

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JUNE 9, 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 Tony Wagner, Dick Allendorf, Brad Wiersum, James Hiller, and Jan Callison were present. Councilmembers Terry Schneider and Bob Ellingson were excused.

4. APPROVAL OF AGENDA.

City Manager John Gunyou noted addenda to items 10D, 10I, 12A, 14A, and 14B.

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

5. APPROVAL OF MINUTES:

A. April 21, 2008 regular meeting.

Allendorf moved, Wiersum seconded a motion to approve the minutes of the April 21, 2008 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

B. May 5, 2008 regular meeting.

Callison noted a correction to the discussion on the Groveland Cemetery item changing the word "crematorium" to "columbarium."

Allendorf moved, Wiersum seconded a motion to approve the minutes of the May 5, 2008 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Present Minnesota Public Relations Society of America 2007 Classics Award for the Minnetonka 50th Anniversary Committee.

Callison read the presentation information.

David Hakenson, the chair of the 50th Anniversary Committee and a member of the Public Relations Society of America shared the award he had previously accepted on behalf of the city. He said the city's competition for the award was the Capitol City Partnership's promotion of the ice skating rink in Rice Park and a promotion by the Minnesota State Lottery. He said he had fun chairing the committee.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings.

Callison said she recently attended a meeting in Jordan about an effort to organize a Highway 169 group to coordinate projects in the corridor. For Minnetonka this involves the Bren Road intersection. She said it's unclear what will become of the effort due to the prioritization of projects, and noted there will be ongoing discussions. Edina Mayor Jim Hovland and State Senator Terri Bonoff have offered to serve on the committee and track the process.

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

No one appeared.

9. BIDS AND PURCHASES:

A. Consideration of bids for the Oakhaven Park site improvements, Project No. 4520.

Gunyou gave the staff report.

Wagner moved, Wiersum seconded a motion to award the bid # 2008-003-PW, Project No. 4520 to Odessa II Construction for the Oakhaven Park Site Improvements with a bid of \$31,795.00. All voted "yes." Motion carried.

B. Consideration of bids for the Oakhaven Park playground equipment, Project No. 4520.

Allendorf moved, Wagner seconded a motion to award the bid # 2008-005-PW, Project No. 4520 to Webber Recreational Design.

Inc. (option #2) with a bid of \$54,986.83. All voted "yes." Motion carried.

C. Consideration of bids for the 2008 Emergency Vehicle Preemption Project No. 08301.

Gunyou gave the staff report. He said because the city received such good bids, his intention is to modify the contract to do the remaining two preemption lights within the previously approved budget. The amount falls within the discretionary amounts the council has delegated to the city manager.

Wiersum noted the bids came in at 52 percent of the estimate and agreed it is a good opportunity to complete the project a year ahead of schedule.

Wiersum moved, Allendorf seconded a motion to award the bid for the 2008 Emergency Vehicle Preemption Project No. 08301 to Killmer Electric Company, Inc. in the amount of \$11,527. All voted "yes." Motion carried.

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

A. Claims for council authorization – May 27, 2008.

Allendorf moved, Wiersum seconded a motion to approve the May 27, 2008 claims which includes checks numbered 212036 through 212356, totaling \$838,527.96. All voted "yes." Motion carried.

B. Claims for council authorization – June 9, 2008.

Allendorf moved, Wiersum seconded a motion to approve the June 9, 2008 claims which includes checks numbered 212357 through 212608, totaling \$819,133.58. All voted "yes." Motion carried.

C. Resolution changing two polling locations.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2008-054 changing two polling locations. All voted "yes." Motion carried.

D. Resolutions related to the awards of three bond issues.

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

- 1) Resolution 2008-055 awarding the sale of approximately \$2,250,000 General Obligation State-Aid Street Bonds, Series 2008A
- 2) Resolution 2008-056 relating to funding of approximately \$2,250,000 General Obligation State-Aid Street Bonds, Series 2008A
- 3) Resolution 2008-057 awarding the sale of approximately \$2,500,000 General Obligation Open Space and Park Improvement Bonds, Series 2008B
- 4) Resolution 2008-058 awarding the sale of approximately \$4,415,000 General Obligation Water Revenue Refunding Bonds, Series 2008C

All voted "yes." Motion carried.

E. Approval of change order #1 for Karen Lane street and utility improvements.

Allendorf moved, Wagner seconded a motion to approve the change order. All voted "yes." Motion carried.

F. Amendment to an existing conditional use permit for a home addition at 9914 Minnetonka Boulevard.

Allendorf moved, Wagner seconded a motion to adopt Resolution 2008-059 amending and replaces a conditional use permit amendment for a single-family dwelling in a B-2 Limited Business District. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) 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.
- 2) No future expansion of the home, beyond that allowed by this conditional use permit, shall be permitted.
- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) 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.
- 5) The applicant must agree to the above conditions in writing.
- 6) This resolution repeals and replaces Resolution No. 95-9959 adopted on September 11, 1995.

All voted "yes." Motion carried.

G. A conditional use permit for grading in excess of 1,000 cubic yards.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2008-060 approving a conditional use permit for grading in excess of 1,000 cubic yards at 13608 Spring Lake Road, Oak Haven Park. Approval is based on the following findings:

- 1) The proposal would meet the general conditional use permit standards as outlined in city code.
- 2) The proposal would meet minimum engineering and natural resources requirements.

Approval is subject to the following conditions:

- 1) 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.
 - a. The following must be submitted for the grading permit to be considered complete:
 - (1) Final grading, drainage and erosion control plans must be submitted for staff approval.
 - (2) Final plans must include a rain garden or infiltration swale to meet city stormwater quality standards, which requires the infiltration of one (1) inch of stormwater runoff off of the entire new impervious surface on the property.
 - (3) 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.
 - b. Prior to issuance of a grading permit:
 - (1) Install a temporary rock driveway, erosion control, and tree protection fencing for staff inspection. These items must be maintained throughout the course of construction.
- 2) A copy of this resolution must be recorded with Hennepin County.
- 3) Permits may be required from other outside agencies. It is the applicant's responsibility to obtain any necessary permits.
- 4) The applicant must comply with all monitoring requirements of other appropriate regulatory agencies.
- 5) The city council may reasonably add or revise conditions to address any future unforeseen problems.

- 6) 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.
- 7) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

H. Request to move a garage at 1512 Wilshire Drive to Grove City, Minnesota.

Allendorf moved, Wagner seconded a motion to approve the permit, subject to the following stipulations:

- 1) Compliance with Section 520.030 of the City Code.
- 2) City staff must approve any tree trimming in connection with the move.
- 3) That the move be directly monitored by appropriate city staff.
- 4) That the move be a continuous trip from the property to outside the city limits, and that the house cannot stop or be parked within the city.

All voted "yes." Motion carried.

I. Resolution ordering the abatement of long grass nuisance conditions.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2008-061 as amended by exhibit "A" ordering the abatement of the nuisance conditions. All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES:

A. Items concerning Tonka Town Commons.

Community Development Director Julie Wischnack gave the staff report.

Wiersum asked for clarification why the area specified on the map would be rezoned from R-1 to R-3. Wischnack said because of the lot size and the lot density the area has to be an R-3 zoning district. Wiersum said currently the lots are substandard. He asked if the rezoning is required because of the update to the current standards. Wischnack said an alternative solution would be to allow the lots to remain as nonconforming properties.

Allendorf asked what the comprehensive plan steering committee thought of the proposed changes. Wischnack said the committee has been reviewing the area. Currently the proposal is to turn the properties back to commercial all the way to Highwood Drive. There are concerns to the proposal that were expressed at the neighborhood open house. She said she does not know what ultimately will be decided by the Steering Committee. Allendorf asked if the commercial designation was counter to the item before the council. Wischnack indicated that it was.

Allendorf asked Wischnack to elaborate on the two issues identified in the staff report. Wischnack said planning staff has been reviewing the site plan and discussing the plan with the developer for some time. Staff has concerns about vehicle circulation throughout the site as well as the buffering.

Wagner noted the steering committee's report will be presented to the council June 16. He asked how the application would be impacted by that report. Wischnack said the application asks for a guide plan change and that is a factor because the comprehensive plan has not been adopted. The comprehensive plan will not go to the Met Council and surrounding communities for review until late August. Official adoption likely will not occur until late 2008 or early 2009. City Attorney Desyl Peterson said currently the guide plan has a different use as does the committee's proposal. Either way the council will be looking at a change that the guide plan does not allow.

Callison asked for clarification that the proposal does not include the McDonald's property. Wischnack said that was correct.

Callison said staff did not think the application should go to the comprehensive plan steering committee for review, partly because the committee is nearing its end. The application is in the permitting stage of the process and is not in the conceptual phase. She said there was a lot of neighborhood discussion at the open house about the proposal and therefore the city should be sensitive involving the neighborhood in the process. She indicated it would be appropriate to think creatively on how to involve the neighborhood and to be more proactive. There will be a comprehensive plan steering committee meeting at the end of June to look at the area.

Wagner asked if Callison was suggesting using the proposed development review process for this project before the Planning

Commission reviews the proposal. Wischnack said the city needs to comply with the statutory deadlines for decision making on the proposal. She said staff has informed property owners during the comprehensive plan process about the proposal. The regular neighborhood meetings will be scheduled as soon as possible.

Wiersum said he also attended the open house and said he heard a lot of concerns and questions from the neighbors. Many of the neighbors do not understand what options and alternatives exist for the property. He said as the neighborhood meetings are scheduled he would like to see a broader distribution than normal for the mailing area.

Allendorf said the area is currently commercial. He asked if staff concerns were about the change of use or about the specific building being proposed. Wischnack said staff has a general site plan concern and the concerns are not about the building itself or the use of the building. Staff is also concerned about having enough area for storm water treatment and buffering. Allendorf said the zoning change is not the point but rather the Planning Commission should focus on if the site plan works.

Peterson said the city could develop another proposal in tandem with the application to guide the area as commercial. This would allow the council to choose between the two or deny both.

Wiersum said at the open house residents were not aware of the proposed development but were responding to the ideas put forward by the comprehensive plan steering committee.

Callison asked for the tentative date the item would be discussed by the Planning Commission. Wischnack said the schedule is for the item to be on the commission's agenda July 3.

Wiersum moved, Allendorf seconded a motion to introduce the ordinance and refer to Planning Commission. All voted "yes." Motion carried.

B. An ordinance regulating outdoor display.

Gunyou said the item was prompted by a number of considerations, including the comprehensive plan discussion about what should be done with existing automobile dealerships in the I-394, and also a recent application for a new dealership in the area. City Planner Loren Gordon gave the staff report.

Wagner asked if the proposed performance standards would apply to existing businesses that make no changes or if those businesses would be grandfathered in. Gordon said currently the existing auto businesses are allowed to expand minimally relative to their frontage. The proposed ordinance would open the door for existing businesses with different performance standards. The ordinance would eliminate some of the more rigid standards in the current code and put in place performance standards that will begin to help the quality of the site and the transition to the residential neighborhoods.

Wagner said currently there are no restrictions related to the loading and unloading of vehicles in the neighborhood areas. He asked if the proposed ordinance gives the city the ability to regulate that activity or if it would only apply if the property owner redevelops their land. Gordon said the ordinance would be triggered when a site is enlarged in certain ways. If a business operating today proposes no changes, there isn't a mechanism the city has to require the property to conform to the new standards.

Wiersum noted there are smaller dealerships east of Plymouth Road. He asked if there is a plan to do something with those dealerships similar to what is being proposed. Gordon said the area north of Ridgedale is an area that staff felt didn't have the same visibility to the public as the areas covered in the proposed ordinance. That area also doesn't have the adjacent residential neighborhood factor. Another consideration is the redevelopment potential of the area.

Hiller said when the issue was discussed at the study session the idea was to incentivize current dealers to improve their property. He said looking through the proposed ordinance he didn't see those incentives. Instead, current owners may have an incentive not to make any significant changes to avoid having the new standards apply. Peterson said the big difference is that under the existing ordinance dealers are allowed to only expand 10 percent of the frontage. The proposed ordinance gives dealers the right for a greater expansion. If they choose to expand, the standards would apply. Gordon said the triggers are the expansion of buildings and parking lots. He said many of the dealers are considering expanding their buildings. He said the existing dealership east of Plymouth Road will continue to operate under the existing code provisions.

Allendorf said usually the number of parking spots is mandated by the size of the building. He said the proposed ordinance takes the

opposite approach. Gordon said in an office situation the idea is to have enough parking spots for the office use. In this situation the idea is to control the product. There is an amount of parking that is needed for employees, customers, and others coming to the property. There are also the cars that are stored onsite. Gordon said there is a relationship between the maximum amount of parking on a property that gets it out of balance with where the city wants to get to in terms of a higher standard for aesthetic quality for the building and site. As the properties were evaluated the ones that were more compliant with where staff wanted to go had a lower ratio of parking. There are other considerations for the site plan including buffering and storm water issues. These considerations would be difficult with a high number of cars parked on the property.

Allendorf asked if the intent of the proposed 200 feet per parking space was to drive the display cars inside a building or ramp. Gordon said the purpose of the provision is to provide a better way to aesthetically deal with the number of cars for the existing businesses. Allendorf suggested rewriting the provision to clarify the intent.

Allendorf said the definitions of proper screening and how high a wall should be is written so vaguely that any group of residents could complain that a wall is not high enough. He said the last time a proposal came in for this specific property residents across a wetland wanted large, dense trees to be planted on a berm so they could not see the dealership.

Wiersum asked what the current dealerships would look like if the 200 hundred square feet of internal space provision was applied to them. Gordon said staff evaluated the amount of onsite parking for a number of the businesses and there was a range of parking space ratios. On the high end was a ratio of one space for every 65 square feet. On the low end was a ratio of one space for every 168 square feet.

Hiller said he understood how the proposal would improve car dealerships. In relation to other types of businesses he asked why the city would want to encourage the expansion of auto dealerships. Gordon said the standards attempt to get at issues related to the transition between residential and commercial uses. Currently there is limited ability to correct issues and the issues are addressed on a complaint basis. Peterson said the reason to allow car dealerships to expand is to give the dealerships the incentive to fix up their properties. Without allowing expansion the city does not

have much to offer as an incentive to improve the properties. Hiller said he was concerned with allowing outdoor displays in areas where there haven't been outdoor displays before. Peterson said with the proposed ordinance it shouldn't matter if the property is a car dealership or an office use. What the ordinance attempts to do is to have a similar parking ratio for an office building, a retail property or an auto dealership.

Callison noted a provision in the proposed ordinance specifies the hours dealerships can be open which is already regulated by state law. She suggested changing the language to read "hours as provided by state law." That way if the state law changes the city would not need to amend the ordinance.

Wagner noted the overlay district covers I-494 to Plymouth Road. He asked the rationale for including the strip mall on the corner as part of the ordinance. Wischnack said planners try to envision the reuse of buildings, and potentially the commercial center will not be the long term use of the area. The thought was to decide if an appropriate use for the area would be a car dealership or automotive display use. Staff decided that would be an appropriate use.

Wiersum moved, Allendorf seconded a motion to introduce the ordinance and refer to Planning Commission. All voted "yes." Motion carried.

13. PUBLIC HEARINGS: None.

14. OTHER BUSINESS:

A. Items concerning an expansion of Groveland Cemetery.

Wischnack gave the staff report.

Wagner said Wischnack indicated that in the easement area there is no statement that the trees should be protected but a number of the neighborhood concerns relate to the trees that provide screening. He asked what the staff position would be if the approval stated the trees are to be protected until the time a sewer excavation would need to occur. Wischnack said it would be OK to state that in the approval but she is leery about giving false impressions about what the area is. Putting in such a notation in the approval may give the impression the city will protect the trees in the future.

Callison noted a correction needed for item five in the resolution stating, "Groveland Cemetery Association or any subsequent property owner is reasonable for replacement..." She said the word "reasonable" should be changed to "responsible." She indicated a question raised in the letter received from the neighboring property owner asked if the cemetery would be restricted in removing trees outside of the reserved ones. Could the cemetery association remove all the other trees on the site a day after the house comes down? Wischnack said the only trees that will be removed outside the tree preservation area would be at the time the plots are needed. The tree preservation areas are protected and not plotted. The site plan before the council would need to be amended to remove the plot areas. Peterson suggested adding language to the resolution making the stipulation clear in the resolution.

Callison noted there is an existing fence on the north side of the property where there is a sewer easement and where screening would be added. She asked if the fence will remain. Wischnack said the fence will partially remain.

Callison said the council previously discussed the Woodlawn Avenue side of the cemetery and whether there should be vegetation. The staff recommendation is for there to be bushes in the area but doesn't say anything about arborvitae. Wischnack said that provision 5.01 subsection 3 in the resolution includes language about the landscape plan and the hedge along the eastern property line to buffer the site from Woodlawn Avenue. There is also language about the northerly 20 evergreen. There is no specific language about arborvitae. She said the city's natural resource manager indicated arborvitae might not be the right choice to provide a good buffer. The decisions can be made later on. Callison asked if the decisions will include input from the neighboring property owner. Wischnack said the property owner will be included in the discussions and landscape plan review.

The applicant, Charles Schelin of 15760 Tonkawood Drive, said there was a misunderstanding about the plots notated in the shaded area of the staff report. The previous council discussion indicated that there was to be a tree preservation plan. Schelin said when the five trees are damaged or taken out, the intent is not to replace the tree in the same spot but a tree could be planted in an alleyway. The replacement tree could have a root line that is substantially less than the current trees. This would open up additional gravesites. Callison said that was not what staff is recommending. The intent is to keep trees in the notated spots and to keep the look similar to what it looks like today. Wischnack said

the direction staff felt they received at the last council meeting was to preserve the areas by doing a tree preservation plan indicating what trees were to be saved and to remove corresponding plots from the plat. Gunyou said he discussed this staff recommendation with Councilmember Schneider, who indicated it was his expectation that the trees would be replaced at their current locations, and that the plots would not be used. Schelin said it didn't seem reasonable that the cemetery could not use many of the plots. He said there are many other areas where trees could be planted, thus meeting the intent of tree preservation. This would populate the area with substantial trees and provide the cemetery with around 80 grave plots.

Schelin said the required tall shrubbery for a hedge line along the east property line will shield the sight of the cemetery from the neighboring property but will also create a hidden area for potential illegal activity. By keeping the area more open, people driving down Woodlawn Avenue could see people doing destructive things. He said the association was advised that it would be better to register the gravesites without the shaded area with Hennepin County. This would allow the cemetery to use some of the gravesites in the shaded area in the future without having to re-file with the county. Schelin added the recommendation is for 20 trees to be planted in the easement area. He asked for clarification for the height of those trees. Callison said that would be developed with staff if the proposal was approved. Schelin said information provided to staff asked that the trees be planted next spring to enhance the chance of survival. Staff has indicated to him the grave sites in the area cannot be used until all the trees are planted.

Lucy Starr of 3216 Woodlawn Avenue said she was the property owner to the north of the cemetery. She said she would like to see more trees preserved. The trees are significant to the beauty of the property and the aesthetics of her property and the school yard's view. If the pines along the west end of the property are removed Starr said her view would be on the Groveland School parking lot. The trees block out the lights from the parking lot. She said she is also concerned about having some say in what the buffer will be along her property line. As for the east end of the property, she thinks it would be nice to have some type of hedge along Woodlawn Avenue. Currently there is no hedge and people are stealing flowers and other things from the cemetery.

Wischnack said the area of the proposed pines along the west side has not been denoted as a tree preservation area on the overall

plan. The staff's perspective is that the criteria for the trees should be health, stability, and the longevity of the trees.

Schelin said most of the trees that are outside of the cemetery's property will continue to block the view of the residence of the school property.

Wagner said he would like additional language in the conditions of approval that state trees will not be taken down until the lots are needed. He said because there is a community need and benefits for what is being proposed his previous concern about expanding the use into the residential area has been lessened as long as extra caution is taken to ensure screening for the neighbors to the north. He doesn't feel strongly about requiring a hedge on the east side. Callison asked Wagner's thoughts about the issue of reducing the number of plots in order to preserve the trees. Wagner said he was in favor of taking the lots out. If the situation occurs in the future where the lots are needed and trees can be added in other areas, the council can make the decision at that time.

Allendorf said he agreed with Wagner on all three issues. He is concerned about expectations. He wouldn't want to mislead a resident into thinking she has veto power over a landscaping plan. He said he isn't discounting allowing input but doesn't want to set an expectation level that is not realistic.

Callison asked Wischnack to clarify if five or six trees will be preserved. Wischnack said the official drawing from the surveyor shows there are six trees that will be preserved. Callison noted the staff report indicated five trees would be preserved. Wischnack indicated the narration of the staff report was incorrect.

Wiersum agreed with the discussion on buffering and tree preservation. He said the concerns he raised in the previous discussion on the item remain. He has a hard time supporting the expansion of the cemetery when it will be adjacent to residents who didn't plan on living next to a cemetery when they moved into the area. He said a cemetery provides a valuable service to the community but he doesn't believe a nonconforming use has the right to expand because it is running out of space. Many cemeteries have run out of space and continue to be cemeteries but no longer have burials. The city chose to get out of the cemetery business with Lone Lake when there was still a lot more space to expand.

Callison said she agreed with Councilmember Schneider's comments on the item at the last council discussion stating this isn't

a variance issue. It's a conditional use issue with all the standards being met with the exception of the size. She said the expansion is appropriate but there are red flags being raised due to the misunderstanding about the requirements. She is concerned that the end result will be people hearing something that was not agreed upon. Looking at the picture showing the entire site, she said there are a lot of trees on the site and to expect tree preservation and working around the trees is keeping with the current cemetery. If trees could be put in with less root zone there may be the ability to recapture some of the site for plots. The previous discussion was to keep the character of the site that is reminiscent of what currently exists.

Allendorf said if the item were tabled until the next meeting it might be beneficial to articulate specifically where the misunderstandings exist. Staff could send out answers to the misunderstandings to everybody who has asked for information about the proposal. Gunyou said staff could compile a list of the misunderstandings with responses, but thought the issues were less about misunderstandings than about a disagreement by the applicant over what the staff recommendation was. Staff could clarify the recommendation.

Schelin said the association has no problems with the staff recommendations. The association would like to keep the option to reconsider the root lines in the future to recapture gravesites that are being taken off the plan now.

Wagner said he wanted to move forward on the item rather than tabling it as long as there was clarity on the east shrub line and expectations on the trees. Adding the provision stating trees will not be removed until the lots are needed would clarify a lot of the misunderstanding.

Wagner moved, Allendorf seconded a motion to adopt Resolution No. 2008-062 approving a conditional use permit, with minimum lot size variance from 5-acres to 3.9-acres, for the existing and expanded Groveland Cemetery at 3300 and 3228 Woodlawn Avenue.

Approval is based on the following findings:

- 1) The proposal meets the required conditional use permit standards.
- 2) The proposal meets the required standards for a variance, because:

- a. UNDUE HARDSHIP: The existing cemetery is a non-conforming 3-acre size. This existing and long-standing non-conformity presents a practical difficulty.
- b. UNIQUE CIRCUMSTANCE: There is an existing, non-conforming cemetery on one of the subject properties. The proposed expansion would create an overall larger cemetery, decreasing the existing non-conformity. This is a unique circumstance not common to every R-1 zoned property.
- c. INTENT OF THE ORDINANCE: The intent of minimum cemetery size is to ensure: (1) such land uses have adequate area of growth; and (2) consolidation of such land uses. Expansion of an existing cemetery, rather than creation of a new cemetery, meets this intent.
- d. NEIGHBORHOOD CHARACTER: Woodlawn Avenue is a unique roadway surrounded by a variety of land uses, including: a public park, cemetery, residential properties, and to the west a church and school. The existing cemetery and its proposed expansion would not alter this unique character

Approval is subject to the following conditions:

- 1) This resolution must be recorded with Hennepin County and a copy of the recorded resolution must be returned to the city prior to any site work or any cemetery use of the 3228 Woodlawn Avenue property.
- 2) The site must be developed and maintained in substantial compliance with site plan date-stamped June 3, 2008. Unless modified by the conditions below.
 - a. Plots shown in gray on this plan are those plots within the critical root zone of trees identified by staff to be important to the site. These plots may not be used for burial. Upon natural decline of the trees, the trees must be replanted.
 - b. Plots must be sold and developed sequentially from south to north. An entire east-west row of plat must be sold before moving northerly to the next row of plots.
 - c. No tree may be removed until the plot(s) where it is located is need for actual use, unless the tree dies from natural causes or becomes hazardous.
- 3) A landscape plan must be developed. The plan must:
 - a. Include 20 evergreen trees along the north property line to buffer the site from the adjacent residential property.
 - b. A copy of the plan must be given to the adjacent residential property owner for review.

- The plan is subject to review and approval of city staff.
- 4) All required plantings associated with the landscape plan must be installed in conjunction with removal of the existing structures on the site. In no case may the property be used for burials prior to installation of required landscaping.
 - 5) Groveland Cemetery association or any subsequent property owner is reasonable for replacement of any required planting that does not survive.
 - 6) No plots or roadway connection are allowed within the existing Metropolitan Council sanitary sewer easement.
 - 7) The sanitary sewer easement must be physically demarcated to ensure no future encroachment within the easement, other than approved landscaping.
 - 8) The plat drawn for submission to the state must first be submitted to the city for staff review and comment.
 - 9) The plat submitted to the state must clearly note all existing easements.
 - 10) The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - 11) 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.
 - 12) The applicant must agree to these conditions in writing.

Callison said the expectation was that plots within the critical root zone were not to be used with the understanding that once the trees die there may be further consideration of the issue.

Wagner said the intent of his motion was that if a tree is still healthy when it gets to a certain lot, lots would be skipped.

Wiersum asked if the "future consideration" issue would require the item to come before a future council to free up the plots. Peterson confirmed it would require an amendment to the conditional use permit.

Wischnack said item 5.01 subdivision 2 of the proposed resolution requires the plots to be removed from the plot plan. She asked if that was the council's expectation. Callison indicated that was correct. The applicants would file a plot plan that does not include the plots.

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

B. Items regarding The Exchange plat.

Peterson gave the staff report.

Allendorf moved, Wagner seconded a motion to:

- 1) Adopt Resolution No. 2008-063 vacating a portion of public right-of-way adjacent to 14517 Excelsior Boulevard.
Approval is based on the following findings:
 - a. The petitioner is the owner of the land abutting said easement and, therefore, is a proper petitioner.
 - b. The city no longer needs this easement.
 - c. Vacating this easement is in the public interest.Approval is subject to the following conditions:
 - a. The applicant must provide title evidence as required by the city attorney.
- 2) Approve the document that partially releases The Exchange plat from the provisions, conditions, restrictions and covenants contained in the existing agreement for installation of improvements and waiver of special assessment appeal.
- 3) Approve the documents that releases The Exchange Plat from the provisions, conditions, restrictions and covenants contained in resolutions approving:
 - a. A conditional use permit for a residential use in a B-2 Limited Business District for a group home for four mentally and physically handicapped adults.
 - b. A conditional use permit for a group home for four medically fragile children.

All voted "yes." Motion carried.

Callison called a recess at 8:15 p.m.

Callison called the meeting back to order at 8:31 p.m.

C. Ordinance regulating retail sales in residential districts.

Peterson gave the staff report.

Wagner asked if the proposed ordinance states that the sales are permitted uses but do not require a license or registration. Peterson confirmed no permit or fees are being required. Wagner said the Planning Commission minutes indicated there were questions about how the ordinance would apply to Tupperware parties or Pampered Chef events. Peterson said those types of activities would not be subject to the ordinance.

Hiller said there was a discussion during the Planning Commission hearing about how the ordinance would apply to renters, occupants, and property owners. Peterson said the ordinance limits garage sales to residents or friends of a resident. Hiller asked how it would apply to snowbirds. Peterson said if the snowbird is a resident they could hold a garage sale. Hiller asked if a person placing a newspaper ad selling a car would have that sale count toward the number of garage sales allowed. Peterson said the ordinance would apply to the sale of a car but likely there would not be any complaints related to that type of sale.

Wiersum said frequently families go together to conduct a garage sale. He asked if twice a year he and his neighbors conduct a garage sale at his house and then hold another sale at one of the neighbor's homes. Peterson confirmed that would be allowed. The limit is for two garage sales a year per property.

Al Miles Albrecht, an attorney with Gavin, Olson & Winters at 1017 Hennepin Avenue in Glencoe, Minnesota said he was representing Laura Soelberg. He said there was a fatal flaw in the proposed ordinance. The rights and privileges clause of the Minnesota Constitution prohibits a person from being disenfranchised or deprived of any of the rights and privileges secured to any other citizen. He said snowbirds and nonresident owners have the same rights as residents. He suggested adding the word "owner" to several provisions in the proposed ordinance pertaining to "occupants." He said it was easy to say the ordinance would not be enforced against snowbirds but it would allow for arbitrary decisions. Peterson disagreed with Albrecht's interpretation of the constitution. She noted that people who own property but don't live at the property are not allowed to vote in the jurisdiction. She said that voting was a far more fundamental right than conducting a garage sale.

Callison said she had concerns and if others agreed with the concerns her preference was to bring the item back for discussion when the entire council was present. She said legislation should be done to address a problem that can be addressed through the legislation. The problem with garage sales is the amount of traffic created and they are in some cases a guise for a business. The ordinance goes beyond those problems by limiting the number of sales a year. She said by gradually whittling away at activities that the community enjoys or wants to do reduces legislation to the lowest common denominator. There are some instances that created the concern but now there is a proposal that would go

beyond curing the problem. The proposed ordinance will not allow the city to address traffic issues or the issue of businesses masquerading as garage sales. She said residents will expect the ordinance to be enforced and the city will end up having to do things it doesn't want to do because the ordinance goes beyond fixing the problems. She noted she has gotten only two comments on the item- one in support and one in opposition. The comment in support dealt with the storage of items outside that can be dealt with through the nuisance ordinance.

Allendorf said he has received a lot of comments. He said all the comments have been in support of the ordinance.

Allendorf moved, to adopt Ordinance No. 2008-XX amending City Code §§300.10, Subd. 2 & 3, 300.11, Subd. 2 & 3, 300.12, SUBD. 2 & 3, and 300.13, SUBD. 2 & 3 regarding retail sales in residential districts. There was no second. Motion did not prevail.

Wiersum said the ordinance is consistent with what exists in other communities. But he agreed that Callison's point about solving the problem that needs to be solved was a valid concern.

Peterson asked for direction from the council on how to regulate traffic. Callison said if somebody anticipates they will have a crowd at their house they could call the city and there would be a process to provide signs or notify neighbors. She said if the issue is traffic she doesn't see how the ordinance solves the issue. Peterson said the ordinance would limit the traffic issue to twice a year. Callison said her guess is that most garage sales only happen twice a year. She suggested looking at an ordinance that clarifies the difference between a garage sale and a business.

Hiller said it would be helpful to know how significant the problem is and how many complaints the city receives. He agreed the city should not have an ordinance if there isn't the need.

Wagner said the fundamental question is whether or not there is a problem and whether there is a need to legislate against it. He said from a cost standpoint having people call in to get signs and register for a garage sale is not something he wants the city to get into. He has never received a call about a garage sale during his time on the council. Callison said she was not suggesting going to a permit system. She said if the issue is traffic, the ordinance should deal with traffic.

Allendorf said the ordinance as proposed makes sense.

Callison asked when the item would come back to the council. Peterson indicated June 30.

D. Discussion of public process for development review of Minnetonka Mills/Burwell Drive area.

Gunyou noted the council had a study session in February to discuss improvements to the development review process. He said this project was a good opportunity to test the ideas discussed at the study session. The recommendations include holding discussions earlier in the process to identify major issues, and providing for an ongoing public feedback process. He said this project involves a critically important area of the city and thus was seen as a good one to implement the new process.

Wischnack gave the staff report.

Wagner said currently when an ordinance is introduced the council only receives one or two pages of the actual application. He asked if the new process will include more detailed information for the council when the ordinance is introduced. Wischnack said between the time the formal application is received and its introduction to the council, the information is often not very detailed because staff wants to alert the council immediately about the proposal before the staff analysis is undertaken. Under the new process the idea is for the council to review the issues brought up during the public issue identification and neighborhood meeting phase. But she said the detailed plan could be provided to the council earlier. Wagner said that would be beneficial to help him identify issues that have not been brought up.

Wagner said there has been a lot of interest citywide on the proposed development and he supports an extended notification area because people see the area as a regional amenity. There are two distinct areas to the development. There is the area south of Minnehaha Creek and the area north of Minnehaha Creek with each area having a much different constituencies. He suggested including information about the development in the *Minnetonka Memo*.

Wiersum said for areas of wide interest and for controversial developments the new process is a great improvement, because it involves more people earlier in the process. He asked if the new process was developed by the staff or if staff worked collaboratively with some developers. Gunyou said staff developed the process.

Wiersum suggested getting some developer input might be useful because the process could be a meaningful raising of the bar on expectations of developers. He said he would like a discussion on the potential pros and cons of the new process and as an example noted that broader notification solves problems but it's more expensive, takes more time, and increases the likelihood of pushback.

Allendorf said he asked himself what problem was being solved by the new development review process. He asked Wischnack how the process would have worked with the Opus project to address the concerns of the residents. Wischnack said in the Opus process there were several early meetings with the neighborhood, but that meaningful feedback was limited after the engineering and architectural planning were done. She cautioned the new process would not necessarily lead to total buy in on projects. Neighborhood feedback that isn't supportive of a development will continue to be received. What the new process does allow is more participation earlier in the process before pen is put to paper. Gunyou noted another benefit to the developer. He said in this case the developer expressed appreciation about the prospect of receiving policy direction before a great deal of time, effort, and money was invested.

Allendorf said the first neighborhood meeting is a good idea as long as it is seen as a chance to develop a list of true issues, and not simply air complaints about the developer, the presentation, and the lack of ability to provide input. He said in the case of Opus the biggest problems came during the time between the Planning Commission review and council action. During that time, a number of changes occurred for the benefit of the neighborhood. However, the neighborhood wasn't aware of the changes until they saw the council packet. The council wasn't able to convince the neighbors that their input was valuable and how their concerns had been addressed. He suggested adding a neighborhood meeting between the Planning Commission review and when the item is scheduled to come before the council. At that meeting, responses to the items identified on the issue list developed at the earlier neighborhood meeting along with issues brought up at the public hearing and Planning Commission review could be discussed. Changes that were made would also be identified. Gunyou said that was a good suggestion. That type of discussion has been done informally in the past, but having a more official meeting would be helpful. He noted the city web site will be revamped to allow people to sign up to be notified of updates on specific projects.

Hiller said in general he liked the new process. He suggested it might make sense to reverse the order of the issues identification meeting and the neighborhood meeting. He asked if the Planning Commission has been asked about its role in the issue identification process. Gunyou said the item was discussed at the joint study session with the Planning Commission. In response to reversing the order of the meetings, Gunyou said the issues identification meeting was intended to start with the developer presenting the proposal as a basis for identifying issues. There would be a second meeting where the developer would present options after considering and addressing the issues that were identified. Hiller said he agreed with the others about expanding notification for this proposal but not through more mailings rather through more advertising.

Callison agreed that more mailings are not necessary but signs on properties would work well for this proposal. She said it was her original understanding that the issues identification meeting would involve discussions on a conceptual plan from the developer. She said what she heard at the Comprehensive Guide Plan open house was that the plan was too conceptual for people to be able to provide good feedback.

Wiersum noted people are generally better editors than they are authors. If they are given something to respond to, they'll be able to discuss what they like and what they dislike. He said he was sensitive to the criticism that projects tend to have a head of steam and the city has an agenda before the residents ever hear of a proposal. Staff meets with the developer to address issues before it is ever heard by the public and momentum is created. He said the new process with the upfront work will help address that issue.

Callison asked how much detail is expected to be presented at the first meeting. Wischnack said the idea is for a conceptual plan to be presented that may include some aerial photography and outlines of areas of interest that the developer is promoting. Conceptual drawings based on the discussion at the first meeting would be created for the Planning Commission meeting.

Wagner said the idea for the process is to get the neighboring areas involved in the momentum of the project. He said there has to be some specificity to the design presented at the first meeting because people have difficulty responding if there are too many variables. He said the developer has to be upfront to get feedback but shouldn't mislead people into thinking there is an alternative if there is only one scenario that the developer feels will work.

Allendorf said unless there is enough specificity at the first meeting to give true direction to the neighborhood, a developer may be reluctant to bring up something that will be responded to negatively. He said it is staff's responsibility that if a major issue is identified it should be communicated with the developer.

Hiller said if the plan presented is too detailed it will focus the neighborhood's attention on the wrong thing. A conceptual plan would focus attention on issues like density and proximity to parks rather than arguing over a specific proposed wall. He said he now supported a more conceptual plan to start with that would get people focusing on the right issues rather than looking for a specific detail to use to try to stop a proposal.

Wagner said maybe there wasn't a right or wrong answer on the issue. This project will likely change the area from R1. For the project at the southwest corner of Hopkins Crossroads, there was a defined zoning district set up and a detailed plan might have been useful for the initial meetings. This proposal might be one where a conceptual design might work better.

Michael Halley of 14801 Minnehaha Place thanked staff for the proposed review process. He said it would start a process that should take no longer than 15-18 months and hopefully will end up with a successful conclusion for all parties concerned. The intention is to bring forward two viable projects. He is concerned about presenting something completely new to the neighbors north of the creek. The conventional densities will not work. Halley said although he is willing to walk away from the project if it is unworkable, there is a window of opportunity because there is an amicable arrangement with all of the affected homeowners to bring forward a project that works for everybody. The inclination for the neighbors is to think the area is an ideal extension of Big Willow Park and he said he needed the Planning Commission and City Council to communicate that either nothing will happen or something of real consequence will be developed. There likely will not be another opportunity to draw all the homeowners together again. Halley said one advantage is that unlike other recent projects there are not a lot of neighbors that would be immediately impacted.

E. 2009-13 Capital Improvements Program.

Gunyou gave the staff report.

Callison said there was a discussion at the CIP study session about desirability for a sidewalk on Hutchins Drive. The \$40,000 project is listed as unfunded with no definitive date for when it might be put in place. She asked for an update on where the proposal stands. Gunyou indicated that a new system to set trail priorities is being developed, and that a fall study session is being planned to discuss this process with the council and park board. Council could make decisions on the project and others at this time. He noted that the CIP can always be amended in the future to reflect those decisions.

Callison noted that that a number of projects are unfunded that were included in the discussions about future road needs and the use of bonding. Gunyou said the only bonding included in the recommended CIP is for Shady Oak Road. The other projects were listed in the CIP as unfunded to insure that the council was aware of the potential future need. Because the actual cost and timing of the state and county projects is unknown at this point, he suggested that future CIPs would use a 10 to 15 year planning perspective, rather than only five years, to track future funding requirements as the projects move forward on the county's planning list. This was the approach taken for the study session to show the council what was potentially in the pipeline.

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2008-064 adopting the 2009-13 Capital Improvement Program
All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Reappointments to the senior citizen advisory board.

Callison moved, Allendorf seconded a motion to reappoint:

- Ruby Berg, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2008 and expiring on May 31, 2010.
- Richard Koenig, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2008 and expiring on May 31, 2010.
- Karen Mast, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2008 and expiring on May 31, 2010.
- Marie Moilanen, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2008 and expiring on May 31, 2010.

- Beverly Montgomery, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2008 and expiring on May 31, 2010.

All voted "yes." Motion carried.

16. ADJOURNMENT.

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 9:49 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk