

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, AUGUST 25, 2008**

1. CALL TO ORDER.

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

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL.

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

4. APPROVAL OF AGENDA.

City Manager John Gunyou noted addenda to items 10G, 13B, and 14B.

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

Councilmember Ellingson was present at 6:32 p.m.

5. APPROVAL OF MINUTES:

A. July 14, 2008 regular meeting.

Wagner moved, Allendorf seconded a motion to approve the minutes of the July 14, 2008 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

B. July 28, 2008 regular meeting.

Wagner moved, Allendorf seconded a motion to approve the minutes of the July 28, 2008 Minnetonka City Council regular meeting. Ellingson, Allendorf, Hiller, Schneider, and Callison voted "yes." Wagner and Wiersum abstained. Motion carried.

6. SPECIAL MATTERS:

The council took up agenda items 7 and 8 before item 6.

A. Golden Living support initiative grant.

Lisa Harrel, the executive director of Hillcrest of Wayzata, presented the grant to Fire Chief Joe Wallin.

B. Update regarding the Southwest Transitway and Station Area studies.

Katie Walker, Transit Project Manager from Hennepin County, said three LRT routing alternatives are still on the table. The next phase of study, the draft environmental impact statement process, will occur over the next 18 months. The three alternatives will be evaluated in terms of the transportation, community, and social impacts, and impacts to the natural and physical environment. Walker said the Hennepin County Regional Railroad Authority intends to seek federal funding once the route alternative is identified.

Walker said the Federal Transit Administration's program that funds light rail project typically funds 50 percent of the project's construction costs. Once the environmental impact statement process is complete, preliminary engineering begins. She said it is anticipated the preliminary engineering phase will take one to two years. The final environmental impact statement would then be completed and the project would receive its record of decision from the federal government. Next is final design and collecting all of the right of way required for the project. She said the hope is for the line to be operational in 2015 or shortly thereafter.

Walker said the Hennepin County Railroad Authority has set public hearing dates for the draft environmental impact statement process. If a person is not able to attend the hearings written testimony will be accepted.

Gary Hay, from Hay Dobbs, said his firm is in charge of the master planning for the project. Their scope of work goes from St. Louis Park through Eden Prairie. He said the two areas most affected in Minnetonka are the Opus and Shady Oak sites. Hay said there is an extensive public involvement process. The information and inventory phase is being completed at this time.

Ellingson asked where in the process the decision on the preferred route will be made. Walker said at the end of the draft environmental statement near 2009, the idea is to narrow the three alternatives down to one preferred alternative. The rail authority then will go to the Metropolitan Council for adoption of the locally preferred alternative and amendment of the transportation policy plan to reflect the mode and alignment. Ellingson noted the

approval of the comprehensive guide plan was an agenda item later on in the meeting and the plan has anticipated that light rail will go through Opus. He asked if the city is getting ahead of the process by having that preference in the comprehensive guide plan. Community Development Director Julie Wischnack said light rail in the Opus area was discussed during the review of the comprehensive guide plan. What was done in the study is to accommodate a projected number of residential units as well as commercial retail space with the impact of traffic and transportation as a worst case scenario if light rail were to come in.

Ellingson said he prefers that proposed route. He asked if station locations will be studied along the existing right of way for both routes. Walker said at the end of the alternatives analysis there was a preference stated by the council as well as the Eden Prairie City Council, the Twin West and the Eden Prairie chambers of commerce, and the Southwest Policy Advisory Committee for the route that goes through the Opus and Golden Triangle area. A large part of that stated preference was based on the economic development benefits. At this point the rail authority does not have plans to evaluate or do the detailed station planning work along the property owned by the Hennepin County Regional Rail Authority.

Wagner said it has been a very fruitful process. He said as he understands it this plan is the most advanced in the process after the Central Corridor project. This does not guarantee the route will immediately follow the Central Corridor project. Walker confirmed this was correct. Wagner asked if the LRT project was being tied in with the Shady Oak Road project given the timeframe. Wischnack said staff has met with Hopkins staff to discuss coordinated efforts. Wagner said the Southwest Alliance has been created by the Twin West Chamber and other chambers for people interested in joining an advocacy group.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings.

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

No one appeared.

9. BIDS AND PURCHASES:

- A. Consideration of bids for the hockey rink paving project at Gro Tonka Park.**

Gunyou gave the staff report.

Wiersum moved, Schneider seconded a motion to award bid # 2008-004-PW, to Midwest Asphalt Corporation for the Gro Tonka Park hockey rink paving project with a bid of \$29,500.00. All voted "yes." Motion carried.

B. Items pertaining to the Glen Lake Xcel Energy fencing project.

Gunyou gave the staff report.

Schneider moved, Ellingson seconded a motion to give approval of the construction agreement with Xcel Energy and award of the project to Odessa II in the amount of \$82,087.00 All voted "yes." Motion carried.

Allendorf noted there is an existing portion on the grocery store lot where part of the building has been taken down. His understanding was that there was going to be landscaping and improvement of the area and asked when that will take place. Gunyou said the landscaping is a requirement of the development agreement and probably be done this fall. Wischnack said there have been negotiations between the developer and a senior housing developer and as part of those negotiations landscaping and interim landscaping have also been discussed.

C. Consideration of bids for the Glen Lake Streetscape Project No. 4313.

Gunyou gave the staff report.

Wagner asked how the tax increment financing will work with this project and if the costs will be paid back to the Development Fund. Gunyou said the funding will come from a variety of sources with the largest source being from a grant from Hennepin County. A state grant has also been received. He said the Development Fund is scheduled to be repaid as part of the TIF generation when the development is taking place. Wagner said the funding for the project is a great example of tools used to help facilitate neighborhood development.

Wiersum noted the bid was for \$656,000 and the engineer's estimated was for \$818,000. He said if the county and state grants are used they should cover all the costs. Gunyou said the Development Fund will be used less than planned. When looking at

the funding sources and expenses they are not just for the construction but also engineering, administration and other costs. He said Wiersum raised a good point that there will be less city funding for the project.

Hiller said he understood that the DEED grant requires a match from the city. Wischnack said that was correct.

Allendorf moved, Wagner seconded a motion to award bid for the Glen Lake Streetscape Project No. 4313 to Thomas and Sons Construction Inc. All voted "yes." Motion carried.

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

A. Claims for council authorization – August 25, 2008.

Allendorf moved, Wagner seconded a motion to approve the August 25, 2008 claims which includes checks numbered 214197 through 214523, totaling \$1,831,800.63. All voted "yes." Motion carried.

B. Ordinance amending the liquor license regulations.

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2008-22 amending the liquor license regulations. All voted "yes." Motion carried.

C. Ordinance amending the fire code.

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2008-23 amending the fire code. All voted "yes." Motion carried.

D. Resolution pertaining to tax-forfeited land at 3320 Chippewa Road.

Wagner asked for the item to be pulled from the consent agenda. He said he drove by the property earlier in the day and asked why the city wouldn't consider taking the land and conveying it to Homes Within Reach for affordable housing. Gunyou said staff looked into that option but it would be complicated to do what Wagner was suggesting. It is likely Homes Within Reach would be better off by directly bidding on the project. Callison added she would be reluctant to have the city get in the middle of the process because Homes Within Reach has certain standards for the homes

they acquire. This might lead to the city holding on to a property for longer than it would want to.

Wagner moved, Wiersum seconded a motion to adopt Resolution No. 2008-091 approving the classification of non-conservation tax-forfeited land and authorizing the sale thereof at public auction. All voted "yes." Motion carried.

E. Resolution pertaining to the CSAH 73/I-394 South Frontage Road Project No. 4913

Allendorf moved, Wagner seconded a motion to adopt Resolution 2008-092 accepting plans and specifications, and authorizing the advertisement for bids for the CSAH 73/I-394 South Frontage Road, Project No. 4913. All voted "yes." Motion carried.

F. Approval of design services proposal for Minnetonka Mills Park.

Allendorf moved, Wagner seconded a motion to approve proposal with Barr Engineering. All voted "yes." Motion carried.

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

Allendorf moved, Wagner seconded a motion to adopt Resolution 2008-093 ordering the abatement of long grass nuisance conditions. 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 a revenue note by the city of Deephaven for the refinancing of facilities located at 18301 Highway 7, Minnetonka, MN (Minnetonka Youth Hockey Association).

Gunyou gave the staff report. He said there is no financial exposure to the city.

Callison opened the hearing at 7:11 p.m. No one spoke.

Callison closed the hearing at 7:11 p.m.

Wiersum moved, Allendorf seconded a motion to adopt Resolution No. 2008-094. All voted "yes." Motion carried.

B. Public hearing to consider resolutions for special assessments of 2007-2008 projects.

Gunyou gave the staff report.

Callison opened the hearing at 7:12 p.m. No one spoke.

Callison closed the hearing at 7:12 p.m.

Wagner said there were a number of very small amounts being amortized over five years. He asked staff to consider a minimum amount before going to a five year period.

Gunyou said Wagner's idea was a good one and staff is taking steps to make sure that is possible for next year.

Wagner moved, Wiersum seconded a motion to adopt the following resolutions with the addendum:

- 1) Resolution 2008-095 adopting special assessments for Sewer/Water/Street Improvement Project No. 4988.
- 2) Resolution 2008-096 adopting special assessments for Nuisance Abatement Project Nos. 4894N-98, 4894N-99, 4894N-100, 4894N-101, 4894N-102, 4894N-103, 4894N-104, 4894N-105, 4894N-107, 4894N-108, 4894N-109, 4894N-110, 4894N-111, 4894N-116, 4894N-117, 4894N-118, 4894N-120, 4894N-122, 4894N-127, 4894N-128, 4894N-131, 4894N-132, 4894N-133, 4894N-134, and 4894N-135.
- 3) Resolution 2008-097 adopting special assessments for Nuisance Abatement Project Nos. 4894N-113, 4894N-114, 4894N-121, 4894N-123, 4894N-136, and 4894N-138.
- 4) Resolution 2008-098 adopting special assessments for Nuisance Abatement Project No. 4894N-137.
- 5) Resolution 2008-099 adopting special assessments for Nuisance Abatement of Diseased Tree Removals Project No. 4902.

All voted "yes." Motion carried.

C. Public hearing to consider applications by Bacio, Inc., for on-sale and Sunday on-sale intoxicating liquor licenses for Bacio restaurant, 1571 Plymouth Road.

Gunyou gave the staff report.

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

Wiersum moved, Hiller seconded a motion to continue the hearing to September 29, 2008. All voted "yes." Motion carried.

D. Public hearing to consider an application by Trader Joe's East, Inc., for an off-sale intoxicating liquor license

Gunyou gave the staff report.

Wiersum asked when Trader Joe's plans to open. Wischnack said Trader Joe's is in the process of construction plan creation. It is expected the city will have the building permit submission within the next month.

Schneider asked if there was an expiration date on the liquor license. City Attorney Desyl Peterson said the license would expire at the end of the year.

Callison opened the hearing at 7:17 p.m. No one spoke.

Schneider moved, Wiersum seconded a motion to continue the hearing to September 29, 2008 All voted "yes." Motion carried.

E. Public hearing to consider a temporary onsale intoxicating license for Make-A-Wish Foundation of America

Gunyou gave the staff report.

Callison opened the hearing at 7:19 p.m. No one spoke.

Callison closed the hearing at 7:19 p.m.

Hiller moved, Allendorf seconded a motion to grant the license. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Consideration of the 2030 Comprehensive Plan.

Wischnack and Ann Perry from Resource Strategies Corporation gave the report.

Wagner said expanding the definition of buffer will be helpful for future projects. He said that for a controversial project in the northeast part of the city buffers were discussed between commercial development and R1 property. He asked if the statements in the comprehensive guide plan document will have the city look at what are reasonable buffers from an ordinance standpoint. Wischnack said there are performance criteria that probably need to be amended in the city code to reflect the language in the guide plan more accurately. Wagner thanked staff for the changes made in the housing and land use section. He said the changes give enough context and commentary for developers. If a developer is creative enough the city would be willing to look at the proposed changes and development standards.

Hiller agreed the plan gives developers ideas on what can be done but what was lacking was documenting the motivation for including the ideas. The motivation needs to be taken into account for the circumstances with the limited opportunities for development in the city. He said there is a specific goal that the city recognizes its responsibility to use the features to ensure housing is available and obtainable for underrepresented groups within the city. He doesn't want to encourage small lot sizes unless that purpose is accomplished. Schneider noted there is language in the plan defining the purpose is to attract specific demographic groups. Hiller said the criterion does not necessarily demonstrate that the identified groups are underrepresented or will be in the future.

Wagner said that looking at the demographics listed there is a sense of where the trends are moving. He said the additional language gives the city tools that can be used to get a variety of housing types.

Callison said many of the ideas have to be implemented project by project. While some direction needs to be given, it is hard to predict which groups ten years from now will need to be focused on by the city. She said the language addresses what the steering committee was getting at while giving the city the flexibility to deal with the issue as projects come forward.

Schneider said the section gives clear direction and the change in the focus. How the city will use and enforce the section will depend on the circumstances and the opportunities that are available.

Allendorf asked if it would make sense to be proactive and to have a comprehensive plan presentation for the development community. Callison said that made sense to her. Wischnack

agreed it was a good idea. Schneider said the idea had merit. He said it also might be a good idea to identify a number of developers who have history of developing mixed use, multi or single family detached housing to focus in on the section on city involvement and participation. If the idea is to work given the land prices and development costs, the developer's input on what they expect from the city would be helpful.

Wiersum said the city's demographics are changing. As the population ages the demand for different types of housing will increase. The language in the plan takes a big step in addressing this change. He said there is a combination of providing the leadership to anticipate and address the changes, but over time the market will decide what gets developed.

Wagner moved, Allendorf seconded a motion to approve the 2030 Comprehensive Plan with the changes noted in the August 25, 2008 city council report with the following conditions:

- 1) Other agencies will be notified of the comprehensive plan and will be allowed 6 months to provide comments about the plan.
- 2) If additional changes are requested as a result of this review, the city council will consider the issues.

All voted "yes." Motion carried.

B. Items concerning ordinances regarding tree protection.

Gunyou gave the staff report.

Wagner asked how the ordinance would apply to people who buy the 1940s to 1950s built ramblers in the city and tear them down or significantly remodel the homes. Wischnack said the ordinance pertains to 50 percent tree removal or more. The city receives a lot of feedback from homeowners around a teardown who are concerned about tree preservation and the impact on neighborhood character by a major redo of a property. Natural Resources Manager Jo Colleran said the 25 percent to 35 percent provision applies only to subdivision of land. On an existing vacant parcel, redevelopment, or site improvement, the applicant would be allowed to include the teardown area and where the rebuilt house would go and a 20 foot perimeter around the house with no mitigation. The house could be built with all the grading and then the owner would have to wait two years to install something like a swimming pool. Wagner asked if a person has a 2/3^{rds} acre lot and tears down an 800 square foot house, if the applicable area would

include the 800 square foot footprint and the 20 foot perimeter or would they be allowed to clear their entire building pad? Colleran said the person would be regulated under the proposed ordinance if the person was going to increase the square footage of the home by 50 percent or greater. Gunyou clarified the current ordinance has the same requirements.

Wiersum asked how the 25 percent provision would apply to a property with a portion that contains a woodland preservation area. Would the changes in the ordinance apply only to the woodland preservation area portion of the property or would it impact the entire property? Colleran said the provision would only apply to the woodland preservation area.

Hiller asked for clarification on the section of the ordinance that allows for reduced lot sizes and if it would impact tree loss. City Attorney Desyl Peterson said the provision on reduced lot sizes is in the section dealing with PUDs. Once a PUD application is received the standards are outlined to decide if the PUD proposal will be approved. One option is for the council to accept a smaller lot size in order to preserve trees. Callison said it was her understanding that a future council would answer Hiller's question to decide whether all the lots have to be a certain size. Peterson said it is one of the factors that can be considered in examining the PUD.

Hiller said previous council discussion was about going to the PUD standard to allow a property owner to get to the R-1 standard of a half acre lot. He noted the proposed provision goes beyond that. Peterson said that potentially is correct. The property owner could still end up with the maximum number of lots with one being smaller than the standard. Wagner noted that is no different than what currently exists.

Schneider said a property owner entitled to five half acre lots with half the site being a woodland preserve, all the woodlands would be preserved and eight small lots could be allowed under a PUD. Peterson said that was not what the ordinance was addressing. The ordinance would give the council the ability to allow up to the density that would be allowed in the zoning district. Under Schneider's example the maximum would be five lots. Schneider said it was his understanding an applicant would not be limited to half acre lots for the calculation of the number of lots. Callison said it was her understanding the R1 standard would apply for the maximum. Wischnack said there may be occasion the council may want to increase the density and this likely could be accomplished

through a rezoning action that changes the density for the property within the PUD approval process.

Callison said the language in the ordinance under question was that the "site may be developed up to the full density normally allowed in the applicable zoning district if the property is developed." Wischnack said the rezoning action could take place at the same time that the PUD is done. Gunyou said it was not the intent to use the tree ordinance to change zoning provisions.

Hiller said he remained concerned with the five year look back provision. He asked if there were examples when more than two years was necessary. Colleran said for a new home built on an existing vacant parcel of land, where the builder builds the home with no immediate buyer, when the house is bought there would be a two year waiting period before the buyer is allowed to externally expand the structure or build a pool. The provision would also apply to redevelopment of property and also would apply to commercial industrial property where site improvements are being considered. Colleran said the five year look back would apply to someone who is thinking of developing or subdividing their land in the future. The provision is meant to prevent someone from removing all their trees, which existing property owners have the right to do, to plan for a development without mitigating any tree loss. The current ordinance has a two year look back clause.

Hiller said the proposal includes a requirement for conservation easements or other legal means to ensure that woodland preservations or groups of trees, or significant trees are not intentionally destroyed after development has been approved. He asked if the objective was to get as much of the trees that have been damaged under conservation easements. Colleran said the important term in the clause is that the city "may" require an easement. She said it is similar to the existing practice.

Hiller said the overall ordinance was excellent but he had issues with the conservation easement and five year look back provisions. The five year look back obligates people to really plan ahead if they are considering developing smaller lots. He said the proposed ordinance makes the city guardians of people's yards and that was not the intent of the ordinance.

Mike Maloney, of 2401 Ford Road, said he has lived at that address for 37 years and planted many of the trees on the property that would now work against him. If someone were to buy his property and change it into two lots, they likely would not be able to build two

homes on the acre and a quarter. Callison asked Maloney if he talked with staff to see if the ordinance would apply to his property. Maloney said Wagner had been helpful. He said Wagner indicated there probably would be no issue using a PUD.

Schneider said that if a property had a lot of nice trees on it, it wouldn't necessarily fall into the woodland preserve area that would trigger the PUD and one acre lot requirements. Maloney said he checked with staff and his property is not in a woodland preservation area but he still would be limited to removing 35 percent of the trees. Schneider said the ordinance wouldn't necessarily prevent Maloney from subdividing or building two homes. It would only trigger whether mitigation would be needed for some of the trees. Peterson said there is a second threshold of 35 percent of the protected trees that would trigger a PUD. Gunyou said he was familiar with Maloney's lot. The PUD would allow the houses to be situated differently. He said a PUD would likely be very doable with two lots on Maloney's property.

Callison asked if would be appropriate to clarify in the ordinance that the PUD size restrictions do not apply. Peterson indicated this could be done.

Rose Larson, of MFRA Associates at 1916 Colfax Avenue in Minneapolis, said she was representing Dr. Campbell. Campbell has an application for a PUD subdivision under review. She said Campbell's property has several hundred trees on it. There is a portion of the property in a woodland preservation area. Larson said she wanted to ensure as part of the PUD application that with every possible best management practice already done, that her firm would be able to work with the city on the density issue.

George Macgibbon, of 11500 Timberline Road, said he is one of 27 people directly impacted by the woodland preservation provision. Macgibbon questioned if the new ordinance would make the city any better. He said at times the least amount government supervision is the best.

Nancy Macgibbon, of 11500 Timberline Road, suggested the city should notify residents that would be affected by the ordinance. She opposed the ordinance because it is too severe, too complex, and affects too few people to take up so much time and money. She asked if the five year look back provision would be retroactive. She also asked if residents would have to report to the city when a tree is cut down or when a tree dies.

Callison asked staff to review the notification process. Wischnack said notifications were published in the Minnetonka Memo. There were also several news articles in the local newspapers and the Star Tribune. In April, 2008, notice was sent 2,400 parcels of land in the city. These notices were sent to anyone in the woodland preservation area. Callison asked if one tree falls would it trigger city action. Wischnack said the look back provision would be to look at any tree removal in the five year period prior to development. Aerial photography would be used to determine if a major tree removal or a clear cutting had been done in anticipation of development. She said removal of diseased or hazardous trees is already provided for in the ordinance.

Callison asked Peterson to respond to written comments that the ordinance is too vague. Peterson said the comments were the opinion of the writer based on his viewpoint as a property developer. She said she didn't see anything in the comments that provided any legal substance that would cause her to recommend any changes to the proposed ordinance. Wagner noted the comments mentioned a recent Wisconsin Supreme Court decision. Peterson said the point of the case was that a city cannot require someone to go to a PUD. She said she has advised the council of that for many months.

Hiller asked for clarification if the four criteria listed in the ordinance are met, if a property owner is allowed to go to what would have been allowed without the tree issue. Gunyou said the ordinance allows the property to be developed to that extent with approval from the council.

Wiersum asked for clarification if there is an appeal process for an applicant who does not agree with the staff recommendation about the number of lots in an R1 subdivision for a development in a woodland preservation area. Gunyou said the council always has the final say on the matter. He pointed to the Coyote Song development where the council ultimately decided what the appropriate development was.

Callison said staff has had the opportunity to apply the ordinance to a number of developments. She said she did not recall any development proposal where a property owner indicated they received a lesser approval than expected. As an example, Wischnack pointed to the upcoming Woolman Woods development where there is a one unit per acre density for a nine acre piece of property. She said while the numbers are not exactly what is in the proposed ordinance, the preservation and the conservation

easements make up the majority of the site. Wischnack said the council will have the opportunity to see how the ordinance worked for the site plan and in doing the appropriate preservation methods. She said Braeburn Woods, another recent development, included discussion about dropping a lot but the council allowed the lot to be included with a large area of open space in and around a storm water pond. A majority of the treed areas were preserved other than for the housing pad. She said the ordinance seemed workable and would not negatively impact people's development rights.

Schneider said the ordinance strikes a good balance between maintaining the woodland preserve areas and the neighborhood character while allowing people to do reasonable development. He said the only concern he had was the presumption for when a proposal comes in. Will it be presumed that a person can do the maximum number of lots if everything has feasibly been done to use everything available in a PUD? He said his goal was to be able to force the developer to be prudent in designing the layout to do everything reasonable to preserve trees without sacrificing the feasibility of the development just to save a few more trees.

Wiersum said he agreed with Schneider. The genesis of the proposed ordinance was the Crosby Cove development and the frustration the council felt with the idea that there was no opportunity to change something that they felt should be changed. The ordinance should not meaningfully restrict property rights but ensure there are tools in the toolbox to defend against the bad developer who would cut down trees inappropriately or not listen to a reasonable proposal from the staff. He said he understood Hiller's concerns about the five year look back but to make the restriction shorter than that might create perverse incentives for people to plan ahead to cut down trees. He said moving forward the city should be reasonable and enable residents to subdivide and develop property within the confines of the ordinances that have worked well while still having tools available to deal with those who do not want to play by the rules.

Wagner said the original purpose of the ordinance was to have a method to protect a valued resource in the community. He said the council needs to be firm in stating that although the city wants to protect a valued resource, there is an inferred and clear expectation in the ordinance that a person has the right to develop a property if it meets all the other ordinances. He asked staff if the five year look back provision was included because the council was concerned that a two year look back was not long enough. Gunyou said staff recommended the change based on previous council discussion.

Allendorf said he has heard people who fear the ordinance because they don't understand it. He said the PUD worked during the moratorium and the ordinance will work just as well. The process is simple. It is a PUD process that tries to preserve trees. What is complicated is the ancillary items where it is difficult to look at a lot to see if certain percentages apply. He said he would change the "may" in the ordinance to "will" have the presumption that a person will have the same number of lots under a PUD that they would under the existing zoning ordinance as long as they have met all the other provisions.

Hiller said within the time window of redevelopment or subdividing the land, the ordinance is excellent. He said the ordinance is reasonably clean, clear, and simpler than he thought was possible. The complexity is not an issue but the city is obligated to explain it better to residents. He said his concern was that the council did not want to get into managing what people did on their property. He said the five year look back provision puts the city into the position of trying to be guardian of properties and trees.

Callison said the city already has been doing a lot of what is in the proposed ordinance. On properties that have developed where the city has made a conscious effort to save trees, easements have been asked for. The council has been careful not to intrude on people's use of their property. She said fundamentally what is being struggled with is if the council trusts the staff to administer the ordinance in a way the council agrees with. Because staff has essentially administered the ordinance for some time, the council can trust staff to make the proper decisions. The council always has the authority to make sure the ordinance is properly administered.

Schneider suggested adding language making it clear there is not a minimum PUD size. Peterson said she had language that could be added. Schneider also suggested changing the look back period from five years to three years. He agreed with Allendorf that the "may" should be changed to "can" on page 7, item 2C of the ordinance. Peterson suggested adding other clarifying language to the same section.

Schneider moved, Allendorf seconded a motion to:

- 1) Adopted Ordinance No. 2008-24 amending the tree protection standards.
- 2) Adopted Ordinance No. 2008-25 amending associated landscape standards.

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

15. APPOINTMENTS and REAPPOINTMENTS: None.

16. ADJOURNMENT.

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 9:04 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk