

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, SEPTEMBER 15, 2008**

1. CALL TO ORDER.

Mayor Callison called the meeting to order at 6:32 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, Bob Ellingson, and Jan Callison were present.

4. APPROVAL OF AGENDA.

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

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

5. APPROVAL OF MINUTES:

A. August 11, 2008 regular meeting.

Schneider moved, Wiersum seconded a motion to approve the minutes of the August 11, 2008 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Presentation of Community Action Recognition Awards to Minnetonka Girl Scouts who have earned the Gold Award.

Callison and Allendorf presented the awards.

B. Proclamation declaring Family day – a day to eat dinner with your children.

Wiersum read the proclamation.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings. He noted Mike Norton was sitting in for City Attorney Desyl Peterson.

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

Grace Sheely of 14325 Grenier Road said there were around nine people who applied to be appointed to the Planning Commission. Al Thomas was not interviewed by the council. She said it was a disservice to put ex-councilmembers back on committees because voters indicated they wanted new representation.

Anne Malm-Hossfeld of 14616 Glendale Street asked for an update on the Glen Lake project. She said she heard rumors that there were negotiations for site A to be developed by St. Therese. She asked if a building permit had been applied for site C and if not had an extension been requested. Community Development Director Julie Wischnack said no building permit had been pulled for site C. The city has not received a formal application for an extension. She said as she noted at a recent Planning Commission hearing, there have been negotiations with St. Therese about site A.

9. BIDS AND PURCHASES:**A. Consideration of bids for the CSAH 73/I-394 South Frontage Road Project No. 4913.**

Gunyou gave the staff report.

Wagner said in the original approvals there was a trail on the east side of County Road 73 through the development. He asked if that trail was the responsibility of Opus or the city. City Engineer Lee Gustafson said the trail was the responsibility of the developer. Staff is working with a property owner to secure a needed easement.

Schneider moved, Allendorf seconded a motion to award the bid for the CSAH 73/I-394 South Frontage Road improvements to Bituminous Roadways, Inc. in the amount of \$1,276,295.00. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Claims for council authorization – September 8, 2008.**

Allendorf moved, Wiersum seconded a motion to approve the September 8, 2008 claims which includes checks numbered 214524 through 214806, totaling \$1,792,276.37. All voted "yes." Motion carried.

B. Resolution authorizing the Minnetonka Police Department to enter into a Safe & Sober grant agreement.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2008-100 authorizing the Minnetonka Police Department to enter into a Safe & Sober grant agreement. All voted "yes." Motion carried.

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

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2008-101 ordering the abatement of long grass nuisance conditions. All voted "yes." Motion carried.

D. Resolution ordering the abatement of nuisance conditions existing at 3520 Meadow Lane.

Allendorf moved, Wiersum seconded a motion to adopt Resolution 2008-102 ordering the abatement of nuisance conditions existing at 3520 Meadow Lane. All voted "yes." Motion carried.

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

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

13. PUBLIC HEARINGS:

A. Public hearing to consider applications by Mr. Joseph Chan for on-sale wine and on-sale 3.2 percent malt beverage liquor licenses for Dragon Jade Restaurant.

Gunyou gave the staff report.

Callison opened the hearing at 6:53 p.m. No one spoke.

Wiersum moved, Wagner seconded a motion to continue the hearing to October 13, 2008. All voted "yes." Motion carried.

B. Public hearing to consider applications by Chipotle Mexican Grill of Colorado, LLC, for on-sale wine and on-sale 3.2 percent malt beverage liquor licenses for Chipotle Mexican Grill.

Gunyou gave the staff report.

Callison opened the hearing at 6:55 p.m. No one spoke.

Schneider moved, Wagner seconded a motion to continue the hearing to October 13, 2008. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Items concerning WOOLMAN WOODS.

City Planner Loren Gordon gave the staff report.

Schneider said he had a concern about the ditch that goes from the new road to the east. There is a fair amount of bank erosion in the drainage area. He asked if the plan includes bank stabilization or reduction of the erosion. Gordon said the plan calls for a wetland buffer and setbacks. The grading permit will provide detail on how the erosion issue will be addressed.

Allendorf said there was information from Parks and Trail Manager Perry Vetter recommending where a trail might be located in the future. Gordon said there are plans for improvements along Sparrow Road for 2012. Gustafson said the overall goal is to look at the entire area of Sparrow Road for a two year reconstruction. There is a plan to include a trail that would provide access along Sparrow Road.

Wiersum said the Woolman Woods property likely won't be fully developed by 2012 and by that time the new trail could be in place. Gordon said the timing of the development will depend on the housing market conditions. The developer estimates it will be upper end housing.

Wagner said the entire site is basically a conservation easement outside the building pad. There are proposed drainage ponds and he doesn't remember including drainage ponds in conservation easements. He asked if permitting will be needed every time the drainage pond has to be worked on. Gordon said there have been other projects with storm water ponds within a conservation easement. The most recent example is Coyote Song. He said provisions will be included to provide for regularly scheduled maintenance of the facility. Callison said she wanted assurance that people will not feel as if they are living in a park and they cannot do anything with their land. Gordon said the developer provided the city with the area for the easement with accommodations for yard space and grading considerations.

Tom Gonyea, representing Estate Development Corporation, said he hopes the lots will be sold within a couple of years. There has been significant interest already even though nothing is ready to sell. He said he has worked with staff on the conservation easement issue. The site has a lot of topography to it and some of the conservation easements would be on a side slope. He said the storm water pipe that goes through the woods will be installed underground leaving all the trees in place. There will be a basin that feeds the pipe to the south of the northern storm pond. The pond further south will need more grading. On the headlight issue, Gonyea said his preference was option C although the lot will be tight and there might be a potential setback issue.

Michael Zucker of 4730 Timber Ridge Place said for decades the neighbors have had that safe access to Reich Park. He said the city ordinance provides that land should be dedicated for parks and trails as part of the subdivision process. A greater good could be served by providing for a narrow path on one of the lots. Callison said there appeared to be a public easement west of Woolman Drive that would allow people to walk Ridge Road down to the park. Gordon said that area was privately owned.

Dirk Devries of 18600 Woolman Drive said he preferred the option outlined in the staff report. Allendorf asked Devries if he was able to meet with Gonyea to see if option D would be agreeable. Devries said he talked with Gonyea about the new option but still preferred the option in the staff report.

Schneider asked if the plat being approved included option C. Gordon said between the approval of the preliminary plat and the final plat, slight modifications can be made. Option C would require a slight alteration of lot nine and would be included with the final plat.

Wiersum asked if option C would require any variances. Gordon said option C would be in conformance.

Hiller said without a trail or upgrade it is a hazardous walk to get to the park. He said he was intrigued with the idea of allowing the use of the existing trail until a new trail is completed. Callison said the issue is whether the city can compel the private property owner to keep the trail in place. Wischnack said there is no agreement for the trail to exist and the developer is not supportive of the idea.

Schneider said it was a great proposal to have the wooded site with as much preservation being done. He said he appreciated the

concerns expressed about the trail. He encouraged looking for some interim safety improvements along Sparrow Road until the reconstruction takes place. There are other mitigation options if option C unduly impacts the lot. He was inclined to leaving the submitted plat as approved given how the city has historically dealt with T intersections.

Allendorf said there were two people who approached the council with significant requests and he would not take away the homeowner's rights to his property because two people want the trail to remain because it has always been there. He said when he saw the options to deal with the headlight issue he questioned how far the city was going to address one resident's concerns. He said he would leave it up to staff to determine what was reasonable.

Wiersum said he would like to see a trail but he believes that just because an informal trail existed in the past, it doesn't mean the trail should remain, or that it is a good place for a trail. He said staff has indicated to him it is not a good location for a conforming trail. Without the informal trail it is difficult to get to Reich Park so the city should look at what type of access should be developed over time.

Hiller said the development will keep and maintain a lot of green space. He agreed the trail is not something that should be forced upon the developer. As for the headlight issue he said there is a specific harm to a specific individual that a specific resolution would address.

Ellingson said he supports including a trail. The city just went through the comprehensive guide plan process where there was an emphasis on connectivity of the city's parks and schools and commercial centers. He said there have been several subdivisions where the council has approved a trail. The city would not need to pay for the trail and it would benefit the people who live in the development as well as the existing neighbors.

Callison said the issue with the trail is that it is not good access because of the grades and location. She agreed it is important to find a safe way to get to the park. On the headlight issue she said she supported option C.

Wagner moved, Hiller seconded a motion to:

- 1) Adopt Ordinance No. 2008-26 which approves the proposed rezoning from R-1, low-density residential, to PUD, planned unit development. This ordinance is based on the following findings:

- a. The rezoning would be consistent with the city's guide plan; and
 - b. The rezoning would be consistent with the public health, safety, and welfare.
- 2) Approve the WOOLMAN WOODS preliminary plat, date-stamped July 28, 2008.
Approval is based on the following findings:
- a. The proposal meets the required standards and ordinances for a preliminary plat.
 - b. The proposal minimizes tree loss.
- Approval is subject to the following conditions:
- a. Prior to final plat approval, complete the following:
 - (1) Show the following on the final plat:
 - (a) Full 100-foot right-of-way on both proposed cul-de-sacs.
 - (b) Right-of-way of the westerly cul-de-sac in the location indicated on Option C site plan attached to the September 15, 2008 staff report.
 - (c) 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.
 - (d) A minimum 20-foot drainage and utility over all existing or proposed public utilities.
 - (e) Drainage and utility easements over the 928.1 elevation associated with the existing and created wetland on the north side of the site.
 - (f) Drainage and utility easements over 100-year elevations.
 - (2) Pay a park dedication fee of \$5,000 per newly created lot, for a total of \$30,000.00.
 - (3) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
 - (4) Drainage and utility easements and maintenance agreements for the wetland, infiltration basins, and any other stormwater mitigation facilities.
 - (5) Any existing right-of-way must be vacated in conjunction with final plat approval.
 - (6) The wetland zoning overlay must be removed/rezoned from that part of the existing

wetland filled to accommodate construction of a public roadway.

(7) Rename "Timber Ridge Court".

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

(1) An engineering and administration fee.

(2) An electronic CAD file of the final plat in microstation or DXF.

(3) The following documents must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval:

(a) Title evidence that is current within thirty days before release of the final plat.

(b) Conservation easements over wooded areas in substantial conformance with the preliminary utility/conservation easement plan, date-stamped July 28, 2008, and a drawing of the easements.

The easement may allow:

(i) Removal of hazard, diseased, or invasive species.

(ii) Hand grading in those areas labeled as such on the preliminary utility/conservation easement plan, date stamped July 28, 2008. No tree removal or root disturbance is allowed in conjunction with this hand grading.

(iii) Location of a monument sign, public utilities, including ponding areas, and creation of wetland mitigation area.

(c) Conservation easement 25-feet upland of the edge of all delineated and created wetlands and a drawing of this easement.

The easements and drawings must be recorded with the final plat.

(d) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas.

(e) 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.

(f) A development agreement in a form acceptable to the city attorney.

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

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

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

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

(a) Final street, utility, grading and drainage, site plan, and tree mitigation plans as required by the city engineer must be submitted for staff review and approval. The city engineer will provide the developer with a formal memorandum outlining all items and details which must be provided on the submitted plans. These include, but are not limited to:

(i) The site plan must include 25-foot wetland buffers upland from the delineated edge of all existing and created wetlands. No grading is permitted in the required wetland buffers except as needed in areas of proposed wetland impact and mitigation.

(ii) Detail regarding construction of the mitigated wetland.

(iii) A soils recommendation by a qualified soils engineer verifying that the Minimum Standard Street is adequate. The recommendation must be based on soil borings. Borings must include infiltration rates of site soils.

(iv) Retaining wall at wetland culvert under westerly cul-de-sac must

- be minimized with use of additional grading.
- (v) All retaining walls must be of low maintenance design acceptable to the city engineer.
 - (vi) Storm sewer pipe must be directionally-drilled from the northerly to southerly ponding areas.
 - (vii) Watermain installed on the east side of the development must be directionally-drilled.
 - (viii) Pretreatment structures (grit chambers) are required.
- (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) One of the following:

 - (i) Escrow dollars, in amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the site throughout the course of construction; or
 - (ii) Evidence that an erosion control inspector has been hired to monitor the site through the course of construction. This inspector must provide weekly reports to natural resource staff in a format acceptable to the city.
- (f) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance. The management plan must be accompanied by a cash escrow, in the amount to be determined by city staff, and a waiver document prepared by the city attorney and signed by developer. Through this document the developer 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.
- (2) Ponding areas, public utilities, and associated grading and facilities must be located to maximize tree preservation. Staff may require adjustments in locations of these improvements in order to do so. Inch-for-inch mitigation is required for woodland preservation area and high-priority trees removed in conjunction with required ponding.
- (3) Prior to issuance of a grading permit:

- 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 Woodland Preservation Areas and High-Priority Trees removed outside of these perimeters and in all infiltration and ponding areas. Significant trees removed outside of these areas must be mitigated tree for tree.
- (d) Submit cash escrow in the amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and (2)

if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

- (3) For each building permit, the following items must be completed:
- (a) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
 - (b) Proof of subdivision registration and transfer of NPDES permit.
 - (c) Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot. These items must be maintained throughout the course of construction.
 - (d) Install heavy-duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.
 - (e) Pay a hookup fee for sanitary sewer and water.

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

- (1) Minimum setbacks for principal structures:
- | <u>MINIMUM SETBACK</u> | |
|------------------------|--|
| <u>Front</u> | <u>25-feet</u> |
| <u>Side</u> | <u>10-feet interior to PUD</u>
<u>15 feet exterior to PUD</u> |
| <u>Rear</u> | <u>20% of lot depth or 40 feet,</u>
<u>whichever is less</u> |
- (2) House type and location must be in substantial conformance with the preliminary grading plan date-stamped July 28, 2008.
- (3) Pool and/or other accessory structure location must be in substantial conformances with the preliminary grading plan date stamped July 28, 2008.
- (4) Lot 9 must take driveway access from the easterly cul-de-sac.
- (5) Construction on Lots 1, 3, 4, 5, and 6 must incorporate techniques to mitigate for hard surface runoff, subject to the approval of the city engineer.

- (6) Pools or other similar accessory structures may be built at the time of house construction if such structure is indicated on the preliminary grading plan, date-stamped July 28, 2008. Pools or other similar accessory structures may be built at the time of house construction if not shown on the preliminary grading plan, date stamped July 28, 2008, if such structure would have no greater tree impact than that shown on the grading plan and if that structure is outside of the required conservation easement.
- (7) Minimum lowest floor elevation is 2 feet above the 100-year elevation as determined by the city engineer.
- (8) Maximum floor area ratio within the plat is 0.5. Individual lots may exceed this standard. However, the total floor area ratio of the subdivision may not.
- (9) Maximum hard surface coverage is 50%. Individual lots may exceed this standard. However, the total hard surface coverage of the plat may not.
- (10) All portions of first-story walls as measured by an approved route around the exterior of the house must be within 150 feet of the street. If access requirements cannot be met, the house must be protected with 13D automatic fire sprinklers.
- f. During construction, the streets must be kept free of debris and sediment.
- g. The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.
- 3) Adopt Ordinance No. 2008-27 which modifies the boundary of a Wetland Overlay District. This ordinance is based on the following findings:

 - a. The rezoning would be consistent with the purpose of the Wetlands Protection Ordinance.
 - b. The rezoning would be consistent with the city's water resources management plan and the goals and policies of the city's comprehensive guide plan; and
 - c. The rezoning would not negatively impact public health, safety, and welfare.

- d. Wetland area will be created compensatory to the amount filled.
- 4) Adopt Resolution No. 2008-103 which approves:
- Wetland and Floodplain Alteration Permits for temporary impact to 2,987 square feet of an existing wetland.
 - Wetland setback variance from 25 feet to 0 feet for construction of a public street.

This resolution is based on the following findings:

- a. The proposed public streets are with the general location of an existing driveway on the site.
- b. The proposed public streets have been located to minimize impact on the existing wetland and floodplain.
- c. The proposed area of fill is minimal at just 189 square-feet.
- d. Compensatory wetland and floodplain area in the amount of 500 square feet will be created.

Approval is subject to the following conditions:

- a. Prior to issuance of a grading permit:
- (1) Document the existing conditions of the area of temporary impacts, as outline in the Wetland Conservation Act Rule 8425.0520 subpart 5, including ground elevations, contours, inlet dimensions, outlet dimensions, substrate, plant communities, and hydrologic regime.
 - (2) Obtain approval and comply with the requirements of the Wetland Conservation Act.
 - (3) Obtain approval from all other appropriate agencies.
 - (4) Submit a letter of credit for 150% of the estimated cost or 125% of the actual bid for the wetland and floodplain replacement to be constructed. The letter of credit will be reduced based on establishment
- b. Complete restoration of those areas proposed to have temporary wetland impact must be completed within six months of issuance of a grading permit.
- c. Wetland monitoring reports must be provided annually by the developer, for a period of five years or until the city accepts the mitigated wetland.
- d. The developer must submit a cash escrow or letter of credit of either \$1,500.00 per calendar year or in an amount equal to the quote of a qualified delineator to ensure compliance with the wetland monitoring schedule.

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

B. Items concerning BMW Imported Autos.

Gordon gave the staff report.

Allendorf asked if the proposal meets the recently passed ordinance. Gordon indicated the proposal meets the ordinance and no variances from that ordinance are needed.

Hiller said the white exterior material does not fit in with the character of the rest of the I394 corridor. Gordon said the evaluation included looking at the quality and durability of the material. Staff also looked into how the material would show. The high quality material is not shiny and smooth. There are also joint lines between the panels that break up the look of the building.

Schneider, who served as co-chair of the group that revamped the ordinance, said the intention was not to get all the buildings to look alike. The intention was to avoid allowing a cheap, tacky looking building being built in the city. He said the council has not had to apply or interpret the ordinance much since it was written. Most communities in the Twin Cities have updated their ordinances to require high quality metal panels similar to glass.

Wiersum said it might be appropriate to change the ordinance at some point to address changes in architecture and design that has occurred since the ordinance was originally written.

Peter Coyle said he was speaking on behalf of the applicant. He said when the process began there was an understanding that if the council was to grant relief on the outside storage issue, there would have to be tradeoffs. The council was looking for a productive use of the difficult site. The use had to be compatible with the freeway corridor uses that were being guided. The understanding was the council was willing to consider an office like design that managed outside storage that was reflective of an office use. He said the applicant has worked hard to bring a project to the city that meets the intent and spirit of the code. There were changes made as a result of the neighborhood meeting including the reduction of building height and removing the tower; preservation of the berm in the northwest corner of the site; and protection of the wetland. He said the exterior of the building will

add a level of style and design that will make it distinctive and an asset to the community.

Wagner asked if the dealership will use the address of Minnetonka or Wayzata. Coyle said it will be the Minnetonka BMW.

Donald Cox of 408 Parkers Lake Road asked if vehicles will continue to be offloaded on to the service road. Callison said the staff report said there is a very long driveway that will allow for the offloading of vehicles on the property. Cox said it was his understanding there will be a considerable amount of piling involved on the project and asked if there was a time limit for the piling. Gordon said the hours for construction operations would be 7 a.m. until 10 p.m. Wischnack said for other projects with piling issues there have been accommodations made in the construction schedule for nearby neighborhoods.

Hubert Hafner of 311 Ranchview Lane said he and his neighbor have three concerns: 1) the height of the building; 2) the building material; 3) the screening. Callison asked staff to clarify what the proposal is for the berming. Gordon said the fencing would be six feet in height. On the north side of the fencing would be the new trees that will complement the existing trees. There will be around 70 trees in total. Callison also asked Gordon to clarify the variance. Gordon said the 60 foot setback is the majority of the building. The portion of the building that is at 70 feet would be the mechanical portion. The element that would be 85 feet high would be a wall that extends up with no enclosed space underneath it. Callison noted the variance is on the side of the building next to the commercial area not on the north side that is adjacent to the residential area.

Allendorf asked what the ordinance requires in terms of screening the building from residential view. Gordon said the ordinance requires screening from view at the ground level of the residential properties. He said the intent would be to screen the activities of the ground level on the site, not to screen the entire building. The ordinance also provides for enclosure of the automobiles.

Schneider said for past office building projects the mechanical penthouses have not counted toward the height calculation. He asked if the need for the variance has been stretched by including the mechanical penthouse in the height calculation. Gordon said the mechanical penthouse meets the literal definition in the building code. Schneider said the ordinance defines the building envelope as space that can be occupied. He said he supported granting the variance but questioned whether it was needed.

Bob Shadley of 700 Gleason Acres Drive said he was speaking on behalf of all the seven families that reside on Gleason Acres Drive. He said the neighborhoods concerns remain the same as they have been throughout the process: environment, safety, and the architecture. At the Planning Commission hearing the residents recommended that the city use the revenue from the project to hire full time police to enforce the traffic ordinances in the area. Another idea is to set up a dedicated phone line so the city could document the number of calls related to traffic problems in the area. As for the architecture, Shadley said a lot of time had been spent addressing the affects of the problem and not the cause. He said the cause of the problem is that BMW dictates the structure type and material and also dictates the number of vehicles on the site. He would be happy to work with developer to find a site that would not be intrusive to anyone.

Shadley said methane has been detected at concentrations above the upper explosive limit at several subservice locations on the site. He said nowhere in the RAP/CCP is prevention or mitigation of an explosion during construction addressed. The MPCA approval of the August 25 RAP/CCP was done on August 29. He said one of the jobs he held in the military was being responsible for disposing explosives. If his staff brought this proposal to him he would want to see the environmental impact statement, the risk assessment, and the safety plan that would be implemented to protect people in the hazard area. He noted the project is 25,000 square feet less than that required for conducting an environmental impact statement. If future expansion is allowed an environmental statement would be required. He said at a minimum personnel should be evacuated and traffic not allowed up to a 1,000 feet around the perimeter to protect against flying shrapnel, as well as arsenic, selenium, asbestos.

Wagner asked the staff to discuss if part of the reason why the berm cannot be extended is the ponding requirements for the site. Gordon said if the berm was extended it would require the relocation of the ponds. The ponds could be moved over within the wetland buffer edge along the east side of the site but staff felt that might reduce the natural quality desired along the buffer edge. Wagner asked if the city had the ability to reduce the number of outside parking spaces to shift the building to accommodate a berm. Gordon said the applicant is meeting the parking space requirement. Spaces are also being required for square footage within the sales part and service bays. Parking spaces could be reduced and the ordinance still would be met. He said if the berm

were reduced a modification would be needed to the site plan to accommodate the deliveries.

Callison asked the applicant to comment on the environmental risk issues. Dan Holte of Braun Intertec said that the most significant environmental issue at the site is the methane and is why the RAP/CCP was prepared. The plan consists of an under building methane capturing system as well as an under parking lot system. The main issue with methane is not during construction because the gas disperses but rather if the gas builds up under surfaces. He said piling has never been an issue on methane sites.

Schneider said the biggest screening mechanism for the building is the 1,000 foot distance from the residences. He said it is worth considering if something could be done to the site plan through additional landscaping or screening that still meets BMW and the developer's requirements. He said a 10 foot berm or six foot fence will have little significance from 1,000 feet away. Converting the back row of employee parking to proof of parking would provide an additional 20 feet of space that could be used to plant cottonwood trees. The trees would provide a significant summertime screen.

Wiersum asked if staff had any concerns about the rigor of the MPCA evaluation. Gordon said city staff had contacted two different MPCA staff to get at a comfort level in identifying the issues related to the cleanup. He said the city staff has been satisfied what is happening is typical for a site where methane is present. There will be building plan review of the project if it goes forward. The MPCA will review the exact plans so there will be checks to ensure the project is implemented in the way it was proposed.

Wagner said he was supportive of the proposal. The comprehensive plan guided the area for this use or an office use. From a height standpoint either one would be of similar height. He said the proposal is a good use of the property that conforms with the city's expectations that were reviewed when the ordinance was adopted. He would be open to looking at reducing the number of surface parking spaces because of the inside tiered parking.

Allendorf said he was also supportive of the proposal and it was consistent with the recently adopted ordinance. He took a look at the sight line from the neighborhood to the site and it was not intrusive. He said he would not oppose taking out the back row of parking but does not believe planting trees to screen will be of much benefit.

Hiller said he was supportive of the outdoor display ordinance. He said the technology is there to build on the site safely. He still had concerns about the finish of the building. The current standards for the outdoor display ordinance were developed on the concept that what was built would fit in with an office building and would eliminate the rows of cars. The proposal calls for a building with a distinctive finish that does not fit in with the other office businesses and residential properties in the area. He said the variance should not be granted on that basis. If the proposal was for an office building the type of proposed finish would not be considered.

Wiersum said he thought it was a good looking building. The issue of the metal surface of the building is not a concern because the issues the neighbors have raised have little to do with the material but more to do with the color. He said BMW would not want to build on an explosive piece of property and if there was any meaningful risk they would not build on the site. He agreed with Allendorf about the distance from the residences to the site. The top of the building is basically at the level of the horizon so it would not stand out.

Callison said the environmental issues are serious concerns but she was not persuaded that the risk is as presented. She said the engineering firm and the MPCA understand what has to be done on the site. She agreed that the distance of the building from the residences is not much of an issue. She said proof of parking is for proof of parking and if trees are put in and the parking is needed the same issues will come back. She understands the intent behind the I394 ordinance on the design materials is that high quality materials will be used. Uniformity is not required because the city tries to stay away from dictating styles. Creativity is involved and gives the community some of its character. On the issue of cars and safety related to test driving she urged residents to notify the police if the ordinance is not being followed.

Allendorf moved, Wagner seconded a motion to:

- 1) Approve the preliminary plat date-stamped August 25, 2008. Approval is based on the finding that the plat meets the required standards and ordinances and is subject to the following conditions:
 - a. Prior to final plat approval, complete the following:
 - (1) Show the following on the final plat:
 - (a) A minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.

- (b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
- (c) Drainage and utility easements over wetlands, floodplains, infiltration basins and stormwater ponds, as determined by the city engineer.
- (2) Pay a park dedication fee of \$129,600.
- (3) 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 engineering and administration fee.
 - (2) An electronic CAD file of the final plat in microstation or DXF.
 - (3) Payment for traffic signs and installation, as required by the city engineer.
 - (4) The following documents must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval:
 - (a) Title evidence that is current within thirty days before release of the final plat.
 - (b) Conservation easements over the required wetland buffer 25-feet upland from the delineated wetland edge and a drawing of the easements. The easement may allow removal of hazard, diseased, or invasive species. The easements and drawings must be recorded with the final plat.
 - (c) Declaration and restrictive covenants over all mitigated wetland areas per the WCA.
 - (d) Restrictive covenants to be recorded against the individual lots within the plat. The covenants must include the conditions that have not been met as of the release of the plat.
 - (e) Maintenance agreements for infiltration basins and stormwater ponds, as required by the city engineer.
 - (f) A development agreement in a form acceptable to the city attorney.

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

- (5) Any other requirements included with final plat approval.
- 2) Conduct the first reading of the ordinance which approves the proposed master development plan, and final site and building plans for a new automobile dealership at 15802 and 15810 Wayzata Boulevard. Approval includes the following variances:

 - a. Side yard setback variance from 70 feet to 60 feet.
 - b. Variance to allow use of composite metal panels as a primary building material.

This ordinance is based on the following findings:

 - a. The proposal would meet the required standards and ordinances for a site and building plan approval.
 - b. The proposed setback variance associated with the development is reasonable.

 - (1) PRACTICAL DIFFICULTY. The location of an existing wetland on the east side of the building and the applicant's desire to adequately buffer this wetland constitute a practical difficulty. The setback variance could be eliminated by a 10-foot shift of the location of the proposed building. However, such shift would merely move the building 10 feet away from existing paved area on an adjacent auto dealership site and 10 feet closer to the existing wetland.
 - (2) UNIQUE CIRCUMSTANCE. The setback requirement is based on the 70-foot height of the proposed building. However, just 1.3 percent of the proposed building is 70-feet in height. The vast majority of the building would be 60 feet or less in height and meet the setback requirement. The articulated height of the proposed building is a unique circumstance not common to every commercial building within the PID district.
 - (3) NEIGHBORHOOD CHARACTER. Any redevelopment of the currently vacant site will change the visual character of the property. However, the 10-foot setback variance itself would not.
- b. The proposed building materials variance associated with the development is reasonable.

- (1) PRACTICAL DIFFICULTY. The proposed composite metal panels would have many of the same characteristic as polished stone or glass panels. The discrepancy in city code which would allow for polished stone or glass panels, but not allow for similar composite panels that have as high of material quality constitutes a practical difficulty.
- (2) UNIQUE CIRCUMSTANCE. The metal panels would comprise no more than 55 percent of any one façade of the proposed building. Though clearly more than an accent material, the panels would not make up an overwhelming majority on any façade. This breakdown of building materials is a unique circumstance not common to every commercial building and property.
- (3) NEIGHBORHOOD CHARACTER. Any redevelopment of the currently vacant subject site will change the visual character of the property. The building materials variance itself would not.

The master development plan, and final site and building plans are subject to the following conditions:

- a. This master development plan repeals and replaces Ordinance No. 98-19 adopted on September 14, 1998.
- b. 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 August 25, 2008.
 - Grading plan date-stamped August 25, 2008.
 - Landscaping plan date-stamped August 25, 2008.
 - Building elevations date-stamped August 25, 2008.
 - Utility plan date-stamped August 25, 2008.
 - Illumination plan date-stamped August 25, 2008.

The above plans, as modified by the conditions below, are hereby adopted as the BMW master development plan and as final site and building plans.
- c. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
 - (1) The following must be submitted for the grading permit to be considered complete.

- (a) Final site, grading, drainage, utility and erosion control plans must be submitted for staff approval. The city engineer will provide the developer with a formal memorandum outlining all items and details which must be provided on the submitted plans.
- (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, landscaping requirements, and to restore the site. 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) 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. The management plan must be accompanied by a cash escrow, in the amount to be determined by city staff, and a waiver document prepared by the city attorney and signed by the developer. Through this document the developer 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.
- (e) One of the following:
 - (i) Escrow dollars, in amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the

- site throughout the course of construction; or
- (ii) Evidence that an erosion control inspector has been hired to monitor the site through the course of construction. This inspector must provide weekly reports to natural resource staff in a format acceptable to the city.
- (2) Prior to issuance of a grading permit:
- (a) Submit a seed mix proposal for the infiltration area and adjacent slopes. This mix must be of natural and native species and is subject to review and approval of natural resources staff.
 - (b) Install all measures in accordance with the SWPP for staff inspection. These items must be maintained throughout the course of construction.
 - (c) The final plat must be released by the city and filed with Hennepin County for recording.
 - (d) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Minnehaha Creek Watershed District, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits. Copies of all required permits must be submitted to the city.
- (3) The stormwater ponding 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:
- (1) Submit the following documents:
 - (a) A recorded copy of the ordinance.
 - (b) A recorded copy of the conditional use permit resolution.
 - (c) Recorded copy of the final plat, all required easements, and restrictive covenants.

- (d) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - (e) 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.
 - (f) Certified as-built drawings in mylar, PDF, and CAD formats.
 - (g) As-built topography survey for infiltration basins and all utilities in CAD format.
- (2) Submit the following plans for staff review and approval:
- (a) A final site plan. This plan must:
 - i. Designate fire lanes. These lanes must be acceptable to the fire marshal.
 - ii. Designate customer parking spaces.
 - (b) A final landscaping plan. The plan must:
 - i. Include an estimate of the proposed cost of the work and must meet minimum landscaping requirements as outlined in ordinance.
 - ii. Must substitute another species of evergreen trees for Colorado spruce shown on preliminary plans.
 - (c) 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. The management plan must be accompanied by a cash escrow, in the amount to be determined by city staff, and a waiver document prepared by the city attorney and signed by the developer. Through this document the developer 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.
- (d) 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.
- (e) 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 Woodland Preservation Areas and High-Priority Trees removed outside of these perimeters and in all infiltration and ponding areas. Significant trees removed outside of these areas must be mitigated tree for tree.
- (3) The following items must be completed:
- (a) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
- (b) 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.
- (c) Pay all required hookup fees.
- e. This ordinance does not approve any signs. A separate sign plan review and sign permits are required.
- f. The property owner is responsible for replacing any required landscaping that dies.

- g. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- h. Construction must begin by December 31, 2009, unless the planning commission grants a time extension.
- 3) Approve Resolution No. 2008-104 which approves a conditional use permit for outside storage and display at 15802 and 15810 Wayzata Boulevard.
Approval is based on the following findings:
- a. The proposal meets conditional use permit standards as outlined in the city code.
- b. The proposed setback variance associated with the development is reasonable.
- (1) PRACTICAL DIFFICULTY. The location of an existing wetland on the east side of the building and the applicant's desire to adequately buffer this wetland constitute a practical difficulty. The setback variance could be eliminated by a 10-foot shift of the location of the proposed building. However, such shift would merely move the building 10 feet away from existing paved area on an adjacent auto dealership site and 10 feet closer to the existing wetland.
- (2) UNIQUE CIRCUMSTANCE. The setback requirement is based on the 70-foot height of the proposed building. However, just 1.3 percent of the proposed building is 70-feet in height. The vast majority of the building would be 60 feet or less in height and meet the setback requirement. The articulated height of the proposed building is a unique circumstance not common to every commercial building within the PID district.
- (3) NEIGHBORHOOD CHARACTER. Any redevelopment of the currently vacant site will change the visual character of the property. However, the 10-foot setback variance itself would not.
- c. The proposed building materials variance associated with the development is reasonable.

- (1) PRACTICAL DIFFICULTY. The proposed composite metal panels would have many of the same characteristic as polished stone or glass panels. The discrepancy in city code which would allow for polished stone or glass panels, but not allow for similar composite panels constitutes a practical difficulty.
- (2) UNIQUE CIRCUMSTANCE. The metal panels would comprise no more than 55 percent of any one façade of the proposed building. Though clearly more than an accent material, the panels would not make up an overwhelming majority on any façade. This breakdown of building materials is a unique circumstance not common to every commercial building and property.
- (3) NEIGHBORHOOD CHARACTER. Any redevelopment of the currently vacant subject site will change the visual character of the property. The building materials variance itself would not.

Approval is subject to the following conditions:

- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the approved master development plan:
 - Site plan date-stamped August 25, 2008.
 - Grading plan date-stamped August 25, 2008.
 - Landscaping plan date-stamped August 25, 2008.
 - Building elevations date-stamped August 25, 2008.
 - Utility plan date-stamped August 25, 2008.
 - Illumination plan date-stamped August 25, 2008.
- b. Fire lanes must be designated on the plans submitted for building permit review. These lanes must be acceptable to the fire marshal.
- c. Customer parking spaces must be designated on plans submitted for building permit review.
- d. All inventory and display vehicles located outside of a building or structure must be at finish grade level. No jack stands, risers, or other mechanisms may be used to elevate any vehicle for display purpose;

- e. Class II motor vehicle sales (used car sales) are allowed only as an accessory part of the new car sales.
- f. The sale of vehicles may occur during the times and days allowed by state law.
- g. At no time may vehicles be displayed in any yard area, drive aisle, or fire lane.
- h. Parking lot and site security lighting must comply with section 300.31(7)(c) and in addition, the following requirements:
 - (1) Maximum of 450 watts per fixture.
 - (2) Maximum height of light standards is 30 feet in outdoor display areas as defined in 300.31 Subd. (4)(a)(3)(b) and 25 feet in all other outdoor areas.
 - (3) Maximum of 1 watt per square foot surface parking area.
 - (4) The lighting plan shall be designed to have 0.0 foot-candles at residential property lines with the understanding that ambient light from other sources may spill on the property and influence actual on site measurements.
- i. The customer parking spaces must be clearly signed and may not be used at any time for inventory vehicle parking.
- j. All pickups and drop offs of vehicles must occur on site and off public streets.
- k. All loading and unloading of vehicles must occur on site and off public streets.
- l. Customer testing of vehicles may occur only on non-residential streets and only with a store employee.
- m. No loudspeaker paging system may be used.
- n. All rooftop equipment must be fully screened from ground level view of adjacent properties.
- o. All signs must be consistent with this code or any future sign plan approval.
- p. All trash and recyclable materials must be screened from public view.
- q. The property owner is responsible for replacing any required landscaping that dies.
- r. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- s. 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.

- t. The applicant must agree to these conditions in writing.
 - u. Prior to issuance of a building permit, this resolution must be recorded with the county and a copy of the recorded resolution must be returned to the city.
- 4) Adopt Resolution No. 2008-105 which approves a conditional use permit for grading in excess of 1,000 cubic yards at 15802 and 15810 Wayzata Boulevard. Approval is based on the following findings:
- a. The proposal would meet the general conditional use permit standards as outlined in city code.
 - b. The proposal would meet minimum engineering requirements.

Approval is subject to the following conditions:

- a. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
 - (1) The following must be submitted for the grading permit to be considered complete.
 - (a) Final site, grading, drainage, utility and erosion control plans must be submitted for staff approval. The city engineer will provide the developer with a formal memorandum outlining all items and details which must be provided on the submitted plans.
 - (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, landscaping requirements, and to restore the site. 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) 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. The management plan must be accompanied by a cash escrow, in the amount to be determined by city staff, and a waiver document prepared by the city attorney and signed by developer. Through this document the developer 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.

- (2) Prior to issuance of a grading permit:
- (a) Install all measures in accordance with the SWPP for staff inspection. These items must be maintained throughout the course of construction.
 - (b) The final plat must be released by the city and filed with Hennepin County for recording.
 - (c) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Minnehaha Creek Watershed District, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits. Copies of all required permits must be submitted to the city.
- (3) The stormwater ponding 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.

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

Callison called a recess at 9:00 p.m. She called the meeting back to order at 9:10 p.m.

C. Items for the 2009 Preliminary Tax Levy.

Gunyou gave the staff report.

Hiller suggested it would be helpful in the future to include the budget study session summary with the staff report. He asked for an update on the current year's budget. Gunyou said at this point there is only data for about half of the year. One reason a soft freeze has been imposed is the shortfall in the development fee collection and higher than expected energy costs. He said better information will be available when all the detailed information is presented to the council. It is expected there will be a shortfall by the end of the year. The city does have substantial reserves that can be used to deal with the shortfall.

Hiller said the budget presented is about \$218,000 more than what was presented at the study session. He asked what was added to the expected expenses. Gunyou said the preliminary levy is not built on specific expenses but rather a recommendation on where to set the cap. He said the budget recommendation is about \$160,000 more than what was discussed at the study session. Staff is recommending setting a slightly higher cap because salary settlements from neighboring communities are running higher than anticipated and there is continuing concern about the fall off in the development fees. He said the preliminary levy does not commit the council to levying to that amount and at this point it makes sense to build in a cushion.

Wiersum said he received a couple calls from residents who let him know what they thought about the potential HRA levy. One issue they raised was because housing values are down they expected a corresponding decrease in property taxes. He said it would be helpful to clarify for residents how property taxes are calculated. Gunyou said a lot of factors affect residents' property taxes. The city is only one unit of government that levies and its portion for commercial properties is very small. State law assigns the relative weights to the different categories of property differently. A \$100,000 residential home does not get taxed the same as a \$100,000 business. Another factor is what is happening with the market values. Relatively, the values of homes overall have not increased as much as commercial property. This shifts more tax on to commercial property. He said in some cases a resident might see a property tax decrease depending on how far the value of their house decreased. Hennepin County has indicated even with their proposed seven percent property tax increase, countywide property

taxes will go down on average for homeowners. Wiersum noted that property values are relative to everybody in the city. This means that if everybody's house value uniformly dropped ten percent taxes would remain the same for all.

Allendorf said he would like to see the detail tracking of the planning and community developments expenditures on developments. Are the fees adequate? How does the city make an equitable charge for developments and is the city discouraging meetings because a developer will have to pay more for a permit? He said for setting the cap of the levy, the recommendations were well thought out.

Darlene Kleberg of 18212 Kathleene Drive said now is not time for the HRA levy because times are tough.

Ivan Fox of 6008 Pinewood Lane noted the stock market had dropped over 500 points during the day and two major investment banks were about to cease to exist. He said a possible depression was forthcoming and it was a bad time to do a HRA levy. Previous discussions about a possible HRA levy had taken place at meetings that were not videotaped and with no resident input. He said the city is on track to meet the Met Council's affordable housing goal. He criticized the Glen Lake project.

Grace Sheely of 14325 Grenier Road said it is not the time to be looking at a lot of capital improvements. Residents are willing to live without road improvements for a couple of years and without the renovation to the Williston Center. She encouraged residents to take a close look at city services to see if there are services that can be cut to avoid tax increases. She questioned the need for weekly recycling service.

Anne Malm-Hossfeld of 14616 Glendale Street questioned where the affordable housing and development goals come from. She said residents have not been allowed input on what the HRA levy should be spent on. She said it was inappropriate to levy taxes that would not go to a broad spectrum of residents but rather would go just for one target. She asked to what extent the Met Council mandates have put the city under pressure to raise funds for affordable housing. Callison said Malm-Hossfeld's questions would be good ones to bring up at the EDA's hearing if the levy was approved.

Hiller agreed the economy was tight and the proposed 5.2 percent increase was a reasonable cap. He noted that in past years the final levy ended up being close to the preliminary levy and thus was

reluctant to approve the cap because past efforts to reduce the number have not happened.

Wagner said the opportunity for public input and study begins once the preliminary levy is determined. He said Sheely brought up good questions that residents need to ask the council and the council needs to ask itself. Are people willing to live with less city services? During his time on the council the feedback has been the majority of residents have not been willing to accept a reduction in police protection, road projects, or capital projects. He said he was hesitant to predetermine before the public input process starts that the entire city wants a reduction in services. He noted that last year's budget increase for public safety has resulted in tripling the number of traffic citations in the city with an eight to ten percent drop in residents' concerns about speeding.

Wiersum said it was a fair point that when the cap is established with the preliminary levy that the council frequently levies close to that number. He said 5.2 percent is reasonable at this juncture. There have been prudent steps made in managing costs but more than any other year during his time on the council the city will need to fundamentally look at if residents would be willing to accept cuts in services. He said the city needs to look creatively at ways to come to a final levy that is lower than the preliminary levy.

Schneider said a number of good comments had been made by the residents. He agreed that the discretionary spending is in the capital improvement area. Fortunately because of the way the city does long term budgeting through fund balances and keeping the overall assets in balance, the city is not working toward a set dollar amount that needs to be met at the end of the year. The budgeting process does require monitoring the fund balances thoroughly to determine what is truly discretionary. He said there may be some capital expenditures that can be delayed or eliminated. He has long advocated Sheely's suggestion of going to a two week schedule for recycling. He said because there are so many uncertainties that have to be dealt with before the final budget is approved, it does not make sense to arbitrarily cut a certain percent only to find out that something like fuel costs are much more than anticipated.

Ellingson said a good point that was made at the study session was that the property tax levy was increased to improve streets and traffic enforcement in response to surveys. He supports the 5.2 percent increase but noted there is no increase in city services associated with the tax increase but rather the tax increase was just to maintain current services.

Callison said she supported the proposed 5.2 percent increase and in the next few months more information will be available about the uncertainties the city is facing. The piece missing is the direct impact on property taxpayers that will be available when the truth-in-taxation statements are mailed. She said the numbers talked about during the study session were different than the current numbers. This is because the study session allows for a discussion but the decision was being made at this meeting. She said she has never received a call from somebody saying they can live with potholes on the roads.

Wagner said the Basset Creek Watershed District was considering an expansion of their administrative services. He asked if that was included as part of their budget request. Gustafson said there is a \$35,000 line expenditure for an administrative position that is a placeholder pending further discussion. If approved, the city would pay a small percentage of the \$35,000. Callison noted the city does not have any control over the district's budget.

Schneider moved, Allendorf seconded a motion to adopt:

- 1) Resolution No. 2008-106 setting a preliminary 2009 tax levy and budget for truth-in-taxation purposes.
- 2) Resolution No. 2008-107 setting a preliminary 2009 tax levy for the Bassett Creek Watershed Management Tax District.

All voted "yes." Motion carried.

Hiller said he has attended all the EDA meetings since last November. One topic that keeps coming up is the funding needed for affordable housing is running down fund balances and leaving no money left to address other issues. He said he was not comfortable with a budget that doesn't take care of the big picture of what needs to be done in housing and redevelopment as a complete package. Establishing the proposed \$400,000 levy for affordable housing while a noble cause, will set the precedent for using the levy for other things like trails and administrative overhead. He said one of the EDA commissioners indicated support of the levy if there was a good plan to spend the funds and he too could support it if a good plan was in place. He could not support the levy without addressing the comprehensive issue.

Schneider agreed that the city should not build a fund up without knowing how it would be spent. He said he has received more calls about the proposed HRA levy than he has from issues like street repair and the Glen Lake development. Residents are concerned

about adding a new tax during a stressful economic time. As he explained what the levy was for, half of the callers begrudgingly agreed that affordable housing is part of the community but didn't agree they should pay for it. He has tried to explain to people that having a dedicated fund for an affordable housing set at an appropriate amount, will save taxpayers a significant amount of money over time. He said if the state legislature believes the wealthier communities are not doing their fair share in addressing affordable housing, the state will take what it believes is the fair share from those communities. That type of mandate could have a several million dollar impact on residents. He said by establishing a modest levy it will demonstrate the city is doing something to encourage and promote affordable housing in the community.

Wagner said the EDA brought the proposed levy forward mainly because it is tasked with supporting the comprehensive plan from an affordable housing and economic development standpoint. The EDA is concerned about the declining fund balances with no new revenue sources, and no likely TIF district to add to the funds. The city has done well in meeting the affordable housing goals because there have been major redevelopments have occurred. He said he does not see similar major redevelopments occurring in the future. The Met Council goal is for 47 percent of the city's new housing units or 385 overall units that need to be affordable. Meeting the goal will be a struggle given the declining fund balances. He said affordable housing is an attribute that the council takes seriously and supports.

Allendorf said he supported an increase in the city's levy to address roads and traffic enforcement because survey results indicated that was what a great majority of residents wanted. No one has told him what they really want is for their taxes to increase so the city can buy five WHALT houses. He said five houses will not move the city very close to the goal of 47 percent of the city's new housing be affordable. What should be done is to seek developers to come in to the portion of the city that the comprehensive plan identified as areas where affordable housing is appropriate or could be developed. While the WHALT program has been successful he doesn't see how the program and a one and a half tax levy increase will indicate to the Met Council that the city is trying to meet the goals. He said the city usually doesn't implement such a new program at one time. If the levy was approved, he would like to see the plan and how it would be phased in.

Ellingson said without a better understanding of how the money would be spent, he didn't think the levy was appropriate.

Wiersum said the city wants to be an open and welcoming community and wants the people who work in the city to be able to live here as well. The HRA levy would create opportunities to help move the city in the right direction to meet the affordable housing goals and to fund the type of development the city wants. The comprehensive plan lays out goals but there is no plan to address the demographic reality that the city will face during the comprehensive plan period. He said it is a challenging time and raising taxes is difficult.

Callison said the fundamental question is if this is the right time to do the HRA levy. It is premature to say no just because there is no plan developed, because at this point the purpose is to get the plan developed. The other reason not to do the levy is because economic times are bad. She said that was a compelling argument and that \$400,000 was not the right amount. She suggested setting the amount at \$200,000. If the amount is set too high and there is not a plan on how it would be used, the conversation will be that the levy is a bad idea and the city won't be able to establish it when the time is right. Setting the levy at an appropriate amount will let the conversation move forward.

Schneider moved, Callison seconded a motion to adopt Resolution 2008-108 for consent and approval of a \$200,000 2008 HRA Levy

Wagner asked for direction from the council to bring back to the EDA as to what the council expects if a \$200,000 levy is approved.

Callison said she would still like staff to look at city owned properties that could be sold to provide short term alternative funding. She would also like staff to take a look at other government funding for affordable housing that might be available.

Schneider said that \$200,000 wouldn't go a long way in addressing the affordable housing issue. Establishing the levy will help leverage other significant funding. He said WHALT would be able to use the funding to go to other sources to get additional grant money. He said WHALT's goal for this year is to build about 20 homes with many of them in Minnetonka. He said if the levy is established the Met Council will point to Minnetonka as an example for other cities.

Wiersum said by establishing the levy at a modest amount, it will further demonstrate the city's commitment to affordable housing and will likely leverage other funding.

Allendorf said \$200,000 would equate to a three quarters of a percent tax increase on residents. He said if the purpose of establishing the levy was to send a message to the Met Council, the amount could be less than \$200,000. Phasing in the levy would help address the fund balance issue. He agreed with Callison's concern about setting the levy too high and hearing back from residents that it is a bad idea thus making it harder to implement in the future.

Callison said the council is looking for some long range planning from the EDA that is creative and looks at a variety of funding sources that will really make a difference in addressing the affordable housing issue

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

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointment to the planning commission.

Callison said the city appreciates the volunteers who serve on committees and there were good applicants who were interviewed. The comprehensive guide plan steering committee had 10 volunteers who had never been involved with the city government so there is a good effort to get people involved. She said the city tries to balance all the boards and commissions taking into consideration representation from all wards, different experience levels and different interests. The Planning Commission currently has three members who have served on it for less than one year. She said it was appropriate to appoint somebody with more experience and having served on the city council does not disqualify a person from serving on a board or commission.

Callison moved, Schneider seconded a motion to appoint Al Thomas to the planning commission, to serve the remainder of a two year term, effective September 15, 2008 and expiring on January 31, 2010. All voted "yes." Motion carried.

16. ADJOURNMENT.

Wagner moved, Wiersum seconded a motion to adjourn the meeting at 11:14 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk