

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MARCH 9, 2009**

1. CALL TO ORDER.

Mayor Schneider called the meeting to order at 6:33 p.m.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL

Councilmembers James Hiller, Dick Allendorf, Amber Greves, Brad Wiersum, Bob Ellingson, Tony Wagner, and Terry Schneider were present.

4. APPROVAL OF AGENDA

Assistant City Manager Geralyn Barone noted an addendum to item 10B.

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

5. APPROVAL OF MINUTES: February 9, 2009 regular meeting

Allendorf moved, Hiller seconded a motion to approve the minutes of the February 9, 2009 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Recognition of Officer Darlene Ford as the 2008 Traffic Officer of the Year

Schneider read the recognition.

B. Recognition of natural resource volunteers

Schneider read the recognition honoring Russ Anderson, Peter Bauer, Bruce Collins, Jim Couling, Pat Divine, Tom Egan, Robert Gausman, Mike Hirl, Joe Janssen, Gary Kerber, Sue Knopp, Fred Leverentz, Betsy Massie, Dan McCarthy, Betty Moe, David Morgan Randall Neal, Elizabeth Neal, Conrad Olmstead, Sandy Olmstead, Nakul Prajapati, Dan Saufferer, Mary Steinbicker, Bill Steinbicker, Sharon Whiting, Linda Zimmerman, Chris Carlson, Peg Carlson,

Gerald Cox, Chuck Heuser, Chris Kramer, Jim Laumann, Ethel Smith, Ann Werner, Mark Storck, John Burton, Dewey Hassig, John Twele, Maressia Twele

C. Presentation and proclamation regarding 11th Annual Empty Bowls event

Barb Westmoreland and Nelson Berg gave the presentation. Schneider read the proclamation.

D. Proclamation declaring March 12, 2009 as Caring Youth Day in Minnetonka

Greves read the proclamation.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS

Barone reported on the schedule for upcoming council meetings.

8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA

No one appeared.

9. BIDS AND PURCHASES:

A. Bids for Ridgedale watertower painting

Barone gave the staff report.

Wagner asked if the settlement went into the utility fund. Public Works Director Brian Wagstrom confirmed that it did.

Allendorf said the city educates residents about conserving water. He asked when the painting would be done and what assurances residents have that there will not be a water shortage when the tower is taken out of service. Wagstrom said the project will begin in April and the tower will be back online by July 1. Heavy water draw occurs in July and August.

Wagner moved, Wiersum seconded a motion to award contract to Classic Protective Coatings, Inc. All voted "yes." Motion carried.

B. Quotes for community center banquet room chairs

Barone gave the staff report.

Wiersum said he attended a banquet the previous night in the community center. He questioned if the purchase was needed this year given the current economy.

Wagner noted the favorable bidding environment and said delaying the purchase may end up costing the city more.

Barone said the city has delayed a number of capital projects this year including the remodel of the community center. The chair and carpet replacement is more critical for the functionality of the room.

Recreation Services Director Dave Johnson said the carpet is not in as bad shape as the chairs. There are seams pulling loose and tears in spots so there is a concern about the condition of the carpet given the amount of use this spring and summer.

Greves agreed the chairs need replacement. She asked if there will be a new look with the new carpet and chairs. Johnson said a whole new earth tone look is being discussed.

Allendorf moved, Hiller seconded a motion to award contract to Bertolini Seating for the purchase of 300 banquet room chairs totaling \$31,184.18. All voted "yes." Motion carried.

C. Quotes for community center banquet room carpet

Allendorf moved, Hiller seconded a motion to award the contract to Multiple Concepts Interiors in the amount of \$26,412. All voted "yes." Motion carried.

D. Purchase agreement for 1707 Hopkins Crossroad

City Engineer Lee Gustafson gave the staff report.

Wagner said he is concerned there will be a sale of the property to WHALT and the city will have to re-purchase the property at a higher price as part of a redevelopment. He asked if a clause could be included in the agreement with WHALT to address his concern. He also asked if the garage would meet all the city's setback requirements. Gustafson said staff is making certain the city retains enough easement so there is sufficient right of way no matter what happens with the county road. Community Development Director Julie Wischnack added a clause could be added to the agreement with WHALT to address Wagner's concern. She said there are

difficulties with meeting setback requirements and staff will have to work through that issue.

Wiersum said the current owner of the home will occupy the home for up to a year on a lease basis rent free. He asked if the city would have had to pay more for the house if that stipulation not been offered. Gustafson said the condition is common in other purchases the city has done. He said the condition may have saved the city money because there are no closing costs or additional appraisals needed.

Hiller asked why the purchase amount is coming from the livable communities fund rather than the development fund. Wischnack said the livable communities fund is often used for WHALT contributions.

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

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

A. Claims for council authorization – March 9, 2009

Allendorf moved, Greves seconded a motion to approve the March 9, 2009 claims which includes checks numbered 218322 through 218576, totaling \$670,015.27. All voted "yes." Motion carried.

B. Items concerning the Bren Road/Highway 169 interchange

Allendorf moved, Greves seconded a motion to:

- 1) Adopt Resolution No. 2009-010 supporting an application to DEED for the Bioscience Business Development Public Infrastructure program
- 2) Adopt Resolution No. 2009-011 supporting an application to DEED for the Minnesota Investment Fund program
- 3) Adopt Resolution No. 2009-012 supporting an OPUS Street Improvement District

All voted "yes." Motion carried.

C. Resolution approving conditional use permit for a Jimmy John's restaurant located at the NE corner of 494/394

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2009-013 which approves a conditional use permit for a 1,755 square foot fast food restaurant at 14100 Wayzata Boulevard.

Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Prior to issuance of a certificate of occupancy, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- 2) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 3) 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.
- 4) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

D. Resolutions approving agreements for environmental cleanup funds for 15802 and 15810 Wayzata Boulevard

Allendorf moved, Greves seconded a motion to:

- 1) adopt Resolution No. 2009-014 entering into an agreement with DEED
- 2) adopt Resolution No. 2009-015 entering into an agreement with the Metropolitan Council
- 3) approve the subrecipient agreements between the city and TCA Real Estate, LLC.

All voted "yes." Motion carried.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance amending architectural material standards in the Planned I-394 zoning district

Wischnack gave the staff report.

Allendorf questioned if the proposed ordinance language would give enough direction to applicants and the council. Wischnack said language could be added clarifying the aesthetics need to match the corridor.

Hiller agreed with Allendorf. He said he was recently in Utah and saw a shiny silver building with a huge glass window. He asked how a decision would be made if a proposal for a similar building was presented to the city. Wischnack said that was the struggle

staff had with the materials proposed for the BMW building. There was a question if the materials fit in with the natural surroundings and if it was appropriate for the corridor. In that case the council found that the materials were appropriate and gave BMW a variance. She said the decision will be situational allowing the flexibility to look at the specific qualities of the site. Hiller said he was concerned the lack of standards could lead to decisions being made that are too arbitrary.

Schneider said often on projects that people object to aesthetically, the concerns are not about the quality of materials but rather are about the proposed design. The city ordinances do not address these concerns. He said he was somewhat comfortable with the proposed approach because the council is bound by consistency of action over time. Wischnack said some communities have detailed architectural control standards in their ordinances.

Hiller said if the ordinance returns to the council with the same vagueness, he could not support it.

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

13. PUBLIC HEARINGS:

A. Temporary on-sale liquor license for Bet Shalom, 13613 Orchard Road

Barone said the event is scheduled for April 13.

Schneider opened the hearing at 7:18 p.m. No one spoke.

Schneider closed the hearing at 7:18 p.m.

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

14. OTHER BUSINESS:

A. Resolution authorizing bids for the Dominick Drive Reconstruction Project No. 09401

Gustafson gave the staff report.

Ellingson asked Gustafson for information comparing asphalt and concrete sidewalks. Gustafson said bids will be taken on both surfaces so exact information is available for the council to consider.

Michael Urbanus, 5500 Bristol Lane, spoke in favor of a four foot bituminous sidewalk. He asked how many trees would be removed and what type would be replanted. He also asked if the city would consider reimbursing residents if the nearby oak trees die and inquired about the staging of the project. He said 25 mph speed limit would be adequate for the road. Gustafson said the sidewalk material will be decided when the bids are awarded. The rationale for the six foot sidewalk was that width would meet more of the ADA standards and would allow two people to pass at the same time. He said he didn't think any of the trees would be removed at the south end but would confirm that. There will be root cutting done to minimize impacts on trees. Work will likely begin on the first phase at the south end first where no easements are necessary. At the same time work will be done on isolated areas of the north end. The 25 mph speed limit signs will remain. He said there should not be any tree removal along the area of the sidewalk that parallels the regional trail.

Ray Conte, 5500 Dominick Drive, said he asked for the boulder wall because the home is an old farm house. The project will take about 10 feet of the hill in front of his home. The wall is a good compromise to help keep the property in character with his house and neighborhood. Ellingson noted that he met with the Contes last summer and Conte's wife was quite concerned about the project. Conte said his wife remains heartbroken about the project but they have made their concerns known.

Debra Stapek, 4728 Dominick Drive, said at first she was not in favor of the sidewalk but now is very much in favor of it for safety reasons. She said her husband is an asphalt equipment operator and he favors concrete sidewalks because of the longevity of that material.

Wagner said the city is over budget on its road projects and asked for the trail segment parallel to the regional trail, an optional bid be received to see how it would impact the budget. Gustafson said that was a reasonable request.

Wiersum moved, Hiller seconded a motion to adopt Resolution No. 2009-016 accepting plans and specifications, and authorizing the

advertisement for bids for the Dominick Drive Reconstruction Project No. 09401. All voted "yes." Motion carried.

B. Items authorizing bids for the Sherwood Forest Reconstruction Project No. 06608

Gustafson gave the staff report.

Allendorf asked how much curb is needed along Lakeview Lane to address the erosion issues. Gustafson said staff has estimated about 450 feet of curbing is needed. Allendorf said he was seeking a solution that would address the erosion issues but also address residents concern that the curb be as unobtrusive as possible. He asked if using bituminous material for the curbing would look aesthetically out of place. Gustafson said there will be natural plantings in the area behind the curb. He said the neighborhood would like to see the entire boulevard area down to the pond restored. That would be done as part of the project.

Wagner asked for clarification about a retaining wall on Oakridge Lane. Gustafson said the plan is for a retaining wall in the area that abuts the school property. Wagner said the neighborhood has a concern about ensuring the native planting takes place. He asked that when the bids come in, a line item be included in the budget specifically for the plantings. Gustafson said the most appropriate time for doing that would be during the bid award. Wagner said the storm water aspects of the project are over budget. He asked if there was anything that should be evaluated as part of the bidding process to minimize the cost increase. Gustafson staff has looked at the issue and has tried to minimize costs wherever possible.

Wiersum said it is clear that for Lakeview Lane the staff recommendation differs from what the residents would like. He asked what the least intrusive approach would be that staff would be comfortable recommending. Gustafson said the simplest recommendation would be to install concrete curbing on all streets within the neighborhood based on initial installation and long term costs. At a minimum 450 foot of curbing needs to be installed on the south side of Lakeview Lane cul-de-sac to take care of the erosion and the silt currently washing into the pond.

Hiller asked if there was any long term difference as far as erosion control between asphalt and concrete curbing. Gustafson said there would be no difference initially. Over the lifetime of the street there would be some curbing erosion with bituminous curbing due to the steepness of the street. That erosion will wash down to the catch

basins. The proposed system should remove the erosion before it gets into the pond.

Jim Couling, 11619 Live Oak Drive, asked the council to find a way to guarantee that the visual impacts and wounds incurred by the significantly invasive project are healed and mitigated by allocating one percent of the budget to a qualified contractor of native plants and a green restoration plan. Such a plan would include an innovative design that uses green technology and methods. Reducing the size of the curb from six inches to four inches might produce the savings to pay for the cost. Couling said the project has been railroaded through and that a plan has been in place for several years.

Schneider said there can be confusion between a capital improvement plan that states what is being proposed over time with street reconstruction and a specific plan for construction of a road. The city has done a good job at trying to get residents involved and soliciting input. He said he wasn't sure what green technology is available for road construction.

Brian O'Neill, 12000 Briar Lane, said his property suffers runoff from both sides of the street. Without the project, his house may slide into the ditch.

Greg Odell, 11510 Lakeview Lane, said he was encouraged by the discussion about bituminous curb and that he could live with 500 feet of bituminous curbing although it is not ideal.

Hans Cedarblad, 11820 Live Oak Drive, said he was encouraged after attending the neighborhood meeting. Over the years, he has carried chunks of curb that has been ripped up by traffic. He said concrete curbing would help quite a bit. He supports Couling's idea of taking one percent of the project funding to provide green restoration solutions.

Joel Longo, 11220 Oak Ridge Lane W, asked for clarification about the retaining wall from his property to the school. Gustafson said the road is leaning into the school property. In order to properly support a new road a structural foundation is needed. To accomplish this, a retaining wall is needed four to five feet away from the existing curb. He said the area between the new road and the retaining wall will be grass and possibly a wildflower mixture.

Wagner said the city had to balance long term drainage and flooding issues with the cost of bituminous curbing over the life of

the project while trying to keep as much of a natural feel as possible. He supported the staff recommendation with the addition of bituminous curbing for 450 feet and some additional language in the resolution about dedicating funds for the natural restoration.

Greves asked if it was possible to taper bituminous or concrete curbing into the surmountable curbing. Gustafson said that would be a different machine laid curbing that would be more expensive than concrete curbing. Greves said she supports bituminous curb for the 450 feet and supports language in the resolution for dedicated funds for natural restoration. She asked if there has been discussion about what would be a reasonable amount set aside for the restoration. Gustafson said one percent would be reasonable. The city's natural resources manager is looking for volunteer staff to assist as well as inexpensive crews to do a lot of the leg work.

Hiller asked if there was concern about erosion issues for the area without curbing. Gustafson said he is somewhat concerned but not as concerned as he is with the 450 feet along the south side.

Ellingson said the people concerned about the concrete curb and gutter live on the main circulation streets. He sensed that people are giving up because they won't get their way and there has not been concession to people's concern about the appearance of the street project. He said the reason people move and live to Minnetonka is the out in the country feeling and look. The city is urbanizing one neighborhood after another, substituting judgment by saying in every instance concrete curb and gutter will be used. He said if the city was not willing to make an exception for a neighborhood like Sherwood Forest it won't be willing to make any exceptions.

Wagner agreed Sherwood Forest is a jewel of the city, but he had difficulty spending over \$300,000 twice over the next 40 years to replace curbing. The city is doing its best ensuring long term investment in the neighborhood by correcting the drainage and flooding.

Wiersum said in recent years the community survey indicated the number one issue for residents has been the condition of roads. He noted the city does not assess for road improvements like other neighboring cities do. The city needs infrastructure that works while trying not to raise taxes to pay for the roads the residents are demanding. He said the city has listened to concerns and has tried to come up with a compromise that makes sense.

Schneider said he and Allendorf have long supported bituminous curbing. Switching to concrete curb and gutter will eventually change the feel and character of the community to some degree. His passion for using bituminous has been changed by environmental concerns with the city seeing more and more water quality issues, the degradation of ponds, lakes and wetlands due in large part to runoff from roads. Another concern is the life span of bituminous curbing compared to concrete.

Allendorf said the city has gone to curb and gutter for every street that has been reconstructed. He said this is contrary to the council policy. The policy was that neighborhood streets didn't have to be concrete curb and gutter with the realization there is a cost to retain the character of Minnetonka. Concrete curb and gutter was discussed for connector streets and on streets around schools and retail nodes. He suggested another study session on the issue.

Wagner moved, Greves seconded a motion to adopt Resolution No. 2009-017 accepting plans and specifications and authorizing the advertisement for bids for the Sherwood Forest Reconstruction Project No. 06608. Hiller, Allendorf, Greves, Wiersum, Wagner, and Schneider voted "yes." Ellingson voted "no." Motion carried.

Schneider called a recess at 8:50 p.m.

Schneider called the meeting back to order at 8:56 p.m.

C. Items concerning HOPACA HOLLOW, located at 4404 and 4412 Wilson Street

Wischnack gave a recap of the tree ordinance process and an overview of key elements of the plan in need of clarification. She said the ordinance has created the flexibility that causes the interpretation issues.

Schneider said one of the questions he would like the council to discuss is the interpretation of the trigger of the woodland preservation provision.

Wiersum asked for clarification of the right to remove trees in a woodland preservation area (WPA) if the developer develops at one lot per acre. Wischnack said there was a substantial change in the ordinance about basic tree removal area. There is an allowance to remove trees within the pad site. Schneider clarified the site could not be clear cut by doing a one acre parcel.

Wiersum said greater density creates the opportunity for greater profitability for a developer. The previous council discussion involved a concern about preserving trees while still being considerate of property rights. If a developer agreed to go to a PUD and work diligently with staff in good faith, there would be a strong likelihood of allowing the full density of the property.

Hiller said the final version of the ordinance also protects remnant ecosystems. With the possibility of going to half acre lots, the question was if this could be done without damaging the remnant ecosystem. The city would not ensure the developer could get to full density but would work with the person to get as close as possible while retaining the primary purpose of trying to retain the remnant ecosystems.

Greves said she sees the 25 percent as a guideline. She likes the flexibility of the ordinance but the creativity allowed under a PUD is vague and the vagueness can be a pitfall of the ordinance. The council has to decide what it is comfortable with in terms of impact.

Wagner said the original goal was to provide the city more tools to work with. The city wants the flexibility but keeping the flexibility might mean when developers come in to work with staff, two or three options have to be provided. He said he would like to use the ordinance to protect as much of the continuous woodland preservation as possible. But, if a proposal was for an eight acre site that was all natural continuous woodlands, where no matter what is done the developer would go over the 25 percent threshold, he would not limit the development to eight lots.

Wiersum agreed with Hiller that the council needed to remember the goal of preserving the ecosystems while being considerate of property rights. He also agreed with Wagner that having alternatives gives the council the ability to find something that works for the developer as well as the goal of preserving ecosystems.

Allendorf said the additional tool was to prevent a situation like Crosby Cove from happening again. He said the 25 percent or more of the woodland preservation area threshold gives the council the right to say a developer cannot cut down all the trees. The PUD requires the developer to work with the city to come up with the development that gives them the density they want and preserves the trees. The ordinance directs the developer to work on a PUD. The PUD process should preserve the property rights and density that a logical developer would expect to get out of the property.

Schneider said everyone seemed to agree 25 percent is a valid trigger. The question is what is it that the city is trying to save? He said that is when it becomes site specific. Staff should help the council identify the significant characteristics of the particular site. Once that is identified, the city has to work with the developer, who has to be prepared to provide detailed options, which might result in less density than a standard half acre lot.

Greves presented a situation the city has worked with the developer but there is a proposal for a 48 percent impact. After some creativity the impact is reduced to 40 percent. In that situation did the tree protection ordinance do what it was intended to do and uphold the values of the community? Schneider said at past public hearings the first comments from the neighbors are that they own the trees and the trees cannot be taken down. What the ordinance tries to do is to balance how much of the woodland preserve area should be preserved for the community and the property rights of the developer.

Principal Planner Susan Thomas and Wischnack gave the staff report for the HOPACA HOLLOW property.

Wagner said under the staff's three lot plan, the WPA remaining is 89 percent. Under the ordinance the WPA is not triggered and the developer could remove another 14 percent and still be in compliance. Staff confirmed this was correct. Wagner said the tradeoff could be having bigger lots with more flexibility from a building pad standpoint or four lots with less flexibility.

Wiersum said the difference between the staff's four lot plan and the applicant's plan is the placement of the properties. The housing pad is 50 percent larger in the applicant's plan. He said a developer makes profit by getting as many lots as is reasonably possible and the size and expense of the home. Limiting the size of the homes potentially impacts the developer's ability to profit. He asked if the staff plans facilitate potentially larger home sizes. Schneider said with smaller lots and more preservation area on the far west, there will be less flexibility.

Hiller asked for more information about the woodland protection area. Natural Resources Manager Jo Colleran said the area is a remnant oak forest that extends over most of the parcel and goes up to the north. Hiller said he understood the area is primarily on the west side. Colleran said Wilson Street borders the area along the east. That area is somewhat of a hollow. There is a slope over the north midsection.

Hiller asked if the staff plans took into consideration the drop off between lot one and lot two. Thomas said the plan takes the drop off into account by pushing the development to the east. The area has not been engineered. Hiller asked for the tree count difference between the plans. Collieran said the sketch plans attempt to quantify the total area that would be protected. For the four lot plan 77 percent of the area is protected. For the three lot plan 89 percent is protected. A tree inventory was done for the site, but when the ordinance is applied, the total acreage is what is looked at versus individual trees. She said that in the applicant's proposal before the council a couple of weeks ago, approximately 110 caliper inches or 14 trees would be removed from the tree preservation area. The applicant also indicated he would be adding 234 caliper inches or about 20 trees to the tree preservation area. The grading plan associated with the proposal indicated this information was not accurate. She said there were four ten inch oaks on the most western lot that were not included in the proposal. There is a 20 inch oak on the middle lot that already is in the tree preservation area. That tree is somewhat protected by a 30 inch oak tree immediately to its north. The tree would be severely impacted because 50 percent of its critical root zone would be graded out. There is an eight inch maple that also would have 50 percent or more of its root system graded out. Depending on where the road is placed, a dozen trees to the north would have the grading go right up to the trunks of the trees. She said two elms and a cherry tree might tolerate the additional grading.

Hiller said the developer's plan has an extensive area below lot four that is marked off as cleared. He asked the reason for this. Thomas said the area is shown as a required ponding area. Hiller said there is more than a tree issue being looked at. The applicant has an approved plan that the council has agreed has minor changes except for the tree ordinance issue. He said the question is whether there is significant impact that could justify denying the proposal. He asked how the council was to make a judgment if the impact is significant enough to the changes between the plans to require the applicant to redesign his plan beyond if the plan meets the new tree ordinance. Wischnack said the question before the council is if the ordinance has changed the council's thinking about the development and the way it is designed. She said staff was trying to present an alternative design that would maintain the developer's ability to develop the desired number of lots with the understanding that marketwise the developer may not be receptive to the plan. She said there is a market for smaller lot configurations that protect

trees. She said the staff plan shows there is a significant change in the amount of tree area that is saved.

Schneider said as similar applications come forward, it is important the council is shown the woodland preservation area.

Allendorf said the council is not required to give approval after the second or third year. Peterson said that was correct. Allendorf said what has changed isn't the applicant's plan, but is the city's idea about tree preservation and woodland preservation areas. He said he was asking himself if the staff's plan was significantly better because it gives the applicant four lots and also meets the city's new tree ordinance.

Greves said the questions she was thinking through include: does the applicant's proposal meet what the council is comfortable in approving in terms of site location? Is there creativity of design to maximize preservation? Is there stewardship of the land? And overall is the plan responsible development? She said the answer to each of the questions is no. With the changes between 2006 and 2009 there have been significant grading and setback changes. She said the staff's four lot plan or a three lot plan would be a much better option. She said a 2,400 square foot house pad size would be fully in character with the neighborhood.

Curt Fretham, 15400 Highway 7, pointed out the staff's plan has a pond at the top of the hill and it has to be in the lower area. Because of the pond location, a 2.2 preservation area is unrealistic. He said the owners of lot one want to keep the garage and want to have the minimum half acre lot. Overall, the proximity of the four lot homes is not consistent with the neighborhood. The plan includes the elimination of the retaining walls but a 14 foot retaining wall would still be needed. Because of these issues, it wasn't a fair representation to compare the staff plans to what he has presented. The balance between property rights and tree preservation, between tree preservation, practicality and economics doesn't exist in the staff plans. He said less than six months from the time he requested an extension, staff thought his proposal was a good plan. Another concern is that one of the staff plans inaccurately states he is only losing 17 percent of the trees. One of the benchmarks for tree preservation in the ordinance was based on proposals that misrepresented the percentage of tree loss.

Fretham said the staff information indicates his approved plan has 1.3 acres remaining and 1 acre remaining in his current proposal. The calculations do not include the pond area. He said the revised

proposal changes the grade of the road to allow for preservation of the trees that Colleran discussed. He is willing to work with staff to save as many trees in that stretch as he can.

Allendorf asked Fretham to comment on the staff plan that moves the lots to the east and move the house pads to the north in order to save trees. Fretham agreed the movement of the house pad would save more trees, but it would be more restrictive than the approved plat and he would likely not continue with that development. Allendorf asked if by too restrictive Fretham was referring to the lack of space around the homes. Fretham said there is not enough space and that the homes are too crowded together.

Schneider said the lower area the pond could be moved to in the staff plan doesn't appear to have a lot of trees. Thomas said there is an existing low area that Schneider identified that might be a location for the pond. She said the intent of the pond's location in the staff's plan was to consider creative stormwater management on each lot for the roof runoff. The pond is intended to pick up runoff from the street itself. Schneider said in order to do an infiltration basin the entire area would need to be regraded and the entire structure changed. He asked Fretham if there was a design layout that would give him four lots with more flexibility but preserves more trees or if his 2009 plan and the staff plan are the only two alternatives. Fretham said he would have to study alternatives to evaluate if they could work.

Wiersum said the 2009 plan and the 2006 plan are not that different. He said there is a fundamental issue of fairness. The council does not have the obligation to offer a third extension to a developer. At the same time the council regularly approves extensions. The difference between 2006 and 2009 is the tree ordinance that was enacted between the approvals of the two plats. He said it was appropriate to find a compromise to get a workable plan.

Ellingson noted this is Fretham's second request for an extension. He said the 2006 plan and the two staff proposals all show the low area where there could possibly be pond as a woodland preservation or tree conservation area. If this was included in the 2009 proposal, that proposal would look better.

Hiller said there is not a significant change in the 2006 and 2009 proposals. To try and enforce smaller pad sizes, eliminate front yards and backyards on all the properties, and the extreme lot sizes are overly burdensome to a developer who has worked with the city

thus far. The council routinely grants extensions unless something significant is shown to have changed. He said the city has not met its obligations to show there has been a significant change and therefore the developer should be allowed to go with the 2009 proposal.

Peterson said the legal standard is that a change in an ordinance is a justifiable basis for denying the extension.

Barone said it would be helpful for the future of the tree preservation ordinance that whatever direction the council decided to go, the reasoning was based on the past approval and not that the council was making concessions on the ordinance. Schneider said if the council decided to approve a similar four lot plan it would be because of the past approval.

Wagner asked staff to comment on the statement that the pond does not impact the woodland preservation area. Colleran said putting the pond in the area where there are fewer trees down in the hollow would impact the woodland preservation area. The question is to what degree. Schneider said one option would be to do a drywell infiltration for the rooftop drainage. Colleran said that option has been used in other areas.

Wagner said the developer should be given some credit because approval came before the tree ordinance was passed. But he said he was not excited about the total impact being at 41 percent. He would credit the developer for a smaller pond if there were some creative things that could be done for treating the water from the house pads.

Allendorf said he would like staff and the developer to work together as if a PUD process was occurring. He could support a plan if a few more trees are saved.

Wiersum said if the same arithmetic is applied to the 2006 and 2009 plans, the plans would be closer than they appear. He agreed with others that he would like to see a compromise worked out between the staff and the developer.

Schneider said he agreed with four of the council members who had given staff the direction they would like to see an improved 2009 version with the idea there would be four lots and exempt the proposal from the tree preservation ordinance.

Fretham said the 2006 plan showed a 50 percent preservation area but that did not account for the pond area. Schneider said the pond was not the issue. The issue was the trenching and the impact going to the pond.

Wischnack summarized the council direction for staff was to come back with a revised 2009 plan that preserves 50 percent or more of the woodland preservation area. Schneider said the plan should come as close as possible to the 50 percent criteria. He said more value should be put on specific trees being preserved and not just a percentage of the area.

D. Items concerning TERRATONKA, an 8-lot subdivision of existing properties at 3100 Forest Lane, 3200 and 3218 Eldorado Trail West

Thomas gave the staff report.

Wagner asked staff to comment on if, without redoing the entire road, a house could be put on the property on the north side of Dr. Campbell's driveway. Thomas said there are a few lots on the far west side of the property that would be very shallow in terms of buildable area both in the original and the revised applications.

Allendorf asked if both lot three and six were dropped, if the issue about the encroachment on the knoll would be addressed. Thomas confirmed that was true.

Curt Newcomb said the applicant's goals from the beginning have been to preserve trees and to work jointly and collaboratively with staff to come up with solutions. He said Campbell's driveway could be moved further to the south to provide additional space for the properties to the north. Eight lots might not be the number the applicant asks for. Until the engineering and analysis is done, the actual number is unknown.

Allendorf asked why the staff's plan did not include a lot where the applicant included lot seven. Thomas said access to that lot would be off a private roadway. Allendorf said that if lots three and six were dropped a seventh lot could be added to the upper area. Hiller agreed with Allendorf but said he was unsure if lot seven could work.

Schneider said his concern was for future planning that Forest Lane is a public right of way that has a private drive. Some day Forest Lane will need renovation and the property owners could come to

the city asking for a public road. If that happens there is not a cul de sac that would be necessary for turnaround. He suggested taking an area of the corner of the property where a cul de sac could be added, moving the driveway as close as possible to the north lot line. This would leave enough room for a new home site without going into the knoll. He said the other benefit of the staff's medium plan alternative was the conservation area is made into an out lot where the city could enter into a maintenance agreement with the association to maintain the area. A trail could be added up to Forest Lane for pedestrian access.

Wagner agreed with Schneider and Allendorf's comments. Having an association maintain the area would be beneficial. He said he was skeptical that lot seven would work even if the driveway was moved but was comfortable with seven lots and not eight. He would like to see the preservation area be in the area of 65 to 70 percent.

Wiersum said seven lots seem doable. He agreed that with some creativity a 65 to 70 percent area could be achieved that would balance property rights with tree preservation.

Hiller said he would like trails to be considered as the item proceeds.

Greves said she was supportive of the staff's medium plan alternative with the addition of potential lot where lot seven is located.

Newcomb said the trail and the maintenance agreement have already been looked at by the applicant.

E. 2009 Assessment Report

City Assessor Dick Toy gave the report.

Allendorf asked for clarification about the terms "traditional sales" and "lender mediated sales." Toy said traditional sales involve arm's length transactions between willing buyers and sellers while lender mediated sales include both foreclosures and short sales involving banks.

Wagner said he receives foreclosure information and sees a cluster in a specific condo in the Opus area. He asked how much the data is influenced by one or two projects that are more condo-related. Toy said the data Wagner was referencing was only for single family properties.

Wiersum asked how many lender mediated sales occurred in the city during the timeframe Toy was presenting. Toy said there were 93.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointment to the park board

Schneider moved, Hiller seconded a motion to appoint Elise Raarup to the park board, to serve a two year term, effective March 10, 2009 and expiring on January 31, 2011. All voted "yes." Motion carried.

16. ADJOURNMENT

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 11:28 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk