

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, DECEMBER 21, 2009**

**1. CALL TO ORDER.**

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

**2. PLEDGE OF ALLEGIANCE.**

All joined in the Pledge of Allegiance.

**3. ROLL CALL**

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

**4. APPROVAL OF AGENDA**

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

**5. APPROVAL OF MINUTES:**

**A. November 23, 2009 regular meeting**

Greves moved, Allendorf seconded a motion to approve the minutes of the November 23, 2009 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

**B. December 7, 2009 regular meeting**

Greves moved, Allendorf seconded a motion to approve the minutes of the December 7, 2009 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

**6. SPECIAL MATTERS: None**

**7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS**

Gunyou reported on the schedule for upcoming council meetings.

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

No one appeared.

**9. BIDS AND PURCHASES: None**

**10. CONSENT AGENDA (Items Requiring a Majority Vote):****A. Claims for council authorization – December 14, 2009**

Allendorf moved, Greves seconded a motion to approve the December 14, 2009 claims which includes electronic fund transfers (EFTs) numbered 1121 through 1142 and checks numbered 223875 through 224272, totaling \$1,952,132.29 All voted “yes.” Motion carried.

**B. Agreement with Teens Alone for 2010**

Allendorf moved, Greves seconded a motion for approval of contract renewal agreement for the year 2010, not to exceed \$2,000. All voted “yes.” Motion carried.

**C. 2010 general liability insurance and workers’ compensation renewals**

Allendorf moved, Greves seconded a motion to renew the city’s insurance policies through LMCIT for package policies with the following options:

- \$25,000/\$150,000 deductible for the package policies
- 100% Open Meeting law coverage
- No waiver of statutory limits

and to also authorize renewal of the LMCIT workers’ compensation policy with a \$10,000 deductible. All voted “yes.” Motion carried.

**D. Resolution relating to the city’s health reimbursement arrangement plan amendment**

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2009-115 to amend the Health Reimbursement Arrangement plan to include health insurance premiums for spouse or dependents paid by the participant with after-tax dollars as eligible for reimbursement. All voted “yes.” Motion carried.

**E. 2010 nonunion employee salary and benefit adjustments**

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2009-116 to adjust 2010 nonunion employee salaries and benefits. All voted “yes.” Motion carried.

**F. City manager compensation**

Allendorf moved, Greves seconded a motion to approve city manager compensation to include 2009 performance pay of \$1,315.09 and 2010 wage of \$141,302.72. All voted “yes.” Motion carried.

**G. Time extension of multiple variances for construction of a new home at 16930 Grays Bay Boulevard**

Hiller asked that the item be removed from the consent agenda. He noted that the council generally grants the extensions but because this request involves lake property this extension is different. The public input process including neighborhood comment forums occurred over two years ago. When the public hearing was held and the appeal was heard by the council, there was a 25 foot conservation easement to protect the shoreline. In March 2008 the shoreline ordinance requiring the buffer was repealed. He said because the public input occurred before the change, residents concern about environmental protection, runoff and other issues have not been given the chance to be heard. He recommended the planning commission review the item.

Wiersum said Hiller raised a good point about the shoreland buffer but at the same time if that was the only change and the proposal came before the council, it likely would be approved. He said he believes after a number of extensions proposals should go through the process again because there may be new neighbors and the current public input is important. But he said for this item the staff recommendation was appropriate. If the house is not built in the next year, the staff would likely recommend denial and the proposal would have to go through the process again.

Schneider said there was a point when extensions should not be granted related to significant changes in ordinances or when a significant length of time has passed. He noted the situation is somewhat unique because the economy has halted most construction. If the proposal was before the council it likely would be approved. He said he was inclined to go along with the staff recommendation with the expectation that if the economy is better a year from now, the house would be built.

Greves agreed giving another year extension made sense. She said Hiller raised some good issues and it reminded her of the Hopaca Hollow proposal. That project was delayed for a couple of years and during that time the council adopted the tree ordinance. She said giving this project another year provided a happy medium and would allow the council to revisit the proposal.

Allendorf moved, Wiersum seconded a motion to approve the twelve-month time extension of City Council Resolution No. 2008-031, which is the revised resolution removing the shoreland buffer and conservation easement requirement. Allendorf, Greves, Wiersum, Ellingson, and Schneider voted "yes." Hiller voted "no." Motion carried.

**H. Agreements related to the Williston Center renovation project**

Allendorf moved, Greves seconded a motion to approve the agreements, contingent upon adoption of the proposed 2010 budget for the Community Investment Fund:

- 1) Architectural services
- 2) Construction management

All voted "yes." Motion carried.

**11. Items requiring Five Votes:****A. Items regarding the purchase of self contained breathing apparatus (SCBA)**

Wiersum moved, Greves seconded a motion to:

- 1) Approve the amended joint powers agreement
- 2) Award the contract to Clarey's Safety Equipment on behalf of the joint powers association
- 3) Approve the purchase of equipment
- 4) Amend the 2010-14 capital improvement program

All voted "yes." Motion carried.

**12. INTRODUCTION OF ORDINANCES: None****13. PUBLIC HEARINGS: None****14. OTHER BUSINESS:****A. Items concerning BLACK OAKS ESTATES, a 7-lot subdivision of existing properties at 16611 Black Oaks Lane:**

- (1) Rezoning from R-1, single-family residential, to PUD, planned unit development;**
- (2) Preliminary Plat with wetland setback variance;**
- (3) Approval of a cul-de-sac in excess of 500 feet;**
- (4) Right-of-way vacation; and**
- (5) Right-of-way establishment**

City Planner Loren Gordon gave the staff report.

Greves asked if there was consideration given to extending the private easement along lots five and six to the north. Gordon said the developer discussed moving trees to the adjacent property to provide tree protection without the need for an easement.

The applicant, Roy Lecy, a resident of the city of Mound, pointed to an area that all the trees would be saved. He said there was not agreement for a driveway from lot six to Black Oaks Lane. The homeowners association that owns the private road provided a letter indicating they understood Lecy's right to develop the property but they did not want to share the private drive. Lecy said that the driveway would save trees and if the plan was approved, he would go back to the association and formally request that they allow lot six to join the association. If this is denied the alternative would be to protect the tree boundary between Black Oaks Lane and the development. The tree calculations were done assuming the worst case scenario. He indicated the home currently on the property would be removed.

Lecy said the controversy involving the wetland has been resolved. He said the wetland is unusual because there is no surface water and no subsurface water down to 12 feet. Methods of enhancing the wetland are being looked at. He said the biggest concern raised at the neighborhood meetings was the drainage. Neighbors do not want any of the water on the property to be moved on to somebody else's property. He said the proposal is for 13 rain gardens on the site to take care of the surface water. When the project is complete water will not be diverted to the neighbors to the north or south. He said there would be better drainage protection than currently exists because a new drainage overflow pipe would be built and that would divert the water into the lake. He noted he could have come forward with a proposal for a conforming plat with eight lots. The development plan is for seven lots. All of the lots would be at least half an acre. He went with seven lots to save trees and the lots would better conform to the appearance of the neighboring properties. He said the property would save over 70 percent of the high priority trees and over 62 percent of the significant trees. The calculations include quite a bit of transplant work. He noted there are methods that ensure a higher percentage of transplanted trees to survive than the 50 percent success ratio the city uses.

Lecy indicated the site grading issues have been resolved. The city requires that the basement floor has to be two feet higher than the wetland. This requires that the homes include walkout basements. He said he has met with all the Wayzata residents to the south and their biggest concern was drainage. The residents understand that by meeting all of Minnetonka's requirements, there would be less drainage to the south than exists today. He said he agreed to a ten foot buffer along lot one. The buffer would be included in the property covenants. He also agreed to a further setback from the lake. He noted city staff met with the Black Oaks Lane residents and the biggest concern was saving as many trees as possible.

Greves asked Lecy to elaborate on the plan to transplant trees. Lecy said trees would be transplanted from lots five, six, and seven and would be transplanted within the development. Greves said when she visited the site she observed the big pine trees that would be transplanted. She asked what the plan was for the tall deciduous trees located to the north of the pines. Lecy said any tree that is likely to live and could be transplanted with a 42 inch spade would be moved within the property. More trees would be needed as buffer between the lots that are on the lake and around the wetland. He said the diameter of the pine trees determine if they can be successfully transplanted.

Hiller indicated that he was satisfied that the number of trees would be sufficient to meet the city's requirements and not require the formal conservation easements. Lecy said there would be an easement because he promised one to the neighbors.

Greves said she did not have any concerns with the proposal about density. She also did not have concerns about trees and drainage.

Schneider said the applicant did an excellent job with the design. He said his only concern was with the high reliance on the rain gardens. Rain gardens work well long term if maintained properly. He said there may be some opportunity in potential wetland enhancement discussion to provide an open pond that would allow peripheral drainage into the pond before the water went into the wetlands. Gordon said the topography would make it difficult to do more traditional engineering.

Greves asked if the proposal included the council adopting the establishment of public right of way over the area of Black Oaks Lane that the city was maintaining. Gordon indicated that was correct and the right of way within the project would be brought back to the council as part of the final plat.

Allendorf moved, Wiersum seconded a motion to:

- 1) Adopt Ordinance No. 2009-18 which approves rezoning the subject property 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.
- 2) Adopt Resolution No. 2009-117 which grants preliminary plat approval to BLACK OAKS ESTATES, date-stamped November 9, 2009, with cul-de-sac in excess of 500 feet. Approval includes the following variance:

a. Wetland setback variance for a new road from 20 feet to 13 feet.

Approval is based on the following findings:

a. Aside from the wetland setback variance, the proposal meets the required standards and ordinances for a preliminary plat.

b. A reduced width public street and ribbon curb are appropriate in this specific situation as their use:

(1) Would reduce grading associated with street construction and stormsewer installation, affording protection of High-Priority and Significant Trees on the site, most notably existing silver maple trees lining the existing site entrance.

(2) Would afford the opportunity to use a "natural" stormwater system.

(3) Would maintain the current width of the existing Black Oaks Lane, which is 22 feet wide.

c. The setback variance is reasonable. The location and setback of the proposed private road reflects the location and setback of the existing driveway on the site.

d. The pattern of existing development and available roadway access requires that the only practical method of providing public access to the site is a long cul-de-sac.

Approval is subject to the following conditions:

a. Prior to final plat approval, complete the following:

(1) Show the following on the final plat:

- A 40 foot right-of-way along the neck portion of the cul-desac and minimum 100-foot right-of-way for the cul-de-sac bulb.
- 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. These easements are not required in the immediate areas of the accessory existing at the time of this approval.
- Utility easements over existing or proposed public utilities, as determined by the city engineer.
- Drainage and utility easements over wetlands, floodplains, and rain gardens required for construction of the public street, as determined by the city engineer.

(2) Pay a park dedication fee of \$30,000.

(3) The city must vacate existing right-of-way on the subject property.

- (4) The city must establish public right-of-way over a portion of the existing, publically maintained Black Oaks Lane.
  - (5) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
- b. The following items must be submitted to the city before the city releases the final plat:
- (1) An electronic CAD file of the final plat in microstation or DXF.
  - (2) Payment for traffic signs and installation, as required by the city engineer.
  - (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) Conservation easements and a drawing of the following easements.
      - Wetland Buffer easement 16.5 feet upland of the delineated wetland edge. This easement must allow co-location of the public right-of-way.
      - Shore Impact Zone easement 37.5 feet upland of the established ordinary high water level of Gleason Lake.

The easements and drawings must be recorded with the final plat.
  - (c) Documents establishing a homeowners' association. The association must be responsible for maintaining common areas, infiltration areas, rain gardens, and any other required drainage improvements approved by the City. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of rain gardens and any adjacent drainage ditches, keeping a vegetative cover within the ditches and rain gardens, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.
  - (d) Restrictive covenants to be recorded against the individual lots with the plat. The covenants must include:



- (ii) No retaining walls within required city right-of-way.
    - (iii) Extension of public utilities to the edge of the Black Oaks Estates development in a location to be determined by the city engineer. This location may require directional drilling.
  - (b) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit, wetland restoration, landscaping requirements, and to restore the site. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until: work has been completed according to the plans approved by the city; and as-builts of the street, public utilities, and rain gardens have been submitted.
  - (c) A tree mitigation plan. The plan must meet minimum mitigation requirements as outlined in the ordinance. However, at the discretion of natural resources staff, mitigation inches may be decreased based on the health of trees removed.
  - (d) A signed development agreement with the city. The agreement must guarantee that the developer will complete all public improvements and meet all city requirements. Aside from this and other standard items outlined in the city's template agreement, the agreement must outline the developer's responsibility associated with necessary repair of existing public streets. The city engineer must evaluate the condition of the publically maintained portion of Black Oaks Lane. Following construction of the public street and utilities within the BLACK OAKS ESTATES, the city engineer will reevaluate the condition of the publically maintained portion of Black Oaks Lane. The developer is responsible for any and all repairs deemed necessary to bring the roadway back to "predevelopment" conditions.
  - (e) If the developer is constructing any public improvements, the following must be submitted for staff review and approval:
    - (i) Final street and utility plans.



Preliminary Grading, Drainage, and Erosion Control Plan date-stamped November 9, 2009. City staff may allow grading outside of these limits if the total percentage of the site graded is less than or equal to the percentage of the site graded as indicated on the Preliminary Grading, Drainage, and Erosion Control Plan date stamped November 9, 2009.

- (ii) Tree removal on each lot, to accommodate principal and accessory structures, is limited to those trees shown for removal on Tree Plans date stamped November 16, 2009. City staff may allow tree removal other than that shown on these plans if the total percentage of tree removal is less than or equal to the percentage of the removal as indicated on the Tree Plans date stamped November 16, 2009.
- (iii) Location of sewer and water services must minimize impact to any significant trees. No trees may be removed specifically for installation of services. One set of new services must be installed.
- (c) A tree mitigation plan. The plan must meet minimum mitigation requirements as outlined in the ordinance. However, at the discretion of natural resources staff, mitigation inches may be decreased based on the health of trees removed.
- (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) An appropriately size rain garden, or other infiltration system approved by the city engineer must be constructed on each residential property in conjunction with home construction. The required rain garden must be fully contained on the property it is servicing. Grading plans and any required stormwater calculations must be submitted together with building permit application materials.
- (2) Submit the following documents:
- (a) A recorded copy of the preliminary plat, all required easements, and restrictive covenants.
- (b) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
- (c) 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.
- (d) A drainage and utility easement over the required rain garden. This easement must be reviewed, approved, and recorded by the property owner prior to final building inspection.
- (e) A stormwater maintenance agreement associated with an individual lot's rain garden or other required infiltration system.
- (3) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
- (4) 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.
- (5) Install heavy-duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.
- (6) 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 all R-1 zoning standards. In addition:
- (1) Required principal structure setbacks are as follows:
- |   |                |
|---|----------------|
| <u>Front Property Line</u>                            | <u>25 feet</u> |
| <u>Side Property Line Exterior to the Development</u> | <u>15 feet</u> |

Side Property Line Interior to the Development

10 feet

Rear Property Line 20% of lot depth or 40 feet  
whichever is less

Ordinary High Water Level 75 feet

100-Year Floodplain 20 feet

Delineated Wetland Edge 35 feet

- (2) Required front yard setback for accessory structures existing at the time of this approval is 6 feet. This setback will accommodate the existing barn on the site.
  - (3) Minimum floor elevation is 955.0.
  - (4) 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.
  - (5) A driveway easement must be recorded across Lot 7 to provide access to Lot 6. The easement document must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's review and approval prior to recording. The only allowed access to Lot 6 is via this driveway easement. This condition may be waived if the Black Oaks Homeowners Association provides written authorization for Lot 6 to access the existing private road owned and maintained by the association.
  - (6) No portion of the driveways to Lot 6 or Lot 7, including any required grading, is allowed within dedicated public right-of-way north of the lots. This condition as it pertains to Lot 6 may be waived if the Black Oaks Homeowners Association provides written authorization for Lot 6 to access the existing private road owned and maintained by the association.
- f. Prior to final building inspection for each newly constructed house, the following must be submitted:
- (1) An as-built survey which include all structures, topography, and rain gardens.
  - (2) Recorded copy of drainage and utility easement associated with required rain garden or infiltration system.
- g. Demolition of the existing house, city staff must be allowed into the house for photo documentation of the structure.
- h. Signage must be installed and maintained which delineates the edge of any required conservation easement. This signage is subject to the review and approval of city staff.

- i. During construction, the streets must be kept free of debris and sediment.
- j. The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

All voted "yes." Motion carried.

**B. Appeal of the planning commission's decision denying multiple variances to install a new wall sign on the office building located at 10901 Red Circle Drive**

Gordon gave the staff report.

Hiller asked why the staff recommendation was for approval even though the planning commission voted to deny the variances. Gordon said the staff report included good rationale behind the variance findings. He said the planning commission had a good discussion but the discussion did not change staff's opinion about what was included in the staff report and its initial recommendation.

Hiller asked if consideration was given to locating the sign along the top edge of the building along the glass line. Gordon said he had not heard the idea discussed but the applicant could better answer the question. Hiller said as a person drives east on 494 the sign is not visible until coming around the corner. The Holiday Inn is visible but the edge of the building where the sign would be located cannot be seen until the driver comes to Shady Oak. Driving the other direction, the edge of the building cannot be seen from the car's front window. Gordon said the Security Life sign is visible driving west on Highway 62. The National American University sign is visible when traveling east on Highway 62. The sign can be seen while entering Opus from Shady Oak Drive.

Schneider said one of the challenges with some of the buildings in the Opus area is that when you are lost and trying to find a building it helps to have some type of identification available.

Allendorf asked how many votes were needed for approval. City Attorney Desyl Peterson said five votes would be required to grant the variances.

Christine Town, executive vice president at National American University, said the school's concern was that classes are held at night and it is difficult to find one's way in the area. She said it would be helpful to have something identifiable visible.

Wiersum said the issue was not about advertising value of the sign but was about the identity of the building. He said it was reasonable to grant the variance because the challenging nature of the streets in the Opus area. Having a visible sign would be helpful.

Todd Kaufman, 149 12<sup>th</sup> Avenue North, Waite Park, property manager and leasing agent, said consideration had not been given to locating the sign on the glass line. He said the sign was not for advertising but was more for identification purposes.

Schneider said the council and staff had discussed for a number of years the need to update the sign ordinance. He said a fifty foot sign on a four story building located on a major highway probably was not appropriate. He said a sliding scale that would define what could be done in certain conditions would be more effective. He supported granting the variances because the proposal made good common sense. If the proposal was for two signs on the ribbon on the front of the building he likely would not have supported it. Having two signs on the same side of the building that would be visible from the road would be counter to what the city was trying to do with signage. The proposal was essentially for a one sign building because both signs could not be seen at the same time in any situation.

Hiller agreed there was a need for the identification on the building to help people find their way but he was concerned that all the requirements of the ordinance were being ignored. He said the best way to find the building was seeing the clear glass side from the backside of the building. The sign did not need to be as big as proposed because other options exist. He said he would have a difficult time explaining to the next applicant looking for a sign variance why this proposal was allowed and their sign was being denied because there were no guidelines why this proposal was necessary.

Allendorf said when he read the planning commission minutes it occurred to him that the commission was doing what it was charged to do. The planning commission is responsible for looking at the application to determine if it fits with the ordinance. He said his job as a council member is to consider the planning commission input and to determine if a proposal fits in with what the council wants to have happen in the community. He said it made perfect sense to match up the size and stature of the proposed sign with the Security Life sign and to allow the two signs to operate to the betterment of the people trying to find the building. He said the point that the proposal was so divergent from the ordinance that it should not be approved proves that the ordinance should be looked at again with recognition that a formulaic solution to signs does not work.

Greves agreed that flexibility was needed for this area because of the differences in the buildings. There have been a lot of changes in the area in terms of zoning and nonconforming uses. She said there is a complex history to the area.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2009-118 which approves the following variances to install a new wall sign on the building at 10901 Red Circle Drive:

- Variance to allow for two wall signs on the building.
- Variance from maximum copy and graphic height from 24 inches to 10- feet, 6-inches.
- Variance from maximum copy and graphic area from 50 square feet to 147 square feet.

Approval is based on the following findings:

- 1) The proposal is reasonable and would meet the required standards for a variance, because:
  - a. UNDUE HARDSHIP: There is an undue hardship due to the configuration of the building. The southwest building elevation has three protruding faces. There is not a building face to accommodate the entire length of the sign if it was configured in a single line of copy and graphic.
  - b. UNIQUE CIRCUMSTANCE: The significant size and height of the building, and the increased distance from the roadway are circumstances that are not common to every office building.
  - c. INTENT OF THE ORDINANCE: The sign would meet the intent of the sign ordinance. The signs would provide for appropriate site identification, and would provide appropriate visibility from each direction.
  - d. NEIGHBORHOOD CHARACTER: The signs would not adversely impact the character of the commercial area. The sign would be proportioned to the scale of the building. Furthermore the sign would be comparable in height and size to the existing wall sign. This would provide consistent and uniform signage on the property.

Approval is subject to the following conditions:

- 1) The wall signs must be in substantial compliance with the plans date-stamped September 21, 2009.
- 2) Prior to issuance of a sign permit, a copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
- 3) This variance will end on December 31, 2010, unless the city has issued a sign permit for the project covered by this variance or approved a time extension.

Allendorf, Greves, Wiersum, Ellingson, and Schneider voted “yes.” Hiller voted “no.” Motion carried.

**C. Resolution denying a twelve month time extension of multiple variances for construction of a new home at 2813 McKenzie Point Road**

Gordon gave the staff report.

Hiller said the item was an even more extreme example of the issues he raised for item 10G. He said given issues including impervious surface, the item should be sent back to the planning commission for review.

Schneider said water management enhancements could be incorporated into the project and that would allow the opportunity for public input and for the council to take a look at the water characteristics.

Wiersum moved, Hiller seconded a motion to adopt Resolution No. 2009-119 denying the extension request. Denial is based on the following findings:

- 1) By City Code 300.07 Subdivision 5:
  - a. Any variance granted by the city shall run with the land and shall be perpetual unless prior to December 31 of the year following the year of approval and no building permit has been issued or substantial work performed on the project, in which case the variance shall be null and void.
  - b. The city may extend the period for construction upon finding that the interest of the owners of neighboring properties will not be adversely affected by such extension.
- 2) Variances to construct a new house on the subject property were approved in 2005. Twelve-month extensions of this approval were subsequently granted in 2006, 2007, and 2008.
- 3) The public input process for the applicants' proposal, including invitation for neighborhood comment and the formal public hearing process, occurred over three years ago. Based on City Code 300.07 and long-standing city policy, resident should be given an opportunity to review and comment on the applicants' proposal.
- 4) Denial of the requested extension would not deny the applicants' reasonable use of the property. Rather, denial would require that the applicants reapply for variances and be subject to the full review process.

All voted “yes.” Motion carried.

**D. Resolution for a conditional use permit for a telecommunications tower on the property located at 14451 State Highway 7**

Gordon gave the staff report.

Wiersum asked if the antenna could be put on the water tower or if that was not an option. Gordon said technically putting the antenna on the water tower was feasible. The applicant indicated that would have been acceptable a year ago but now there has been too much invested in the monopole.

Greves indicated her understanding was that a previous council decided on the hydrosphere tower so the equipment could be placed inside. She asked if it was council's discretion whether or not a ground structure could be allowed that was not prohibited by covenant. Gordon indicated that was correct. He said part of the building of the water tower was to house as much equipment inside the tower as possible to minimize the visual impact. Greves said she appreciated that further assessment of the area was done by the consultant. She asked how much room exists for more antennas if there were future proposals. Gordon said there was probably room for two or three more antennas.

Allendorf said there are existing structures outside the water tower and asked what the structures are used for. Gordon said he was not sure but thought they housed equipment for the water service or emergency communications equipment. Allendorf noted that because there already are outside structures it would not be as if granting someone access would be new. He asked if it was known how large a structure would be needed to serve T-Mobile's purposes. Gordon said the typical size of the equipment structures is around eight by ten feet.

Ron Gunderson representing T-Mobile said the company came to the city first and went through an exhaustive analysis of the water tower and it was determined in July 2008 that there was no room on the water tower. The company was advised to look elsewhere to solve the problem and the proposal accomplishes that task. He said it appeared the proposal met the criteria and intent of the ordinance under a conditional use permit.

Wiersum asked from a functional perspective if there was anything that would make a monopole in the Edina Realty location preferable to locating an antenna on the water tower. Gunderson said from a technical perspective the difference was separation of around 750 feet from the Edina Realty property and the water tower. The height of a monopole would be approximately the same height as an antenna on the water tower. He said functionally the antenna on the water tower could possibly work but at this point because the company has invested thousands of dollars in surveys, leasing, engineering and RF studies. He added the criteria in the city's ordinance have been met. Wiersum asked if T-Mobile's

objective was to get an antenna or a monopole. Gunderson said the primary objective was to get the coverage needed to fill in a hole in the network. Wiersum asked if an antenna on the water tower would achieve the objective. Gunderson indicated it would and the company had tried to do that a year and a half ago. Wiersum said the issue was coverage and not location. He asked if it was a fair statement to say T-Mobile had a coverage objective and not a monopole objective. Gunderson said the city had an opportunity to have the antenna on the water tower but T-Mobile was told to look for another option. He said the application meets the criteria and intent of the ordinance.

Wiersum asked if there were other approaches to better disguise a monopole. He said he disliked the way monopoles look. Gunderson said that monopoles disguised as pine trees (“monopines”) look like bottle brushes on steroids. He said monopines look garish and stand out much greater on the landscape than a single white pole. He pointed to the pole at the southwest corner of the Cub Foods building located at Highway 7 and County Road 101 as an example of what the monopole would look like. Wiersum said he did not like the pseudo-flagpole look either. He asked if it made sense to have an 85 foot monopole in front of a 35-40 foot high hill rather than having a 40-45 foot monopole at the top of the hill. Gunderson said one of the original discussions was the possibility of locating the pole in Tower Park. T-Mobile was told that was not a feasible option. The idea of an 85 foot tall monopole was it would clear the hill and the pole would be partially screened by the hill because it would be in the back parking lot behind the Edina Realty building. The equipment could also be hidden better and would be screened by a security fence. He said this seemed to be the most viable solution.

Hiller said he also did not like monopoles but the applicant had a legitimate point. He asked when the item had to be decided. Gordon said the review date would be February 17. Hiller said when companies use the water tower they pay the city a fee for access. He suggested this was an option to consider for discussion. Gordon said since the study was completed, T-Mobile was contacted and told that equipment could be put outside the tower. He said Gunderson indicated the company was moving in another direction. Peterson said the city normally charges a lease rate for locating an antenna on the water tower. She said given the history of the situation, the city could offer a better deal to T-Mobile. She emphasized that the issue for the city wasn't about money but about the aesthetics. Hiller said he was reluctant to allow a monopole when there was another nearby option.

Allendorf said he wasn't as sympathetic to T-Mobile's argument. A mistake was made and rectified and the company's response was the city had to live with the mistake. He said when water towers are built the idea is they

would save the city from ugly monopoles. Now that the equipment storage issue has been revisited by the city, he said T-Mobile should revisit the location issue as well.

Greves said the monopole was an extreme solution and she understood how T-Mobile came to that solution. She said if the issue was aesthetics, then T-Mobile needed to look at a continuum of solutions. Using the water tower would better meet the needs of the community than a monopole. She said she met a resident who designs antenna placement locations and she learned a lot of creative things are being done to ensure monopoles are not going up everywhere.

Wiersum said T-Mobile wants to and has a right to improve its coverage. The council has limited recourse in denying the antenna but it does have some authority in where the antennas are located and what they look like. He said monopoles are unsightly and there are creative people who could make a monopole look better but the real answer was the water tower option that would work, and be a better solution for the residents of the city.

Schneider said he understood and appreciated the frustration T-Mobile experienced in trying to get something done in a timely manner. He said the primary criteria when the ordinance was drafted was to locate antennas on existing structures wherever possible. Monopoles would be allowed as a last resort. He said in this case there was a logical solution that covers the intent of the ordinance and thus was the only option available to T-Mobile. He suggested tabling the item to give staff time to work on the details. He said it would be beneficial to know the maximum capacity of the tower. He also suggested looking to see if there were alternatives that would allow antennas on top of the tower that would not interfere with the public safety antennas. In this case because of the inconvenience that was caused for T-Mobile he would recommend reducing the standard lease fee to offset the extra engineering that is needed.

Allendorf moved, Wiersum seconded a motion to continue the item to no later than February 17, 2010.

All voted "yes." Motion carried.

#### **E. Items relating to the 2010 operating budget and tax levies**

Finance Director Merrill King gave the staff report.

Hiller said he was asked by a couple of residents why the city did not cut back further given the difficult times, particularly questioning why capital

projects had not been cut or delayed. He said some of the residents who spoke at the public hearing at the last council meeting asked whether the budget was for services and items that were really needed and valued. Looking at the proposed budget and what has been done, he said the city is providing what people value in the city. The primary costs were for safety, parks, and road improvements, so he was comfortable with the modest tax increase. He said there are a few big capital projects coming up in the future including the park along Minnehaha Creek and the Glen Lake project. Both projects provide something people want. He said he was unwilling to cut back on those projects, because they were not just being built for today. To compromise on the projects would produce something people would be disappointed with in the long term.

Wiersum said he wished a flat budget could have been accomplished. Raising taxes, even marginally, in tough economic times puts him in the mindset of voting for the must-haves and less comfortable voting for the nice-to-haves. He said he was proud the city provides the services residents value at a reasonable cost.

Allendorf said the proposed budget not only includes what residents want but also are willing to pay for.

Greves said the biggest factor for her in approving a budget was if the city was spending taxpayer money prudently and wisely. She said the proposed budget does that and was responsive to residents. Residents wanted the city to cut spending and there were \$2 million in permanent cuts. She said most residents do not want the city to cut services too greatly.

Schneider complimented staff for taking a hard look at reorganizing and restructuring city operations to be more efficient long term. He said the city was benefitting long term by buying in today's economic climate rather than postponing projects and paying more in the future. He noted he received calls during the budget process indicating the city should cut back on snowplowing, but after the weekend snow, he received calls complaining the city was not doing enough plowing.

Greves noted a number of the city's innovative capital projects are financed with the interest from the Community Investment Fund, which is not derived from property taxes. She also thanked city employees who have been asked to do more with less.

Hiller moved, Allendorf seconded a motion to:

- 1) Adopt Resolution 2009-120 adopting a budget for the year 2010, a revised budget for 2009, and setting a tax levy for the year 2009, collectible in 2010.

- 2) Adopt Resolution 2009-121 setting a tax levy for the Bassett Creek Watershed Management Tax District for the year 2009, collectible in 2010.
- 3) Adopt Resolution 2009-122 adopting an HRA budget for the year 2010, and setting an HRA tax levy for the year 2009, collectible in 2010. All voted "yes." Motion carried.

**15. APPOINTMENTS and REAPPOINTMENTS:** None

**16. ADJOURNMENT**

Wiersum moved, Greves seconded a motion to adjourn the meeting at 8:34 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk