

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MAY 4, 2009**

1. CALL TO ORDER.

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

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL

Councilmembers James Hiller, 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 14A. Schneider requested item 10B be moved to special matters.

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

5. APPROVAL OF MINUTES:

A. April 6, 2009 local board of appeal and equalization meeting

Greves moved, Allendorf seconded a motion to approve the minutes of the April 6, 2009 Minnetonka City Council local board of appeal and equalization meeting. Hiller, Allendorf, Greves, Wiersum, Ellingson and Wagner voted "yes." Schneider abstained. Motion carried.

B. April 6, 2009 regular meeting

Wiersum moved, Wagner seconded a motion to approve the minutes of the April 6, 2009 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

Proclamation declaring May 10-16, 2009 as National Police Week

Allendorf read the proclamation.

Wiersum moved, Greves seconded a motion declaring May 10-16, 2009 as National Police Week. All voted "yes." Motion carried.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS

Barone reported on the schedule for upcoming council meetings.

Schneider said that he and Wagner attended the Night of Neighbors block captains meeting. There was a very good turnout and presentation. He also noted there would be a ribbon cutting at the Gold Nugget on May 5. The restaurant opens May 6.

Schneider said he has been a member of the Metro GIS Policy Board for the past 11 years. He was appointed chair at the last meeting.

8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA

No one appeared.

9. BIDS AND PURCHASES:

A. Consideration of proposals for the Lone Lake Park playground equipment, Project No. 4544

Barone gave the staff report.

Wiersum moved, Greves seconded a motion to award Project No. 4544 to Webber Recreational Design, Inc. with a proposal of \$72,235.95. All voted "yes." Motion carried.

B. Bids for the CSAH 101 Landscaping Project

Barone gave the staff report.

Greves asked for confirmation that the 63 American elms would be diseased resistant elms. Natural Resources Manager Jo Colleran indicated that was correct.

Allendorf asked what type of response was received from the private property owners. City Engineer Lee Gustafson said up to two thirds of the private property owners responded they wanted something put on their property. Some property owners indicated they were fine with the way things are.

Hiller moved, Wiersum seconded a motion to award the bid for the CSAH 101 Landscaping Project No. 4921 to Hoffman and

McNamara Company in the amount of \$91,390.50. All voted "yes."
Motion carried.

C. Items concerning the Dominick Drive reconstruction project

Gustafson gave the staff report.

Wiersum noted that the concrete sidewalk would cost around \$92,000. The bituminous sidewalk would cost \$46,000 and the staff report indicated the concrete sidewalk would last twice as long. Given the lifespan, he asked if the city would have to live with a substandard bituminous sidewalk for a period of time if the council chose that over concrete. Gustafson said asphalt can be repaired. It is also possible to overlay asphalt. He said the \$46,000 cost was the cost to construct the sidewalk during the construction time period. To replace a bituminous sidewalk in the future would cost more because there would be associated costs such as removal and restoration. Wiersum asked if staff felt the best solution was a concrete sidewalk. Gustafson indicated that was correct.

Allendorf said he recalled that the preference of the majority of the homeowners was for a bituminous sidewalk. He said because of the cost difference, he would lean toward supporting a bituminous sidewalk given the neighborhood preference and that the character of the street is so important to the residents.

Wagner said one issue that came up in the final engineering approval was that some residents did not want the parallel trail next to the regional trail. He asked about the pros and cons of not having a segment parallel to the regional trail. Gustafson said eliminating approximately 800 feet of sidewalk would save around \$14,000 if the sidewalk was done in concrete and around \$9,000 if the sidewalk was done in bituminous. He said one negative in having a hard surface sidewalk from one end of Dominick Drive to the other end with an 800 foot gravel section in the middle is that some parents have indicated that it is difficult to push a stroller and navigate with smaller children on gravel.

Schneider said he had heard a clear preference from the neighbors for the use of bituminous. He said the standard for trails in most cities and in Minnetonka was bituminous primarily because of the cost. He said one concern with trails located right next to a road is tree roots that push up under the surface. The damage this causes to bituminous is less than with concrete where the roots tend to require a quick repair of an entire slab because of the potential for someone to trip over the pushed up section.

Allendorf moved, Wagner seconded a motion to:

- 1) Award the bid for the Dominick Drive Reconstruction Project, Project No. 09401 to Park Construction Company in the amount of \$4,184,474.18.
- 2) Amend the CIP
- 3) Authorize agreement with Canadian Pacific Railway
- 4) Adopt Resolution No. 2009-028 approving the Wetland Conservation Act replacement plan for this project.
- 5) Install a bituminous trail.

All voted "yes." Motion carried.

D. Items concerning the Sherwood Forest Street Reconstruction Project

Gustafson gave the staff report.

Wagner asked for more information about the nearly \$500,000 difference in what was budgeted from the storm water fund and the proposed funding. Gustafson said the overrun was because of several landlocked ponds that needed to be connected and outlets provided. Staff looked at reducing the number of pipes and examined the exact cost of the storm sewer system. He said there were several modifications made between when the plans were approved and bids were authorized. The modifications included draining as much water as possible with gravity versus directing the water over to the lift station. This saved a considerable amount of money by allowing a smaller sized lift station to be installed. Additional savings were achieved with directional drilling. He said the project was an expensive one and noted the project originated from a storm sewer issue. The public works department is purchasing the lift station components and will coordinate the installation. This will provide additional savings.

Wagner moved, Greves seconded a motion to:

- 1) Award the bid for the Sherwood Forest Street Project No. 06608 to Wm. Mueller & Sons, Inc. in the amount of \$1,599,072.59.
- 2) Amend the CIP
- 3) Adopt Resolution No. 2009-029 approving the Wetland Conservation Act replacement plan for this project.

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

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Claims for council authorization – April 27, 2009**

Allendorf moved, Wiersum seconded a motion to approve the April 27, 2009 claims which includes checks numbered 219344 through 219570, totaling \$1,108,398.96. All voted “yes.” Motion carried

B. Proclamation declaring May 10-16, 2009 as National Police Week

Item moved to special matters.

C. Resolution concerning a 2-lot subdivision of existing properties at 4813 Williston Road

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2009-030 which approves a lot division at 4813 Williston Road, date stamped February 6, 2009, with the following variances: a lot width at the right of way variance from 80 feet to 25.5 feet for Lot 2 and a variance from the maximum number of lots having access onto a private driveway from 3 to 4 lots.

Approval is based on the following findings:

- 1) The proposal meets the required standards and ordinances for a subdivision.
- 2) The proposal meets the required standards for a lot width at right-of-way and private driveway access variance in Section 300.10, Subdivision 5(h)(2)(b).

Approval is subject to the following conditions:

- 1) Prior to release of this resolution, complete the following:
 - a. Submit the following documents for review and approval of the city attorney. The documents must be prepared by an attorney knowledgeable in the area of real estate:
 - (1) Title evidence that is current within thirty days before release of the final plat.
 - (2) Updated Declaration of Easement dated October 1, 2003 to include a private driveway easement between the public right-of-way and Lots 1 and 2. The easement must state the maintenance responsibilities of each owner.
 - (3) Applicant’s engineer must verify contours. If standing water exists, city will require a drainage and utility easement to the 100 year elevation.

- (4) 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.
- (5) Utility easements over existing or proposed public utilities, as determined by the city engineer.
- (6) 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.

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

- b. Pay a park dedication fee of \$5,000.00.
 - c. If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
 - d. Submit an electronic CAD file of the final plat in microstation or DXF.
 - e. The accessory structure located on Parcel 1 must be removed, or a cash deposit must be made to the city ensuring the removal of the accessory building within a time frame agreed upon by staff.
- 3) 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.
- a. The following must be submitted for the grading permit to be considered complete.
 - (1) A final grading, drainage, and tree preservation plan must be submitted for each lot subject to staff approval. Plans must:
 - a) Indicate temporary and permanent erosion control measures.
 - b) Trees proposed to be removed and protected. Tree protection fencing must be shown to prevent impacts within the critical root zone of trees to remain.
 - c) Incorporate techniques to control runoff in order to prevent short and long-term erosion of the slope on Lot 1.
 - d) Avoid or minimize grading and construction activity within the steepest portions of the slope on Lot 1.

- e) Drainage from the proposed drive must be directed away from the home.
 - f) Drainage must not be directed toward the adjacent properties.
 - g) Verify whether additional grading will be required where Lot 1 meets Lot 2 to eliminate the potential for standing water.
- (2) 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;
 - (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) 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.
- b. Prior to issuance of a grading permit:
- (1) Runoff must be directed primarily toward the shared private drive and must be directed away from adjacent properties.
 - (2) Install a temporary rock driveway, erosion control, and tree and wetland protection fencing for staff inspection. These items must be maintained throughout the course of construction.
 - (3) The final plat must be released by the city and filed with Hennepin County for recording.
- c. Each lot is to be custom-graded after issuance of a building permit. Lot 1 cannot be graded until a building permit is issued. No simultaneous mass grading of the lots can occur due to the steepness of the slope on lot 1.
- 4) Prior to issuance of a building permit for any of the lots within the development:
- a. Submit the following for items staff review and approval:

- (1) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance.
- (2) Final grading and tree preservation plan for the lot. The plan must:
 - (a) comply with the preliminary grading plan as depicted on the preliminary plat;
 - (b) must preserve trees designated for preservation at the time of preliminary plat approval;
 - (c) 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.
- b. Submit the following documents:
 - (1) A recorded copy of the preliminary plat, all required easements, and restrictive covenants.
 - (2) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - (3) 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.
- c. Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
- d. 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.
- f. Pay a hookup fee for sanitary sewer and water.
- 5) Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the all R-1 zoning standards. In addition:
 - a. 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.
 - b. At the time a new home is built on Lot 2, the new home must either be protected with 13D automatic fire sprinklers, or, the private driveway must be reconfigured to a "fire access" road.

6) During construction, the streets must be kept free of debris and sediment.

All voted "yes." Motion carried.

D. Extension of a preliminary plat, with variance located at 13800 Spring Lake Road

Allendorf moved, Wiersum seconded a motion to approve the twelve-month time extension. All voted "yes." Motion carried.

E. Extension for the COYOTE SONG preliminary plat located at 2714 Oakland Road

Allendorf moved, Wiersum seconded a motion to approve the twelve-month time extension. All voted "yes." Motion carried.

F. Encroachment agreement with Enventis Telecom

Allendorf moved, Wiersum seconded a motion to execute an encroachment agreement with Enventis Telecom for the purpose of installing telecommunications on street right of way and public easements. All voted "yes." Motion carried.

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

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2009-031 authorizing the Minnetonka Police Department to enter into a Safe & Sober grant agreement. All voted "yes." Motion carried.

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

12. INTRODUCTION OF ORDINANCES:

A. Ordinance regarding social hosts

Imogen Davis, from Tonka Cares, gave a presentation.

City Attorney Desyl Peterson gave the staff report.

Wagner said he fully supports Tonka Cares efforts but when he read the council packet he had significant concerns with the language of the proposed ordinance. As written the ordinance would require a person to take reasonable steps to prevent the

possession or consumption of alcoholic beverages and that differs from Peterson's explanation that for a violation to occur, the ordinance required a person had to know alcohol would be present. A violation would also occur in a situation where a parent tells their kids not to drink before leaving for a weekend only to have underage consumption occur. He said he was concerned that a person could be charged even though they were not present. Another of his concerns was the lack of definition of the term "allow." He asked for clarification of the premises that would fall under the ordinance noting that a person who owns vacant land could be charged even if an underage person consumes alcohol with or without permission.

Schneider said it was important for the ordinance to be worded so it couldn't be misinterpreted allowing a person to claim they were being entrapped. If that happened it could lead to a ground swell of opposition to the ordinance.

Greves noted she serves as the council liaison to Tonka Cares and was highly supportive of introducing the ordinance. The ordinance would address a loophole in the law and would give the city a tool to tackle the issue of underage drinking. She said it was important to look at the ordinance as a preventative measure against the risks associated with underage drinking including sexual assault. The ordinance would provide a tool to deal with people who are more than willing to host parties where alcohol is served.

Wiersum said the concept of the ordinance made sense. He said the questions that Wagner raised get at the difficulty of coming up with wording that lays out the intent of such an ordinance. It was important to be as clear as possible to outline what the intentions and expectations of the ordinance are. He said there are different levels of parental cooperation and culpability on the issue of underage drinking.

Schneider recommended staff develop alternative language for some of the proposed language to determine if variations were clearer to the common lay person without affecting the usability and enforceability of the ordinance. He agreed that the clearer the ordinance was, the easier it would be for residents to support it. Schneider said many teenagers do not realize the impacts of some of their actions related to underage drinking. He noted the same individuals have a significantly higher degree of respect for the environment than previous generations. He wondered if there were ways to translate what it takes to be responsible for a healthy planet to what it takes to be responsible for healthy habits.

Greves moved, Hiller seconded a motion to introduction of the ordinance with the legal department's option. All voted "yes."
Motion carried.

13. PUBLIC HEARINGS:

A. Resolution supporting an application to DEED for grant funds for the Bren Road/Highway 169 interchange

City Manager John Gunyou gave the staff report.

Allendorf asked if the \$1 million grant was for planning purposes and if the entire cost of the project was around \$19.5 million. Gunyou confirmed the grant was for \$1 million, and that the total cost was \$19.5 million. The total expected state funding was around \$9 million. Allendorf asked if staff had thought through the steps to how the \$19.5 million would be obtained. Gunyou said staff was reasonably confident that the funding would come together. Allendorf questioned if the \$1 million grant would be wasted if the rest of the funding could not be achieved. Gunyou said the grant was for planning and construction as well. He said the grant was one of the many things that need to fall in place in order to come up with the full funding. Allendorf asked for a staff memo about how the \$19.5 million might be achieved. Gunyou indicated that would be provided.

Wiersum asked if the \$1 million grant would be returned if the rest of the funding was not accumulated. Gunyou confirmed that was correct. Schneider said once a few pieces were in place the rest would be easier to get in place and that the grant was a critical first step.

Schneider opened the hearing at 7:32 p.m. No one spoke.

Schneider closed the hearing at 7:32 p.m.

Wiersum moved, Allendorf seconded a motion to adopt Resolution No. 2009-032 supporting the application to DEED for funds from the Minnesota Investment Fund. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Conditional use permit for a pediatric rehabilitation center at 5900 Rowland Road

City Planner Loren Gordon gave the staff report.

Greves said there were resident concerns noted in the council packet about the sight lines going in and out on to the road from the site. She asked if the issues have been addressed. Gordon said the amount of traffic had been looked at on Rowland and Bren Roads and there was nothing exceptional in terms of peak hours. The generation from the site would be very low.

Allendorf said it would appear the traffic would decrease compared to the previous office function. Gordon said that was a reasonable statement given the type of activity that would occur. There would be morning drop-offs and pickups and some service activity. The typical office building has other traffic like trips generated from meetings at the building.

Greves said there were some resident concerns about the children coming in and out of the building. She said some of the misconceptions may have come from the fear of the unknown and not being familiar with autistic children. She explained that there is a wide spectrum of autistic children. Many of the children are mildly impacted by autism. The services being provided would be highly structured and it would be unlikely a child would have a fit every time he or she was dropped off. She said the type of service was underrepresented in the city and very much needed.

Wiersum said autism was increasing in society with one in 150 children being impacted. He said the opportunity to serve autistic children in the city was a good opportunity.

Wiersum moved, Greves seconded a motion to adopt Resolution No. 2009-033 which approves a conditional use permit for a pediatric rehabilitation center within the existing building at 5900 Rowland

Road. Approval is based on the following findings:

- 1) Aside from the location of emergency vehicle access to the site, the proposal meets the required conditional use permit standards as outlined in city code:
 - a. The use is consistent with the intent of this ordinance.
 - b. The use is consistent with the goals, policies and objectives of the comprehensive plan.
 - c. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements.
 - d. The use is consistent with the city's water resources management plan;

- e. The use is in compliance with the performance standards specified in section 300.28 of this ordinance.
 - f. The use does not have an undue adverse impact on the public health, safety or welfare.
 - g. The clinic would not be adjacent to low density residential areas.
 - h. The site has direct access to collector or arterial street as defined in the comprehensive plan; and
 - i. Emergency vehicle access to the site shall not be adjacent to or located across a street from any residential use.
- 2) A variance from the emergency vehicle access standard is reasonable, as the proposal meets the intent of the standard. Unlike a traditional medical clinic which may experience regular trips by emergency vehicles, The Holland Center, as a rehabilitation center does not. Emergency trips to the site would be typical of any non-medical use of the building. In the five years the center has operated in the City of Excelsior, the South Lake Police Department has received only three emergency calls to the site.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. Record this resolution with the county. A copy of the recorded resolution must be returned to the city.
 - b. Submit an emergency response plan for review and approval of the police department.
- 2) The following changes to the site or operation require review and/or amendment of the conditional by the city council.
 - a. Decrease in the square-footage of the indoor play/observation area.
 - b. Increase in enrollment to over 25 students.
 - c. Any other change to the approved use that results in a significant increase in traffic or a significant change in character.
- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

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

Gordon gave the staff report.

Wagner asked for more information about if the ponding area was excluded from the woodland preservation area. Gordon said the trees would have to be removed from the ponding area. Wagner said he recalled that the ponding area was mostly treeless. Gordon said there were trees within the ponding area.

Greves said under the standards of the tree protection ordinance, the incentive of PUD zoning was included that stated a proposal could be approved if appropriate and creative techniques were used to preserve a woodland preservation area. Specific criteria was included that outlined what creative design might entail and how minimizing the impact to the neighborhood and the character of the existing neighborhood and landscape could occur. She said the proposal was not compelling or consistent enough with those particular aspects of the ordinance. To get creative and to minimize the impact to the trees, the only option would be to drop one of the lots. She said that option had not been explored. From a profitability standpoint eliminating a lot would not be best for the developer, but she wanted to look out for what is best long term for the community and would like a higher value placed on preservation. She understood the fairness issue based on the 2006 approval but much has changed since that time. She said the site has a valuable ecosystem that is the very essence of what should be protected.

Wagner said he shared Greves' passion for preservation and that was why the tree protection ordinance was passed. He said the reason he was willing to support the proposal was the precedent had been set on the development. The developer made a number of decisions based on the council's actions. He said the council would have to continue to discuss how the ordinance applies to future developments.

Wiersum said Greves' comments reflected the very essence of the challenge the council faced on the issue. The ordinance was passed because the council wanted a tool that would allow them to say no when something was not appropriate for the natural characteristics of a property. He said if what was before the council was a new proposal his decision would be different. However because of the previous approval, and the compromises that had been made have improved what was proposed in 2006.

Allendorf said other councilmembers have pointed out that proposed developments have not been true to the tree ordinance. He said that could be because not all of the council believes in the tree ordinance as it is currently written. He said there was discussion about revisiting the tree ordinance to reflect what the

current council wants. Gunyou noted there had been a lot of different versions of the tree ordinance before it was finally adopted. He said the decision was to try the ordinance for a while to see if it worked out. Fundamentally the ordinance provides the incentive of a PUD and then the council looks at the factors to determine if the developer has done enough to preserve trees. The revised format attempts to highlight these issues for the council's policy decision. Once a number of projects have gone through the planning commission and council process, staff would have a better idea about what the council was looking for. He said one of the difficulties is that there is a disagreement between councilmembers because there are different philosophies on how to apply the ordinance. Allendorf said he heard Greves and Ellingson state disappointment that the council was not being true to the ordinance. He said when the ordinance was adopted there was agreement it would be tested and it now has been tested. He suggested reviewing the ordinance at a study session based on how the ordinance was applied to recent developments.

Hiller said he disliked seeing the woodland preservation area cut out but would support the proposal because of the past approval. He said the council has not seen enough examples yet to reconsider the ordinance although he agreed the ordinance should be reconsidered at some point.

Wiersum said the tree protection ordinance was developed when the council discussed having more tools to prevent what occurred with the Crosby Cove development. He said since approving the ordinance there have been longer council discussions but the council now has a tool to say no to developments and to determine the city's standards related to tree preservation and protecting the rights of property owners. He agreed with Allendorf and Hiller that the council would need to revisit the ordinance after seeing more examples.

Schneider agreed the council needed to come to a consensus around what was being enforced. He said he didn't think the council was ready for a study session on the ordinance because of the small sample that had been looked at. He supported the revised way staff presented the information because it allowed for a more philosophical and broader look instead of just looking at percentages of trees. The revised format better gets at looking at the quality and types of trees. He said this was important because it would help the council make a better educated decision balancing the net impact of the ordinance versus property rights. The council was making judgment decisions on what should be the end result.

He said he had seen areas where the underbrush and poorer quality trees should be removed to improve the health of the overall forest. If the ordinance could be developed to look not only at the percentage but also the quality of what trees were being removed and what trees were being saved, it would give the council a better ability to analyze the effectiveness of the ordinance.

Ellingson said he originally voted against the proposal because he thought the topography of the site was inappropriate for a residential development. His concern was that by approving the proposal the city would allow the removal of all the trees and then have lots that would not sell. He said he has heard there are 60,000 vacant lots for sale in the Twin Cities area. There have been other lot subdivisions that have been approved in the city where the lots remain vacant. He agreed with Greves that at the very least the number of lots should be reduced in the proposal.

Hiller moved, Wiersum seconded a motion to adopt Resolution No. 2009-034 which reaffirms previous preliminary plat approval of the subdivision known as HOPACA HOLLOW date-stamped April 14, 2009. Approval is based on the following findings:

- 1) The proposal is in substantial conformance with the HOPACA HOLLOW preliminary plat previously approved in 2006.
- 2) The proposal meets the required standards and ordinances for a preliminary plat.
- 3) The proposal meets the required standards for a lot width at right-of-way variance in Section 300.10, Subdivision 5(h)(2)(b).

Approval is subject to the following conditions:

- 1) Prior to final plat approval complete the following:
 - a. Show the following on the final plat:
 - (1) A ten-foot-wide drainage and utility easement adjacent to the public street right-of-way and seven-foot-wide drainage and utility easements along all other lot lines.
 - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (3) Drainage and utility easements over wetlands, floodplains, and stormwater ponds, as determined by the city engineer.
 - b. Pay the city a park dedication fee of \$9,500.
 - c. If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.

- 2) The following items must be submitted before the city releases the final plat:
 - a. An engineering/utility inspection fee.
 - b. An electronic CAD file of the final plat in microstation or DXF.
 - c. 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 review and approval:
 - (1) Title evidence that is current within thirty days before release of the final plat.
 - (2) Conservation easements as depicted on the Tree Protection plan date-stamped April 17, 2009, and a drawing of the easements. The easement and drawing must be recorded with the final plat.
 - (3) Tree Preservation Easement as depicted on the Tree Protection plan date-stamped April 17, 2009, and a drawing of the easement. The easement and drawing must be recorded with the final plat.
 - (4) Documents establishing a homeowners' association. The association must be responsible for maintaining common areas, common drive, the required drainage pond and any other required drainage improvements approved by the city. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.
 - (5) A private driveway easement between the street right-of-way and Lot 4. The easement must state the maintenance responsibilities of each owner. The easement must be at least 32 feet wide. The minimum driveway width must be as required by the fire marshal.
 - (6) Drainage and utility easements over proposed sanitary sewer lines as required on properties adjacent to the subject property.
 - (7) 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. These covenants must first be submitted for the city attorney's approval.

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

- d. Any other requirements included with final plat approval.
- 3) 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.
 - a. The following must be submitted for the grading permit to be considered complete:
 - (1) Final grading, drainage and erosion control plans for review and approval of the city engineer. If the developer is installing the utilities, the developer must also submit final utility plans.
 - (a) Sanitary sewer not located under the private street must be directionally bored.
 - (b) Any new manholes must be precast or as approved by public works staff.
 - (2) A letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid cost to comply with grading permit requirements and restore the site. The city will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway and grading have been completed according to the plans approved by the city.
 - (3) If the developer is constructing any public improvements, the following must be submitted for staff review and approval:
 - (a) Final utility plans.
 - (b) A signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements.
 - (c) 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.

- (4) Evidence of watershed district approval.
 - (5) 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.
 - (6) Cash escrow in the amount of \$10,000.00. This escrow must be accompanied by a 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 problem.
- b. Prior to issuance of a grading permit:
- (1) Install a temporary rock driveway, erosion control and tree protection fencing for staff inspection. These items must be maintained throughout the course of construction.
 - (2) The final plat must be released by the city and filed with Hennepin County for recording.
- 4) Prior to issuance of a building permit for any of the lots within the development:
- a. Submit the following items for staff review and approval:
- (1) A construction management plan. The plan must be in a city approved format and outlined minimum site management practices and penalties for non compliance.
 - (2) A final grading and tree preservation plan for each lot. The plan must:
 - (a) compliance with preliminary grading plan as depicted on the preliminary plat;
 - (b) preserve trees designated for preservation at the time of preliminary plat approval;

- (c) Show sewer and water services to minimize impact to any significant trees. No trees may be removed for installation of services.
- (3) The city may required adjustments in the house pad location to maximize tree preservation.
- (4) A tree mitigation plan. The plan must meet minimum mitigation requirements as outlined in the ordinance. However, at the discretion of natural resources staff mitigation inches may be decreased based on: the health of trees to be removed; the ability to appropriately install trees on any sloped areas; and/or installation of under-story shrubbery. A copy of the recorded plat and any easement or covenants required to be recorded.
- (5) Cash escrow in the amount of \$10,000.00. This escrow must be accompanied by a 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 problem.
- b. Submit the following documents:
 - (1) A recorded copy of the preliminary plat, all required easements, and restrictive covenants.
 - (2) A letter from the surveyor stating that the boundary and lot stakes have been installed as required by ordinance. If the grading for the proposed private drive has not been completed, the city planner may approve a time extension to this requirement.
 - (3) 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.
- c. Schedule and hold a preconstruction meeting with the engineering, planning, and natural resources staff.

- d. Install a temporary rock driveway, erosion control, and tree protection fencing for staff inspection and approval. These measures must be maintained throughout the course of construction.
 - e. Install heavy-duty fencing, which may include chain-link fencing, at the tree preservation easement. This fencing must be maintained throughout the course of construction.
 - f. Pay a hookup fee for sanitary sewer and water.
 - g. All houses must be protected with 13D automatic fire sprinkler systems.
- 5) Notwithstanding the requirements outlined above:
- a. All lost and structures within the development are subject to the R-1 zoning standards, except that principal structures may maintain a minimum setback of 20 feet from the paved surface of the private drive.
 - b. Houses without frontage on the public street right-of-way must be protected with 13D automatic fire sprinklers.
- 6) During construction, the streets must be kept free of debris and sediment.
- 7) Before the city makes a final inspection of the house, the drive must be paved from the street to westerly-most lot. A driveway setback of at least seven feet must be maintained from side lot lines. The city may approve a time extension if weather prevents paving of the drive.
- 8) 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.

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

C. Items concerning water and sanitary sewer connection fees

Gunyou gave the staff report.

Allendorf said during the previous discussion it was said that the higher fees would cover the CIP. He asked if that were true with the proposed fees. Gunyou said there was not an easy answer to the question because the variance in costs and revenues from year to year was substantial. The CIP is based on rough estimates of what portion of the costs is due to expansion versus improvement. The number can vary by a few hundred thousand dollars a year depending on what is developed, what doesn't develop and what expansion takes place. He said the new proposal is within the same

range as the previous one. He added that staff was recommending doing a reanalysis every five years.

Hiller said another reason the changes were being proposed was to provide consistency and simplicity in billing. He said his only concern was that lowering the fees would put the city in the position of having to raise the fees again in the near future. He would prefer not having to change the fees regularly. Gunyou said an escalator was included so there would be an inflation factor for construction costs. This would be similar to the inflationary adjustment that is done on other utility fees. Schneider said there was a difference between simplicity and clarity versus the dollar figure. Most cities that have a simple approach routinely change the fees every year. This allows developers to look at the schedule for any year without having to worry about how the fees are calculated.

Wiersum said the SAC unit concept was the correct approach because it provides a methodology and greater simplicity. He asked that the fees be reviewed from time to time because of the nebulous nature of the numbers.

Wagner said he would like more information and discussion on the impact the fees would have on the CIP. He asked if there were a couple of projects being considered in the CIP that could show the relationship to the proposed rates. Gunyou said there were not any specific projects in the CIP that would demonstrate what Wagner was looking for, since the major projects are related to road construction. He noted that the major source of utility funding is through user fees, rather than connection fees, so proposed change would make things more fair and simple, rather than raise significant new funding.

Schneider said if the proposed fees were not adopted, the sewer and water improvements would be funded through user fees. He said the next question is when the user fees should be adjusted. Wagner said it would be helpful to look at the capital fees and the user fees at the same time. Gunyou said going forward that was the plan.

Allendorf moved, Wagner seconded a motion to adopt:

- 1) Resolution No. 2009-035 approving a revised council policy for water and sanitary sewer connection fees.
- 2) Resolution No. 2009-036 approving a revised council policy for special assessments

- 3) Resolution No. 2009-037 approving a revised council policy for petitions for the construction of municipal water, sanitary sewer, public streets, and appurtenant improvements.
- 4) Resolution No. 2009-038 establishing the new "Residential Equivalent Charge" for both water and sanitary sewer connection fees.

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS: None

16. ADJOURNMENT

Wiersum moved, Greves seconded a motion to adjourn the meeting at 8:22 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk