

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MAY 5, 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 Terry Schneider, Bob Ellingson, Tony Wagner, Dick Allendorf, Brad Wiersum, James Hiller, and Jan Callison were present.

4. APPROVAL OF AGENDA.

City Manager John Gunyou noted addenda to items 14A, 14B, and 14C.

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

5. APPROVAL OF MINUTES: April 7, 2008 board of review meeting.

Wiersum moved, Allendorf seconded a motion to approve the minutes of the April 7, 2008 Minnetonka City Council Board of Review meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Presentation of Community Action Recognition Award to Teri Wold.

Wiersum read the recognition. Callison presented the award to Wold and thanked her for all her work.

Wold said it is difficult for people to know what having a child in the military is like unless you actually have one. She thanked her husband, three sons, and daughter-in-law for allowing her to devote time to her organization.

B. Retirement recognition of Virgil Herrmann, Project Engineer.

Wagner read the proclamation. He thanked Herrmann for all his work on behalf of residents. Callison wished Herrmann well in his retirement.

Herrmann thanked the council and his colleagues for their support. He said he will miss working for the city.

Schneider said he has the opportunity to work with Herrmann for around 25 years. During that time there have been a number of challenging situations. Schneider said without exception every resident he has spoken with spoke highly of Herrmann.

C. Proclamation declaring May 11-17, 2008 as national police week.

Allendorf read the proclamation.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings. He introduced Mike Norton, an attorney from Kennedy and Graven, who was filling in for city attorney Desyl Peterson.

Callison said she and others on the municipal legislative commission met this past week with Governor Tim Pawlenty. There was a conversation about transportation and property tax issues.

Callison said she also testified at the legislature a couple of weeks ago on a proposal that would provide property tax relief to homeowners but also would remove the deductibility of property taxes from income tax deductions.

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

No one appeared.

9. BIDS AND PURCHASES:

A. Consideration of bids for the McGinty Road Retaining Wall reconstruction, Project No. 4764.

Gunyou gave the staff report.

Callison asked if the additional cost will cause the city not to be able to complete any other projects. Gunyou responded it would not, noting there is a good balance in the park dedication fund.

Schneider moved, Wagner seconded a motion to amend the CIP to cover the increased costs of the project and award of bid # 2008-

002-PW, Project No. 4764 to Sunram Construction, Inc. for the McGinty Road Retaining Wall reconstruction with an alternate bid of \$179,490.69. All voted "yes." Motion carried.

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

A. Claims for council authorization – April 28, 2008.

Allendorf moved, Wiersum seconded a motion to approve the April 28, 2008 claims which includes checks numbered 211448 through 211737, totaling \$1,250,345.63. All voted "yes." Motion carried.

B. Conditional use permit for a temporary outdoor market at 10301 Bren Rd W.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2008-043 approving a conditional use permit for temporary outdoor sales at 10301 Bren Road West. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) By July 1st of each calendar year, the applicant/property management must:
 - a. Submit confirmation of off-site parking and transportation agreements.
 - b. Come to a written agreement with the City of Minnetonka Police Department to provide a traffic control officer throughout the temporary market. The officer will be provided at the applicant's expense. Lack of such agreements will render this conditional use permit null and void.
- 2) The applicant must obtain any necessary permits from the city's environmental health department for food service and/or sanitation.
- 3) Temporary outdoor sales are limited to the five days in August. Any additional temporary outdoor sales will require city council review of this conditional use permit.
- 4) Temporary outdoor sales area is limited to that area illustrated on the applicant submitted site plan date-stamped February 11, 2008. Any modification to the sales area which increases the total number of parking spaces occupied by the temporary outdoor sales will require city council review of this conditional use permit.
- 5) Through the temporary sale, the site must conform to all standards outlined in City Code 300.21.4(a) – Outdoor Storage, Display, Sales, or Servicing.

- 6) Any change to the property in terms of its use as a merchandise mark will render this permit invalid.
- 7) Any change to the approved conditional use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit. Should the city receive complaints regarding parking or traffic, the city may require the applicant to reappear before the city council. At that time, the city council may reasonably add or revise conditions to address any future unforeseen problems.
- 8) The applicant must agree to the above conditions in writing.
- 9) A violation of the terms and conditions of this conditional use permit will render this permit null and void.

All voted "yes." Motion carried.

C. Fire relief association investment policy.

Allendorf moved, Wiersum seconded a motion to approve the policy. All voted "yes." Motion carried.

D. Resolution ordering the abatement of nuisance conditions existing at 11421 Oakvale Road N and 5112 Willow Lane.

Community Development Director Ron Rankin reported that 11421 Oakvale Road N is now in compliance.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2008-044 ordering the abatement of nuisance conditions existing at 5112 Willow Lane.

All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES: None.

13. PUBLIC HEARINGS: None.

14. OTHER BUSINESS:

A. Items concerning a 10-lot subdivision of the existing properties at 16400, 16408, and 16416 Hidden Valley Road.

City Planner Julie Wischnack gave the staff report.

Wagner asked for clarification about how much discretion the council had relating to the 500 foot cul-de-sac extension. The staff report indicated six R1 lots could be built with the extension. He asked if the development meets all the criteria Wischnack listed, whether the council was required to approve the development or whether there was discretion similar to a variance request. Wischnack said the city code states the council may approve a cul-de-sac longer than 500 feet. The code doesn't state which criteria have to be met. She said the decision about the extension is similar to the PUD process.

Wagner said the staff report makes the assumption there is a legal right for six lots if there is a cul-de-sac extension. He asked if that is a specific right staff believes exists or if there is leeway because there is the requirement in the code. Wischnack said it was an assumption because an extension from any direction would be greater than 500 feet. Norton added one consideration is not to look at the 500 foot extension issue in isolation. He said it has to be looked at in the context of all the other approvals and rights that exist. In theory the council doesn't have to approve the extension even if the applicant meets all the other standards. But he said if the council was to deny the request based on not wanting the 500 foot extension, staff would need the reason so the decision could be legally supported.

Hiller asked why the 500 foot requirement exists. Wischnack said cul-de-sac length requirements are typically for resident health and safety issues particularly related to fire access. In this situation there would be a sprinkling requirement similar to lot behind lot situations.

Schneider said in addition to safety access there was a general discussion a few years back that the length requirement was to encourage connections. If a through street was possible the city would require the access. He said the reality with many cul-de-sac situations is there is no outlet.

Wiersum said the staff report indicated that if the PUD was not approved the developer could develop the site with the same number of lots as an R1. Since the extended cul-de-sac is under the council's purview he asked if the council were to deny the extension would the city have a legally defensible position. Norton indicated that the 500 foot extension issue should not be looked at in isolation. He said it is not an independent standard by which the council should consider denying the entire proposal. The PUD gives the city more control over the development than it otherwise

would have if it was a permitted use. The extension permits the city and the developer to use all the rights the developer has. If the council wished to deny the extension, Norton said he would recommend developing appropriate reasoning based on why that aspect is not appropriate. He said the 500 foot extension becomes close to a right if all the other standards are met.

Callison said one of the more destructive parts to a development is water retention issues. She said this proposal is unique because it includes a requirement of having pervious pavers for the driveway which will mean less water runoff. She expressed hope that the water retention portion of the proposal has been downsized to reflect the fact there will be less water runoff and thus less tree destruction. Wischnack said staff spent much time reviewing the infiltration areas as another method to help with the size of the storm water pond. Also, the pervious pavement will help reduce the overall runoff that is used to calculate the size of the pond.

Callison asked if the pond could still be made smaller. City Engineer Lee Gustafson said presently staff does not know if the pond could be made smaller. Those details will be worked out when the developer submits the design plans related to drainage and storm water. Gustafson said the type of brick pavers used for the driveways also needs to be taken into consideration. Staff understands council's guidance that the area should be reduced to the bare minimum to prevent tree loss.

Callison said one consequence of the PUD is that the spacing between the houses is reduced. This causes properties to look a little jarring particularly if the homes are two stories. She said in this case that might not be the case because some of the houses are setback a little differently. She wondered if there were further opportunities to position the houses so that the aspect they present fits more with the neighborhood. Wischnack said the PUD standard allows for 10 feet by 10 feet as opposed to 10 feet by 15 feet, which is customary in R1 areas. She said if the council's desire is to tighten up the proposal in terms of where the building pad is located that could be done by modifying the PUD ordinance.

Wagner said when he visited the site he saw some severe topography changes. He was concerned about the existing cul-de-sac area that has two slopes going down into it. He asked if the storm sewer will be piped over to the filtration pond. Gustafson said staff has realized there are concerns with the capacity of the cul-de-sac area. The initial intent is to double the amount of catch basins in the area so the storm sewer system can take in more water. The

low point will stay approximately in the same location. The storm sewer itself will discharge towards the infiltration area and the proposed water quality pond. Gustafson said the exact drainage will be unique. The low flows will go towards the filtration area and the higher flows will go towards the water quality pond. This will allow the capture of the low flows that carry most of the material that needs to be filtered out. The details will be worked out with the developer.

Wiersum said there have been neighborhood comments on drainage issues. He said he would like a better understanding of the nature of the existing problems. He asked if the proposal were to be approved if the drainage issues would be better or worse than they are today. Gustafson said overall the situation will be no worse than it is today. There is a wetland that receives drainage directly from the water that goes to the north. That water will now be treated by the water quality pond. There is also a filtration area. Erosion and capacity concerns have been brought to staff's attention. Improvements can be made to those areas and staff will work with the developer to address all the concerns. Wiersum asked if the property owner directly adjacent to the proposal will see more, less or about the same amount of water running through the yard. Gustafson said the property owner will likely see less water because there is an attempt to capture more of the water in the existing cul-de-sac area as well as the low point of the new road.

Cory Lepper of 16408 Hidden Valley Road said he has lived at that address for five years. During that time there has been a lot of investment and re-investment in the area. He was approached by the attorney for the estate of the property to the east. The attorney inquired if Lepper had interest in purchasing the property. Lepper indicated he was interested in order to control any development that would occur next to his backyard. The Leppers eventually purchased the property. He has worked with city staff for eight months on a proposal to develop the property. Originally he submitted a proposal using the Hidden Valley concept. He received a letter from staff indicating residential use of the combined site would occur directly west of Pine Street. Lepper said he took a step back and talked with the neighbors. The neighbor directly south of Pine Street expressed concern over the Hidden Valley concept because it would be directly adjacent to his property and a considerable amount of pine, oak, and tamarack trees would be removed. Lepper and the neighbor then discussed the idea of continuing Pine Street through.

Under the proposal Lepper said the amount of mature trees that would be lost equates to about 373 inches of conifers or 10 percent of the overall tree inches of the entire site and 80 percent of the conifers on the entire site. Any access through Hidden Valley would take the trees out. The proposed PUD plan has the same amount of lots as the conforming R1 plan with about 7,800 square feet of impervious surface with the PUD plan and 17,000 on the conforming plan. The proposed PUD plan has approximately 12,000 square feet of grading and approximately 119,000 square feet of grading under the conforming plan. Lepper said some developers would look at maximizing walk out lots but his proposal uses the topography to guide the plan. The difference in impact is about five percent grading versus 47 percent if another developer moved forward with the R1 conforming plan. The tree preservation is about 63 percent to 73 percent versus the conforming plan which would save around 28 percent of the trees saved. He said another key component of his plan is the 1.1 acre conservation easement. Roughly 19 percent of the entire site will be saved in perpetuity as an easement. The proposal uses a good conservation minded approach and fits in with the city's goals.

Bonnie McDonald of 3913 Avondale Street said the people in her neighborhood have never been asked what they think of the proposed development. There are two viable options of what road to enter. She said all Minnetonka residents want to maintain congruency and integrity within a neighborhood. In this case the alternative is to make a decision that has nothing to do with the topography. She said there are numerous other options coming off Thrushwood Lane. The area behind Pine Street has been completely flooded on numerous occasions. Putting a road that runs over the crest of the hill will add to the water issues. She said the biggest issue that isn't being addressed is the safety issue. Because of the slope going down Avondale the water drains across her driveway. The driveway becomes glare ice and adding more vehicles jeopardizes the safety of the residents. It is a straight shot down Hidden Valley into the neighborhood with no steep driveways and no obstructed views. She said Minnetonka is known for its safe haven neighborhoods and the proposed development will dramatically impact the safety of everyone in the neighborhood.

Allendorf asked what the average number of trips a house generates. Gustafson said that an average house generates eight to ten trips a day.

Kim Kelsey of 16300 Pine Street said her biggest concern is the safety issue. She is not opposed to the development and the effort

to save trees. The Kelseys have two children who walk up Avondale Street. There is a sharp turn where if a driver lost control they would end up in one of the resident's yards. The neighbors know the area and slow down especially during the winter. Traffic will increase with additional homes being built.

Schneider commended the developer for the sensitivity on how the homes were sited. He disagreed with Callison's concern about the spacing between the houses. The concern would hold true if the houses were in a row but the homes are sited at an angle with garages on one side and the houses on the other side. He said the biggest issue is the point of access. The other concern is how to address the drainage issue. He agreed the continuity of a neighborhood is important but the staff recommendation provides for the continuity. The proposal keeps Pine Street a cul-de-sac while limiting the development to six new homes, and significantly improves the amount of tree preservation on the site.

Schneider said the water quality characteristics of the plan are far superior to what currently exists. The water quantity will be a challenge. There will be significantly improved drainage characteristics with a normal flow and adding the extra catch basins. The problem will occur in the rare storm where the four catch basins will not be able to handle the high water flow. Because of the area's topography the only route for the water to go is over land. When that happens there will be erosion and other issues that are unavoidable. He said that is one of the prices that will be paid by maintaining the topography of the site. He said this particular design is a good example of what he'd like to see when the city does the PUD conservation design.

Wagner also commended the developer for his sensitivity to the environment. He said he was struggling with the density of the site. Rather than six lots, five would be a more appropriate number. There are a number of lots under the city's half acre minimum. Wagner said the extension of the cul-de-sac is the best method to reach the property because it provides the continuity with the neighborhood. The neighbors' concerns with traffic are valid but the construction traffic will be the most concerning.

Hiller said he shared the concerns about the density but after looking at how the houses are staggered and the depth changes it prevents the area from looking like a solid ring of houses.

Wiersum said one of his questions was if the PUD exists because of the moratorium. Had the moratorium not been in place and the

developer proposed an R1 neighborhood, would staff have recommended a PUD? He said after talking with staff the design potential is greater with the PUD because it provides the opportunity to save trees, situate the homes, and prevent more hard surface. He said this approach works better than the alternatives. He said adding 60 additional trips a day will not add a significant amount of traffic. Traffic is an issue when people do not obey speed limits and are not respectful of their neighbors. He said the residents in the neighborhood are respectful and there is reason to believe the people who move in will be equally as respectful. The choice before the council is denying the proposal and seeing an R1 proposal come forward that the city could not deny. He said the development's impacts will be relatively small.

Allendorf said he doesn't know what the traffic counts are on Pine Street compared to Hidden Valley Road but he would guess that there is nearly twice the traffic on Hidden Valley Road. The traffic issue is a relative issue and the best plan for the neighborhood is to accept the Pine Street extension. He agreed with Wagner that the bigger traffic problem might be during construction and that he hopes the city will pay attention to the construction management plan.

Callison said after reading the staff report and visiting the area it struck her that there is a challenge to either think short term or long term. The short term concerns involve the construction traffic and road safety. The long term benefits involve the environmental preservation. She said the new homeowners will learn to drive the streets safely. Minnetonka was developed in an area that was left natural and the streets are rolling and narrow. Safety issues exist throughout the community. She said once the construction traffic is gone the best long term solution is to come in off Pine Street. She agreed with Wagner about the density. She also agreed water runoff issues will likely improve for some of the property owners.

Schneider said although four of the lots are under the 22,000 square feet requirement, the developer has made a major concession in writing a restriction limiting the footprint to 2,800 square feet. He said it was an insightful and innovative way to reduce hard surface coverage as well as the massing of the overall site.

Callison said she would like staff look at the water retention features to make sure the features are as small as possible.

Wiersum said the proposed design is a good design because it saves trees, creates more flexibility, and creates the conservation easement. He said the city hasn't compromised on its conviction about half acre lots because this is a PUD with real benefits that would not have been gained had the city required 22,000 square foot lots.

Allendorf moved, Wagner seconded a motion to:

- 1) Adopt Ordinance No. 2008-15 approving the proposed rezoning. This ordinance is based on the following findings:
 - a. The rezoning would be consistent with the city's guide plan; and
 - b. The rezoning would be consistent with the public health, safety, and welfare.
- 2) Give preliminary approval to BRAEBURN WOODS, date-stamped April 4, 2008, with cul-de-sac in excess of 500 feet. Approval is based on the following findings:
 - a. The proposal meets the required standards and ordinances for a preliminary plat.
 - b. The proposal minimizes tree loss.
 - c. The pattern of existing development requires that the only practical method of providing public access to the site is a long cul-de-sac.

Approval is subject to the following conditions:

- a. Prior to final plat approval, complete the following:
 - (1) Show the following on the final plat:
 - (a) A minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.
 - (b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (c) Drainage and utility easements over the 920.0 elevation, the stormwater pond and infiltration basin areas.
 - (2) A roadway easement on the 16333 Pine Street property, dedicated to the applicants, must be re-dedicated to the city. The easement must be 25-feet from the centerline of Pine Street.
 - (3) Pay a park dedication fee of \$5,000 per newly created lot, for a total of \$35,000.00.
 - (4) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.

- (5) Drainage and utility easements and maintenance agreements for the storm pond, infiltration basins, and any other stormwater mitigation facilities.
- b. The following items must be submitted to the city before the city releases the final plat:
 - (1) An engineering/utility inspection fee.
 - (2) An electronic CAD file of the final plat in microstation or DXF.
 - (3) The following documents must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval:
 - (a) Title evidence that is current within thirty days before release of the final plat.
 - (b) Conservation easements over wooded areas in substantial conformance with revised conservation easement drawing dated 05/05/08 and a drawing of the easements. The easement may allow removal of hazard, diseased, or invasive species. The easements and drawings must be recorded with the final plat.
 - (c) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas, common drives, required drainage ponding and any other required drainage improvements approved by the city. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, removing any blockage of the swale or culvert that may impede the drainage of the site and yearly reporting to the city, as approved with the building permits and as prescribed in the drainage and utility easement maintenance agreement.
 - (d) Restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the

conditions that have not been met as of the release of the plat.

These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.

(4) Any other requirements included with final plat approval.

c. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit applicant has been submitted, reviewed by staff, and approved.

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

(a) Final street, utility, grading and drainage, site plan, and tree mitigation plans as required by the city engineer must be submitted for staff review and approval.

(i) The street plans must include:

- Roadway alignment, profile, and cross sections.
- B612 curb and gutter on reconstructed streets.
- B612 curb and gutter with appropriate curb cuts adjacent to infiltration systems on the newly constructed street.
- Standard 80-foot diameter cul-de-sac within standard 100-foot diameter right-of-way. A median island is not permitted.

(ii) The utility plan must include:

- Extension of the Pine Street stormwater system to the proposed pond.
- Sump pump drain tile for properties along the south side of the Pine Street extension.
- Adjustment of existing roadway storm drains to the new road edge. An additional catch basin must be installed at the low point of the roadway.
- Lots 1 and 2 must use existing sewer and water services.

- Profiles for all public utilities.
- Fire hydrant as required by the fire marshal.
- Additional drainage calculations and exhibits as required by the city engineer.
- (iii) The grading plan must include:
 - Infiltration systems shown on private property, rather than public right-of-way.
 - Removal of the existing cul-de-sac and restoration of adjacent yards.
- (iv) The site plan must include:
 - Permanent roadway easement area on 16333 Pine Street.
- (v) The tree mitigation plan must include:
 - Mitigation for trees removed to accommodate the stormwater pond and infiltration areas.
- (b) A Stormwater Pollution Prevention Plan must be submitted for staff review and approval.
- (c) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.
- (d) If the developer is constructing any public improvements, the following must be submitted for staff review and approval:
 - (i) Final street and utility plans.
 - (ii) A signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements.
 - (iii) A letter of credit or cash escrow in the amount of 125% of a bid

- cost or 150% of an estimated cost of the improvements.
- (iv) The city will only reduce or release the letter of credit or cash escrow upon receipt of as-built drawings and a letter certifying that the streets and utilities have been completed according to the plans approved by the city.
- (e) A temporary construction easement for grading on the property at 16333 Pine Street. This easement must be acquired by the applicant.
- (f) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.
- (g) A recorded copy of the conditional use permit.
- (2) Ponding areas, public utilities, and associated grading and facilities must be located to maximize tree preservation. Staff may require adjustments in locations of these improvements in order to do so. Inch-for-inch mitigation is required for high priority trees removed in conjunction with required ponding.
- (3) Prior to issuance of a grading permit:
- (a) Install all measures in accordance with the SWPP for staff inspection. These items must be maintained throughout the course of construction.
- (b) The final plat must be released by the city and filed with Hennepin County for recording.
- (c) A copy of approved MPCA NPDES permit.
- (4) The stormwater pond must be constructed prior to commencement of grading work and any public improvements. Upon project completion, all accumulated sediment must be removed. A certified as-built of the pond contours is required for final acceptance.
- d. Prior to issuance of a building permit for any of the lots within the development:
- (1) Submit the following documents:

- (a) A recorded copy of the rezoning ordinance.
 - (b) The preliminary plat, all required easements, and restrictive covenants.
 - (c) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - (d) A letter of credit or cash escrow in the amount of 150% of an estimated cost or 125% of a bid cost to complete required tree mitigation. Individual letters of credit are required for each lot.
 - (e) An electronic CAD file of certified as-built drawings microstation or DXF.
- (2) For each building permit, submit the following items for staff review and approval:
- (a) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance.
 - (b) Final grading, drainage, and tree preservation plan for the lot. The plan must:
 - (i) Comply with the preliminary grading plan as depicted on the preliminary plat.
 - (ii) Preserve trees designated for preservation at the time of preliminary plat approval;
 - (iii) Show sewer and water services to minimize impact to any significant trees. No trees may be removed for installation of services. One set of new services must be installed.
 - (iv) Grading on Lots 2 and 5 must minimize drainage onto 16333 Pine Street
 - (v) Grading on Lots 2 must maximize preservation of existing conifers, including a large tamarack at the front of the lot, and prevent impacts to the large oak in the southeast corner.

- (vi) Staff may require adjustments in the location of the proposed house, driveway, grading and utilities to maximize tree preservation.
 - (c) A tree mitigation plan. Mitigation must be provided for trees removed beyond a 20-foot perimeter to the proposed building footprint, and a 10-foot perimeter of the proposed driveway. Inch-for-inch mitigation is required for high-priority trees removed outside of these perimeters.
 - (d) Submit cash escrow in the amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- (3) For each building permit, the following items must be completed:
 - (a) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
 - (b) Proof of subdivision registration and transfer of NPDES permit.
 - (c) Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot. These items must be maintained throughout the course of construction.
 - (d) Install heavy-duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.

(e) Pay a hookup fee for sanitary sewer and water.

e. Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the following:

(1) The house “type” for each lot (walk-out, full-full basement, look-out) is restricted to the “type” detailed on the preliminary grading plan date-stamped April 4, 2008.

(2) The maximum structural footprint allowed on each lot, which includes house and garage, is restricted to 2,800 square-feet.

(3) Minimum setbacks for principal structures:

	Pine Street Properties	Hidden Valley Road Properties
Front	25-feet	35-feet
Side	10-feet interior to PUD	30-feet aggregate, with no one side less than 10-feet
	15 feet exterior to PUD	
Rear	20% of lot depth or 40 feet, whichever is less	20% of lot depth or 40 feet, whichever is less

(4) Minimum lowest floor elevation is 922.0

(5) Maximum floor area ratio within the plat is 0.5. Individual lots may exceed this standard. However, the total floor area ratio of the subdivision may not.

(6) Maximum hardsurface coverage is 50%. Individual lots may exceed this standard. However, the total hardsurface coverage of the plat may not.

(7) Minimum site lines must be maintained on Lot 10 as per city engineer exhibit date-stamped April 10, 2008.

(8) All portions of first-story walls as measured by an approved route around the exterior of the house must be within 150 feet of the street. If access requirements cannot be met, the house must be protected with 13D automatic fire sprinklers.

f. During construction, the streets must be kept free of debris and sediment.

g. 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) Adopt Resolution No. 2008-045 which approves a conditional use permit for construction of a stormwater pond below the 100-year flood elevation within BRAEBURN WOODS. This resolution is based on the following findings:
- a. The proposed pond would not diminish floodplain storage. Rather, the pond would increase storage capacity.
 - b. The proposed pond would not negatively impact the existing wetland on the site.
 - c. The proposed pond would provide for infiltration and sediment control prior to release of water into the wetland. This would improve existing stormwater discharge and treatment conditions in the area.
- Approval is subject to the following conditions:
- a. Permits may be required from other outside agencies including, but not limited to, Purgatory Bluff Creek Watershed District, Army Corp of Engineering, and Minnesota Department of Natural Resources. It is the applicants responsibility to obtain all necessary permits.
 - b. Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
 - c. The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - d. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
 - e. The applicant must agree to the above conditions in writing.
- 4) Adopt Resolution No. 2008-046 which approves a floodplain alteration permit for construction of a stormwater pond below the 100-year flood elevation within BRAEBURN WOODS. This resolution is based on the following findings:
- a. The proposed pond would not diminish floodplain storage. Rather, the pond would increase storage capacity.
 - b. The proposed pond would not negatively impact the existing wetland on the site.
 - c. The proposed pond would provide for infiltration and sediment control prior to release of water into the wetland. This would improve existing stormwater discharge and treatment conditions in the area.
- Approval is subject to the following conditions:

- a. Permits may be required from other outside agencies including, but not limited to, Purgatory Bluff Creek Watershed District, Army Corp of Engineering, and Minnesota Department of Natural Resources. It is the applicants responsibility to obtain all necessary permits.

All voted "yes." Motion carried.

B. Items concerning an expansion of Groveland Cemetery.

Wischnack gave the staff report.

Schneider said it would be beneficial for staff to discuss the amount of discretion the council has on a CUP compared to a rezoning. Norton indicated the council has more discretion on a rezoning because a CUP is a permitted use with the conditions. If the applicant reasonably meets the conditions, the council's discretion is limited. Rezoning involves a legislative act that gives the council more discretion. He said the city has standards in its ordinance that still must be followed with a rezoning.

Ellingson asked if there was any consideration for tree preservation on the lot. The drawing included in the staff report indicated the trees were to be cut down leaving a rectangular grid of cemetery plots. Wischnack said the property owners indicated that whenever possible groupings of trees would be saved for aesthetic reasons.

Schneider asked if the property owners have the right to take down trees on the existing lot and put in plots. Wischnack said the owners have that right.

Wiersum asked if the current cemetery were a vacant lot and the owner wished to put a cemetery there, would that be allowable under the city's current ordinances. Wischnack said the same process would be required involving a CUP review with a variance from the standard five acre minimum.

Wagner asked if the only requirement would be a CUP review if a property owner had a five acre lot and wanted to build a cemetery. Wischnack indicated it would be the same process without the need for a variance.

Callison said she remembered hearing the applicant tell the Planning Commission that trees would not be removed from the additional property. Her expectation was that most of the vegetation

would remain and grave markers would be placed around the trees. Wischnack said there is no stipulation in the conditions but the property owner did make the statement at the Planning Commission hearing.

Hiller asked if the additional area is approved if the additional activity will enhance the maintenance being done on the current cemetery. Wischnack said that question was more appropriate for the property owner to answer.

Charles Schelin of 15760 Tonkawood Drive said the planned gravesites will be filled in a systematic way. The intent is to leave the trees and foliage as much as possible to maintain the natural beauty of the lot. The large trees make it difficult to see any buildings. He said a gravesite location will be skipped to preserve a tree. As the property is developed and as a tree dies or needs to be removed the gravesite location will be recaptured. Schelin asked the purpose of the requirement for the hedge and the arborvitae trees. He said it would take some time for a grove of arborvitae trees to block the view of the neighboring property. He questioned the purpose of the hedge because as it grows it would provide a place where people could hide creating a policing issue. When the decision was made to propose buying the property, the idea was to put trees in the area that would block the view and enhance the neighbor's image of the property.

In response to Hiller's question Schelin asked if the inference was that the current cemetery is not being kept up to a standard. Hiller said he was trying to get a general idea about what would be enhanced with the extra activity.

Callison said the Planning Commission's record indicated that there would still be around 30 to 35 burials per year. She asked if the number was likely to increase. Schelin said the number probably would increase. There are currently around 30 burials a year. At that rate the property would fill up in 20 years. He said cremation is becoming more common and those gravesites do not take up nearly the same amount of space as regular gravesites. In addition the Groveland Cemetery Association has considered the possibility of adding a columbarium.

Wischnack said the intention of the arborvitae is to provide additional protection to the property owner to the north. She noted it was a Metropolitan Council sewer easement area so there has to be care in the types of plantings recommended. The plantings have to be fairly easy to remove if the sewer line needs to be accessed.

Schelin said there was no objection to putting in the arborvitae. Wischnack said the buffering on the street side would provide a separation from the road to the cemetery.

Schneider asked staff to address how the plots are legally established. Wischnack said there is a filing required with the state to register the plat area.

Allendorf said he didn't recall seeing any fencing when he was visiting the cemetery. He asked why it wouldn't be better to match the existing fencing rather than go to a different material. Wischnack said the site plan provided a hedge location. She said the existing fencing is a chain link fence located to the south.

Wiersum asked what the capacity is of the existing cemetery and how much vacant capacity exists. Schelin said the current capacity is 2,700 plots. There are 90 spots left.

Bill Hendrickson of 3204 Woodlawn Avenue said there are several reasons why the proposal should not be allowed. The city's variance guidelines state that variances are not to be granted for convenience or economic reasons. He said the proposal is only for economic reasons. It would provide an economic solution for the current property owner. He said it would also provide economic benefits for the cemetery association.

Hendrickson said the proposal is being promoted as a service to the community. He said the comprehensive guide plan committee is looking for long term plans to meet the needs of the residents. The city currently has four five acre cemeteries. He said it would be difficult to disallow future expansions if this one is allowed. During the Planning Commission discussion a question was raised if other five acre areas have been looked at in the city. The answer was that it was difficult to find a five acre area in the city. Hendrickson said he found three areas that would make good locations. One is in the Jidana area north of Minnetonka Boulevard. There is also land around city hall. Purgatory Park also has land available that would provide a park like setting. He said these other areas would be better in creating a true amenity to the community.

Hendrickson said traffic in the area already is congested. The activity level will increase with additional funerals and visits to the new graves will be more numerous than visits to the gravesites of people who died a number of years ago. He said the biggest issue is the potential violation of the zoning ordinance because of the five acre requirement. Callison said if the applicant received a variance

then it would not be a violation of the ordinance. Hendrickson asked about the history of the five acre requirement. Wischnack said cemeteries are an unusual land use to try to regulate. She said some cities do not have a minimum lot size for cemeteries. Typically five acres provides some longevity to the use.

Schneider said he disagreed with staff's interpretation of what was being proposed in granting a variance for the five acres. When there is an existing nonconforming use it is a permitted use that does not need a variance. If there is a brand new use a variance needs to be granted to the standard. He said in this case the applicant is reducing the nonconforming status of the existing nonconforming use which is permitted. Therefore, a variance is not required because it is a reduction of the nonconformity. But he said he was prepared to approve the variance so no one would challenge it. He recalls several similar cases where the final result was the city didn't require a variance because it was a reduction of an existing nonconforming use.

Schneider said in general he agreed with the concept, the right to expand, and the benefit of expanding the cemetery. The Met Council easement is a natural buffer between the cemetery and the existing single family homes. He is concerned about what the applicant could do versus what they are doing. Hypothetically, if the area was five acres and a brand new facility was coming in with the plan applied to the entire five acres, and the applicant stated they would keep the trees, Schneider said he would not accept that. He said the applicant should show what trees will be kept and then plat around the trees. His concern is that 20 years from now when there is need for more land, the cemetery could then take down the trees that might be dying so it becomes a solid plot from one end to the other. He would like to see some mechanism to identify that there will be some vegetation integrated into the facility along with the arborvitae to the north. That would provide that it is a legitimate use that fits into the neighborhood. Gunyou said one approach to achieve this objective would be to identify the groups of trees the city wished to preserve, and then require permanent easements.

Wiersum said cemeteries are distinctive properties because many people will think twice about living next to them. The adjacent property owner made the decision to live next to the cemetery. The people that live next to that person made the choice to live next to him but not directly adjacent to the cemetery. Wiersum said he has no problem with the purchase of the property but does have an issue with turning the property into a cemetery. The number of spots left is not an issue the city should feel compelled to solve. He

said if the five acre minimum does not mean anything, it should not exist. The proposal does not eliminate the nonconforming use and will impact the neighborhood in a meaningful way.

Allendorf said when he visited the site he thought about what a tranquil place it is and that it does not conflict with the neighborhood. He agreed with Schneider that if the new property was allowed to become a cemetery and there were assurances that the new property would blend in with the existing cemetery property, he would see nothing wrong with that at all. The issue would be the clearing of trees either now or in the future. He said Gunyou's idea is similar to what is done for other land use issues. The developer puts into writing what trees will be saved or replaced. He said if that is done he would support the proposal.

Hiller said getting a commitment in writing is a good idea. His concern was trying to increase the area to ensure the cemetery is maintained.

Callison said what she was most struck by in watching the Planning Commission hearing was the reflection upon what a diverse area of the city this is and how strongly the property values are supporting the area. There is a legitimate concern about what the property value of the homes will be. The concern is most true for the adjacent property but is less true for the houses three or four down from the cemetery. Because of the public investment in the area, property values are being enhanced. She said the fundamental question is if this is a reasonable use and if the ordinance is unreasonable in preventing the use. She said it is reasonable for a cemetery to want to expand. If the five acre minimum is required before the cemetery is allowed to expand essentially that means there never will be an expansion. She said she doesn't think the traffic impacts will be extreme. There are more attractive hedging than the proposed arborvitae but buffering the cemetery from the adjacent property is important.

Wagner said he was struggling with people's expectations. Because of the way the area has been guided, the neighborhood has not had the expectation there would be an expansion. The area is zoned and guided for R1. He said he was concerned with the impact on the property owners adjacent to the property.

Schneider said the area is guided for single family so it would be a permitted use. He agreed with Wagner that there are some expectations but that is where the CUP comes into play. If somebody assembles five acres anywhere in the city the land can

be turned into a cemetery. He said there is a legitimate concern that one of the specific criteria for the CUP is the provision that states "the preservation of the site in its natural state to the extent practical by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas." Schneider said he did not agree with staff that the standard has been met. He said if that standard is met to his satisfaction he would support approval. He said he would like to send the item back to staff to work on the issue of preservation of trees.

Gunyou suggested council might consider the option of adopting a condition of approval that a tree preservation plan would have to be prepared and approved by the natural resources department. Schneider said he was not comfortable with that option, because it is too critical an area. He said there is a similar issue with the landscaping plan. There needs to be some type of visual separation with the roadway that will define the area as a cemetery.

Schneider moved, Ellingson seconded a motion to continue the item.

All voted "yes." Motion carried.

Callison called a recess at 8:42 p.m.

Callison called the meeting back to order at 8:55 p.m.

C. Items concerning demolition of the existing home and construction of a new home within the floodplain at 2504 Bantas Point Lane.

Wischnack gave the staff report.

Kathleen Nelson of 2504 Bantas Point Lane said the number of variances requested may seem like a lot, but the same number of variances would be required to build any home on the lot. She said she has designed the home three times. Design number two was being done during the McMansion policy drafting. It was difficult to draft something not knowing what the final policy might be. The plan was submitted when the policy was adopted. The plan was revised removing a room above the garage making the house come within 48 square feet of the floor area ratio in the policy. Nelson said none of the facts have changed since the Planning Commission twice gave its recommendation not to require Nelson to reduce the home by 48 square feet.

Nelson noted comments made at the council meeting where the McMansion policy was adopted. One of the comments made was that the policy was attempting to objectify something that can be very subjective. Another comment was the policy was a trial and test policy that could be modified as the council begins to deal with tangible examples. It was noted it was an interim policy to apply and study to see what works and what does not work before a final policy was adopted. She said the proposed home complies with the McMansion policy. She noted the staff report indicated the policy would allow the city to restrict new homes by a floor area ratio or to a specific plan. She said she has submitted a specific plan. She has completed all the construction documents which she has submitted to the city. The policy states that it allows exceptions where the proposed home is in an isolated location or where the council approves a specific plan that is compatible with the neighborhood. The staff report indicated the proposed policy was worded to be broad and flexible. Nelson said she understood the policy as one designed to affect the potential size of homes and the character of the neighborhood. She said the strict interpretation to require the removal of 48 square feet would ironically allow a much greater mass to be built by increasing the ceiling heights.

Allendorf asked Nelson how she would reduce the home by 48 square feet if needed for approval. She said she has not looked into that. Allendorf said he would have thought that was one of the first things Nelson would do to avoid having to come back to the council. Nelson said the home is small enough with a single car garage and no storage space. She is hoping to avoid designing the home again. Allendorf said as he visited the neighborhood he found it difficult to say the proposed house is in an isolated location and that the plan is consistent with the neighborhood. Nelson said the policy provision states that the house is in an isolation location or where the council approves a specific plan that is compatible with the neighborhood. She said her proposal is compatible with the neighborhood and is more compatible than something that could be designed that is in strict adherence with the policy.

Allendorf asked Wischnack to comment on Nelson's information that she could adhere to the policy while increasing the mass by raising the ceiling height. Wischnack said it is unusual to have 10 foot ceilings as a normal ceiling height especially in the lower level. She said the staff recommendation to require removal of 48 square feet relates to the structure's square footage itself. Another important issue is the proposed house is on a 3,700 square foot lot similar to most home sizes.

Schneider said the applicant's argument that the house could be made worse was not a good argument. A better argument is that removing 48 square feet would greatly impact the functionality of how the space works. He said the original intent of the policy wasn't to be absolutely rigid. There was much discussion that if the council knew exactly what was being proposed there would be more flexibility than relying on the ratio. He said he liked the design of the proposed house and the 48 square feet amount was nominal.

Schneider said when the item originally came before the council on as a consent agenda item he listened to the Planning Commission discussion. The commission indicated the 48 square feet would be insignificant and would improve the house, and he did not read all the stipulations because he assumed those items were standard. When the item returned to the council, there was a modification of the Planning Commission recommendation and what the council voted on. He said that indicates a flaw in the process. If there is a significant change between the Planning Commission recommendation and the time it appears before the council, the item should not be on the consent agenda. Even if the changes were clearly identified and discussed, he would have had a difficult time identifying where the 48 square feet should be removed. There was a plan that was well documented and it is reasonable to expect the applicant be allowed to build the home as designed.

Wiersum said the discussion over the original proposal was about the issue of mass. The council felt with all of the variances involved and the height of the building and small size of the lot, that there was too much mass for the lot. The current proposal is a specific plan that has solved the mass problem. He said the McMansion policy is not an ordinance but a guideline.

Wagner said the intent of the McMansion policy is to prevent oversized houses that are out of character with the neighborhood. He said the proposal is not out of character with the neighborhood.

Allendorf said he did not have an issue with the proposed house. The house may not be in keeping with the present neighborhood but will be in keeping with the neighborhood as it evolves. He said he had an issue with the floor area ratio as it will be used in the future. He asked if there was a way to designate the approval of this proposal based on the architectural nature of the plan but disregard the approval in any future calculation of floor area ratios of other houses. Wischnack said the council is allowed to remove a property from the calculation if it feels it is not reflective of the

neighborhood. In smaller lot situations .52 to .53 will continue to be what will be seen in the neighborhood. She added that .52 to .53 are the largest FARs that are seen in Minnetonka.

Allendorf said he wanted the minutes to indicate that he is supporting approval of this house because of its specific design and not because of any FAR calculation. When another house comes in and notes that this proposal with a .53 FAR was approved, the council can state the house wasn't approved based on the FAR but rather approved it on an architectural basis. Wischnack said it would be difficult to flag certain properties to not be considered within the FAR process. Norton said the only disapproval presented in the packet was based on the McMansion policy. Based on the discussion there is plenty of information that would overcome the staff hesitancy to approve the departure from the policy. As far as establishing precedence, he said that should not be an issue because this is a unique situation that will likely not appear elsewhere in the city.

Ellingson said when the item came up last year he noticed that the Planning Commission recommended approval but the staff recommended not grant the exception to the McMansion policy. Because the item was not discussed he thought the applicant was in agreement. He said it is important to keep in mind this is a policy and not an ordinance. The policy as adopted allowed for exceptions.

Hiller said he understands staff's concerns that this is a worst case scenario with the houses packed densely together. To leave staff with the question about giving in on one proposal and applying the policy to other proposals leaves staff in an awkward situation. He said adding the flexibility in this case where it is the worst case scenario might lead to scaling the FAR up when the houses get further apart and that puts staff in a difficult position.

Callison said she supported the exception of the McMansion policy. She said the 48 square feet is a small amount and the impact on neighboring properties is not worth the amount of time spent discussing the item.

Wagner moved, Wiersum seconded a motion to:

- 1) Adopt Resolution No. 2008-047 which approves a conditional use permit and variances for construction of a new house at 2504 Bantas Point Lane. Approval includes the following:
Lot Variances

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

Building Variances

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

Approval is based on the following findings:

a. PRACTICAL DIFFICULTIES:

- (1) There are practical difficulties caused by the extremely small size of the lot and the presence of floodplain and a shoreland setback encroaching on approximately 50% of the lot. Together, these factors make construction of a home, which is compatible to the surrounding neighborhood, difficult.

b. UNIQUE CIRCUMSTANCE:

- (1) The lot variances would be required to construct any new home on the site.

c. NEIGHBORHOOD CHARACTER:

- (1) Numerous variances have been approved for various homes in the surrounding neighborhood, including similar front yard, shoreland, and flood plain variances.
- (2) The construction of a modern home would make the property more compatible with others in the surrounding neighborhood and would not alter the essential character of the neighborhood.

- d. The existing structure's low floor elevation is not located at least two feet above the floodplain elevation of 931.5 as required by ordinance. The proposed home, with the exception of the attached garage, will meet ordinance requirements for low-floor elevation separation from floodplain, thus, eliminating a nonconforming situation on the subject property.

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

Approval is subject to the following conditions:

a. Submit/complete the following before the city issues a building permit:

(1) Submit proof of having recorded this resolution with the county before the city issues a building permit.

(2) Submit a construction management plan; this plan must outline parking and construction access and stockpile and material storage.

(3) Install temporary rock driveway, erosion control, tree protection and lake protection fencing, subject to review by the city's natural resources staff. These items must remain in place throughout the course of construction.

(4) Submit a grading plan showing how the elevated garage floor will be achieved. The grading plan must also show that the proposed structure's crawl space can accommodate a compensatory volume of floodplain being filled.

(5) The property owner must submit an emergency evacuation route from the structure directly to land above the designated 100-year flood elevation, subject to staff approval.

b. Pervious pavers must be used for the driveway and pathways.

c. The existing storage shed must be permanently removed from the subject property.

d. Maintain a low floor elevation above 933.5 for all new living space and a low floor elevation of 932.25 for the attached garage.

e. Structure must be designed to comply with ordinance 300.24.9(j).

f. Install vegetate in areas where demolished structures are removed.

g. Permits may be required from other outside agencies, including but not limited to the United States Army Corps of Engineers, Minnesota Department of Natural Resources, Minnehaha Creek Watershed District, and the Lake Minnetonka Conservation District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.

h. This variance will end on December 31, 2009, unless the city has issued a building permit for the project

covered by this variance or approved a time extension.

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

D. Resolutions related to the sale of three bond issues and establishing procedures for compliance with reimbursement bond regulations.

Gunyou gave the staff report.

Wagner noted that the city may also have to bond next year for the Shady Oak Road project. Given the \$10 million cap to be eligible for lower bankers qualification interest rates, and given the three bonds adding up to around \$9 million this year, and with interest rates being fairly low, he asked the reasoning behind not adding another \$500,000 to get closer to the limit and thus eliminating the need to bond next year. Gunyou said the city is reserving a capacity of around \$700,000 in the event the TIF bonds have to be issued for the Glen Lake project. There are certain qualifications in that development agreement that would require the city to issue the bonds when the developer meets the criteria, and that issuance could take place later this year. He also indicated the interest rates from this year to next year are not expected to be dramatically different.

Wagner asked what criteria the Glen Lake developer has to meet in order for the TIF bonds to be issued. Gunyou said the criteria have to do with the demolition and clearance of site C. Rankin added the developer has done preliminary work to determine the feasibility of issuing the bonds, and the issuance may likely occur later this year.

Hiller said the council was doing more than just voting on a simple bonding item. The proposal was to change policies going forward, and the council should take a careful look at that approach. He supports funding the Shady Oak project. His concern is whether the city should change its methodology in going into long term investments to pay off the projects. He said he ran some alternatives. One way to look at the question is to look at what is going to happen in the future. The proposal presented at the recent study session funded around six projects and used up about 60 percent of the MSA funding. He said looking out 12 years, the obligation would be around \$16 million dollars. By 2024 there would still be around \$12 million in obligations. This would leave a lot of long term debt left for future councils.

Hiller said the road plan calls for funding two things from the MSA funds. First, projects are funded that also have funding from the county. The city portion is needed to maximize the county funding. The road will be fixed and enhanced. Second, are development projects that will bring in new businesses? He said the two things should be treated differently and should be bonded differently. He would have no hesitation pointing out to someone 20 years from now that paying for the Ridgedale and Opus developments with long term bonds provided new jobs and other benefits. But using the same long term funding for more generic projects will be more difficult to explain. Those projects are the current council's responsibility. He said the length of the proposed bonds differs but isn't necessarily related to the property involved. Funding decisions should be based on what is being brought to future generations who are being made to pay for the project. If the Ridgedale and Opus developments are taken out of the equation would money still need to be borrowed? Using the study session plan, and if the other listed projects are funded every two years, the MSA funding will cover the projects.

Hiller said the two phases of the Shady Oak project will cost around \$5.8 million and constrain the city in the future and force it down the path to bonding for everything. He said the plan needed to be re-examined to save the long term borrowing capability for projects that will give tangible value to people in the future.

Callison asked if staff looked at the implications for future projects if the resolution for Shady Oak Road was approved. Gunyou said the information provided at the study session presented the worst case scenario. Staff included all the projects that were conceivably on the table over the next 15-20 years to illustrate how such a worst case might be accommodated. He agreed the city should be cognizant of the level of debt and the reason for entering into that amount of debt. The city has always followed a pay-as-you-go approach for major road funding, but cities are finding it increasingly difficult to do that. The broader question is how much debt the city is comfortable with.

Gunyou said there seemed to be a general consensus at the study session that it was important to do the Shady Oak project, because it is immediate and the city is faced with the prospect of losing the county and federal funding. He said there was also council discussion about the possibility of delaying future major road projects to limit the need for future bonding. He said it would be useful in future CIP discussions to look at what is on the horizon

beyond five years and consider how the city should plan for those projects.

Callison said it was concluded at the study session that more discussion was needed about upcoming projects and how to pay for them. The decision before the council tonight was just the Shady Oak Road project, which council agreed had to be done.

Schneider said there are two types of policy. One is a general discussion and consensus for a direction from council to staff. The other is for a formal policy that is written, discussed, and adopted into the city's policy book. He wasn't comfortable writing a policy for this issue because of all the variations and unknowns. At the study session, council shared the concerns raised by Hiller, concluding that bonding should be used as a last resort, and that projects would not be routinely approved without looking at the financial ramifications and the implications of delaying projects. Because it is such a major issue, future discussions are warranted, and will take place, but it is not necessary that all issues be resolved before council votes on this bond issue.

Wagner said he agreed that the information provided at the study session assumed a worst case outcome. The council's responsibility is to look at a project and determine its benefits and if the project is in the best long term interests of the city. Discussions will continue as council considers future projects, but what is before the council tonight is the Shady Oak project, open space bonds and a refinancing.

Wiersum also agreed that the study session discussion was about a worst case scenario. The city would evaluate projects individually as they came up, and there was no decision committing significant amounts of dollars. There was also discussion that under the bonding approach the city would retain its AAA bond rating. He said the approach was prudent and fiscally conservative. Tonight council is talking about Shady Oak Road, which the city has to do.

Ellingson asked if it was possible to vote against one resolution, while supporting the others. Norton agreed that was possible.

Hiller said there were future implications with the bonding, and that the city was using up 20 percent of the plan. Approving the resolutions was premature, and the city should not proceed with the Shady Oak Road project until there is an agreement that this is the direction the city should go.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2008-049 providing for the issuance and sale of approximately \$2,250,000 General Obligation State-Aid Street Bonds, Series 2008A

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

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

- 1) Resolution No. 2008-050 providing for the issuance and sale of approximately \$2,500,000 General Obligation Open Space and Park Improvement Bonds, Series 2008B
- 2) Resolution No. 2008-051 providing for the issuance and sale of approximately \$4,415,000 General Obligation Water Revenue Refunding Bonds, Series 2008C
- 3) Resolution No. 2008-048 establishing procedures relating to compliance with reimbursement bond regulations under the Internal Revenue Code.

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 9:55 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk