitary sewer and water.
- (6) The house to be located on proposed Lot 1 must be protected with 13D automatic fire sprinklers.
- (7) Prior to issuance of a grading permit:
 - (a) The final plat must be released by the city and filed with Hennepin County for recording.
- e. The following specific development requirements apply to Lot 1, Block 1, Minnetoga Estates:
 - (1) Lot 1 must be custom graded at the time of building permit. Only grading for the private drive, utilities, and drainage improvements will be permitted prior to issuance of a building permit.
 - (2) Minimum low floor elevation shall be 901.0-feet (2 feet above 100-year flood elevation, 899.0). The minimum driveway elevation shall be 900.0-feet (1-foot above 100-year flood elevation, 899.0).
- f. During construction, the streets must be kept free of debris and sediment.
- g. Sixty-seven inches of trees are required to be replanted prior to issuance of the certificate of occupancy.
- h. The proposed storm sewer shall be designed as a continuous system of conduit from the existing 18-inch CMP outlet to the proposed outlet location south of the proposed driveway. All hydrology and hydraulic design computations shall be submitted for review and approval by the city engineer.
- i. The sanitary and water services shall be private up to the connection point into existing city public utilities.
- j. The applicants must obtain a letter of permission from the property owner of 5117

Baker Road, which indicates the owners' acceptance of tree planting on that property.

- k. Final plans, specifications, and design computations shall be submitted to, and revised as required, by the city engineer.
 - l. 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.
- 3) Introduce the ordinance which approves the proposed change in the wetland overlay district boundary. This ordinance is based on the following findings:
- a. The wetland mitigation associated with the wetland impact meet the standards of the city code and the Wetland Conservation Act.
 - b. The mitigation area for the wetland is being compensated within the same sub-watershed district as the wetland being altered.
 - c. The mitigated wetland will ultimately have a higher function and value than the portion being filled.
- 4) Adopt Resolution No. 2008-004 which approves:
- Wetland and Floodplain Alteration Permits.
 - Conditional Use Permit for excavation and fill greater than 20 cubic yards within the floodplain.
 - Wetland setback variance from 20 feet to 5 feet for construction of a driveway in a wetland overlay district.
- This resolution is based on the following findings:
- a. The wetland replacement would benefit the city by creating a better quality wetland than currently exists.
 - b. The applicants' have indicated that once the home is built they intend to put a larger area of their land into conservation easement.
 - c. The applicants' proposal meets the general and specific standards for granting of a conditional use permit for excavation and fill greater than 20 cubic yards within the floodplain.
 - d. Proposed Lot 1 is a landlocked parcel. Vehicular access to the site would be impossible without construction of a driveway requiring a variance. This presents a practical difficulty.
- Approval is subject to the following conditions:
- a. Obtain approval from all appropriate agencies before construction.
 - b. Obtain approval and comply with the requirements for the Wetland Conservation Act replacement plan as

- presented in the plans dated September 10, 2007, and as amended.
- c. The mitigated wetland must have 5:1 side slopes and an undulating bottom. The final construction drawings must be revised to reflect this.
 - d. The mitigated wetland must be subcut one foot below the final grade to allow placement of hydric soils. The final construction drawings must be revised to reflect this.
 - e. The restored wetland area should not be subcut since hydric soils already exist. Only minor alteration to the grade will be allowed in this area. The final construction drawings must be revised to reflect this.
 - f. A soil scientist must be on site at the time of hydric soil replacement in the mitigated wetland area; city staff must also be notified in order to ensure compliance with the wetland replacement plan.
 - g. All salvaged hydric soils must be treated to ensure that they are free of invasive weed seeds such as thistle and reed canary grass.
 - h. The construction plans must be revised to indicate a BWSR W2 seed mix in the specification and in the text under the "Notes" section. The sedge component of the W2 mix must be enhanced.
 - i. Applicants must provide wetland conservation act forms, including: affidavit of land ownership, declaration of restrictive covenants, and consent to replacement wetland.
 - j. Applicants must provide wetland monitoring reports annually, for a period of five years or until the technical evaluation panel accepts the mitigated wetland. At the end of the monitoring period there shall be no more than 15% invasive species present.
 - k. Applicants must provide a cash escrow or letter of credit in the amount of \$7,500 (\$1,500 per year x 5 years) to ensure compliance with the wetland monitoring schedule.
 - l. Applicants must provide a letter of credit for 150% of the estimated cost or 125% of the actual bid for the wetland and floodplain replacement to be constructed. The letter of credit will be reduced based on establishment of the replacement wetland.
- 5) Adopt Resolution No. 2008-005 which approves the variance to permit a lot with no frontage on public right-of-way, which accesses by permanently recorded driveway easement. This resolution is based on the following finding:

- a. The applicants' proposal meets ordinance criteria for granting of a variance to permit a lot with no frontage on public right-of-way, which accesses by permanently recorded driveway easement.

All voted "yes." Motion carried.

E. Administrative hearing regarding Tobacco General Inc.

City Attorney Desyl Peterson gave the staff report.

Glenn Binder, a Hennepin County Public defender who works at 12601 Ridgedale Drive, said he was representing Adly Ohalley the owner of the tobacco store. Ohalley was not contesting a violation took place. Binder said Ohalley's son was working at the time of the violation. It is rare when Ohalley is not working at the store. The son thought he was selling to a person over the age of 18 and there was no criminal intent. The son was criminally prosecuted and the charge was amended to a petty misdemeanor resulting in a \$200 fine. Binder said he was seeking a waiver of an additional fine.

Peterson said under state law there are two kinds of fines - one is a criminal penalty and the second is a civil penalty. The civil penalty applies to the licensee. State law mandates the council impose a \$75 fine on a first offense for the civil action. The city's ordinance stipulates a fine of \$250. She said the council would have to grant a variance and there is no provision to do so.

Schneider said he doesn't recall an instance when someone has admitted to intentionally selling tobacco to an underage person. He said the license holder is responsible for supervising employees to make sure they comply with the law.

Wiersum said the city has a reputation of being diligent in enforcing violations involving the sale of liquor or tobacco to minors.

Callison said she understood the unfortunate circumstances but the issue is about taking responsibility. She said it is important that every employee is trained so that youth do not have access to tobacco products.

Schneider moved, Allendorf seconded a motion to adopt the proposed findings of fact, conclusion, and order. All voted "yes."
Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointments to Minnetonka boards, commissions and committees.

Callison moved, Wiersum seconded a motion to approve the following appointments to the Minnetonka Boards, Commissions and Committees:

- Ellen Weishar Cousins to the EDA, to serve the remainder of a six-year term, effective February 1, 2008 and expiring on January 31, 2010.
- Sue Sjeklocha, to the planning commission, to serve a two-year term, effective February 1, 2008 and expiring on January 31, 2010.
- Bob Walker, to the planning commission, to serve a two-year term, effective February 1, 2008 and expiring on January 31, 2010.
- Aimee Blatz, to the planning commission, to serve the remainder of a two-year term, effective February 1, 2008 and expiring on January 31, 2009.
- Carl Adamek, to the police advisory committee, to serve a two-year term, effective February 1, 2008 and expiring on October 1, 2009.
- Ron Timm, to the senior citizen advisory board, to serve the remainder of a two-year term, effective February 1, 2008 and expiring on May 31, 2009.
- Paul Kobs to the community commission, to serve a two-year term, effective February 1, 2008 and expiring on January 31, 2010.

All voted "yes." Motion carried.

16. ADJOURNMENT.

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

Respectfully submitted,

David E. Maeda
City Clerk