

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

1. CALL TO ORDER.

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

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL.

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

4. APPROVAL OF AGENDA.

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

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

5. APPROVAL OF MINUTES: June 30, 2008 regular meeting.

Schneider moved, Hiller seconded a motion to approve the minutes of the June 30, 2008 Minnetonka City Council regular meeting. Hiller, Schneider, Ellingson, and Allendorf voted "yes." Callison abstained. Motion carried.

6. SPECIAL MATTERS: Presentation by Lake Minnetonka Association.

Dick Osgood the executive director of the Lake Minnetonka Association gave the presentation.

Ellingson said the milfoil harvesting program began while he served on the Hennepin County Parks Board. He asked if the Three Rivers Park District still conducts the program. Osgood said the district harvests milfoil on some of the lakes but at this time they are not harvesting on Lake Minnetonka. He said the Lake Minnetonka Conservation District has a harvesting program for Lake Minnetonka. Ellingson said he read a newspaper article written by Osgood suggesting harvesting might actually stimulate the growth of milfoil. Osgood said the objective of the harvesting program is to facilitate navigation and access. He said there is research indicating harvesting stimulates growth.

Schneider said he fully agrees with the major concerns outlined by Osgood in his presentation. Not only is the lake a valuable local resource but a regional and state resource that needs to be protected. He asked when the detailed funding requests will be proposed. Osgood said the association has taken steps not to prepare the specific proposal at this time because they are looking for support of the concept first. He said it is likely the request will be for 10 to 20 times more than the current \$300,000 per year investment.

Allendorf said the council has previously discussed equity issues of the funding of the Lake Minnetonka Conservation District. He asked Gunyou to clarify the funding formula. Gunyou said the city has about three percent of the shoreline and pays 20 percent of the LMCD budget. He said LMCD board member Chris Jewett has been a very effective representative for the city and that Jewett has raised the equity issue from time to time and also has advocated for more of the funding to be used for issues that directly affect Minnetonka residents.

Allendorf said when the association comes up with a proposal on how to fund the solution it would be easier for him to support if the funding was seen to be equitable. Osgood said the funding formula is defined by state statute. He said he personally agrees the formula is not equitable. The problem however is much larger than equity issues. He said the conservation issues cannot be addressed without more adequate funding. Allendorf asked if cities will be asked to live with the current ratio or if the association will look for different ways to come up with the funding. Osgood said the cities need to work together to address the issues.

Callison said voters this fall will be asked to approve a constitutional amendment dedicating more funds to natural resources. She asked if passage of the amendment would open up other avenues of funding. Osgood said the amendment dedicates money to arts, fish and wildlife habitat, and impaired waters. The money for impaired waters will address a federal mandate to clean up polluted waters and not aquatic invasive species. He said if the amendment is passed additional money will not likely be funneled to assist with the Lake Minnetonka issue.

Schneider said he echoed Allendorf's concern that when the association addresses the funding mechanism for a major expansion of the program it needs to set aside the historical allocation of funds and look at all the potential funding options. Once those are identified he said the association should try to evaluate what communities could look at as a reasonable investment for a regional asset. Osgood said when the LMCD was formed in the late 1960's the issue of aquatic species was not nearly the issue as it is today. He said Lake Minnetonka used to be a mess because of sewage pollution but the potential for aquatic invasive species to have an

impact on the lake is much greater and much less reversible. He said the association and the Minnehaha Creek Watershed District have explored the possibility of creating a special taxing district on a subwatershed basis. Also there are 200,000 boats that come into the lake each year so implementing a user fee could raise a substantial amount of money. Two years ago the state provided increased funding through boat licenses surcharges. He said the three bay project received a state grant for \$25,000 and the association has been trying to argue the proportionality issue because Lake Minnetonka has much more traffic than other lakes.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings. He said Allendorf asked him to address an issue related to the robbery at the Gun Stop in Glen Lake. There was a letter to the editor that contained considerable misinformation. He said the city has virtually no authority to regulate gun stores, because state law preempts most local authority. The Gun Stop has been located in Glen Lake for about six years. It was located next to the grocery store for five years before moving into its current location next to the dance studio, which owns the building. The move was a private transaction and the city has not historically been involved in those types of private business decisions. Gunyou said the police chief is meeting with the Gun Stop owner to discuss better security measures.

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

No one appeared.

9. BIDS AND PURCHASES: None.

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

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

Allendorf moved, Ellingson seconded a motion to approve the July 28, 2008 claims which includes checks numbered 213552 through 213885, totaling \$1,877,440.73. All voted “yes.” Motion carried.

B. Public health mutual aid agreement.

Allendorf moved, Ellingson seconded a motion to authorize execution of the agreement. All voted “yes.” Motion carried.

C. Resolutions ordering the abatement of nuisance conditions.

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

- 1) Resolution No. 2008-078 ordering the abatement of nuisance conditions existing at 4261 Woodhill Road.
- 2) Resolution No. 2008 -079 ordering the abatement of nuisance conditions existing at 15803 Minnetonka Blvd.

All voted "yes." Motion carried.

D. Resolution ordering the abatement of long grass nuisance.

The addendum from the community development director indicated all the properties were now in compliance.

E. Rezoning of existing properties at 4639, 4647 and 4653 Shady Oak Road.

Allendorf moved, Ellingson seconded a motion to adopt Ordinance No. 2008-18 which rezones the subject properties from R-1, low-density residential, to I-1, industrial. Rezoning is based on the following findings:

- 1) The rezoning would be consistent with the City's guide plan; and
- 2) The rezoning would be consistent with the public health, safety, and welfare.

All voted "yes." Motion carried.

F. Amendment to contract for professional services with Resource Strategies Corp. for comprehensive guide plan update.

Allendorf moved, Ellingson seconded a motion to approve the Exhibit A - Second Amendment to the agreement between the city and Resource Strategies for additional consulting services. All voted "yes." Motion carried.

G. Final plat approval for YLITALO ACRES.

Allendorf moved, Ellingson seconded a motion to approve YLITALO ACRES final plat date-stamped June 25, 2008, subject to the following conditions:

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

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

All voted "yes." Motion carried.

H. Final plat approval of BRAEBURN WOODS.

Allendorf moved, Ellingson seconded a motion to approve the BRAEBURN WOODS final plat, received on June 17, 2008, subject to the following conditions:

- 1) Compliance with all preliminary plat conditions, include the specific conditions for release of the plat; and
- 2) Unless the city council approves a time extension, the final plat must be recorded within one year of Council approval of the final plat.

All voted "yes." Motion carried.

I. Resolution pertaining to levying the 2008 special assessments.

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

- 1) Resolution No. 2008-080 declaring costs for sewer and water improvement projects to be specially assessed in 2008 and ordering the preparation of proposed special assessment rolls.
- 2) Resolution No. 2008-081 declaring costs for nuisance abatement projects to be specially assessed in 2008 and ordering the preparation of proposed special assessment rolls.
- 3) Resolution No. 2008-082 calling for a public hearing for the proposed special assessments of sanitary sewer, water main, new streets, nuisance abatements, and diseased tree removals on August 25, 2008 at 6:30 p.m.

All voted "yes." Motion carried.

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

A. Conditional use permit for a juice bar at 12201 Minnetonka Blvd.

City Planner Loren Gordon gave the staff report.

Mark Torgeson of 346 12th Avenue North in Hopkins said he has been helping fix the landscaping in front. He said 20 more parking spaces will be created. Torgeson said he was Tom Carluccio's business partner.

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2008-083 approving a conditional use permit for a juice bar with seating area at 12201 Minnetonka Boulevard. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) The following must be completed prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with Hennepin County and a copy of the recorded document returned to the city.
 - b. Submit a proof of parking plan for city staff approval. The plan must show the location of all minimum required parking spaces in conformance with setback and buffering requirements. The city may require the installation of the additional parking spaces whenever the need arises.
- 2) The juice bar and seating area cannot exceed 606 square feet in size.
- 3) The applicant must obtain the appropriate food and beverage licenses from the city.
- 4) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 5) 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.
- 6) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

B. An ordinance regulating outdoor display standards.

Gordon gave the staff report.

City Attorney Desyl Peterson said the BMW application came in for an ordinance amendment. Her opinion is the application is covered

by the 60 day rule. Since the application was received 59 days ago, action had to be taken on the application by the following day or an extension was needed. She said representatives of the BMW dealership had not been willing to agree to an extension.

Peterson said the existing car dealers had expressed much concern over the language related to the 70 percent hard surface maximum so language was added allowing the council to consider variances depending on the good faith effort a dealer was making to improve the site. She said in the original ordinance the expansion of a building on a site by more than 20 percent was the trigger. Staff met with existing car dealers after the last Planning Commission meeting and the dealers asked that language be included adding in 20 percent of the area as a trigger. The dealers pointed to language in the existing ordinance that allows car dealers to expand up to 20 percent of the area and up to 10 percent of the frontage without any negative consequences. Staff thought it made sense to include the language but had concerns with the potential implications. Accordingly, language was included allowing the parcel to expand to up to 20 percent of the area without triggering the performance standards, but this would be measured from the date of the original ordinance of 1988. She said the reason this was done was that the existing ordinance allowed the dealerships to expand 20 percent. Some of the dealerships subsequently have expanded. If language was added allowing another 20 percent from the effective date of this ordinance it would give some dealerships up to 40 percent of an expansion without any improvements. It would also give an advantage to those dealerships that have already made an expansion over those that have not.

Callison asked for clarification about the status of the BMW application. Peterson said the application was for an ordinance amendment that provided language to be inserted into the ordinance. An application for the actual parcel would need to be submitted in the future.

Hiller said a provision states for every 150 square feet of building area a maximum of one parking space is allowed. If an existing use has a parking ratio exceeding the parking space allowance then the council could impose an alternative. He asked if the alternative would include less parking spaces. Gordon said the ordinance would require screening of the parking spaces as well as a lower ratio of parking. He said the ordinance attempts to get to a one per 150 standard. That standard is in the middle of where the parking numbers are for the dealerships that were surveyed. The first

priority would be to get to that standard. If there is not a way to get to the standard then an alternative means would be taken. He said one alternative means would be to use a variance process. Another approach would be to require the screening and the alternative parking standard.

Allendorf asked staff to point out where the screening provision was contained in the ordinance. He said he was concerned about creating unrealistic expectations for the neighbors by a loose definition of screening. Gordon said the provision relies on a review process of the site plan and building conditions when changes are made requiring screening. Rather than a specific detailed approach the provision allows a number of options that can be considered. The city's review authority would determine what might be the appropriate screening. Community Development Director Julie Wischnack said the dealer's property in the corridor is quite varied so one solution does not fit all. She said the Ford dealership is close to residential properties without much separation so a wall might be most appropriate. The Chevrolet dealership has a berm and substantial existing tree growth so a wall might not be the most appropriate approach. Peterson said by using the word "reasonably" in the provision staff was trying to address the situation in which somebody standing on a second floor could look over and the only way to screen would be to put up a 30 foot high fence. That would not be reasonable. What is determined to be reasonable in a particular situation will have to be judged by what is there.

Allendorf said the property was looked at by a dealership a few years back and the people on the other side of the wetland claimed it was reasonable to have a berm with trees on top of the berm and it was the city's responsibility to provide that screening. He said he wants to be sure that the language in the provision is strong enough so if the same group comes to the council, the council can say that what is being asked for is unreasonable. He said if staff was OK in defending the position then he could support the provision. Callison noted that there was language that said the parking structure had to be fully screened from view from surrounding residential uses but the addendum removed the word "fully."

Schneider agreed using "to the greatest extent possible" leaves it up to people's interpretation of what that means rather than the council determining what is reasonable. Including the requirement to minimize the noise and visual impacts gives the council the ability to determine what is reasonable.

Allendorf suggested deleting the words "the greatest extent" and focus the words on "reasonably."

Callison said the ratio provisions were confusing because the council was used to requiring a certain number of parking spaces and the proposed ordinance would only allow a certain number of parking spaces. She said there is always the danger of unintended consequences such as people not making changes to the buildings that should be made because of the requirements. What the ordinance is trying to accomplish is to give the car dealers the ability to improve the views along the frontage road and protect the neighbors. She asked if it would work to remove the ratio and add an expectation that when there are changes the expectation is for additional buffering and a certain number of cars to be hidden. This, in addition to the hard surface coverage and floor area ratio coverage, would not specify the number of cars but would set the expectation of the property looking better when the process is done. Gordon said staff looked at a number of considerations. The approach factored in the number of cars and buffering and screening as ways to get at the aesthetic issue. He said the auto dealers pointed out that their product doesn't sit on a shelf inside a store but sits outside in a parking lot or inside in some fashion. It is therefore difficult to compare the use of an office or a commercial building to a car dealership in terms of parking. The standard has been adapted to allow for the reality of the condition to be reflected in the ordinance. He said between the July 3 and July 17 Planning Commission meetings staff looked to find alternative ways to deal with the aesthetic condition of the parking lots that wasn't solely based on a number.

Schneider asked if the ratio only applied to the front display area. Gordon said the ordinance sets a ceiling of a space for every 150 square feet of building area for parking on the site. If this cannot be achieved the ordinance allows an applicant to seek a variance or allows half of the parking spaces to be adequately screened from ground level. This would permit a dealership to not screen the display area or the area where the cars are for sale by screening the inventory area or the service area. The display area could not be more than a one per 200 parking ratio.

Hiller asked if the one parking space for every 250 square feet of building area for new development was the same as the 150 square feet used for redevelopment based on total parking. Peterson confirmed that was correct. As an example the Lexus dealership in Wayzata has a building that is set back quite a

distance from the frontage road of I-394. That dealership's display area is larger than the Village Chevrolet next door. There will be a different impact on the different properties depending on how they are developed.

Hiller asked for examples clarifying the display area showing the total parking under different circumstances. Gordon said Village Chevrolet has service located in the back half of the building with retail sales occurring in front. Under the ordinance, about two thirds of the defined display area would include service vehicles. Wayzata Nissan has a small display area. Morries Mazda's display area is the front row of cars along the frontage road. Sears has a larger display area. Morries Ford Lincoln Mercury has the largest display area of the existing dealerships. He said the one space for every 200 square feet is a reasonable number based on the square footage of the building because of the one space per 150 square foot standard set for the whole site.

Schneider said, from a practical standpoint, the one space for every 200 square feet would be meaningless. The end result will be 50 percent screening in areas that wouldn't have had that screening before. He noted the lighting requirement based on the wattage was a new concept for the city. The requirement will result in lower fixtures spread out on the site with more uniform coverage. He said he is concerned that since the ordinance only addresses wattages, new technologies may allow ten times the amount of light out of the fixtures while still remaining within the wattage requirement. He asked how the overall illumination of the site will be addressed. Gordon said the approach to lighting was an attempt to find a better way to manage and control lighting on the site by putting the lighting where it needs to be to illuminate the display and keep it away from areas that do not need as much illumination. Staff looked for better standards than the ones the city currently uses. Two years ago, the city of Plymouth conducted a lighting study associated with a "Dark Skies" initiative. The idea was to provide a reasonable standard for commercial uses and also look at how to deal with residential properties. The ordinance reflects many of the provisions that Plymouth developed for their commercial areas. Gordon said Plymouth staff thought it was a reasonable way to manage lighting but that it might have some deficiencies with the onset of newer technologies such as LED.

Schneider suggested staff should continue to monitor the impact of the new technologies and to be proactive to address the issues. Peterson said the Suburban Rate Authority is looking at the issue of street lights and the possibility of using private contractors rather

than Xcel. One of the private contractors has brought in LED lights as an example. There is an ongoing study that staff hopes will provide information about the new technologies.

Callison noted the ordinance looks at both a new car dealership on I-394 and also changing the standards for the existing dealerships. She asked if it was necessary for the council to pass provisions for both or if it was possible to act on the new car dealership and, based upon the complexity, conclude that perhaps the city wasn't ready to go forward with the other changes. Peterson said the two could be bifurcated.

Hiller said the ordinance's section for redevelopment contains a provision related to screening when the property is adjacent to residential property. The same provision is not referred to in the other section of the ordinance. He asked if there was a reason for the difference. Gordon said the screening sections are implicit within the I-394 district. The section applies to all uses. The new section attempts to provide more sensitivity when needed with walls, berms, and landscaping.

Peter Beck spoke on behalf of Sears Mercedes Benz, Morris Mazda, and the Ford dealerships. Beck said the assumption had been that provisions related to the trigger for existing dealerships would be established based on the effective date of the ordinance. The idea has been the existing dealerships could upgrade and expand their properties up to 20 percent without triggering all the requirements of the new ordinance. He said all the dealerships have expanded since 1988 rendering the trigger meaningless. The policy issue is if the council intends that there be no further investment in these dealerships unless the whole ordinance applies or is the intent to allow a certain amount of expansion and improvements before triggering the requirements in the ordinance. Beck suggested tying the trigger to the effective date of the ordinance amendment. He also suggested bifurcating the land area issue with the effective date issue. He said the land area issue arose at the Planning Commission discussion to address situations where a dealership might be able to acquire a little bit additional land to increase screening or landscaping around the perimeter and there shouldn't be a disincentive to do so.

Beck said the dealers worked hard to find language relating to parking that would work. There is a philosophical difference of opinion with staff with putting a maximum number of spaces on the only business in town that needs parking spaces for inventory. He said setting a maximum number will have a number of unintended

consequences. It is telling the business not to grow the business or in order to expand they must contract to avoid triggering the new ordinance. The other option is to put the cars somewhere else. Beck said inevitably what occurs is that inventory cars get into the spaces for employees and service parking no matter how hard the dealers try to prevent that from occurring. Finally, dealers will be forced to store cars offsite and that will mean shuttling the cars back and forth creating more traffic in the area. The dealers proposed putting a maximum number of vehicles in the display area. Beck said there is a concern that the Ford dealership would not be able to comply with the language in the staff proposal because of screening issues related to the hill on the property.

Beck said the 70 percent maximum hard surface coverage requirement is totally unworkable for the industry. If any applications come in, they will ask for 100 and 200 percent variances. He said it is not good public policy to adopt an ordinance where it is known beforehand that the business subject to the ordinance will have to request such large variances in order to apply. In other cities, like Golden Valley, the standard is 90 percent. Historically, in Minnetonka the standard has been 80 percent and the dealers support staying at that maximum with the opportunity to go up to 85 percent. The issue is if the dealerships are a service commercial or retail commercial business. Beck said the dealers sell goods and merchandise and thus the retail standard of 80 percent should apply.

Callison asked Beck if his clients prefer the status quo over the staff recommendation. Beck said the changes were triggered by the BMW proposal. If the ordinance is workable it is a good concept to address existing dealerships. Beck said the council's previous discussion indicated the council wanted to provide incentives to dealerships to invest and upgrade.

Steve Bloomer, the owner of Village Chevrolet at 16200 Wayzata Boulevard, said applying the trigger back to the date of the original ordinance would immediately put him in the position of being nonconforming and would mean he could never expand his building. It could also jeopardize his franchise agreement from being renewed. He said his franchisor has the right to require him to have a certain square footage for the show floor. Bloomer said the 70 percent hard surface maximum also is a serious issue. He said his dealership currently has the worst ratio from the standpoint of parking places per square foot of building with one space per 65 square feet. This cannot be improved without building a ramp.

Allendorf questioned if Bloomer would need to build a ramp if his dealership chose to use the screening mechanism. He said because of the location of Village Chevrolet the screening would be reasonable. Peterson said staff took a suggestion from Bloomer and incorporated it into the ordinance as the alternative to a ramp. Allendorf said he wanted to listen to the testifiers but he wanted them to say something that makes sense in the context of what was being proposed.

Schneider agreed there might be some overreaction to certain aspects of the ordinance but there are implications to provisions including the hard surface coverage. He said since Village Chevrolet is at around 90 percent and if the trigger is applied the dealership would be required to reduce its hard surface area in order to get the same number of cars. The only option would be to build up.

Rod Crass of 8000 Norman Center Drive in Bloomington said he was representing Mark Saliterman the owner of Wayzata Nissan. Crass said the Nissan dealership has the smallest building among its competitors in the area. With the concept of measuring the building rather than the land as a the basis for establishing the parking maximum the dealership would have the fewest number of parking spaces even if the land could handle more parking spaces. Crass said this does not make sense. If parking is to be restricted, then the number of spaces should be related to something that makes sense like the size of the property. Also because of the size of the building Nissan will encounter the quickest trigger. Twenty percent of the building will trigger the ordinance to apply to the dealership while the same square footage will not trigger the neighbor. This means Nissan could not expand to the same point as the neighbor without falling under the new ordinance. Crass suggested looking at a square footage that would limit the most expansion any dealer is allowed to do without triggering the ordinance. He said the hard coverage provision will make virtually everyone in the covered area non conforming and that does not make sense.

Richard Stewart of 13910 Knollway Drive South said he becomes concerned when an ordinance is being proposed that is being based on variances. He said neighbors in the area will be greatly impacted by expansion of parking, the potential of ramps, and screening issues related to higher buildings. Most of the lots to the west of I-494 are down below grade so they are not visible from the frontage road. To the east, Morris and Sears are virtually at grade. There will be another set of regulations that apply to the Morris

Saab area. Stewart said he is concerned about the three tiers in the ordinance. He said over the years residents in the neighborhood have reinvested in their homes and he is concerned about the impacts of the ordinance. Stewart said the residents on the west side were not sure about the reason for the proposed ordinance change.

Peter Coyle of 7900 Xerxes Ave S in Bloomington said he was speaking on behalf of Twin City Automotive Group. He said the group supports the ordinance as proposed by staff.

Schneider said there were more issues with the provisions applying to existing dealerships but none were insurmountable. He said some changes are needed to ensure the ordinance doesn't defeat the purpose by limiting future upgrades of the facilities. He proposed separating the issues related to new and existing dealerships by approving the new dealership provisions and giving staff direction on changes needed to the existing dealership provisions. He said when the item was first discussed he was not anticipating granting existing dealerships the ability to expand 20 percent. The idea was to allow expansion if improvements were made. He also did not anticipate precluding the dealers from expanding their buildings. He said he would support flexibility in allowing expansion of buildings without triggering the new ordinance. He would not support expansion of the property area other than what was allowed under the original ordinance.

Allendorf agreed he did not support allowing 20 percent expansion based on the adoption date of the ordinance because some dealerships have already expanded and it was not fair to those who have not expanded. As for the parking issues he said the intent was to control the number of cars from the neighbors and the frontage road. He said the existing dealers were asking for the trigger to be eliminated because they didn't want the new ordinance to apply to them. This implies that there is something wrong with the ordinance as it applies to the existing dealerships and likely the issue relates to the hard surface provisions. He said the challenge was coming up with an ordinance that the dealers would fall under with percentages that did not dissuade people from upgrading their property.

Schneider agreed with Allendorf. He said he wasn't sure what percentage was the right percentage for the hard surface maximum. He said 70 percent seemed a bit onerous. He was intrigued by the idea of taking a look at providing a parking ratio per site area rather than building area.

Callison said she wasn't entirely certain exactly what the ordinance said and what its effect will be. She said the discussion started with the council recognizing that the dealers want to make changes and upgrades while improving the situation for the neighbors. She said since both groups who might benefit are not supportive of the amended ordinance it raises the question if the ordinance should be changed. She said it was not possible to level the playing field for everyone.

Allendorf said it would be helpful to have staff come back with information about how different hard surface ratios would apply to the five dealerships.

Hiller agreed that it would be beneficial to have staff come back with examples. He said he would like information about how the percentages affect the display areas that are dramatically different between the properties.

Schneider said rather than have staff spend a lot of time writing up information that the auto dealers will disagree with, the city should let the auto dealers know the city is trying to come up with something that would allow flexibility to improve and enhance and maybe expand their sites with corresponding proportional improvements to the properties. He suggested having the existing auto dealers propose things that would allow them to do proportional improvements along with some expansion and have staff evaluate the dealers' proposals to incorporate into the ordinance.

Hiller said since there is no urgency to act and that time should be taken to approach the issue carefully rather than rush it through.

Peterson noted that removing section six of the proposed ordinance would have the effect of maintaining the status quo for existing dealers. The existing dealers would continue in their legal status as a nonconforming use.

Schneider moved, Hiller seconded a motion to adopt Ordinance No. 2008-21 amending City Code §§300.31, Subd. 4, 300.31, and 300.32, Subd. 4, regarding outdoor display in planned I-394 district with removal of section six.

All voted "yes." Motion carried.

Callison called a recess at 8:52 p.m. She called the meeting back to order at 9:00 p.m.

C. Appeal of the planning commission's approval of a sign plan amendment with variances for Welsh Companies.

Gordon gave the staff report.

Callison asked if the only sign being appealed was the monument sign on Baker Road. Gordon confirmed that was correct.

Schneider noted the Planning Commission motion was for a 60 square foot sign and the compromise between the neighbors and Welsh Companies was a 50 square foot sign. He asked if it was correct that the council could not approve the compromise without overturning the Planning Commission. Peterson confirmed that was correct. Anything different from the Planning Commission approval would require five votes.

Hiller asked if the staff recommendation was to go back to the original 42 foot sign. Gordon said that was correct.

Chris Kennelly of 4350 Baker Road said he represented Welsh Companies. He said a higher sign was justified because of the sight lines from Baker Road. Given the tree line the monument is difficult to see. The monument will be moved further back from where the temporary sign is located. He said the company has discussed having the ability to have three names on the front of the sign. One of the tenants wants to have its name on the front monument sign. The design of the sign has been changed to match the building better. The basic concern of the neighbors related to the height of the sign. He said the Planning Commission approval required the sign to have a minimum copy height of nine inches. The maximum area combined with the minimum copy area limits what can be done with the sign. Kennelly said the company agreed to lower the height of the sign to address the neighbors concern but in order to do that requested the minimum copy size be removed. If the 50 square foot sign was approved he said he would request a variance to remove the minimum copy size or reduce it to seven or eight inches.

Hiller asked how much further in the sign will be from where the temporary sign is located. Kennelly said the sign will be two to three feet further in.

Ellingson noted the sign lists "Petters Worldwide." He suggested reducing that to "Petters" to allow a larger type size. Kennelly said Petters Group has specifically stated they never put "Petters" on marketing materials because there is another company with the same name that they have been confused with in the past. He said "Worldwide" is more of a logo than a copy size issue.

Phillip Bahar of 13100 Brenwood Trail said he had no concerns with the westward facing signs, the wall signs, and the northward facing signs. His concern is with the Baker Road sign. He said when he moved into the neighborhood four years ago residents knew Petters Group was in the area but the building felt like a residential low rise building that was located behind a berm. With the expansion of the Welsh Building it is very clear it is now a commercial area. He said he opposed the Baker Road sign because the buildings cannot be missed when coming down Baker Road. There are no other large corporations in the area. He said the monument sign was just a marker and neither of the companies is a drop-in retail site requiring a major monument sign to drive business. Bahar said the only reason the Welsh Companies has an issue with the nine inch copy size requirement is because they need room for a third tenant. That tenant would not own the property. People could still identify where to find the tenant by being told the tenant was located in the Petters-Welsh complex.

Allendorf said he didn't see the hardship to justify approving the variance. He said monument signs are identifiers for a building and not identifiers for a tenant. He said he saw no reason for another panel on the sign and no reason that the size of the sign should be anything other than 42 square feet.

Schneider said there were two major tenants' buildings with a multi tenant structure and the Planning Commission granted the variance for a 60 square foot sign. He said he was inclined to modify the recommendation and not overturn it completely. He said he agreed with the applicant's idea that the nine inch copy size wasn't appropriate for this type of sign. The size limit was established for major roadways where a small type might cause safety issues. He said the 50 square foot compromise was a workable arrangement that he could support.

Hiller said when he drives by the sign it occurs to him there is no competition and it makes sense to reduce the size. The original size of the sign by ordinance is 36 square feet and going up to 42 square feet adds 50 percent that will compensate for moving the

sign back. He said he was reluctant to allow the size to be 60 square feet.

Ellingson said he agreed with Allendorf that there wasn't any hardship or practical difficulty. He said the reasons given do not justify the variance and the building already has a lot of visibility. Anybody approaching the site will know where the building is.

Callison said she agreed the 42 square foot sign was appropriate and there were no grounds for a variance.

Peterson said the deadline to act on the item was September 2 so the council could postpone action until the full council was present.

Callison asked Schneider if he would agree to 42 square feet. Schneider said he could support that.

Allendorf moved, Ellingson seconded a motion to approve the sign plan amendment for Welsh Companies at 4350 and 4400 Baker Road. Approval is based on the following findings:

- 1) The proposal would meet all ordinances and standards for sign plan review.
- 2) The proposal would meet the required standards for a variance, because:
 - a. UNDUE HARDSHIP: There is an undue hardship due to the substantial site area and distance of the buildings from the roadway.
 - b. UNIQUE CIRCUMSTANCE: The distance of the buildings from the roadway and the double-frontage along Baker Road and Interstate 494 are circumstances not common to every office development.
 - c. INTENT OF THE ORDINANCE: The signs would provide appropriate and reasonable site identification and way-finding.
 - d. NEIGHBORHOOD CHARACTER: The signs would not alter the character of the neighborhood, as they are proportional to the scale, and architecturally compatible with the office buildings.

Approval of the sign plan amendment is subject to the following conditions:

- 1) Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan date-stamped May 5, 2008
 - Sign plans date-stamped May 5, 2008

- Building elevations date-stamped May 5, 2008

a. The sign plan must be revised to reflect:

- (1) The monument sign along Baker Road must be reduced in size to a maximum of 42 square feet of copy and graphic area and 159 square feet of total monument area.
 - (2) Each letter of copy on the monument sign along Baker Road must be a minimum of 9 inches.
 - (3) Each letter of copy on the monument sign along Interstate 494 must be a minimum of 15 inches.
- 2) Sign permits are required for the wall and monument signs.
 - 3) Any changes to the sign plans require an amendment to this approval.
 - 4) Sign permits must be issued prior to December 31, 2009, unless the planning commission grants a time extension.

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Allendorf moved, Hiller seconded a motion to adjourn the meeting at 9:27 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk