

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MAY 18, 2009**

1. CALL TO ORDER.

Mayor Schneider called the meeting to order at 6:32 p.m.

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL

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

4. APPROVAL OF AGENDA

City Manager John Gunyou noted addenda to items 13A, 14A, and 14C.

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

5. APPROVAL OF MINUTES:

A. April 20, 2009 local board of appeal and equalization meeting

Greves moved, Wiersum seconded a motion to approve the minutes of the April 20, 2009 Minnetonka City Council local board of appeal and equalization meeting. Allendorf, Greves, Wiersum, Ellingson, Wagner, and Hiller voted "yes." Schneider abstained. Motion carried.

B. April 20, 2009 regular meeting

Allendorf moved, Wiersum seconded a motion to approve the minutes of the April 20, 2009 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS: None

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS

Gunyou noted that the TIF extension for Glen Lake was included in a bill signed over the weekend by Governor Tim Pawlenty. Gunyou also reported on the schedule for upcoming council meetings.

Schneider asked for an update on the expected TIF generation. Gunyou said that would be provided at a future date.

8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA

Robin Flis, 5302 Dominick Drive, said she was surprised to find out that the choice of sidewalk was changed at the previous council meeting. She said she spoke with about 28 homeowners on the south end of Dominick Drive who would like to have the opportunity to speak to the council about their desire for a concrete sidewalk. The residents have a petition signed by 25 people.

Schneider noted the reason the council approved a bituminous sidewalk was not driven by the costs but rather the residents preferred the look of that material. Allendorf agreed the sentiment of the residents who spoke at the meeting was for bituminous as was the response returned on the feedback forms that went out to the homes on Dominick Drive. He asked if feedback forms could be sent to all the homeowners on the north and south sides of Dominick Drive. Gunyou said that was possible and noted the petition would provide similar information.

Allendorf said there was conflicting information. The feedback forms seemed to indicate a preference for bituminous but the petition counters that preference. Gustafson said the feedback form asked residents if they wanted a sidewalk or did not want a sidewalk. Residents were not polled about their preference for the materials of the sidewalk.

Wiersum said the staff recommendation was for a concrete sidewalk but a few residents spoke at the meeting and indicated they preferred bituminous. He said he would be interested in hearing the true views of the neighborhood.

Hiller said if the council decided to re-hear the item then everyone in the neighborhood should be notified. Gunyou said a survey would be mailed out and a notice would be sent out and the item scheduled for the June 22 council meeting.

9. BIDS AND PURCHASES: None

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

A. Claims for council authorization – May 11, 2009

Allendorf moved, Wagner seconded a motion to approve the May 11, 2009 claims which includes checks numbered 219571 through 219864, totaling \$631,643.23. All voted "yes." Motion carried.

B. Resolution approving a conditional use permit to install an outdoor seating area at 14401 State Highway 7

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-039 which approves a conditional use permit for an outdoor patio at 14401 State Highway 7. 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 building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- 2) The outdoor patio must be equipped with refuse containers and periodically patrolled for litter pick-up.
- 3) The outdoor patio must not have speakers or audio equipment that is audible from surrounding parcels.
- 4) The patio will be enclosed by an existing garden/landscaped area located between the sidewalk and the patio, and enclosed at both ends by large planters.
- 5) Obtain all required liquor, food and beverage licenses from the city.
- 6) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 7) 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.
- 8) The applicant must agree to these conditions in writing.

All voted "yes." Motion carried.

C. Resolution to amend the existing conditional use permit, with variance at 12007 Excelsior Boulevard

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-040 which approves repeals and replaces an existing conditional use permit for an educational facility at 12007 Excelsior Boulevard.

Approval is based on the following findings:

- 1) Aside from the bus drop-off/pick-up location, the proposal meets the required conditional use permit standards as outlined in City Code Section 300.16 Subdivisions 2 and 3(a).
- 2) The bus drop-of/pick up location meets the intent of required conditional use permit standards.
 - a. There is a wide sidewalk adjacent to the drop-off/pick-up location, which provides access to several building

entrances. As such, students would have a safe pedestrian connection between the busses and the school.

- b. It is unlikely that a small number of busses stopping on Pioneer Road directly north of the Faith Presbyterian Church will negatively impact traffic operations. Pioneer Road in this area has a relatively low volume of traffic.

Approval is subject to the following conditions:

- 1) Record this resolution with the county and return a recorded copy of the resolution to the city.
- 2) School enrollment is limited to 190 students. Annual enrollment numbers must be submitted to the city prior to July 15th of each year.
- 3) Daytime church activities, such as funerals, must not be scheduled during student drop-off/pick-up times.
- 4) Maintain signs on Nelson Drive identifying "Entrance Only" and "Exit Only" drives.
- 5) Obtain any necessary permits from various city departments and divisions, including: permit from the Recreation Department for use of the neighboring public park; permits from the Building Division to ensure the building meets minimum building code requirements; and permits from Environmental Health Division.
- 6) All external doors must be signed to meet requirements for emergency response.
- 7) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 8) 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.
- 9) The applicant must agree to these conditions in writing.
- 10) This resolution repeals and replaces Resolution No. 2007-068 adopted on June 4, 2007.

All voted "yes." Motion carried.

D. Resolution approving the final plat of FRETAM 8TH ADDITION, previously known as HOPACA HOLLOW, located at 4404 and 4412 Wilson Street

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2009-041 which approves the FRETAM 8TH ADDITION final plat, received on April 29, 2009. Approval is 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.

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

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

12. **INTRODUCTION OF ORDINANCES:** None

13. **PUBLIC HEARINGS:**

A. Off-sale liquor license for Big Top Liquors, 12937 Ridgedale Drive

Community Development Director Julie Wischnack gave the staff report.

Schneider continued the hearing at 6:47 p.m. No one spoke.

Schneider closed the hearing at 6:47 p.m.

Wagner said he originally had concerns about the concentration of licenses in the Ridgedale area but Schneider made a valid point that the Ridgedale area was more of a regional center than it was a neighborhood.

Hiller said he was comfortable issuing this license and even a few more but questioned if the council should have a future discussion about putting a limit on the number of liquor licenses approved in the city. Schneider suggested it might be good having a study session about the broader issue on the pros and cons on setting a number of licenses the city would approve.

Wiersum agreed it would be good to have that discussion. He said the city was probably approaching the saturation level but was letting the market decide the economic viability of running a liquor store.

Greves said she shared Wagner's concerns about the concentration of licenses in the Ridgedale area but Schneider's comments about the area being a regional center were helpful. Approving this license would increase the total to 12 in the city and

that would push the city toward the higher end of licenses per capita. She said she was OK approving this license but additional licenses would be harder for her to approve.

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

14. OTHER BUSINESS:

A. Ordinance regarding social hosts

City Attorney Desyl Peterson gave the staff report.

Greves asked Peterson to further explain why the proposed ordinance would be needed. Peterson said the state law addresses consumption of alcohol by minors in two ways. One is by making it illegal for under aged people to consume alcohol. The other state provision is to make it illegal to furnish alcohol to a minor. She said when police arrive at a party it is difficult to determine who actually provided alcohol to minors. The ordinance would hold responsible the person who has allowed the under aged drinking to happen.

Wagner said the intent of the ordinance was to address gaps in current law. He said his biggest concern was providing clarity on the expectations and preventing unintended consequences. He said under the ordinance's definition of "premise," a violation occurs when a minor is served alcohol with or without the person's permission. He asked for information about the rationale behind that provision. Peterson said the language came from the Chaska ordinance. She said the definition applies to a situation where the premises may be being used without permission. There still is also the issue of the person hosting the party where alcohol is served to minors with or without the landowner's permission. An example would be a party held on a vacant field without permission of the landowner. The person hosting the party would be the one held responsible and not the landowner.

Wagner said his concern with the use of the word "allow" in the ordinance was that the implication was a person was taking no action to prevent a party. He said an unintended consequence could be that someone is using someone else's property without permission. Because the landowner took no steps to prevent the party, the person could be in violation of the ordinance. Schneider said if the landowner meets the other provisions in the ordinance, there should be some liability if the landowner did not take steps to prevent the under aged drinking. Wagner said a worst case

scenario might be in a situation where a landowner of a wooded area who doesn't live nearby, violated the ordinance because it is known parties are held in the secluded area. He said his concern was that the ordinance was clear for land and home owners.

Wagner asked how the ordinance would apply in a situation where a parent is not home and there is beer in the refrigerator. Three minors go to the home after track practice. One of the kids has a beer. Is the parent supposed to regularly tell the child they are not to consume alcoholic beverages or would a standing order suffice? Peterson said most parents likely have a standing order in place telling their children they cannot drink the beer and that situation was not what the ordinance was meant to address.

Wagner said the term "allow" implies that there is a complete absence of any attempt. He said he preferred a more proactive statement using a term like "permit" rather than "allow." He said allow is a more passive term. Being a homeowner means that a person is allowing a gathering. A person who permits the gathering is taking a more active role. Peterson said the issue was proving what happened at the party. The ordinance is an attempt to address a situation where a person could say they did not give permission even if they stood by and allowed the drinking to happen in their house. She said it was difficult to prove somebody gave permission. Removing the term "allows" would weaken the ordinance.

Greves said there was a distinction between "give permission" and "to have knowledge of something." She said if a parent was watching a child beat up another child and said or did nothing to stop it, they were essentially giving permission. She said the definitions in the ordinance are clear. If a person knows the gathering will occur and alcohol will be present, and knows that an under aged person is or is likely to be present and drinking the alcohol, the person essentially is allowing and giving permission for the violation to occur.

Wagner said the ordinance is clear in a party situation. The ordinance defines a "gathering" as three or more people getting together for any reason and he is concerned that the term "allow" is too passive. Peterson said the number of people defined as a gathering could be changed.

Wiersum said although the clarifying language was helpful he has had difficulty explaining the ordinance to people as well as he wanted to. He said his 18 year old son is a senior in high school.

His other son is 21 years old. If all the circumstances spelled out in the ordinance were in place but he didn't know which of his sons' friends would be over at the house, he would have a difficult time knowing who were minors and who were not without actively trying to solicit the information. He said he was concerned what his liability would be. Peterson said the ordinance states that a "person knows an under aged person will attend or is likely to attend." The homeowner would have to have the knowledge and it was not that the homeowner "should have known" the person was under aged.

Wagner asked how a parent would prove they did not know the alcohol was served to a minor. Peterson said the parent does not have to prove anything. The city would have to prove the person knew that an under aged person would be present and alcohol was being served.

Hiller said he appreciated Wagner's concerns but after reviewing the ordinance he was comfortable with the provisions.

Mary Wilkins from One Voice, said she attended a meeting with other communities who have already adopted a similar ordinance. As a parent of three under aged children, she was struck that the vast majority of cases in Chaska and Lakeville did not involve the parents. The violators were young adults who often were hosting under aged girls. She said the ordinance could be considered a sexual predator related ordinance.

Peg Keenan, 3100 County Road 101 in Woodland, said she was a board member of Tonka Cares. She was pleased to see the council was considering the ordinance. The ordinance was important to the Minnetonka school community. She said the ordinance closes loopholes and gives the city the opportunity to take the lead on the issue.

Schneider said the ordinance as it was originally drafted left him uncomfortable because it didn't have the clarity of impact for residents. If residents are not knowledgeable about the ordinance it could be ineffective. He said the ordinance dealt with a serious problem and the additional language was helpful. He said the term "allow" did not bother him and said the example cited by Greves was a good one. If all the conditions exist and a person allows alcohol to be served to a minor, the person was in effect giving permission.

Wiersum said he gets concerned about government overreaching and infringing on people's rights. He wanted to make sure the

ordinance was sufficiently tight and wasn't allowing too much government involvement. He noted the statements in the ordinance are not "or" statements but are "and" statements. There is not the issue of presumed guilt. He said the social ill that was brought up in the public comment speaks to the importance of the ordinance.

Wagner said he wanted to support the ordinance. He offered amending the ordinance to add the word "and" to certain clauses for clarification purposes. He also suggested adding to the reasonable steps provisions the statement "a parent may provide a onetime statement to the juvenile resident that is applicable for all future gatherings at said premises." Peterson said the suggested changes were doable. Wagner also suggested adding a statement to the preamble that states the council does not intend for the ordinance to target prosecution against parents who may have alcoholic beverages on their premises but do not have knowledge the gathering would occur. Peterson said that suggestion was also doable. Wiersum said the changes made sense. He said his children know there is no drinking allowed by under aged people in his house but he does not remind his children of this every time he leaves town. Greves said she too was comfortable with the clarifying language. She said it was important for people to realize the ordinance was primarily a preventative measure against under aged drinking and the associated risks.

Allendorf said the Chaska ordinance states that a "person knows or reasonably should know that an under aged person will..." He said the proposed ordinance states that a person "knows." He asked why Peterson did not include "reasonably should know." Peterson said the term had a vagueness aspect. A person might ask "when should I know? What were the circumstances that I should have understood that this could happen?" Rather than allowing the unknown she said it was better to specify the circumstances when a person should know the violation was likely to happen. Allendorf said if "should have known" had remained in the ordinance it would have provided a prosecutor a set of circumstances that would make residents feel guilty rather than innocent. Removing the language makes it clearer the city is not out to prosecute those who are innocent.

Schneider said the clarity brought to the updated ordinance would help other communities adopt similar ordinance. He said the best thing that could happen would be to have uniform ordinance for the entire metro area. He suggested to Tonka Cares that they should try to get the League of Minnesota Cities to sponsor a uniform ordinance.

Peterson suggested language incorporating Wagner's proposed changes. She suggested adding "directing on a one time basis or as a standing order that no consumption of alcohol and alcoholic beverages allowed." Wagner said that would satisfy his concern.

Greves moved, Allendorf seconded a motion to adopt Ordinance No. 2009-06 regarding social hosts with the city attorney to incorporate the clarifying changes suggested by Wagner. All voted "yes." Motion carried.

B. Items regarding Hillside Senior Living, located at 5431 and 5439 Williston Road

City Planner Loren Gordon gave the staff report.

Dan Kelly, 220 South 6th Street, Minneapolis, an attorney representing Hillside LLC, gave the history of the project.

Brian Lubben, 4501 Hunter's Ridge Road, an architect with Genesis Architecture, said the original 20,000 square foot building footprint had been reduced by about 30 percent. The building area would be about 45,000 square feet within the two and a half story building. There would be 69 dwelling units, down from the original plan of 77 units. This would be about 38 units to the acre down from the original plan of 42 units to the acre. He said there was an attempt to work the half story into the roof to make the building appear residential and as sympathetic to the neighbors as possible. The building height would be 37 and a half feet with 39 spaces for parking. Twenty percent of the units would be affordable housing. The project would be fully funded by the developer with no TIF money involved.

Lubben said the city's development standard for hard surface coverage is 70 percent and the proposal is around 45 percent. The floor area ratio is around .57 down substantially from what was proposed three years ago. The street setbacks would be 50 feet with an increase of the front yard and some of the side yard to provide better integration with the site. There are no variances being asked for but a guide plan change would be necessary. He said this is not an update of the 2005 plan but rather was a brand new plan. The tree preservation would be 67 percent, a substantial improvement over previous plans.

Lubben said other options for the site were looked at including townhomes and single family homes. A townhome project would

envelop much more of the site and would require a great deal more grading. He said high density doesn't always mean more site impact because the density could be condensed into a taller, more compact building. There would be a low trip generation within a senior housing. A traffic study indicated there would be 16 peak trips in the a.m. hour and 25 peak trips in the p.m. hour. There would be about 31 percent hard surface coverage in the proposal. A medium density proposal would have 61 percent coverage.

Lubben said there was a lot of discussion at the planning commission hearing about what was appropriate for the area. The key portion of the site was more a part of the commercial and high density housing that surrounds the property on three sides. He said the green area was somewhat gerrymandered into a larger area of commercial and high density housing that didn't seem appropriate or a long term solution. He added that when completed the project would have a very positive effect on the neighborhood enhancing property values and the appeal of the area.

Lubben said the staff report indicated that with the recent update of the comprehensive guide plan, the city determined that existing guide plan designations in the area should remain. The staff report said that redevelopment proposals and any necessary guide plan merits should be judged on their own merit. He said the proposal had merit bringing senior services to an area in need of the services, adding affordable housing to the area, and had an economic stimulus element. He said the existing topography was probably not original and wasn't even desirable. The project would make a much better presentation on Williston Road. Two thirds of the site would be graded but two thirds of the tree would be preserved. He said a lot of work has been done with city staff to hone in on areas where the proposal could be improved. The project would correct a lot of problems that exist on the current site.

Kelly said the land use map was intended to be the most flexible part of the guide plan. The project would fulfill the village concept, affordable housing, and senior housing without having an adverse effect on public facilities. He said the project would have far less impact than a medium density project. Currently the hardware store is right next to a single family residence. This is indicative of an area that needs some transition and change in density.

Curt Fretham, 15400 Highway 7, said the project would pump in \$10 million into the local economy with jobs and business to local businesses and added tax revenue. He said the planning

commission raised several issues and many of the concerns have since been addressed.

Schneider asked if the proposed configuration would allow the same number of units as the previous proposal that had a full third floor. Lubben said that he believed there would be the same number because they would be memory care units that would be smaller than other units.

Bob Streff, 5507 Williston Road, said the project was desirable but not for the location. He said because his lot was at a lower elevation, he was concerned about the drainage and traffic impact.

Allendorf asked staff to comment on the drainage and traffic concerns. Gordon said the drainage would go to the east or the back side of the building. He said the applicant had not provided a lot of detail about infiltration. In terms of traffic, the type of use would be low generating.

Sharon Gibbons, 5402 Williston Road, said it takes a lot of time to get out of her driveway due to the traffic on Williston. She said she was worried about parking for the public and visitors. She was also concerned about how long the property has been left unmaintained. She said the project was too big and because of the hill it would be difficult to walk to the other end of Glen Lake where the public spaces are located.

Greves asked for confirmation that staff found it unlikely that the site could be developed at medium density with preservation of a noticeably larger percentage of trees than the proposal. Gordon confirmed that was correct.

Peterson noted that looking at the aerial map it looked like the property belonged to the neighborhood to the east than to the neighborhood to the west. She asked Gordon to clarify the information for the council. Gordon said during the comprehensive plan process every property is on the table for possible land use change so the term gerrymandered was not the proper term to use. For this property the guidance was not changed. There is a significant topography change north of the hardware store looking from the west to the east. He said the enclave of single family homes has a context that relates more to the Williston neighborhood because the lots share a common road and have a common edge along the backside that doesn't allow them to be inwardly focused back to Glen Lake.

Schneider said when the Presbyterian homes project was brought forward there was discussion about the piece of property that went out to Williston Road and if the parcel should be divided and what it should be used for. The final decision was to leave the parcel as it was because it was not conducive for development.

Allendorf said the comprehensive plan allows changes if the use was consistent with the neighborhood. He said Lubben did a good job bringing the development into context to the piece of property. The changes include reducing the commercial look in the previous proposal to a more residential look.

Greves said she began more concerned with the site itself rather than changes needed to the comprehensive guide plan. She said she supported the proposed senior housing for the same reasons she supported the St. Therese proposal. She was concerned about the elevation of the original plan with a three story institutional looking building but her concerns were lessened with the revised proposal. She questioned if the look of a medium density project would be any different than the proposal. She said she wasn't as concerned about the trees on the site because 67 percent of the trees were being preserved with a good buffer to the north.

Hiller said the length of the buffer to the north side was a bit deceptive because of the location of the house. He was still concerned about the transition issue. He said the proposal would not address the issue of bringing in younger families into the city. All the options would likely be as intrusive as this proposal. He said senior housing that would get the density to fit into the space was a good use of the property and an appropriate change to the guide plan.

Wiersum said the property has been discussed for a long time. He said he wasn't as comfortable as other council members in re-guiding from R1 to high density before the guide plan was approved by the Met Council. He said listening to the discussion he asked himself if the project was not approved what would happen with the property. R1 housing would be the most appropriate use but the likelihood of that happening likely is not very high. He said the area is truly a village center that needs a transition area. If middle density was proposed then it was unlikely the council would approve 20 units. He said the current homes do not look like active well kept R1 homes. Because there doesn't seem to be a better answer for what else could be put on the property, he said he had a meaningful transition in his thinking.

Ellingson asked if the developer had an operator for the building. Kelly said the operator would be International Management Corporation. The company manages over 1,500 units in the United States and Canada. They do not manage any facilities in Minnesota. Ellingson noted there were neighborhood meetings for the St. Therese project before St. Therese backed out before the council approved the project. He said a senior cooperative was approved on Rowland Road that has not been built yet. He asked if the comprehensive guide plan was changed to high density and the project was not built, if the next developer would still benefit from the change. Schneider said the developer would benefit from the change in the guide plan but the rezoning requires a PUD so the exact same building would have to be built.

Wagner said one of the reasons the comprehensive guide plan did not specifically address the location was because it was figured something would come forward at some point. He said as the planning was done on the east side, there had not been council discussion about the west side. He noted the applicant indicated willingness to delay the proposal in order to get the right thing approved. He said because the EDA has taken up a discussion about the Beacon Hill TIF district and whether or not to extend the district, it might make sense to delay approval to see how that issue would play into this property. The EDA has discussed the ability to use funding from the district within the project area for the use of housing.

Allendorf asked for more information about why TIF would be used when the developer was willing to do the project without it. Wagner said looking at the city's broader housing goals, and knowing there was a potential funding mechanism to do a different type of housing, he would like to hear council discussion about options that may be available. Wischnack said during the EDA review of the city's TIF districts, there was a policy question about decertification of certain districts. The Beacon Hill district will expire in August. If the council decides not to decertify, it would have to decide what to do with the remaining pool of money. She said the amount comes to around \$137,000 per year. There are different parameters for using the funds from a housing district.

Schneider said he was trying to balance the visual impact of a building under high density guiding with the reality of what the alternatives for the site were. He said he was concerned with the original proposal because of the number of units, the size of the building, the visual impact and predominantly, the function of the parking. There are numerous visitors to an assisted living facility.

He said as the proposal has evolved and the way the architect has modified the building to make it visually less intrusive, his concern about approving a high density project has been mitigated. If the property was not designated for high density it likely would not be designated as residential but more likely medium density. Townhouses would likely have the same visual impact. He said he was still concerned about the peak periods of traffic for the facility and suggested the applicant try to obtain some type of short term parking arrangement with the hardware store or the post office.

Hiller said he was also concerned with the parking as well as the issue about being able to walk down to the village area. He said he would like to see the concerns addressed.

Allendorf moved, Wagner seconded a motion to continue the item to June 22, 2009. All voted "yes." Motion carried.

Schneider called a recess at 9:13 p.m.

Schneider called the meeting back to order at 9:26 p.m.

C. Items concerning TERRATONKA, a 7-lot subdivision of existing properties at 3100 Forest Lane, 3200 and 3218 Eldorado Trail West

Gordon gave the staff report.

Wagner asked what the acceptable driveway grade was for a private drive. Gordon said the typical standard was seven percent for a street and up to ten percent for a driveway. Wagner noted a 25 percent slope therefore would be quite significant.

Wagner asked if under option one the building pad would meet potential setbacks. Gordon said the side yard setbacks for the lot would be the same as the other lots under the PUD.

Schneider said the 24 percent driveway grade raised concern when he read the number in the staff report. He said a tuck under garage could be done with an 8 to 10 percent grade. Wagner noted the home on lot seven had a significantly higher grade. Schneider said he thought the 24 percent driveway grade occurred on lot six. Dave Nash, from McCombs Franks Roos Associates, said the existing slope is at 24 percent. There is a fairly flat area from the cul de sac past the west side of the existing house. The 24 percent slope runs from there up to the applicant's existing driveway. Trying to run a driveway on the north side would likely require the lot to be a tuck

under lot. He also noted the 30 inch red oak tree is on the adjacent property.

Wagner said the staff report indicated there would be an easement over the woodland preservation area and a maintenance agreement. He asked for more information about how the easement and agreement would work. Natural Resources Manager Jo Colleran said the intent was for the conservation easement to be placed over the indicated area but no restoration would begin until at least 50 percent of the lots are sold.

Greves said after visiting the site she thought the slope challenges ruled out options 1A, 2, and 3 particularly option 2 because of the pond and the significant fill that would be needed. She said as she looked more closely at option 1, she became more comfortable with the location of the building pad. The contiguous part of woodland was to the south. She said that option would not be nearly as disruptive as the other options.

Wagner agreed with Greves. He said there would be challenges with options 2 and 3 given the fill that would be needed and the adverse impacts to the wetland to the east. He said he would like to see the driveway on lot six remain where it was at until a building permit was issued. Greves said she spoke with the applicants who indicated the driveway would stay until building permits were issued.

Hiller said he agreed options 1 or 1A would be acceptable depending on the design of the house and the other issues.

Wagner moved, Wiersum seconded a motion to:

- 1) Adopt Ordinance No. 2009-07 which approves the proposed rezoning from R-1, low-density residential, to PUD, planned unit development. This ordinance is based on the following findings:
 - a. The rezoning would be consistent with the city's guide plan; and
 - b. The rezoning would be consistent with the public health, safety, and welfare.
 - c. The rezoning preserves desirable site characteristics and open space and protects sensitive environmental features, including steep slope and trees.
- 2) Adopt Resolution No. 2009-042 which approves the TERRATONKA preliminary plat, date-stamped March 31, 2009. Approval is based on the following findings:

- a. The proposed subdivision meets the required standards and ordinances for a preliminary plat. Approval is subject to the following conditions:
- a. Prior to final plat approval, complete the following
- (1) Submit a final plat document. The final plat must:
 - (a) Be in substantial compliance with the preliminary plat OPTION 1 revision stamp date April 22, 2009.
 - (b) Show 40-foot right-of-way for the public street and 90-foot diameter right-of-way for the cul-de-sac bulb extending from Eldorado Trail West.
 - (c) The final plat must dedicate a 40-foot right-of-way for a public street and 90-foot diameter right-of-way for the cul-de-sac bulb extending from Forest Lane.
 - (d) 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.
 - (e) A minimum 20-foot drainage and utility over all existing or proposed public utilities.
 - (f) Drainage and utility easements over 100-year elevations and any stormwater mitigation facilities as required by the city engineer.
- b. The following items must be submitted to the city before the city releases the final plat:
- (1) The city council must vacate any existing right-of-way along the east property line of the subdivision and right-of-way associated with the previously platted Eldorado Trail West.
 - (2) An electronic CAD file of the final plat in microstation or DXF.
 - (3) The following documents must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval:
 - (a) Title evidence that is current within thirty days before release of the final plat.
 - (b) A development agreement in a form acceptable to the city attorney.

- (c) Maintenance agreements for the infiltration basin and any other stormwater mitigation facilities.
 - (d) Conservation easements over wooded areas in substantial conformance with grading limits plan, dated stamped March 31, 2009 and a drawing of the easements. The easement may allow:
 - (i) Removal of hazard, diseased, or invasive species.
 - (ii) Passive trails and other passive recreation improvements.
 - (e) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas.
 - (f) A ecological stewardship plan and fund agreement for the long-term maintenance of the conservation easements within the plat. The terms of the fund must specify who is responsible for maintaining the conservation easements and who is responsible for fiscally managing the endowment.
 - (g) 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.
- (4) The applicant must provide a letter of credit for 125% of a bid cost or 150% of an estimated cost of the initial restoration. The first year of the initial restoration may not begin until 50% of the lots have been sold. The initial restoration may take up to three years.
 - (5) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
- c. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit applicant has been submitted, reviewed by staff, and approved.

- (1) The following must be submitted for the grading permit to be considered complete.
 - (a) Final street, utility, grading and drainage, site plan, and tree mitigation plans as required by the city engineer must be submitted for staff review and approval. The city engineer will provide the developer with a formal memorandum outlining all items and details which must be provided on the submitted plans.
 - (b) A Stormwater Pollution Prevention Plan must be submitted for staff review and approval.
 - (c) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.
 - (d) If the developer is constructing any public improvements, the following must be submitted for staff review and approval:
 - (i) Final street and utility plans.
 - (ii) A signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements.
 - (iii) A letter of credit or cash escrow in the amount of 125% of a bid cost or 150% of an estimated cost of the improvements.
 - (iv) The city will only reduce or release the letter of credit or cash escrow upon receipt of as-built drawings and a letter certifying that the streets and utilities have been completed according to the plans approved by the city.
 - (e) One of the following:

- (i) Escrow dollars, in amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the site throughout the course of construction; or
 - (ii) Evidence that an erosion control inspector has been hired to monitor the site through the course of construction. This inspector must provide weekly reports to natural resource staff in a format acceptable to the city.
- (f) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance. The management plan must be accompanied by a cash escrow, in the amount to be determined by city staff, and a waiver document prepared by the city attorney and signed by developer. Through this document the developer will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- (2) Ponding areas, public utilities, and associated grading and facilities must be located to maximize tree preservation. Staff may require adjustments in locations of these improvements in order to do so. Inch-for-inch mitigation is required for woodland preservation area and high-priority trees removed in conjunction with required ponding.
- (3) Prior to issuance of a grading permit:
 - (a) Install all measures in accordance with the SWPP for staff inspection. These items must be maintained throughout the course of construction.

- (b) The final plat must be released by the city and filed with Hennepin County for recording.
- (c) A copy of approved MPCA NPDES, MPCA sanitary sewer extension, and MN Department of Health watermain extension permits. The city engineer and natural resource manager may also require submission of approved permits from other regulatory bodies.
- (4) 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 for any of the lots within the development:
 - (1) Submit the following documents:
 - (a) A recorded copy of the rezoning ordinance.
 - (b) A recorded copy of the final plat, all required easements, and restrictive covenants.
 - (c) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - (d) 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.
 - (e) Certified as-built drawings in mylar, PDF, and CAD formats.
 - (f) As-built topography survey for infiltration basin and all utilities in CAD format.
 - (2) For each building permit, submit the following items for staff review and approval:
 - (a) A construction management plan. This plan must be in a city-approved format and outline minimum site management practices and penalties for non-compliance.
 - (b) Final grading, drainage, and tree preservation plan for the lot. The plan must:

- (i) Comply with the grading limits as depicted on the grading limits plan, date-stamped March 31, 2009.
 - (ii) 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.
 - (iii) Staff may require adjustments in the location of the proposed house, driveway, grading and utilities to maximize tree preservation.
- (c) A tree mitigation plan. Mitigation must be provided for trees removed beyond a 20-foot perimeter to the proposed building footprint, and a 10-foot perimeter of the proposed driveway. Inch-for-inch mitigation is required for Woodland Preservation Areas and High-Priority Trees removed outside of these perimeters and in all infiltration and ponding areas. Significant trees removed outside of these areas must be mitigated tree for tree.
- (d) Submit cash escrow in the amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- (e) The proposed driveway location on lot 6 shall remain in its existing location until a building permit for lot 6 is issued.

- (3) For each building permit, the following items must be completed:
- (a) Pay a park dedication fee of \$5,000 for each newly created lot, for a total of \$30,000.00.
 - (b) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
 - (c) Proof of subdivision registration and transfer of NPDES permit.
 - (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.
 - (e) Install heavy-duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.
 - (f) Pay a hookup fee for sanitary sewer and water.
- e. Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the following:
- (1) Minimum setbacks for principal structures:
MINIMUM SETBACK
Front 20-feet
Side
 - 10-feet interior to PUD
 - 15 feet exterior to PUDRear
 - Lots 1, 2, 5 and 6: 20% of lot depth or 40 feet, whichever is less

 - Lots 3 and 4: For building foundation: 50 feet for building For post-footings: foundation and 20% of lot depth or 40 feet, whichever is less
 - (2) House type and location must be in substantial conformance the grading limits as depicted on the grading limits plan, date-stamped March 31, 2009.
 - (3) Pool and/or other accessory structure location must be in conformance with R-1 zoning requirements and in substantial conformance

- with the grading limits as depicted on the grading limits plan, date-stamped March 31, 2009.
- (4) Minimum lowest floor elevation is 2 feet above the 100-year elevation as determined by the city engineer.
- (5) Maximum floor area ratio within the plat is 0.5. Individual lots may exceed this standard. However, the total floor area ratio of the subdivision may not.
- (6) Maximum hardsurface coverage is 50%. Individual lots may exceed this standard. However, the total hardsurface coverage of the plat may not.
- (7) All portions of first-story walls as measured by an approved route around the exterior of the house must be within 150 feet of the street. If access requirements cannot be met, the house must be protected with 13D automatic fire sprinklers.
- f. During construction, the streets must be kept free of debris and sediment.
- g. The city must approve the final plat within one year of preliminary approval or receive and approve a written application for a time extension or the preliminary approval will be void.

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Reappointments to the senior citizen advisory board

Schneider moved, Greves seconded a motion to reappoint:

- Donna Bloom to the senior citizen advisory board, to serve another two-year term, effective June 1, 2009 and expiring on May 31, 2011.
- David Carroll, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2009 and expiring on May 31, 2011.
- Ann Dreier, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2009 and expiring on May 31, 2011.

- Kaye Fredensborg, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2009 and expiring on May 31, 2011.
- Wanda Griep, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2009 and expiring on May 31, 2011.
- Lois King, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2009 and expiring on May 31, 2011.
- William Lurth, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2009 and expiring on May 31, 2011.
- Ron Timm, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2009 and expiring on May 31, 2011.

All voted "yes." Motion carried.

16. ADJOURNMENT

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 9:45 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk