

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, JUNE 22, 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 Brad Wiersum, Bob Ellingson, Tony Wagner, James Hiller, Dick Allendorf, Amber Greves, and Terry Schneider were present.

4. APPROVAL OF AGENDA

City Manager John Gunyou noted an addendum to item 14C.

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

5. APPROVAL OF MINUTES:

A. May 18, 2009 regular meeting

Allendorf noted that during the Dominick Drive discussion he asked if it would be costly to survey the neighborhood. The answer was no and he requested a survey be sent out.

Wagner moved, Wiersum seconded a motion to approve the minutes of the May 18, 2009 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

B. June 1, 2009 regular meeting

Wagner moved, Wiersum seconded a motion to approve the minutes of the June 1, 2009 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Recognition of the 100th anniversary of Kraemer's Hardware

Schneider read the recognition and presented a plaque.

B. Recognition of Sergeant Phil Pesheck, 2009 Glen Lake Optimist Officer of the Year

Wiersum read the recognition.

Pesheck said it was an honor to be included in the group of previous winners.

C. Review of the 2008 financial report with the city's audit firm of Kern, DeWenter, Viere, LTD.

Kara Gaffy from Kern, DeWenter, Viere, LTD gave the presentation.

Schneider noted that because of the reduction in the fire relief association's stock portfolio the city would have obligations that will need to be addressed over the next few years. Gunyou confirmed that was correct. The issue will be discussed at the August council study session. He said the difficulty is with a state law that requires cities to amortize any shortfall over a ten year period. Nationally it is more common to allow a 30 year amortization period, since market fluctuations tend to even out. He said the immediate impact would be that the city will have to come up with around \$350,000 in next year's budget, and also for several subsequent years. Staff has requested that the LMC consider this change as a legislative priority next year.

Wiersum thanked and congratulated the staff for the outstanding financial report. He said the report indicated that Minnetonka was a well run city and was better situated to deal with ongoing economic issues compared to other cities.

Schneider said many cities look at the shorter term and solve problems as they go along. He said the city's staff looks long term to ensure the city has a game plan that works.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS

Gunyou reported on the schedule for upcoming council meetings.

Wagner reported that Schneider, Greves, Allendorf, Hiller, and himself attended the fourth Minnetonka Mills visioning and feedback session. There was a good turnout with lots of dialogue. Schneider concurred that the process has been very impressive.

Schneider said he participated in the ULI Opportunity City Program with four other cities. There was a panel discussion that was well received with a lot of good interaction.

8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA

No one appeared.

9. BIDS AND PURCHASES:**A. Agreement for Dominick Drive easement acquisition**

Gunyou gave the staff report.

Greves moved, Allendorf seconded a motion to approve the agreement. All voted "yes." Motion carried.

B. Quotes for manhole adjustments in contractor overlay project

Gunyou gave the staff report.

Wiersum moved, Greves seconded a motion to approve the low quotation from Midwest Asphalt Corporation in the amount of \$78,525. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Claims for council authorization – June 8, 2009**

Allendorf moved, Hiller seconded a motion to approve the June 8, 2009 claims which includes checks numbered 220163 through 220468, totaling \$1,269,740.69. All voted "yes." Motion carried.

B. Claims for council authorization – June 22, 2009

Allendorf moved, Hiller seconded a motion to approve the June 22, 2009 claims which includes checks numbered 220469 through 220734, totaling \$1,435,849.50. All voted "yes." Motion carried.

C. Revised agreement with the Minnetonka School District for the Arts Center on 7

Allendorf asked that the item be pulled from the consent agenda. He noted a typographical error in the staff report. The rent amount was listed for 2010 through 2019 and a second amount listed for 2010 through 2029. He suggested the latter period should be 2019 through 2029. Gunyou said that was correct, and noted the actual agreement listed the correct dates.

Allendorf moved, Wagner seconded a motion to approve the revised agreement with the Minnetonka School District for a long-term lease of the Arts Center on 7. All voted "yes." Motion carried.

D. Resolution adopting the joint and cooperative agreement for use of law enforcement personnel and equipment

Allendorf moved, Hiller seconded a motion to adopt Resolution No. 2009-049 approving the agreement. All voted "yes." Motion carried.

11. Items requiring Five Votes:

A. Agreement and plan approval for the TH 7 North Frontage Road project

City Engineer Lee Gustafson gave the staff report.

Wiersum said the improved access to the businesses would help with their vitality in the community.

Wiersum moved, Greves seconded a motion to:

- 1) Adopt Resolution No. 2009-050 accepting plans and specifications, and authorizing the advertisement for bids for the TH 7 North Frontage Road, west of Highland Road Project No. 09406.
- 2) Adopt Resolution No. 2009-051 approving the MnDOT construction cooperative agreement for this project.
- 3) Amend the 2009-2013 CIP.

All voted "yes." Motion carried.

12. INTRODUCTION OF ORDINANCES:

A. Ordinance amending Sections 600 and 710 of the city code regarding liquor license regulations and fees

Community Development Director Julie Wischnack gave the staff report.

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

B. Ordinance amending Section 710 of the city code regarding increases in fees for food, lodging, and pool licenses

Wischnack gave the report.

Hiller noted a reference to an environmental license fee change that referenced both direct and indirect costs. Previously only direct costs were included. He asked what the additional costs covered. Wischnack said that at times there are interactions with clients that do not necessary relate to a license or a fee. She said an example of an indirect cost might be a visit to the business that was not covered by the fee itself.

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

13. PUBLIC HEARINGS:

A. Use of the Community Investment Fund to finance the Minnehaha Creek Corridor Improvements

Assistant City Manager Geralyn Barone gave the staff report.

Wagner asked for more information about the neighborhood input. Barone said there was an extensive process for public input that began at the beginning of 2008. A series of neighborhood meetings were held as well as hearings by the history commission and park board. She said concept plans were developed both for the full corridor and for the Minnetonka Mills Park. The plans were changed to take into consideration concerns and suggestions from residents.

Schneider said one thing that has not been emphasized enough are the long term benefits of the cooperative arrangement being established with the Three Rivers Park District and the watershed district. Barone noted that at the next council meeting there would be an item included on the agenda that would cement the relationship with neighboring cities, the watershed district, the county, the Minneapolis Park Board, and the Three Rivers Park District.

Schneider opened the hearing at 7:24 p.m. No one spoke.

Wagner moved, Wiersum seconded a motion to continue the hearing to August 3, 2009. All voted "yes." Motion carried.

B. Utility fee increases:

- 1) **Municipal water and sanitary sewer**
- 2) **Storm water**

Gunyou gave the staff report.

Allendorf said he was satisfied with the comparison with neighboring cities. He asked why Eden Prairie's fees were significantly lower. Gunyou

said the biggest factor is that Eden Prairie is a newer city. Minnetonka is in the situation of having to install storm sewers that were not put in when an area first developed. Newer communities require the developers to put in the storm sewer systems at the time the development takes place. He also noted that some cities fund storm sewers with property taxes, while Minnetonka funds storm sewers entirely with utility fees.

Greves asked if there was any data showing what tier most residents fell under. Public Works Director Brian Wagstrom said around 90 percent of residents are in tier one. Gunyou said the tiered rate structure did not make much change for the normal water user but the increases impacted heavy users to create an incentive to conserve water.

Wagner asked that the data be tracked over the next year to get a sense of the impact of the implementation of the structure. Wiersum said he would like to see data that shows if behavior changes occurred or if more revenue was being raised due to the tier structure. Wagstrom said the Ehlers report attempted to look at that issue. The report seemed to indicate that behavior was changed slightly.

Schneider opened the hearing at 7:34 p.m. No one spoke.

Schneider closed the hearing at 7:34 p.m.

Wagner moved, Wiersum seconded a motion to:

- 1) Adopt Resolution No. 2009-052 increasing municipal water and sanitary sewer fees
- 2) Adopt Resolution No. 2009-053 increasing storm water utility fees.

All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Dominick Drive sidewalk construction

Gustafson gave the staff report.

Ellingson asked if the sidewalk was going to continue all the way along Dominick Drive including the area where it would be parallel to the light rail transit corridor. Gustafson confirmed that was the plan.

Robin Flis, 5302 Dominick Drive, asked for council discussion before the vote occurred.

Allendorf said he was surprised by the results of the survey based on the previous input.

Wiersum said the council had previously listened to some residents who strongly favored the use of bituminous. He said the additional information provided by the survey, which overwhelmingly favored a concrete trail, demonstrates the council wants to do what the neighborhood wants done.

Wagner said he too was surprised by the definitive results of the survey that differed from what was heard previously.

Schneider said feedback is received from a variety of sources and the council can't always count on what is in front of them to make the proper decision. At times a judgment call is necessary.

Ellingson said he was concerned about the hard edge being put into some of the neighborhoods. He agreed what was expressed in the survey was overwhelming support for concrete.

Greves noted she was not on the council when this was originally discussed, although she watched the meeting when it was approved. She got the message loud and clear that they were going in a different direction at that time. Greves said the survey provides more scientific input from residents.

Greves moved, Hiller seconded a motion to direct staff to construct the Dominick Drive sidewalk with concrete. All voted "yes." Motion carried.

Schneider noted the applicant for item 14B had notified him he would not be able to get to the meeting until 8 p.m. Schneider suggested moving to item 14C first.

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

City Planner Loren Gordon gave the staff report.

Hiller asked if it was correct that under the current parking rules, 38 or 39 parking places would be required. Gordon said since the property would fall under the requirements for both a convalescent and senior facility there was not a specific number of parking places. The staff recommendation blends the two types of facilities in attempting to meet the parking needs of the both residences and guests. Hiller said the current zoning requirement would be for 38 or 39 parking places and there seemed to be a clear understanding that would not be an adequate number for the facility. He said there needed to be a clearer understanding of how much parking would be needed. Gordon said if a one to one standard were applied to the facility, then 69 parking spaces would be

needed. He said for the Sunrise Senior Living project there were not enough parking spaces, and a variance was required. There has since been an additional 11 spaces added over the past year. Another example is Landings located directly east of the proposed location of this project. That facility has around 80 units. Gordon said there are parking spaces just for the tenants with no guest parking available. Parking has been a problem and the city receives calls on a regular basis.

Hiller noted there were 14 additional onsite parking spaces being proposed. He asked if a variance would be required for the additional parking spaces. Gordon said the north parking spaces would likely meet all the setback requirements. There would be an additional amount of hard cover that would be generated. He said the southern spaces would require a setback variance from the property line and an easement would be needed through the Kraemer's Hardware's property to secure the access. Hiller asked if staff still had concerns about storm water on the property. Gordon replied that there was probably a way to address the concerns but staff has not seen an approach that has indicated a feasible solution.

Greves said if the worst case scenario for parking would be if the facility had between 69 and 76 residents, and a one to one ratio was used. She noted that if the seven spaces at Kraemer's Hardware were added as well as the 14 proposed additional parking spaces the total would still be around 60 spaces. Gordon said staff suspected that more parking would be needed given past experience. The parking code allows staff to look at a future project such as if the facility were to go from senior housing to rental housing. Staff can consider what the parking need would be for this project if the units were rental units. For this project, 138 spaces would be needed. He said when the planning commission reviewed the St. Therese proposal the staff recommendation considered the parking needs to accommodate guest parking and possible unit conversion. The parking spaces included parking that was off of the property as well.

Wiersum asked if the staff recommendation for denial of the application was solely because of the size of the proposed facility or if the issue of high density housing next to R1 housing in an area guided for residential housing was also a factor. Gordon indicated that both issues were considered in the recommendation for denial. When an area has single family housing near a commercial area, a transition is generally desired and going to high density might not be the choice for the transition. He said another issue is the neighborhood stability addressed in the comp plan. The area is a single family home neighborhood north of Kraemer's Hardware. He said a better transition reflecting the single family home character might be expected from a different project.

Wagner said the staff report indicated the proposal had 39 parking spaces not including the 14 additional spaces. The ratio would be around two thirds of the units having parking spaces rather than the desired one to one ratio for the other senior housing projects that were looked at. Gordon confirmed that was correct.

Hiller asked if the facility would be for assisted living and memory care residents. Gordon said that was correct. Hiller said the units would be small and the other examples included senior housing as well. He said the parking had to be looked at more carefully because assisted care residents likely would not have as much need for cars as senior apartments residents would. Schneider noted for assisted living facilities there is a significantly higher parking need for staff. Wischnack said the challenge in applying a parking standard was there are different standards for convalescent facilities and senior housing and the proposal was for something in between the two standards.

Allendorf said when the proposal was discussed at the May 18 council meeting, there were no variances required, the facility fit on the site, and architecturally the proposal looked more residential than commercial. The staff report now seemed to indicate affordable housing was an issue and storm water issues were identified. He questioned if the city should be telling the applicant that if he came in with something less than R5 the city would consider the proposal. If the area was to be treated as a transitional area, then the number of parking spaces was not the real issue. Wischnack said at the May 18 council meeting the council asked a lot of technical questions and staff attempted to provide the answers that would give the council the information needed if the application were to be approved. She said the issue is about the land use and if the proposal was the proper land use transition and density for the site.

Ellingson said there were decisions that needed to be made in a certain order. The first decision was if the council wanted to change the guide plan. He said during his time on the council that had only been done once. In that instance, he was told it would be a good procedure for the council to have a separate hearing about changing the guide plan and then subsequently consider approving the proposal. He said he had been told the comprehensive guide plan committee was aware of this proposal and decided not to change the guide plan. The planning commission voted 6-1 not to change the guide plan and the staff recommendation was also not to change the guide plan. He said the council should first be deciding if the guide plan should be changed before looking at the specific proposal.

Wiersum agreed the council should indicate to the applicant what it was willing to do and what it was not willing to do in terms of land use for the property.

Hiller said he would usually agree that the council should make a decision about the land use for the property. However in looking at the property he could not see the space being used for condos or anything other than what was being proposed. The applicant had found an interesting way to use a difficult piece of property and that should be considered by the council in this case.

Schneider said it was important to evaluate if the land use should be high, mid or low density. He said low density was probably not the ultimate long term use. He also had serious concerns that high density was the correct use. Mid-density therefore was the most logical use. He said however that there could be a poorly designed mid-density project that would have more impact than a well designed high density project. He has had concerns from the beginning that the project was too dense for the site because of the mass of the building. Some of that concern had been alleviated with the re-design of the building. His concern was how an assisted living facility of this size would fit in the context of the particular site. He said a lot of communities do not have a well defined parking standard for an assisted living facility because many of the facilities blend some independent units with assisted living units. He suggested having more dialogue with similar sized communities to develop a standard that better fits an assisted living facility. He said in visiting his father in a 72 unit assisted living facility in Wayzata, there were times once or twice a month where there was overflow parking needed all around the facility. Requiring that amount of parking for a few times a month was not realistic but consideration had to be given about the availability of overflow parking capacity near the facility. He said his concern was that Williston Road has no flexibility because it allows no short term parking. The proposal for 14 additional parking spaces was compromised because the council requested that the parking on the south side of the building be revised to allow a garbage truck to back in and turn around. That would reduce the number of parking spaces.

Wagner said he could see a land use change for the property but he agreed with Schneider that what was approved had to fit in with the context of the west side of the Glen Lake area.

Greves said as much as she would like to have the big picture discussion about land use it was late in the process for the applicant. As she looked over the history of the proposal, she said the applicant had been given direction to scale back the density and size of the proposal and tweak the design. The applicant had met all the requests.

Ellingson said the applicant had been consistently told no to the proposal. The planning commission had recommended denial a few years ago, as well as with the current proposal.

Wiersum said he received several letters about the proposal. One letter noted the council had denied the project years back and questioned why it was back for consideration. He said the answer was that the council had said no to each proposal for various valid reasons but legally the applicant can return as often as they want.

Dan Kelly, 220 South 6th Street in Minneapolis, representing the applicant, said this project had not previously been before the council. Although there have been times the project was rejected, there was instruction and encouragement from the council, the planning commission and staff about suggested changes that could be made to improve the project. He said everyone agrees that it was a transitional area and there should be some change in the zoning. When the applicant explored different types of changes he ran into various issues including hard surface, trees, excavating, mass, and the size of buildings. Over the years the applicant took all the issues into consideration and the result was the project before the council. He agreed with Schneider that a poorly designed medium density project could have far more impact on a site than a well designed high density project. He said this was a well designed high density project. He said there had been discussion about other projects. Those facilities are not comparable with this project. He said the city established a parking standard for this project of 38 parking stalls. Adding seven spaces would make the parking 20 percent higher than the requirement for a convalescent facility. There are no variances needed. He said town homes have been looked at for the property but it was determined that this project was the best use. He was surprised that affordable housing had been brought up as an issue because the project was on the cutting edge of affordable housing.

Brian Lubben, 4501 Hunter's Ridge Road, an architect with Genesis Architecture, said the project had great merit bringing senior housing and affordable housing to the site that would serve a need in the city. He said the storm water requirements could be worked out. He noted that Glen Lake Landings was a five story project. At its tallest, the building is 64 feet above grade. The Hillside project would be between 40 to 51 feet above grade. The slope and the roof treatment would make the mass appear much less than it normally would appear. He said it was a very high standard to ask an applicant to go to a neighbor and ask for a perpetual easement on their property to provide parking for the applicant's property. It is difficult to predict the number of parking spaces that would be needed for events. The applicant has brought forward a handshake agreement in the spirit of how the Glen Lake village operates. He said it was unusual in

a senior housing development for assisted living residents to have cars. Memory care residents almost never have cars. Most of the parking is for staff. He noted Kraemer's Hardware does not have a parking problem.

Lubben said the core issues are the zoning change and the zoning transition. Even though the project falls within the high density classification, it would have a very low impact with a very low traffic count. The building would be very residential in its look. He said the transition appropriately would be from neighborhood commercial to a low impact high density development to low density residential. The city had examples of similar transitions including Westridge Market. He said the grade of Williston Road was around seven percent. The road slopes down 21 feet with around 325 feet of frontage. The slope flattens towards Excelsior Boulevard.

Lubben said the proposal meets the standards for a comprehensive guide plan amendment. The proposal would not have an adverse impact on the natural environment or topography and would correct some odd grading that has happened on the site over the years. When completed the project would look very natural and would fit with the rest of the neighborhood. The proposed high density housing would be consistent with the physical character of the surrounding neighborhood. The neighborhood includes the multi-family housing across the street, the hardware store to the south, the high density housing to the east and north, and retail to the south and east. He said the applicant was not sure if the direction from the comprehensive guide plan committee was to maintain the guide plan designation for the site, or if it was a matter of leaving the designation as is until a project came along. The proposal meets the land use and growth strategies laid out in the guide plan by preserving the single family neighborhoods. It would be a continuation of a development pattern that exists along Williston Road. The proposal would minimize soil and tree removal.

Kelly said the applicant followed the instruction from the planning commission and staff when the proposal first was discussed in 2005. He said there is a market for assisted living and memory care. There may not be a market for other types of medium or high density properties. He said the applicants have worked hard with the city to come up with a project that is a well designed high density project.

Schneider said at the May 18 meeting there was a discussion about redesigning the southern parking lot to accommodate trash turnaround so the trucks wouldn't have to backup on to Williston Road. He asked the status of that request. Lubben said he looked at adding some paving to the north of the "S" curve to create an area that a garbage truck could enter and empty a dumpster. One stall would be removed to allow the

truck to make a full turn and drive straight ahead on to Williston Road. Schneider questioned if adequate space would be created by the removal of one stall. Lubben said one stall would be temporarily removed to provide a space for the dumpster. One stall would be needed for the truck to back into at the southwest corner.

Wiersum asked for clarification about the grade on Williston Road. The staff report indicated the grade was around 13 percent and the applicant indicated it was seven percent. Gordon said the slope was measured from the south property line to the house to the north. This represents the steepest part of the road. Wiersum asked the applicant to clarify a statement about multi-housing unit across the street. Lubben said there was multi-family housing on the corner of Excelsior Boulevard and Williston Road. Schneider said the unit was a twin home.

Clarifying the slope issue, Mike Suess, 197 Willoughby Way, said from the north corner to the south corner there is a 21 foot drop along the 325 feet distance. This equates to a seven percent grade. He said any residents walking the area would be coming out of the south parking lot. The grade gets flatter from the parking lot to Excelsior Boulevard. He also said the turnaround area would work for a truck.

Schneider asked how the garage door would be handled from an operations standpoint. Suess said the door would remain closed. Garbage pickup would be scheduled during a low traffic time. A control could be given to the driver. Schneider asked if visitors would be limited to the outside parking spaces. Suess said visitors would have access to the garage.

Gwen Smith, 14801 Cherry Lane, said she opposed the project. The area is a single family residential area and a 69 person unit would not be the same as a single family residence house. She said Williston Road is the main connection between Excelsior Boulevard and the north side of Highway 7. The road already has a lot of traffic and it does not need more traffic. She said pulling out on to Williston Road can be dangerous given the topography. The road is also dangerous for walkers.

Jackie Erickson, 14802 Peteler Lane, said she and her husband bought the house in March and had they known about the project they would not have bought the house. She said she enjoys her deck and does not want to look at a big assisted living building. She would prefer the property be made into a family park. She agreed Williston Road is a busy road.

Donna Ruckert, 5406 Williston Road, said the staff report was thorough and comprehensive. She said she was concerned with the blind spots along Williston Road. Children ride bikes on Williston Road to the

hardware store toward the ball field. She agreed the grade was an issue and would limit access to the village center. She disagreed that the proposal was an appropriate transition from a commercial area to an R1 area. She also was concerned about an increase in ambulance noise and the vitality of the Glen Lake community given the concentration of senior living facilities in the area. She questioned how the economy has impacted senior housing because senior housing is an expensive option.

Sharon Gibbons, 5402 Williston Road, said a letter was included in the council packet that expressed concern that Hillside and St. Therese would overbuild the market making it difficult for either project to succeed. She said the city code determining the necessary parking takes into account employee and visitor parking and that many residents of the facility would not drive cars. She noted the drawings show the apartment building on the east side but does not show the height change to get to Williston nor does it show the height of the houses across the street. She said the proposed additional parking would eliminate the path to Excelsior Boulevard. Another concern would be changing the guide plan and having the development not go forward. The change to the guide plan would be fairly permanent.

Kathy Patton, 5410 Williston Road, said she appreciated Williston Road being re-graded and the installation of sidewalks. The improvements have made the area feel like a neighborhood. She said she was concerned about safety on Williston Road and adding additional traffic. Her biggest concern was a statement that the council would have to proceed with the project because it was too far along in the process. She said that it is the wrong project for the site.

Hiller acknowledged the applicant had worked on the proposal for a number of years and there had been indications from the city that some people would be receptive to a higher density project. He said the applicant deserved extra consideration because the plan has addressed most of the concerns. He gave credit to the applicant for the affordable housing piece. He said the transition issue would come up even if town homes or single family units were approved because there would be a transition to the south side with the hardware store. The existing situation has two dissimilar adjacent uses. He said the project is the best thing he has seen for the property except for the parking issue. He said he didn't have enough information to feel comfortable that the parking issues were satisfactorily resolved. He also did not have information from staff to determine what the necessary amount of parking is.

Allendorf said he came into the May 18 meeting thinking that the project was not the right use for the property. After seeing that no variances were needed and there were no identified problems until the parking issue was

brought up, he thought the project must be OK. He visited his mother at St. Therese on Father's Day and the parking overflowed to both sides of the street where parking is allowed. It was a reminder that even on a day that wouldn't normally bring a lot of people to such a facility, people do come to the facility. If there is not adequate parking, then people park on the street. If there is no street parking there would be no place to park. He said there was previous discussion about a possible parking agreement that did not work out involving Kraemers. A developer wanted to bring another use to the location where the ballet shop and the gun shop currently are located. Allendorf said he didn't think density at the proposed level would work despite all the work the developer has done to make it work over the past two years.

Wiersum said the building is too big for the property available. The grading would have to change dramatically. He said he was concerned about a guide plan change from R1 to R5. During his time on the council there have been changes to the guide plan. The most analogous situation involved the Sanctuary that changed the guide plan from R1 to medium density in a transition area. He said that proposal was divisive. He questioned if there was enough buffer between the property and the neighboring property. He noted that the city has not received feedback from the Met Council over the guide plan and the council was now being asked to change it for a project that had some merit but still had issues. He said the proposal was to extend the Glen Lake area to make the commercial area larger, and no one was asking for that change.

Greves said she was not concerned about changing the guide plan for the purpose of the proposal. She also was not so concerned about the size, look, and design of the proposed building. The parking issues are a concern. She said she did not see options presented that alleviated her concerns. Even on weekdays, parking can be difficult at Kraemers. Overflow parking would add to that problem. She said she was also concerned about traffic but was not convinced that the traffic issues would be eliminated with another project. Elevation also remains a concern. She has not seen illustrations showing how the building would fit in with the surrounding areas. Her biggest concern remains the parking issue. She clarified that early comments should not be construed that she thought the council did not have the authority to deny the project. She clarified that what she meant was that before she was on the council and observing the process, it seemed the developer was being told no but also that if he made changes the proposal might be approved. She said moving forward the council should decide if there should be a clear cut top down process where changes to the guide plan are discussed first, or if some of the details of a project should be worked through first.

Wagner agreed with Hiller that the project had merits but he said the mass of the building, the parking issues, and the project not being planned with the greater western Glen Lake area were still concerns. He agreed with Greves that the council may have been too nice and should have given the developer a definitive no. He questioned if a 69 unit facility with 35 to 42 parking spots without some type of plan for parking for the rest of the western Glen Lake area is what is wanted.

Wiersum said at the May 18 meeting he asked himself, "if not this project, what?" He said that was the wrong question to ask because it is not the council's job to decide what will go on the property. The council's job is to decide if the project is a good project for the location.

Schneider said it was the council's responsibility to give some guidance on the level of guiding that is appropriate. If the property stays guided as R1 then single family homes have to be built. He suggested taking a look at potential medium density uses that could be on the site to give the council better indication on whether the property should be guided as medium or high density. He said the architect made great strides in blending a large building on to a small site but the function of the use and the way the parking is designed is unworkable in the context of the area. He also expressed concern about changing the guiding to high density.

Hiller moved, Wiersum seconded a motion to adopt Resolution No. 2009-054 denying the requested: Comprehensive Guide Plan Amendment, Rezoning, Preliminary Plat, and Site and Building Plan Review. Denial is based on the following findings:

- 1) Comprehensive Guide Plan Amendment. The proposal is not consistent with property's existing Comprehensive Guide Plan designation. Neither does the proposal warrant an amendment of the existing Guide Plan Designation.
 - a. The proposal does not meet various criteria for such amendment, specifically:
 - (1) The requested land use change would have an adverse impact on the natural environment, including topography.
 - (2) The proposed high-density housing development resulting from the land use change would not be consistent with the physical character of the surrounding neighborhood.
 - (3) The proposed high-density housing development does not provide for a more viable transition to adjacent properties than the current land use. Perhaps if the development included more area properties, there would be greater site design options

and better opportunity for integration/transition into the surrounding area.

- (4) The proposal is not consistent with important land-use principals outlined in the 2030 Comprehensive Guide Plan. Namely, "the integrity of existing single-family neighborhoods will be preserved through careful management of land use transitions and impacts between potential conflicting uses."
- b. In the 2030 Comprehensive Guide Plan, which is currently under review by the Metropolitan Council, the city determined that existing guide plan designations in the area should remain. In doing so, the city determined that redevelopment proposal and any necessary Guide Plan amendments should be judged on their own merit.
- c. The proposal does not meet several land use and growth strategies outlined in the 2030 Comprehensive Guide Plan for the city as a whole and for Glen Lake Station in particular.

 - (1) The proposal would not preserve the integrity of existing single family neighborhoods through careful management of land use transitions and impacts between potential conflicting uses. (2030 Comprehensive Guide Plan Page IV-7)
 - (2) The proposal does not include site plan techniques that reduce conflicts between different land uses in order to manage land use transitions. (2030 Comprehensive Guide Plan Page IV-7)
 - (3) The proposal does not represent a continuation of approved development pattern and land uses along the Williston Road corridor. (2030 Comprehensive Guide Plan Page IV-11)
 - (4) The proposal does not provide appropriate internal and external connections to neighborhoods and facilities. (2030 Comprehensive Guide Plan Page IV-11)
- 2) Planned Unit Development Zoning. The proposal is not consistent with the purpose of PUD zoning as outlined in City Code 300.22 Subd. 1. Specifically:

 - a. As proposed, the PUD does not preserve desirable site characteristics or open space. Neither does the proposal protect sensitive environmental features, such as slopes and trees.
 - b. As proposed, the PUD does not provide a sensitive land use transition to adjacent low-density residential properties.

- 3) Site and Building Plans. The proposal does not meet site and building plan standards as outlined in City Code 300.27 Subd. 5. Specifically:
- a. The proposal does not minimize soil removal or include grade changes keeping with the general appearance of neighboring developed areas.

All voted "yes." Motion carried.

Schneider called a recess at 9:29 p.m. Schneider called the meeting back to order at 9:38 p.m.

B. Items concerning tearing down the existing house and rebuilding a new home on the property at 2618 Crosby Road

Gordon gave the staff report.

Wagner asked for clarification on the driveway. Gordon confirmed the staff recommendation would be to remove the northerly driveway and have the entry be on the southerly portion.

Wiersum said he understood why the applicant would like more parking availability given how narrow Crosby Road is. He asked if an option would be to build in some additional paver area to the north. Gordon said there are a number of approaches minimizing the amount of fill that staff could support.

Tom Ellison, 1730 Oakways, the project's architect, said hydrology studies had been done for both the floodplain issues and permeable questions. He said the road is thirteen and a half feet wide with a small shoulder. The front yard is low and flat and most of it is below the flood plain. There are two large willow trees on the property.

Ellison said he was asked to do five things on the project:

- 1) Fix the floodplain issues
- 2) Provide off street parking like the neighbors have
- 3) Take advantage of the sun and views of a unique site
- 4) Create an inviting approach
- 5) Keep the mass of the house in scale with the neighborhood

Ellison said the parking area would be completely screened from the street. There would be a small drop off area within a landscaped approach to the front door. He said the two driveways would not have more area on the street than any of the neighbors. All four neighbors that have the same circumstance with the narrow street in front have significant parking that allows five to seven cars to be parked on their property. He said the

applicant needs to fill 39.5 cubic yards of fill amounting to three inches of fill over the area. There would be no technical impact on the floodplain. He said staff indicated there are fill related issues other than the technical issues. The city likes to protect wetlands and doesn't want someone to use the techniques of cut and fill to make a larger buildable area to encroach on the wetlands or make a house out of scale with neighboring houses. Ellison said that has not been done.

Ellison said for the driveway issue it was important to make a distinction between the approach to the site and the parking on the site. He said all parking options had been looked at. Crosby Road does not have a cul de sac at the end. A single driveway would require a driver to come in, back up and turn around. He said it was felt the loop was the best strategy because it eliminated the need to back up. Even if the willow trees were removed and the additional parking was provided, the amount of fill would be virtually identical.

Greves said she and her husband were driving on the road recently and noted that to turn around they had to back out of somebody's driveway onto Crosby Road. She noted even if you're at the very top of your game, there's a high chance of backing into the water, so she understood the limitations of the road. She said she supported the option of coming in and out of two different points. She asked Ellison to provide more information about the proposed bridge. Ellison said the bridge was meant for cars to drive over and would provide a secondary entrance. The bridge would be a little above where the grade currently is. Trucks would use the other entrance.

Wiersum said a few years ago the water was over Crosby Road. He said pavers already require constant maintenance. Ellison said that would be an issue if the pavers were set on the current type of subgrade but that would not be done. Granular materials would be used for support.

Schneider said he agreed with the planning commission that from a circulation and fitting into the neighborhood standpoint, the current layout works well. He said he was concerned that there would be flood waters running from the north toward Crosby Road. The trees north of the walkway are built on a patio with a retaining wall right at the property line to elevate the trees. He asked if that was a correct interpretation. Ellison said he would not call it a patio. It would be a raised planter area with a retaining wall. Schneider said he was concerned about impacting the neighbor by having the retaining wall just to have the trees planted higher. Ellison said the concern was being looked at. A landscape architect will be used on the project. He said the neighbor would not be impacted by the flood issues. Schneider said he believed the wall would work from a technical standpoint but his concern was the impact to the neighbor

particularly because the purpose seemed to be to elevate the trees. Ellison said elevating the trees was not the purpose. He said raising the parking area above the floodplain was the issue.

Wagner said he agreed there was definite value to having parking on the property because there was not the option to park on the street. He said he supported the design but had some concerns about the bridge.

Wiersum said the plan was creative and he generally liked it. His concern was with the second driveway. He said he liked the willow trees and would not want to lose the trees. He was not convinced the bridge would save the trees. Two curb cuts are typically not done in the city. Ellison said an arborist was asked if the bridge would work. The arborist indicated there was a good chance the trees would be saved if the supports are far enough beyond the drip line and the grade was not changed.

Schneider noted it was difficult to kill a willow tree. In this case the trees could be trimmed. There is a question if long term the trees are in the right place for the site. He said the bridge would add character and charm to the development. He agreed that the city doesn't often allow two driveways but that there are three homes in his neighborhood with two driveways. He said the bridge was a minor compromise to avoid people having to backup on to Crosby Road.

Allendorf noted he has had no trouble backing up on to Crosby Road but he said he had no concerns with the proposed plan and the project would be an improvement to the neighborhood.

Schneider said the over the years the council had looked at how to address flood plain fill issues. He said there was a fairly definitive policy about when fill could or could not be done. The policy was worded that when there was tree impact from the fill of the floodplain then there was a need to step back and take a second look at the proposal. Other than that it was a technical replacement issue. There was nothing in the policy's wording requiring someone to minimize the filling of a floodplain. He said the proposal meets the intention and spirit of the way the ordinance is worded.

Allendorf moved, Wiersum seconded a motion to:

- 1) Adopt Resolution No. 2009-055 which approves the following items for construction of a new house and driveway at 2618 Crosby Road:
 - a. Floodplain setback variance from 20 feet to 13 feet for the new house.
 - b. Wetland setback variance from 20 feet to 17 feet for the new driveway.

- c. Conditional use permit for a wooden bridge located within the floodplain district.
- d. Variance to allow two access points on a lot with a width less than 110 feet.
- e. Floodplain alteration permit to fill approximately 40 cubic yards of floodplain for the proposed driveway.

Approval is based on the following findings:

- a. The floodplain setback variance is reasonable and would meet the required standards for a variance, because:
 - (1) UNDUE HARDSHIP: The location of floodplain on both the front and back of the property presents a practical difficulty in constructing a new house on the lot.
 - (2) UNIQUE CIRCUMSTANCE: The proposal would be a point intrusion into the required setback. Only a small portion of the corner of the garage would extend into the setback requirement.
 - (3) INTENT OF THE ORDINANCE: The variance meets the intent of the ordinance to provide adequate floodplain protection. The variance would not obstruct the flow of floodwaters or impact the amount of floodplain capacity.
 - (4) NEIGHBORHOOD CHARACTER: The variance would not adversely impact the character of the neighborhood. The proposed house would be positioned on the lot similarly to surrounding properties. Furthermore, the house to the southeast has a nonconforming floodplain setback of 16 feet.
- b. The wetland setback variance is reasonable and would meet the required standards for a variance, because:
 - (1) UNDUE HARDSHIP & UNIQUE CIRCUMSTANCE: There is an undue hardship due to the location of the public street. The edge of Crosby Road is located 17 feet from the edge of the adjacent wetland. A driveway connection with the road could not be constructed without the need for a setback variance.
 - (2) INTENT OF THE ORDINANCE: The variance would meet the intent of the ordinance to preserve and protect the environmental, aesthetic and hydrologic functions of the city's wetlands.
 - (3) NEIGHBORHOOD CHARACTER: The variance would not adversely impact the character of the neighborhood. The driveway would connect to the street similarly to the other properties along Crosby Road.

- c. The conditional use permit is reasonable and would meet the required conditional use permit standards.
- d. The variance for two access drives is reasonable and would meet the required standards for a variance, because:
 - (1) The physical conditions of the property are similar to surrounding properties which all have driveways equal in width to what the two driveways would have.
 - (2) The strict application of the ordinance would cause unnecessary hardship on the property owner or tenant.
 - (3) The narrowness of Crosby Road creates a potential safety hazard for egress from the site. Incorporation of a circular two driveway design would minimize the potential for safety hazards on Crosby Road.
- e. The floodplain alteration permit is reasonable because the existing conditions require that floodplain fill occur to provide appropriate access to an existing lot of record.

Approval is subject to the following conditions:

- a. Complete the following items prior to issuance of a grading or building permit:
 - (1) Final grading, drainage, erosion control, tree protection, and floodplain alteration plans must be submitted and approved by the city staff.
 - (a) Drainage must not be directed toward adjacent properties to the northwest or southeast.
 - (b) Final plans must include spot elevations, and top and bottom elevations of proposed retaining walls.
 - (c) All retaining walls must not be located within city right-of-way.
 - (d) The bridge must not be located within the right-of-way of Crosby Road.
 - (e) All floodplain fill and compensation must be located outside the right-of-way.
 - (f) The bridge must be located outside the floodway and must meet the standards of City Code Section 300.24, Subds. 7 & 9.
 - (2) Construction plans and specifications of all proposed stormwater management facilities must be submitted. The plans must comply with the city's stormwater management Rule A Criteria. The plans must be reviewed and approved by city staff.
 - (3) Submit a construction management plan outlining parking, construction access, and stockpile and material storage locations.

- (4) Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
 - (5) Submit cash escrow in an 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:
 - (a) 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
 - (b) If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
 - (6) A copy of this resolution must be recorded with the county and a copy of the recorded document returned to the city.
- b. Complete the following items prior to final building inspections and issuance of a certificate of occupancy:
- (1) As-builts must be submitted for review by city engineering and natural resource staff and include items as required by the city engineer. The city may accept an escrow deposit if site conditions do not allow for completion of the final grading and installation of permanent groundcover at the time of final inspection. The amount of the deposit would be determined by city staff at the time of final inspection. The escrow deposit would be retained until the as-builts have been submitted for city staff review and approval and any needed corrections completed.
 - (2) Any tree mitigation/replacement required must be installed and inspected.
- c. The lowest floor elevation of the house must be a minimum of 2 feet above the designated floodplain elevation.
- d. The lowest floor elevation of any attached decks, patios, and outside stairways must be a minimum of 1.5 feet above the designated floodplain elevation.
- e. The driveway surface must be a minimum of 1 foot above the designated floodplain elevation.
- f. The house must be protected with 13D automatic fire sprinklers as required by the fire marshal.

- g. Permits may be required from other outside agencies, including but not limited to the United States Army Corps of Engineers, Minnesota Department of Natural Resources, Minnehaha Creek Watershed District, and the Lake Minnetonka Conservation District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
- h. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- i. Any change to the approved use that results in significant increase in traffic or a significant change in character would require a revised conditional use permit.
- j. The applicant must agree to the above-conditions in writing.
- k. This approval will end on December 31, 2010, unless the city has issued a building permit for the project covered by this resolution or approved a time extension.

All voted "yes." Motion carried.

Jim Ramstad, 2618 Crosby Road, said he was impressed that each planning commissioner came down to look at his property. He thanked the council for all its work and said he was proud to be a resident of the city.

15. APPOINTMENTS and REAPPOINTMENTS: None

16. ADJOURNMENT

Wiersum moved, Greves seconded a motion to adjourn the meeting at 10:24 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk