

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, SEPTEMBER 29, 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 Dick Allendorf, Brad Wiersum, James Hiller, Terry Schneider, Bob Ellingson, and Jan Callison were present. Tony Wagner was excused.

4. APPROVAL OF AGENDA.

City Manager John Gunyou noted addenda to items 10D, 12E and 15.

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

5. APPROVAL OF MINUTES: None.

6. SPECIAL MATTERS:

A. Recognition of Sarah Schmitz for her service on the planning commission.

Allendorf read the recognition.

B. Citizen lifesaving awards.

Wiersum read the recognition thanking Caid Goodwin, Tim Crane, Sam Munson and Kimberly Blomberg.

C. Proclamation declaring October 7, 2008 as City Wide Open House Day.

Hiller read the proclamation.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the schedule for upcoming council meetings.

Callison said she and several staff members attended the Minnehaha Creek Watershed District's Heroes Awards ceremony. She said the city was recognized for its efforts in improving water quality.

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

No one appeared.

9. BIDS AND PURCHASES: None.

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

A. Claims for council authorization – September 22, 2008.

Allendorf moved, Schneider seconded a motion to approve the September 22, 2008 claims which includes checks numbered 214807 through 215057, totaling \$1,161,959.89. All voted "yes." Motion carried.

B. Resolution adopting the 2009 meeting schedule for the Minnetonka City Council.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2008-109 adopting the 2009 meeting schedule for the Minnetonka City Council. All voted "yes." Motion carried.

C. Resolution appointing election judges for the State General Election on November 4, 2008.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2008-110 appointing election judges for the State General Election on November 4, 2008. All voted "yes." Motion carried.

D. Ordinance adopting the master development plan for BMW.

Mark Birnbaum of 325 Townes Road asked for the item to be pulled from the consent agenda. He said he was concerned about spillage from the private fuel pumps that will be part of the facility and that the facility would become a gas station. Another concern was there is no record of a permit for the wetland buffer with the Minnehaha Creek Watershed District. Birnbaum's final concern was if there will be enough room on the site for semi trucks to unload vehicles. City Planner Loren Gordon responded the developer has said the onsite fuel pump will only be used for those who purchase new cars to fill up the tank before they leave the site. He said the master development plan includes a 35 foot buffer around the wetland.

This is consistent with the watershed district's rules, and their permitting will come after land use approvals. Callison noted as part of the District's permitting process, public input will be taken. City Engineer Lee Gustafson said there is a road that goes around the site making it easy for a semi to pull in and circulate around the site to unload vehicles on site. Gordon said vehicle unloading will occur during normal business hours. Callison said if unloading occurs during non business hours, residents should notify the city.

Schneider asked Gustafson to address the fuel spillage concerns. Gustafson said the MPCA will be required to approve the gas installation and the pumps will have to meet all the current gas dispensing regulations.

Wiersum asked if the city has any ordinance regulating the fuel pumps. Gordon said the city code regulates gas stations under a conditional use permit process. The use on this site would only be for auto sales. If there are retail gas sales, the city could take enforcement action.

Allendorf moved, Schneider seconded a motion to:

1) Adopt Ordinance No. 2008-28 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.

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 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.

2) Approve the master development plan, and final site and building plans 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.

All voted "yes." Motion carried.

E. Resolution to approve a cooperative agreement with Hennepin County to receive Transit Oriented Development grant funds.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2008-111 approving a cooperative agreement (Hennepin County contract agreement No. A081398 with Hennepin County for Transit Oriented Development grant funds. All voted "yes." Motion carried.

F. Final approval of the WOOLMAN WOODS plat at 18601 and 18617 Woolman Drive.

Allendorf moved, Schneider seconded a motion to approve the WOOLMAN WOODS final plat, received on September 23, 2008, subject to the following conditions:

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

All voted "yes." Motion carried.

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

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2008-112 ordering the abatement of the nuisance conditions.
All voted "yes." Motion carried.

H. Resolution ordering the abatement of nuisance conditions.

Allendorf moved, Schneider seconded a motion to adopt the following resolutions ordering the abatement of nuisance conditions:

- 1) Resolution No. 2008-113 at 709 Plymouth Road.
- 2) Resolution No. 2008-114 at 12116 Joanne Lane.

All voted "yes." Motion carried.

I. Resolution to petition the Riley-Purgatory-Bluff Creek Watershed District for the Purgatory Creek Improvements.

Allendorf moved, Schneider seconded a motion to adopt Resolution No. 2008-115 to petition the Riley-Purgatory-Bluff Creek Watershed District to study, construct, and fund basic water management improvements within the watershed district. All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance amending the nuisance abatement procedure.

City Attorney Desyl Peterson gave the staff report.

Schneider said he had concerns about the notice provisions. He said since the city has the ability to assess escalating fines related to repeat violations, a prescribed notification requirement should be included.

Hiller said the goal of the recently approved ordinance increasing fines was to eliminate repeat violations. He asked if the staff had seen a reduction in repeat violations. Community Development Director Julie Wischnack said staff needs more time to evaluate if the ordinance is working. She said currently staff typically does not get a response to the second notice provided to property owners.

Hiller said the references in the ordinance compare the city to Minneapolis and St. Paul. He said one of the key differences is that St. Paul and Minneapolis have staff look for violations. This differs from Minnetonka that deals with violations on a complaint basis. He would like comparative information from other cities who also deal with violations on a complaint basis.

Wiersum said the proposed 24 hour notice posting is too short a period of time. He prefers seven days. The posting does two things: 1) provide notice to a property owner who may not be present; 2) alerts neighbors the city is taking action. Peterson said the current notice is just an 8 ½ x 11 notice that goes on the front door so it does not give a lot of notice to the neighbors.

Allendorf said he likes the 24 hour notice provision. By the time the city gets to that point in the process, 24 hours should be sufficient.

Callison said the proposed changes get at how quickly the city can get the situation under control. She agreed with Schneider on the notice provision that gives people a chance to comply before the city takes action.

Schneider said the proposed changes are the right approach and will prevent minor issues from having to come to the council. He suggested 24 hours is too short a notice period but seven days is too long. Three days would be consistent with other requirements.

Hiller asked what was looked at to expedite the current process. Peterson said staff has tried streamlining the process as much as possible and gave examples. Callison noted the 2009 meeting schedule has one council meeting a month in July, August, and September, meaning there will be fewer opportunities for the council to deal with the issues.

Schneider moved, Wiersum seconded a motion to introduce the ordinance. All voted "yes." Motion carried.

B. Ordinance amending the regulations for dangerous animals.

Peterson gave the staff report.

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

C. Ordinance amending the regulations for building moves.

Peterson gave the staff report.

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

D. Ordinance amending the fire department ordinance.

Peterson gave the staff report.

Wiersum asked if there were any concerns within the department about the proposed change. Fire Chief Joe Wallin said he received no response to the proposed change other than wording changes related to the types of memberships that people could participate in.

Wiersum moved, Hiller seconded a motion to introduce the ordinance. All voted "yes." Motion carried.

E. Ordinance for Terratonka subdivision.

Item removed from the agenda at the request of the applicant.

F. Ordinance adopting a major amendment to an existing master development plan for a new restaurant in the Planned I-394 District.

Gordon gave the staff report.

Schneider moved, Allendorf seconded a motion to introduce the ordinance and refer to the planning commission. All voted "yes." Motion carried.

13. PUBLIC HEARINGS:

A. Continued public hearing to consider an application by Trader Joe's East, Inc., for an off-sale intoxicating liquor license for Trader Joe's liquor store, 12150 Ridgedale Drive.

Gunyou gave the staff report.

Ellingson asked if there was a residency requirement for people who hold liquor licenses. Peterson said the manager is required to be a resident. The owners are not.

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

Callison closed the hearing at 7:17 p.m.

Allendorf asked when construction is expected to start and when the store is expected to open. Wischnack said staff expects to issue the permits before the ground freezes. It is estimated construction will take about nine months.

Hiller moved, Allendorf seconded a motion to approve the license subject to staff recommendations. All voted "yes." Motion carried.

B. Continued public hearing for Bacio restaurant on-sale liquor licenses.

Gunyou gave the staff report.

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

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

Hiller moved, Wiersum seconded a motion to grant the on-sale liquor licenses. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Issuance of notes for Glenhaven TIF District.

Wischnack gave the staff report.

Allendorf asked if the issuance of notes for a TIF district was a normal process or if it was unique to this project. Wischnack said the issuance of TIF notes was a typical process. The city agreed to issue TIF notes in the original February 2007 redevelopment contracts.

Wiersum asked what amount the city was specifically responsible for. Mark Ruff, from Ehlers and Associates, said the tax increment is supported by two different properties. Out of the \$2.4 million note, it is expected the Exchange Building will create tax increment

that will pay off a little less than a million dollars of the note. The maximum term of a TIF district is 16 years. Since the city has already received some increment in 2007 there will be about 13 more years of payments. In addition there will be the increment for the phase two condominium building. Ruff said the developer is taking the risk that the tax increment payments will be sufficient to pay off the note. The collateral on the bank loan would only be based on the phase one actual tax increment. Gunyou said the city is only obligated by the previous development agreement to pass through the TIF that is generated out of the building to the developer. The developer can take the increment on a pay as you go basis, as is often done on projects, or he could use the revenue stream to secure a loan from a private bank. Gunyou said this is also commonly done. Ruff said if for some reason taxes are not paid on the phase one building, the city would not be obligated to pay the bank or another entity.

Wiersum clarified that the increment is the new taxes that would be paid on the properties. If no new taxes are collected the value of the note would be zero. If \$10,000 of taxes is collected, the potential value of the note would be \$10,000. No money is coming out of existing city taxes. Ruff confirmed that was correct.

Ellingson asked if the note amount is \$2.4 million but the tax increment generated by the building is less than \$1 million, would it be more appropriate for the note amount to be around \$1 million? Wischnack said the note is consistent with the previous redevelopment agreement. When the agreement was approved by the council the city agreed to issue the note for phases one and two at one time. She said there is no downside to issuing the note at \$2.4 million. Schneider noted if phase two does not happen for some time but phase one is more successful than anticipated, it would generate more tax revenue than was expected.

Ellingson asked if phase two doesn't get built but phase three does get built would the tax increment from phase three help to pay the promissory note? Steve Bubul, from Kennedy and Graven, said the note is only pledged by the tax increment from phases one and two. If there is tax increment from phase three, the original contract anticipates there would be another note. He said it is likely that provision would have to be renegotiated given the time frames under the previous contract.

Ellingson asked if it was likely that phase two is not going to happen and the developer will be in default, why the promissory note was being approved before the agreement is renegotiated.

Wischnack said under the contract the city is obligated to issue the note if the developer requests that be done. Gunyou said the issue before the council was the TIF note, consistent with the previous development agreement, which was not being changed, with the exception of the recommended side agreement, which would further secure the city's position.

Hiller said under the original agreement the developer could request the note once the Glenhaven tear down occurs and the Gold Nugget opens. Ruff clarified the payment of the tax increment is dependent on those actions, not the issuance of the note. The note could have been issued a year ago but it would have been difficult for the developer to find a bank willing to finance it because the demolition was not finished and there were no immediate plans for the Gold Nugget. Hiller asked why the side agreement was needed if the city was obligated to issue the notes. Gunyou said the side agreement is for the city's benefit and provides an extra incentive for the developer to finish his obligations. He noted the council was not obligated to approve the agreement, but that it would be in the city's interest to do so.

Hiller asked if the Gold Nugget opens and then closes if the TIF funding would stop. Peterson said the Gold Nugget is considered part of phase three. She said the penalty clause in the agreement would be \$1,500 a day subtracted from the developer's profit. If the restaurant were to open and not kept in continuing operation, it would be considered an event of default with respect to phase three. If there is a note issued on phase three then there is the potential that the tax increment would be withheld.

Hiller asked how the penalty clause would be calculated. Peterson said a percentage penalty would be applied against the developer's \$500,000 profit that was included as part of the budget in the original agreement. Hiller asked what was included in the side agreement that will ensure the city would be reimbursed for the streetscaping. Gunyou said the original development agreement is not changed by the side agreement.

Ellingson asked since the Gold Nugget is going into the building constructed for phase one, why the agreement doesn't clarify that. Gunyou said that could be done but staff thought it was simpler to leave the original contract in place. It would make more sense to amend the original agreement at the same time, rather than negotiate pieces at different times. Peterson added it would create an ambiguity in terms of the note being marketable to the bank.

Callison asked if it is expected that there will be a comprehensive renegotiation of the development agreements. Gunyou said any changes in the approvals that the council made as part of the original development agreement would require renegotiation. Callison said the agreement requires the Gold Nugget to stay open without any expectation of an end date. This seems unreasonable. She asked if staff contemplated a closing date for that part of the agreement. Peterson said no. The language was included to encourage the restaurant to be open and to stay open. She said the TIF district would remain for approximately 13 years so legally, that would be the maximum expectation for the restaurant to remain open.

Wiersum said if the developer opened the Gold Nugget by December 31, 2008, he would not accrue the penalty. If the restaurant would then close, the side agreement penalty would not be triggered but rather the developer would be in default on the phase three TIF. This would affect the availability of funds available for phase three. He asked if this was a correct statement. Peterson said that was correct.

Peterson clarified that staff was also asking the council to approve a collateral assignment for the bank that would give the city the authority to pay the tax increment directly to the bank.

Grace Sheely of 14325 Grenier Road said she is pleased the Dragon Jade is open and the apartments and businesses are in place. She is disappointed with the tree loss and loss of home ownership. She is concerned that the grocery store and Golden Nugget will be able to succeed and stay open. She said the city staff was talking as if the senior development with St. Therese is a done deal and there will not be community involvement. She also is concerned about losing negotiating leverage with the developer. Sheely said she remains concerned about the provisions in the original agreement that the neighborhood will not be getting. She asked if issuing the note was necessary for the developer to get the restaurant open. Looking at the penalty provisions the developer could be in default for three years. She said if the city was more careful in getting the TIF back on the whole project, the proposed HRA levy may not be needed. She asked that controversial issues not be put on meeting agendas near the holidays. She objects to the deadline for the restaurant because it is an unrealistic expectation. She doesn't want the restaurant to fail because the city is penalizing the developer. The neighborhood would be thrilled if the restaurant could open by the end of January. She said

landscaping has to be done on site C if the site is to remain as it is for a couple of more years.

Callison said if the St. Therese discussions result in an actual proposal, it will go through the Planning Commission and the rest of the normal review process. Gunyou emphasized that no one from the city has ever indicated that anything related to the initial St. Therese discussions is a done deal. Like any development proposal, any private proposal for the phase three site would go through the normal public notification, comment and review process.

Allendorf said he disagreed with the assessment the city would lose leverage with the agreement. He said instead, he was asking himself why the developer would agree given what the agreement requires him to do and the penalties involved.

Anne Malm-Hossfeld of 14616 Glendale Street asked if the note had to be approved by the council or if staff had the authority to approve it. She asked if the council had the right to ask what the developer planned to use the loan for. She said one possibility is the loan would be used to get financing to complete phase two. As a resident of the Glen Lake area she said she would like a successful restaurant in the area because currently there is no night life. The Exchange currently is an empty parking lot. It hurts her to drive by site C to see barren land.

Callison asked the developer to comment on his request for the issuance of the note. Tom Wartman said Fresh Seasons has established itself as profitable grocery store. A second store will be opened in Victoria, Minnesota. He said under the terms of the agreement it would have been difficult for anybody to bring the Gold Nugget up to code standards that would have allowed it to remain open. The restaurant could have been open in the location where the Dragon Jade recently opened. He said he hasn't paid any of the bills because he is waiting to monetize some of the funds. He currently has over \$3 million of cash invested in the redevelopment area of Glen Lake. The pay as you go note is a way for him to borrow money to continue to meet the requirements of the agreement. He said he has worked for the last nine months to find a person to assist in opening the restaurant. Recently he found an experienced manager willing to invest in the project. He said the timetable is tight and he intends to do everything in his power to be open by the end of December. He said receiving the note will allow him to honor his obligations. Some of the money will be used to invest in the Gold Nugget and used to open the second grocery

store. He said the apartments are around 65 percent occupancy, ahead of what he anticipated.

Callison asked if Wartman believed he could open the Gold Nugget by December 31. Wartman said he believes he could. She asked him to confirm that he is using the proceeds from the collateralization of the note for the phase two project for the Gold Nugget and other investment endeavors. Wartman said the land has been cashed out for the phase two project. There are no TIF dollars coming in from that land.

Allendorf said in the side agreement the city has garnered more control and leverage on the opening of the Gold Nugget and landscaping. He asked why Wartman thought it was in his best interest to sign the agreement. Wartman said because things have not gone as anticipated and the concerns over the timing of the opening of the Gold Nugget, he was willing to sign the agreement to give some assurances to the city.

Ellingson asked if Wartman believed that the original agreement allowed him to ask for the note for phase one and phase two at any point. Wartman confirmed that was his understanding. Ellingson asked why the side agreement was needed. Wartman said the agreement was requested and he was honoring that request. Ellingson said January was the worst time of the year to open a restaurant. He said it was unreasonable to require Wartman to open the restaurant at the beginning of the year given the economy. Wartman said he did not disagree with Ellingson but he is moving forward. He said however, the same thing could have been said about opening an independent grocery store. The success of the store is due to the people involved. He said he would not be afraid to come back to the council if issues do arise.

Callison asked staff when the restaurant was originally expected to open. Peterson replied originally the restaurant was supposed to open by the end of this year. She said the deadline is the end of the year but under the contract Wartman has 30 days after being given notice to remedy the situation, so in reality he has until the end of January before the penalty applies. Callison said another issue raised was whether the note had to come to the council for approval. Her understanding was the side agreements needed council approval. Peterson said the note had to come before the council as well.

Schneider noted Sheely asked if the TIF could be renegotiated to get more increment to replace the HRA levy. He said his

understanding of TIF is that it must be used for an approved project infrastructure improvement. The money cannot be put in the general fund. He commended Wartman for the effort put into moving the project forward. He agreed with the comments that it is more important to do the Gold Nugget right. He said the side agreement could just as easily have a January 31 deadline date and he would be open to changing the date.

Hiller said the reason TIF is used is to get the kind of development that will enhance the community. At the January 2006 council meeting the discussion involved the streetscaping, protecting the environment on the lake, ensuring the grocery store, guaranteeing the amount of affordable housing, and the Gold Nugget. He said it was a package deal. He said he was trying to understand why the council would want to do the one section when there is a whole lot coming together. Removing the TIF takes away a key negotiating element when the city should be looking at a wider span of the project. He said it should be recognized what the city has invested in the project. He questioned why the item was rushed through the EDA earlier in the evening. There had been no clear reason why the item had to be hurried through. At this point, all the related issues should be looked at to ensure the return on investment. He said he did not want to impede on the development and he wanted the developer to get the TIF but other issues need to be discussed. On phase three, the council granted a number of variances as part of new urbanism. Characteristics have changed, such as workers being able to afford the same housing in the area. He said more work needed to be done before proceeding.

Wiersum said the project has changed over time and it has been challenging. He believes there have been good faith efforts on behalf of the developer and city to work together to make the project work in a way that makes sense. The fundamental issue with the side agreement is that it is overly onerous to the developer. Getting the restaurant open in 90 days may be doable but will be a difficult and daunting challenge. He said he wants to get the restaurant open and make it successful. If more time would enhance the likelihood of success it would make sense to grant more time. In response to Hiller's concern about moving ahead too quickly, Wiersum said the city has to respond to the developer's request.

Allendorf said two things were before the council. One was to agree to the note that the developer has the right to ask for. The second item was the side agreement. Approving the agreement was not a difficult decision because it benefits the city. He said he did not

understand the logic in granting more time to open the Gold Nugget since the developer indicated he could open the restaurant by the end of the year.

Ellingson said the city has heard from the developer before that certain things would be done by a certain date but economic conditions did not allow him to meet those deadlines. He said the developer has to say the restaurant can be open in 90 days because he wants the note.

Callison said the city also has the burden of keeping the promise of getting the Gold Nugget open and keeping the development moving forward. She said it was appropriate to approve the item but it is clear a larger renegotiation still has to be done. She said she would support giving the developer 30 more days given the challenging conditions.

Schneider said there is no absolute guarantee that the restaurant could be open by the end of the year given today's environment. The reality is the developer wants resolution to get the collateral to get all the pieces to work together. It would be wise to give a little extra time that would result in a better product. He said he has heard over the years concerns on why the council has so many things happen at the end of the year. He pointed out a lot of times this is due to the fact that many agreements expire at the end of the year. He asked if it also made sense to change the agreement deadline provision to January 31 to avoid having all the public discussion occur in December. Callison said January 31 may not be far enough to get it beyond the holidays. Gunyou noted the dates are in the original agreement, and said future agreements could be written to expire on other dates. Callison said all the agreements could be extended another four months.

Wiersum moved, Schneider seconded a motion to approve the issuance of the TIF note, approve the collateral assignment, and adopt Resolution No. 2008-116 and supplemental contract with an extension to January 31, 2009 for the Gold Nugget. Allendorf, Wiersum, Schneider, and Callison voted "yes." Hiller and Ellingson voted "no." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Reappointments to the police advisory committee.

Callison moved, Allendorf seconded a motion to approve the following reappointments to the police advisory committee:

- John Riley, to serve another two-year term, effective October 1, 2008 and expiring on October 1, 2010.
- Wendy Steinmetz, to serve another two-year term, effective October 1, 2008 and expiring on October 1, 2010.
- Brad Wiersum, to serve another two-year term as the city council representative, effective October 1, 2008 and expiring on October 1, 2010.

All voted "yes." Motion carried.

16. ADJOURNMENT.

Wiersum moved, Allendorf seconded a motion to adjourn the meeting at 8:52 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk