

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JULY 14, 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 Brad Wiersum, James Hiller, Terry Schneider, Bob Ellingson, Tony Wagner, Dick Allendorf, and Jan Callison were present.

4. APPROVAL OF AGENDA.

City Manager John Gunyou noted addenda to items 10C and 14C.

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

5. APPROVAL OF MINUTES: June 9, 2008 regular meeting.

Wagner moved, Wiersum seconded a motion to approve the minutes of the June 9, 2008 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. CenterPoint Energy Community Partnership Grant.

Glen Miller from Centerpointe Energy presented the grant.

B. Presentation regarding new Web site tools.

Community Relations Manager Jacque Larson, Web Technologies Coordinator Marc Drummond, and James Bonneville from Granicus, Inc. gave the presentation.

Callison asked how other cities are using the webstreaming technology that differs from Minnetonka's planned use. Bonneville responded that cities are webstreaming sporting events and using the technology for internal training presentations.

Schneider asked if it was possible to email a link of a specific portion of a meeting to a resident. Bonneville confirmed that it was possible.

Gunyou pointed out one of the advantages of the MyMinnetonka system is its ability to allow real time resident feedback throughout a project and be notified the minute web site information is updated.

Schneider asked if the updates emailed from MyMinnetonka will be filtered by spam blockers. Drummond said the emails will not include attachments but will provide a link to the web site. He said if users add the city's email address to their address books it will reduce the likelihood of the emails being blocked.

Hiller said one of the main concerns he has heard is that residents are trying to pay attention to a project and are having difficulty keeping up to date. He said MyMinnetonka will make it easier for residents to get timely information. He asked if the council's study sessions will be made available online. Gunyou said information of all the meetings including study sessions will be made available through MyMinnetonka. Currently study sessions are not videotaped. Hiller said he would like the council to discuss videotaping study sessions. Callison said that this would be discussed at another time.

Wagner said many residents are most concerned about projects in the area around their house. He asked if it was possible for people to opt in to receive information only for projects based on a certain distance from where they live. Drummond said that option could be investigated.

Wiersum said the city is constantly working on improving notification to residents but sometimes runs into the issue of information overload. He said MyMinnetonka will help bridge the gap by providing information on a timely basis but not inundating people with too much information.

Callison asked if there are other cities using similar technology to Granicus and MyMinnetonka. Larson said several other cities use Granicus for webcasting. MyMinnetonka was developed in house. Callison said MyMinnetonka will allow residents to provide feedback on their own timetable. She asked how that feedback will be collected and shared. Gunyou said the system allows the information to be downloaded and included in the staff report.

Schneider asked if MyMinnetonka could be marketed to other cities. Larson said there might be interest from other cities but further investigation is needed. Drummond said the system is integrated with the city's website so there is an issue about having to copy the entire website to use the tool.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings.

Wiersum reported that Will Lear, a former resident and 2003 graduate of Minnetonka High School competed in the NCAA Division III long distance running championships last year and won the 1,500 and 5,000 meter races. He was the first person to win both races on the same day. Wiersum said Lear has run a sub four minute mile twice this year. Last weekend Lear participated in the U.S. Olympic trials and finished fourth in the 1,500 meter race.

Callison said she attended the groundbreaking for the new Syngenta headquarters with Schneider and Wiersum. She also attended a presentation from the mayors of St. Paul, Minneapolis, and Bloomington about the upcoming Republican Convention. Volunteers are still needed. She said there will be many activities for people not attending the convention including an event called Civicfest.

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

No one appeared.

9. BIDS AND PURCHASES:

A. Consideration of bids for the re-roofing of portions of the community center.

Gunyou gave the staff report.

Wiersum moved, Schneider seconded a motion to award bid to Dalbec Roofing, Inc. All voted "yes." Motion carried.

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

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

Allendorf moved, Wagner seconded a motion to approve the July 14, 2008 claims which includes checks numbered 213088 through 213551, totaling \$2,046,343.19. All voted "yes." Motion carried.

B. Agreement with the city of St. Paul to assist with the Republican national convention.

Hiller asked for the item to be pulled off the consent agenda. He said he supports police and fire departments working together but is concerned about indemnification issues. He asked if it was prudent for the city to share in the \$10 million liability policy and take on the risk involved. City Attorney Desyl Peterson said the city's insurance also provides coverage beyond the \$10 million policy. The League of Minnesota Cities Insurance Trust is looking into the possibility of buying excess insurance so the League of Minnesota Cities Insurance Trust would not be exposed.

Hiller moved, Allendorf seconded a motion to authorize execution of the agreement in a form acceptable to the city attorney. All voted "yes." Motion carried.

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

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2008-075 with the addendum ordering the abatement of long grass nuisance conditions. All voted "yes." Motion carried.

D. Resolution amending Council Policy 2.8 regarding council support of nonprofit organizations.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2008-076 amending Council Policy 2.8 regarding council support of nonprofit organizations. All voted "yes." Motion carried.

E. Supplemental Agreement No. 1 for the 2008 Street Rehabilitation Project No. 08401.

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

11. **Items requiring Five Votes:** None.

12. **INTRODUCTION OF ORDINANCES:** None.

13. **PUBLIC HEARINGS:**

A. Public hearing on the issuance of revenue bonds by the City of Hinckley for the refinancing of facilities located at 4725 and

4731 Clear Spring Road, Minnetonka, MN (Community Involvement Programs).

Gunyou gave the staff report.

Wiersum asked if what was being done was to provide the organization access to tax free municipal financing for people to buy the bonds. Gunyou confirmed that was mostly correct. He said it is a refinancing involving a nonprofit that provides services for developmentally disabled people at a residential facility in the city. Callison noted the city of Hinckley has a facility owned by Community Involvements Programs and that multiple cities are involved in the refinancing.

Callison opened the hearing at 7:14 p.m. No one spoke.

Callison closed the hearing at 7:14 p.m.

Wiersum moved, Wagner seconded a motion to adopt Resolution No. 2008-077 . All voted "yes." Motion carried.

14. OTHER BUSINESS:**A. Items concerning ordinances regarding tree protection:**

Gunyou gave the staff presentation.

Hiller asked for an explanation for the changes recommended by the Planning Commission. He said that many of the changes seemed to be related to pragmatic issues that the commission will have to deal with on future applications and from information received at the public hearings. Community Development Director Julie Wischnack said there was a lot of public input about the viability of the ordinance and how it would affect property rights. She said the first change recommended by the Planning Commission was to delete the one acre minimum lot size concept as an incentive to go through the PUD process. The second major change was about the 25 percent versus 50 percent threshold. The commission was discounting for the allowance of a public street. In the PUD process, staff was proposing, a street could be compensated for in extreme cases.

Callison said she received a letter from a resident inquiring what happens in the case where an expense has been incurred and an ordinance changes the developable potential of the property. Wischnack said research indicates the city is not required to

approve a subdivision based on an assessment. She said many ordinances besides the tree ordinance apply to a property's potential development. When people see a proposed ordinance that might impact their subdivision they also must think about existing ordinances that affect their property. In this resident's case there were steep slopes on the property and an assessment for about three lots at \$20,000. It is questionable whether the resident can subdivide into three lots based on the steep slope ordinance. Peterson said a case decided in the late 1970's specifically addressed a situation where a city had assessed for potential development of a lot and flood plain ordinances took effect after the assessment. Those ordinances prohibited the proposed development and the courts decided there was no obligation to approve the development based on the prior assessment.

Callison asked for clarification on when the wetland acreage is included in deciding how many lots can be built for a lot that includes a wetland. Natural Resources Manager Jo Colleran said when the city looks at an area normally a wetland area is considered to be unbuildable. There is an incentive that provides a density credit of two lots per acre if approved by the council. She said the Wylewood condos are an example where the condos were allowed higher density because there were four or five acres of wetlands.

Wiersum noted that Gunyou had said one of the things that made the proposed ordinance unique is that it focused on subdivision of property rather than just on tree protection. He asked if other communities have taken this approach. Colleran said the proposed ordinance is different from ordinances in similar cities. The closest match to the Planning Commission's recommendation was the city of Eagan. Eagan has an allowable removeable per lot area based on the subdivision of land. Colleran said study session and council discussion and public comments indicated concern that high priority trees were being excluded. Including the city's remnant ecosystems makes the approach in the proposed ordinance different from other communities.

Wiersum said under the current ordinance no trees would be required to be protected in either the five lot Coyote Song development or the Woodhill Road development. He said it is still unlikely that a developer would come in and cut down all the trees since trees add value to property. He said he was torn because having someone come in and cut down all the trees is within the realm of possibility while being outside the realm of likelihood.

Allendorf asked Callison what point she was trying to get at with her questions about wetlands. Callison said she was trying to determine if trees were being treated differently from wetlands particularly if people were seeing a loss in the developed property based upon the ordinances. She said the ordinances treat trees and wetland similarly except the tree ordinances don't have the incentives related to allowing a developer to earn lots back. Colleran noted that there are lots that will never be built on unless they go through the Wetland Conservation Act process and get council approval to mitigate for the loss.

Wagner said he would like a better understanding on the definitional difference between significant and high priority trees. Colleran said a significant tree is defined as any deciduous tree that is eight inches or larger in diameter or any coniferous tree that is 15 feet or taller. Significant trees would be allowed to be removed with no mitigation for the basic tree removal area. For an R1 development this area includes the house pad and a 20 foot perimeter around the home; the roadway and a 10 foot perimeter of the roadway; the driveway and a 10 foot perimeter around the driveway. Outside those areas a person would have to provide a two inch tree for every significant tree removed along with getting council approval of the plan.

She said high priority trees are defined as deciduous trees that are 15 inches or larger in diameter except for box elder, elm, willow, poplar, silver maple, mulberry, fruit, Norway maple, Amur maple, and black locust trees. Colleran said some of those species are considered more invasive. The high priority trees would also include 20 foot or larger coniferous trees. Trees have to be structurally sound and healthy under both definitions. The staff recommendation is that under the one unit per acre scenario 25 percent of the high priority trees and 25 percent of the woodland preservation area on the site could be removed in the allowable tree removal areas. If a person wanted to remove more trees, a PUD would be required. The council could approve a larger amount of trees be removed. She said the high priority classification excludes certain species that are relatively fast growing and are still defined as significant trees. The definition reflects the community value of what staff has heard in the past. High priority trees have a higher level of protection.

Wagner said his understanding was a group of significant trees would never trigger the PUD requirement. Colleran said that was a correct statement.

Callison asked if a resident has the right to plant a garden and remove a stunning oak tree in order to do so. Colleran said if the resident is an existing property owner they have the right to remove every single tree on their property. Callison asked if there was a restriction if the resident wanted to develop the property within a certain period of time. Colleran said there is a look back clause that would require the resident to wait two years before coming in with a development proposal. Callison noted there is also a requirement for the trees to be left in place for two years after a subdivision approval. Colleran said the provision prevents a developer from removing trees to change the property in a situation where a home is not selling. By waiting two years, the home is occupied by a property owner who can make the determination what the best use for their own property is. Wagner asked if the two year look back is defined as occupancy or as a lot split. Colleran said the two year cooling off period is based on certificate of occupancy. The two year look back is based on the time the trees are cut and application.

Charlie Lefevere of 27243 Minnesota Highway 15 in Dassel said the number of lots in a subdivision is of critical importance to the landowner. He said the value of a lot in Minnetonka is around \$200,000 in most cases and can go up to \$500,000 a lot or more. Most people cannot handle a loss of that magnitude. He said the city has a restrictive one half an acre lot size requirement and that is considered plenty of room for a nice house and lots of trees. The proposed ordinance changes the one half acre minimum to a one acre minimum in the cases with lots covered by trees. Lefevere said it would be a severe change for landowners. If a person owned an acre and expected to get two lots, the ordinance would not allow for the subdivision. If a person owned an acre and a half and expected to get three lots, the restriction would not allow the subdivision. In all cases, the number of lots the landowner expected to get would be cut by at least 50 percent.

Lefevere said there was a comment made at the Planning Commission hearing that the ordinance would primarily affect developers rather than ordinary citizens. He said developers do not buy land assuming they will get a subdivision. Rather they offer an amount of money contingent on getting approval for a certain number of lots.

He presented drawings showing the proposed ordinances impact on lots covered by trees. Wagner asked for staff comments on information in the drawings. Gunyou said Lefevere's information was based on the percentage standard. With a PUD, a landowner

could conceivably do anything and none of the information shown in Lefevere's drawings would be applicable. Wagner asked Lefevere what his concern was with the PUD requirement. Lefevere said there was a change of position by the staff. He said it was stated at the Planning Commission hearing that the 25 percent standard would still apply in a PUD. With a PUD the applicant decides what would be permitted under standard zoning and then negotiates over what can be done better. Lefevere said in a situation where the landowner is not entitled to any lots because the 25 percent standard cannot be met, he would have no bargaining power. Generally, it isn't considered a good thing when a city has that kind of unlimited discretion.

Lefevere said the council has been shown situations where the ordinances work because they are cases where there is open space to start with. Such property isn't subject to the full force of the ordinance for very large lots with some open space. He said the Planning Commission recommendation takes a sensible step of giving 25 percent credit for the street. He showed a drawing of the land required to meet the 25 percent requirement with a 3,000 square foot footprint for a house and garage that are perfectly square. A landowner would need .84 acres if the lot was covered by trees. He said near the end of the Planning Commission process, a provision was added limiting the removal to 25 percent of high priority trees. He said high priority trees include at least two species of two inch trees. The largest total footprint for a house and garage fitting on a one half acre lot and meeting the 25 percent land disturbance requirement is 1,067 square feet.

Lefevere said under the proposed ordinance a landowner, who has cut down all the trees on the property, has twice the development rights than a landowner who hasn't cut down any trees on the property. He said the ordinance is confusing, highly complex, poorly understood and unfair. He recommended increasing the disturbance percentage to at least 42 percent. This would allow a 3,000 square foot house to be built on a one half acre lot.

Paul Otto, of 9 West Division Street in Buffalo, said he was a land surveyor and civil engineer representing Lefevere. He said he deals with ordinances all the time and it is helpful for ordinances to make it clear where development rights start and what triggers the PUD process. He said he is a believer in PUDs and that they result in a better product. An ordinance needs to make it clear what is required so a PUD can be judged against another PUD with certain conditions of a property. If things are too broad it will be difficult for property owners to manage their way through the process.

George Macgibbon of 11500 Timberline Road said his homestead falls totally under the tree preservation ordinance. His property is also adjacent to Crane Lake so he is impacted by the shoreline ordinance. He is also affected by the steep slope ordinance. He said he likes all trees including those on non R1 properties. Residents are concerned about the destruction of trees on commercial property. If 94 percent of the city is developed, that leaves six percent that will be affected by the tree preservation ordinance. He questioned if there really is the need for the ordinance and that it might intrude on property rights.

Callison called a recess at 8:34 p.m. She called the meeting back to order at 8:44 p.m.

Allendorf asked if Lefevere was accurate in stating that the driveway would account for 25 percent of the threshold and that the Planning Commission's recommendation for a 25 percent street allowance was removed. Gunyou said the percentages apply to the preservation areas and not the entire lots. Unless the entire lot is covered by highly valued trees the percentage is not applicable. He said the PUD obviates all the arguments because the council has the tool to give discretion and flexibility to applicants. Wischnack said there still is language in the Planning Commission version for the 25 percent reduction for roads. There is a 20 percent reduction for private streets. The staff recommendation does not include the discount.

Schneider said it was challenging to understand the information. In the methodology for calculating the impact on a woodland preserve area, he asked if the calculation was based on the impact per acre of area or by the number of trees in the area. Colleran said the calculation is based on the actual area. If there is a two acre lot with one acre of woodland preservation area, the property owner could remove a quarter of acre of the woodland preservation area. For high priority trees, the calculation is done by the number of trees. Schneider said that if there was circular two acre woodland preserve area on a piece of property in theory a person could put two houses in the preserve area but only remove three trees because of the way the houses are sited. It doesn't necessarily relate to immediate tree loss. There could be a lot more trees removed than 25 percent or a lot less depending on how the homes are sited within the circular area. Colleran said that was correct but noted the applicant is required to maximize tree preservation.

Wagner said for a two acre lot circled by trees with an acre woodland preservation area, an applicant could build upon one and three quarters of the lot.

Peterson said the reason the council asked staff to look at the tree preservation ordinance was because in the Crosby Cove subdivision staff tried to get the developer to do a PUD. The developer refused. The city had no bargaining power to get the developer to do a PUD because the subdivision met all ordinance requirements. The council was looking for a way to give the city more leverage in protecting trees. She said during the study sessions the council discussed mandating the PUD process because then trees could be protected while still allowing development. However the PUD cannot be the norm because the property owner has to have some specific standards to know how their property can be developed. Council directed staff to include incentives to encourage people to go to PUDs.

Callison said the focus of much of the conversation was on reducing the number of lots and that was not the council's intent. The council was looking for ways to be more sensitive to the land, and to do a better job in placing properties. She said in the case of the Coyote Song application the outcome of the ordinance and the negotiations was fewer lots. She asked if staff looked at setting aside the issue of the number of lots and looked at the measures seen in the subdivision off of Tonkawood Road where the city worked proactively to ensure minimal impact. She said the ordinance achieves the protection by reducing the number of lots and not by trying to create incentives to build the units differently. Peterson said the ordinance does use the reduction of lots as the leverage to encourage the property owner to go to the PUD process. She said the ordinance could include criteria that guide what the PUD should allow. Wischnack said for the Coyote Song example the question is really about where the lots are located. The other question is about what the council is trying to achieve with the ordinance. The ordinance is about protecting the remnant ecosystems and not necessarily saving individual trees. She said the broader question is if the lot removal has a substantial impact on the ecosystem. In this case there is a substantial impact but that would not be case in all subdivisions.

Schneider said the difference in the two ordinances is in the 25 percent and one acre criteria. There are other minor differences. He said he disagrees that the Planning Commission recommendation removes the incentives for a PUD process. The fundamental issue is about balancing the rights of a person to develop their property to

a reasonable extent while preserving and protecting as many trees as practical. He said the staff approach goes way too far to get the developer's attention, and has the potential to have a property owner with a five acre lot determining they want to sell the property in five years and cutting down trees so the ordinance does not apply. He prefers a reasonable expectation on the percentage of different types of trees that can be saved on a development without sacrificing density by using a creative approach such as shifting the homes around to save the more important trees or making them fit in better with the ecosystem. He said he would use the staff criteria of establishing a threshold where a PUD is required. Peterson said the city is not allowed to force somebody into a PUD. There have to be standards that allow people to know what can be built. She said the city can encourage people to go to a PUD and that is what the ordinance attempts to do.

Schneider agreed that if a project is big enough to involve public streets and the streets are in a woodland preserve area, the streets have to be factored into the percentage. He said he favored the Planning Commission's pragmatic approach but keeping in language that requires the practical maximization of tree preservation.

Allendorf agreed the staff recommendation was too draconian. He said the Planning Commission recommendation is too close to the existing ordinance and doesn't forward the objective of saving trees and balancing the property owner's right to develop. He suggested blending the two recommendations. He said one acre was an incentive for someone to use a PUD. In the case where the city requires a road to be brought in for the good of the city, it was unfair to include the trees in the percentage of removal. He would use the Planning Commission recommendation to exempt the trees when a public road is brought in. The 25 percent would apply to the remaining area. This would not reduce the number of lots.

Wiersum said someone had once advised him not to vote for an ordinance he did not understand. He said he spent a lot of time reading through the council packet and remains confused. He is concerned how understandable the proposed ordinances are to the general public. He said the work done in defining woodland preservation areas and getting a better understanding on the types of ecosystems is good work and has provided information that can be used going forward. He said he is concerned the proposed ordinances create incentives to do the wrong thing by planning ahead. The ordinances would create a new class of property owners by putting greater restrictions on those who own land with a

woodland preservation area. No other resident has ever had the same restrictions. If he were forced to choose he would choose the Planning Commission recommendation. He said the issue should maybe be tabled for a year rather than enact a bad, confusing, and difficult to understand ordinance and later regret the results. He said it was asking too much in reducing the number of lots by as much as 15 to 20 percent of the total lots.

Wagner said he appreciated Wiersum's comments but the proposed ordinances are what the council asked to receive. He did not support tabling the issue for a year because the council agreed it did not want another Crosby Cove. He agreed with Allendorf that there has to be a middle ground between the two proposed ordinances that would provide the right incentive for what residents have asked for: to preserve the feel of their neighborhoods. He said trees have to be classified to determine what trees should be saved. He agreed with the concern that the ordinances do not reward stewardship. Many residents have maintained trees who have owned lots for a long time.

Wagner asked if the ordinance could include different triggers that preserve a smaller parcel's ability to get the maximum number of lots while allowing the number to decrease over time as the developable area increases. Peterson clarified that Wagner's question was if the ordinance could include different categories of properties based on size and that there could be different standards based on if a property was over a certain size. She said that was permissible as long as there was a good explanation of the reason for the distinction. Wagner said the provision might be based on the percentage of loss of developable property. He said property rights need to be protected in the ordinance while ensuring that there is not the incentive to plan ahead in order to cut down trees and preserving the city's ability to encourage people to do a PUD.

Hiller said the Planning Commission seemed to have the same issue with figuring out what was an appropriate decision for them to make. This was part of the reason for changing the maximum number and the removal of the incentives for the PUD. There is a lot of vagueness with the PUD and the commission wasn't sure what the standards should be to judge the PUD. He said no matter what is approved, it is unlikely that it will solve all the issues and the council likely would have to clean up the ordinance in the future. At the same time, the council could work on the issue for the next year and continue to struggle with the details. He said the best compromise would be to approve the Planning Commission's recommendation that would provide enough tree protection and

consistency for people to understand. Going with the staff recommendation will likely mean that there will be several exceptions asked for and the council will have to pay constant attention to finding the right balance.

Ellingson agreed with Wagner that something should be done rather than waiting another year. He said something would have to be worked out between the Planning Commission recommendation and the staff recommendation. His wife has lived in the city for 55 years and he has seen pictures of the area from the past that show no trees at all. A lot of the trees have been planted by people who have moved into the city. He said the native woodlands need to be preserved. It is unlikely people will cut down all of their trees two years before selling their property. He said the problem is when a developer comes in and for the ease of building several houses quickly, puts in a cul-de-sac and mows down all the trees.

Callison said there are a lot of subdivisions in the city that have worked out well where the trees have been saved. She was struck that coming out of the same process the staff's version of the ordinance got more stringent while the Planning Commission's version became less stringent. She said she likes the woodland preservation area concept and the concept of preserving ecosystems is a huge benefit. She said the city needs to find a way to get people to use PUDs because it is a key tool to accomplish what the council wants to accomplish. She suggested starting with the original ordinance as introduced. Since then having high priority trees has been added to saving woodland preservation areas. She said she wasn't sure if the 25 percent threshold was the proper number. She would also look into more incentives for people to use a PUD while not getting sidetracked by the number of lots. The issue underneath the number of lots is who will pay for the woodland preservation. She said it is clear the city will not pay for the preservation and she doesn't want to burden property owners. There are creative ways to develop that the city is beginning to see in terms of clustering and other techniques. If the ordinance doesn't contain percentages it will be more difficult to work with but also would accomplish what the council wants without putting the burden so directly onto the property owner.

Schneider said he has worked in communities that have been able to work through the process in order to get what they wanted. One example is when working around a wetland area the DNR standards allow the ability to do mitigation and replacement. A number of communities have designated wetland area as an overlay district. Even if a person can meet the DNR standards they

still have to get approval to change the district overlay boundary. He suggested being creative in converting the mapped woodland preservation areas into an overlay district. If a person impacts the district, a PUD would be required for any development. By establishing a separate class that applies throughout the city, different standards can be used. He said there is merit to the approach because it establishes when certain things trigger a PUD and then performance standards can be used that define what the desired end result will be without getting into many pages of detailed language in the ordinance that are difficult to figure out.

Peterson said Schneider was taking a different approach while ending up in the same place as the staff. If a property owner is impacting a woodland preservation area, then there are standards that have to be met. She said staff could look into the use of an overlay district.

Wiersum said one thing that was agreed upon was the desirability to get to the PUD process. He said the one year moratorium worked well allowing properties to be developed without being a draconian approach. He said he prefers creating incentives to get people to use a PUD.

Wagner said the council has to decide what it is willing to accept. He noted everyone seems to be comfortable with a PUD standard. The issue is the triggers. He said he favors protecting the woodland ecosystems but has a problem with not having the right incentives to ensure that people who have been good stewards can develop their property.

Allendorf said the trigger is irrelevant as long as it is lawful. He said once a PUD is triggered the real issue is the percentage of removal or what is going to remain. He said he agreed with Callison that what a property owner will fear is a loss of lots because the ordinance is arbitrary on the percentage. If language is included to protect the number of lots as compared to what is allowed under an R1, then the city, the staff, and the landowner would be working towards the same goal.

Wiersum said the woodland preservation area is an important concept that has been informative. He said the high priority tree concept may have made things more complex and difficult. He said virtually any developer would want to protect a 300 year old oak tree because it adds value.

Schneider agreed with Allendorf that a developer could be assured about the number of lots, but if the lot has trees then extra things have to be done to preserve as many trees as possible.

Wagner said he wasn't sure he could support allowing a person to have four full lots on a two acre lot covered with a remnant ecosystem as they do under current ordinance today. Mitigating impact is an important tool for this council going forward.

Ellingson noted the three example of development being looked at involved the loss of one lot. Each parcel was a different size. He said the Crosby Cove development would go from fourteen lots to thirteen lots which isn't much of a difference. The development on Woodhill Road would go from three lots to two lots which is a big difference.

Callison said the discussion seemed to indicate an interest in language that moves people toward the same number of lots so the outcome of the PUD is similar to R1. Also there seemed to be some consensus for including language that adds flexibility to the 25 percent for high priority trees.

Allendorf questioned if the percentage is needed if the lot is the same as R1 and the best efforts are made negotiating the issue of significant trees. Callison and Schneider said there were in agreement with Allendorf's point.

Peterson said staff would work on coming up with language based on the council discussion but there still needed to be an incentive for a person to go to a PUD. Callison said if language was included limiting the property owner to one house per acre unless a PUD is used then there would be an incentive. Schneider said that would be more palatable to him if language was included stating that if a PUD is not requested the limit of a one lot minimum applies but if a PUD is requested then the R1 half acre lot requirements are assured.

Gunyou said when the first version of the ordinance was presented to the council two years ago there was a provision that stated there would not be any loss of lots beyond a certain percentage. The council indicated at that time they did not approve of that provision. Callison acknowledged the change and indicated that most of the council seemed OK with leaving the PUD one acre requirement in the proposed ordinance.

Schneider said he was suggesting a person was entitled to the R1 standard lot density if a PUD is requested. If a PUD is not requested then the one acre lot requirement applies. Callison said a provision could be included stating if enough trees are saved and other methods are used, the outcome could be the R1 density.

Gunyou said one of the issues is that staff has continued to present multiple options for the council to discuss. He suggested staff sort through the council discussion and present a limited amount of recommendations. Callison noted the council discussion narrowed down some of the options. Schneider indicated a preference for staff to come back with a concept of how to achieve what the council had discussed rather than a full ordinance.

Allendorf moved, Schneider seconded a motion to continue the items.

All voted "yes." Motion carried.

B. Items concerning a five-lot subdivision at 2714 Oakland Road.

Gunyou indicated there would be two more council meetings before action was needed on the item but suggested action at this meeting because there was no guarantee the revised tree ordinance would be ready in time to warrant further delay. Callison said one consideration for when to act on the item was if the four lot proposal that conforms to the ordinance just discussed was likely to be approved. If it was likely not to be approved then it would make sense to make a decision at this meeting.

Schneider suggested if something was approved similar to the Planning Commission recommendation then there should be a staff report with all the details of what was being approved. He said he was comfortable with the five lot subdivision with two additional criteria added that would improve tree preservation and the ultimate result of what the development would look like. One condition would be the requirement that the lots be custom graded. The other condition would preserve eight or nine trees between the house pad on lots five and four with some retaining wall work. Wagner noted the custom grading requirement was already included in the staff report.

Lefevere said at the last council meeting three issues were raised. The issue related to storm water has been satisfied. The concern about a developer coming in and clear cutting after approval but before lots are built has also been addressed. He said the final

issue of the viewscape from Oakland Road will be addressed by an 80 foot conservation easement. Custom grading will be used to preserve trees. Lefevere asked the council to act on the item at the meeting.

Otto said the lots are custom graded. He said if the applicant's plan was approved as designed, lot five would include a tuck under garage with retaining walls that would preserve trees. There are drainage issues between lots four and five. He said any trees between the lots inside a certain area cannot be cut down under the applicant's plan. Staff has indicated some of the trees will die. Otto agreed some of the trees will die but others will not. He said hopefully a developer who likes trees will come up with a different house design on lot four that will save additional trees.

Schneider noted half of the trees he was talking about would be saved under the applicant's plan. He said the plan for lot five indicated a retaining wall going out to the easement line and up. He suggested the wall go from the house pad straight up along the edge of the driveway rather than going up against the easement. This would improve the potential survivability of the trees remaining on lot four. Otto said he could continue to look at the details of the final plans to address the council's concern.

Wagner said he agreed with staff that there likely will not be a resolution to the tree ordinance before deadline for action on the item. He said his concerns had been addressed with the changes that were made since the last council meeting.

Callison noted a PUD was used where a standard R1 could have been used. If the standard R1 had been used it could have resulted in the potential loss of more trees. Wagner noted 60 percent of the trees on the site were protected.

Wagner moved, Allendorf seconded a motion to adopt option B of the staff report with Ordinance No. 2008-20 rezoning 2714 Oakland Road from R-1, low density residential to PUD, planned unit development, and to approve the COYOTE SONG subdivision date-stamped April 14, 2008. Approval is subject to the following conditions:

(1) A conservation easement must be dedicated over the east 80 feet of Lot 5. The easement may allow removal of hazard, diseased, or invasive species. In addition, the easement must:

- (a) Allow for stormwater ponding, and associated tree removal, in substantial conformance with plans date-stamped April 14, 2008;
 - (b) Be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval prior to release of the final plat; and
 - (c) Be recorded with the final plat, together with a drawing of the easement.
- (2) No protected trees that were shown to be saved as part of the preliminary plat may be removed without city approval until at least two years after a certification of occupancy is issued for the home on the lot where the trees are located. The landowner will execute and deliver to the city a declaration of covenant in a recordable form satisfactory to the city attorney incorporating this requirement. Each protected tree that is removed before this date is a separate violation subject to the penalties established by city code.

Prior to final plat approval, complete the following:

- (1) Submit final surface stormwater plans and calculations, acceptable to the city engineer. Surface stormwater treatment facilities must meet the city's minimum design criteria.
- (2) Show the following on the final plat:
 - (a) Dedication of right-of-way for Oakland Road and the new cul-de-sac.
 - (b) The following drainage and utility easements:
 - (i) A 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.
 - (ii) A 12-foot wide easement utility easement adjacent to the Oakland Road right-of-way. This easement is required to cover existing sanitary sewer within Oakland Road.
 - (iii) Drainage and utility easements over the wetland, 100-year elevation, and all infiltration basin areas as required by the city engineer.
 - (iv) A 20-foot wide easement over the existing power line in the

southeast corner of proposed Lot 5. The easement must be a minimum of 10-feet wide on each side of the line.

(3) Pay a park dedication fee of \$5,000 per newly created lot.

(4) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.

b. The following items must be submitted to the city before the city releases the final plat:

(1) An administration and engineering 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) Drainage and utility easements and associated maintenance agreements over all private stormwater treatment facilities.

(c) A conservation easement over the area 25-upland from the delineated wetland edge and a drawing of the easement. The easement may allow removal of hazard, diseased, or invasive species. The easements and drawings must be recorded with the final plat.

(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, and site plans as required by the city engineer must be submitted for staff review and approval.
- (i) The street plans must include:
- Revised "Typical Street Section Detail" which meets city standard street section.
 - Street alignment, profile, and cross-sections.
 - All street and trail patching must be sawcut and replaced perpendicular to the existing street and trail.
- (ii) The utility plan must include:
- Catch basins moved to the east to the radii points of the curb near Oakland Road.
 - Verification of watermain depth in the pond area and insulate depth less than 7.5 feet deep. A wet-pond is not allowed above the watermain.
 - Profile view for all public utilities.
 - Service locations, size and type of materials.
 - Fire hydrant locations as required by the fire marshal.
 - City standard details must be used as applicable.
- (iii) The grading plan must include:
- Proposed Lots 1 and 2 must employ either infiltration techniques or direct all roof runoff to the street to avoid erosion on the code-defined steep slope.
 - All lots must employ either infiltration techniques or direct all roof runoff to the street to avoid drainage onto adjacent properties to the south.

- (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 construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.
 - (f) A recorded copy of the conditional use permit.
- (2) Ponding and infiltration 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) Submit an electronic PDF copy of certified plans and specifications.
 - (b) Submit two full size and three 11x17 sets of construction drawings and three sets of project specifications.
 - (c) Submit a copy of approved MPCA NPDES permit.
 - (d) Install all measures in accordance with the SWPPP for staff inspection. These items must be maintained throughout the course of construction.
 - (e) The final plat must be released by the city and filed with Hennepin County for recording.
 - (4) As required by the city engineer, the stormwater pond and/or infiltration areas 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) A recorded copy of the final 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 in microstation or DXF and PDF format.
 - (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.
 - (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) Pay a hookup fee for sanitary sewer and water.
 - (e) Submit a maintenance agreement for private infiltration areas. Individual property owners must be responsible for maintaining infiltration areas. Maintenance will include, but not be limited to, the periodic removal of sedimentation within these areas, keeping a vegetative cover within the areas removing any blockage that may impede the drainage of the site and yearly reporting to the city.

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

- (1) Minimum setbacks for principal structures:
MINIMUM SETBACK FRONT
25-feet adjacent to cul-de-sac right-of-way
50-feet adjacent to Oakland Road right-of-way
SIDE
10-feet interior to PUD
15 feet exterior to PUD
REAR 20% of lot depth or 40 feet, whichever is less
- (2) Minimum lowest floor elevation is 2-feet above the established 100- year floodplain elevation.
- (3) 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.
- (4) Hardsurface coverage is limited to 50 percent within the development. Individual lots within the development may exceed maximum as long as the average meets this standards.
- (5) Floor Area Ratio is limited to 0.5 within the development. Individual lots within the development may exceed maximum as long as the average meets this standards.
- 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.

All voted "yes." Motion carried.

C. Items concerning a three-lot subdivision of the existing property at 12117 Hilloway Road.

Gordon gave the staff report.

The applicant, Jim Mackinnon of 2430 Meeting Street said the average size of the lots are over 8/10ths of an acre. He said the city staff asked for a conservation easement and that it couldn't be required. Mackinnon agreed to some type of easement that would address the staff's concern while still allowing a reasonable use. He also agreed to do a covenant that protects the northwoods nature of the property because that is what he and the neighbors want. He asked the council to reconsider the potential location of the driveway for lot one. There is an existing sewer and water stub that the city wants him to use so the street would not need to be dug up. He agreed to collocate the driveway and hookups for a couple of the properties. He would like the flexibility to run the driveway from Byrnes Road. The staff recommendation is to run the driveway elsewhere so trees would not be lost. He would agree to a condition of mitigating any tree loss if given the flexibility. He indicated he also agreed to dedicate outlot A that would be part of the right of way of Byrnes Road.

Schneider moved, Wagner seconded a motion to give preliminary approval to the Northern Pines plat, date-stamped April 14, 2008. Approval is based on the finding that the plat meets the required

standards and ordinances. Approval is subject to the following conditions:

- 1) Prior to final plat approval, complete the following:
 - a. Show the following on the final plat:
 - (1) Dedicate Outlot A as right-of-way to be included with Byrnes Road.
 - (2) 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.
 - (3) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (4) Drainage and utility easements over back-to-back 100-year storm elevation of 944.31 and as determined by the city engineer.
 - b. Pay a park dedication fee of \$10,000.
- 2) The following items must be submitted to the city before the city releases the final plat:
 - a. An engineering/utility inspection fee.
 - b. An electronic CAD file of the final plat in microstation or DXF.
 - c. 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:
 - (1) Title evidence that is current within thirty days before release of the final plat.
 - (2) 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.
 - d. The portion of the existing driveway located east of the proposed house on lot 2 and the loop driveway located on proposed lot 3 shall be removed.
 - e. Any other requirements included with final plat approval.
- 3) Prior to issuance of a building permit for any lot within the development:
 - a. Submit the following items for staff review and approval:
 - (1) A construction management plan. This plan must be in a city approved format and outline

- minimum site management practices and penalties for non-compliance.
- (2) Water and sewer service location and depth must be field verified. Location of basement floor elevation is dependent on depth of water and sewer services.
- (3) Stormwater ponding and infiltration facilities must be incorporated into this development to meet stormwater management requirements for quality, infiltration, and quantity. Final plans and supporting hydraulic and hydrology calculations certified by a licensed engineer in the State of Minnesota demonstrating that minimum design criteria are met must be provided for evaluation and approval by the city engineer.
- (4) Final grading, utility and tree preservation plan.
The plan must:
- (a) indicate that each lot will be custom graded at the time of building permit. Only grading for utilities and driveway improvements will be permitted prior to issuance of a building permit;
- (b) show that Lot 1 will gain sewer and water service, and driveway access from Hilloway Road;
- (c) indicate trees designated for preservation at the time of preliminary plat approval;
- (d) show sewer and water services to minimize impact to any significant trees. Sewer and water services must be collocated with proposed driveways in order to minimize tree loss. One set of new services must be installed for Lot 3. Location of services for Lot 3 must be shown on the utility plan;
- (e) a custom grading plan for lot 1 must be submitted to provide adequate drainage of the northwest portion of the lot to prevent flooding potential to the proposed house.
- (5) 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.
- b. Submit the following documents:
- (1) A recorded copy of the preliminary plat, all required easements, and restrictive covenants.
 - (2) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
- c. Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
- d. 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.
- e. Install heavy-duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.
- f. Pay a hookup fee for sanitary sewer and water.
- 4) Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the all R-1 zoning standards. In addition:
- a. Minimum floor elevation is 946.31.
 - b. All structures must maintain a 20-foot horizontal setback from the 942.0 floodplain elevation.
 - c. All three lots must be custom graded at the time of home construction. The location of houses must be in substantial conformance with the plans date-stamped April 14, 2008.
 - d. The only trees permitted to be removed from the property are those located within the footprint of a proposed home, within 20 feet of the proposed footprint and within 10 feet of the proposed driveway. All other trees must be preserved during construction.
 - e. 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.

- 5) During construction, the streets must be kept free of debris and sediment.
- 6) 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.

All voted "yes." Motion carried.

D. Ordinance regulating retail sales in residential districts.

Peterson gave the staff report. She said there have been around 125 properties where there has been a complaint call. Some of the properties involved had repeat calls but most of the calls related to different properties.

Hiller asked if the ordinance would apply to something like a Tupperware party. Peterson said the changes to the ordinance attempt to eliminate Tupperware and Pampered Chef parties from falling under the ordinance because they do not have the same traffic and parking issues related to garage sales.

Alan Miles Albrecht, of 1017 Hennepin Avenue in Glencoe, said the way the ordinance was drafted was unconstitutional because it differentiates between people who own property in the city but do not reside in the city and people such as snowbirds who reside in Minnetonka but also live in other municipalities. He suggested amending language from "owned by a person who occupies the property" to "owned by a person who owns or occupies the property as a residence." He said the change would keep the residential nature of the ordinance in place but also permit people who have an ownership interest in property to conduct a garage sale.

Wagner said in previous discussion it was indicated that a person who lives half the year in the city and half the year in another location would be permitted to do a garage sale while they occupy the property. Peterson confirmed this was correct.

Wiersum said limiting the number of garage sales per year to two was appropriate. He also said it was appropriate that the ordinance is complaint based and action would only be taken when a complaint is received.

Callison agreed staff did a good job of narrowing the ordinance down so there will not be the unintended consequences of affecting

people who sell a variety of things on occasion from their homes. She acknowledged the ordinance will not solve the traffic issues related to garage sales.

Allendorf moved, Wiersum seconded a motion to adopt Ordinance No. 2008-19 regulating retail sales in residential districts. All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 10:31 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk