

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, JANUARY 4, 2010**

**1. CALL TO ORDER.**

Mayor Schneider called the meeting to order at 6:34 p.m.

**2. PLEDGE OF ALLEGIANCE.**

All joined in the Pledge of Allegiance.

**3. ROLL CALL**

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

**4. APPROVAL OF AGENDA**

City Manager John Gunyou noted addenda to items 12A, 14A, 15A, and 15B.

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

**5. APPROVAL OF MINUTES: December 21, 2009 regular meeting**

Allendorf moved, Greves seconded a motion to approve the minutes of the December 21, 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**

Arlene Gregory, 436 Kenmar Circle, said she brought up an issue related to her water bill at a November council meeting. She was told that residents would be notified after three or four months if their water meter was not functioning correctly. She asked for an update. Schneider clarified the direction given to staff at the meeting was to come up with notification procedures that took into account that many residents leave over the winter. Gunyou said staff was in the process of developing the procedures, and suggested that Gregory was welcome to contact city staff for updates. Schneider said it was likely the procedures would not be implemented until the summer because it would be imprudent to send out a bunch of notices knowing that many residents are gone for the winter.

9. **BIDS AND PURCHASES:** None

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

A. **Claims for council authorization – December 28, 2009**

Allendorf moved, Wiersum seconded a motion to approve the December 28, 2009 claims which includes electronic fund transfers (EFTs) numbered 1143 through 1154 and checks numbered 224280 through 224649, totaling \$2,547,764.64 All voted "yes." Motion carried.

B. **Resolution designating an Acting Mayor and Alternate Acting Mayor for 2010**

Wiersum moved, Ellingson seconded a motion to adopt Resolution No. 2010 -001 designating Council Member Tony Wagner Acting Mayor and Council Member Dick Allendorf as Alternate Acting Mayor for the year 2010. All voted "yes." Motion carried.

C. **Agreement with the city of Greenwood to provide city court administrative services**

Allendorf moved, Wiersum seconded a motion to execute the agreement with the city of Greenwood. All voted "yes." Motion carried.

D. **Resolution for reaffirmation of previous preliminary plat and final plat approval of the MCKELLEY ADDITION, a two-lot subdivision**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2010-002 which reaffirms the 2007 preliminary plat approval and grants final plat approval of the MCKELLEY ADDITION at 3515 Meadow Lane. Approval is based on the following findings:

- 1) With the exception of variances for lot area and lot width at front setback, the proposal meets all standards and ordinance requirements for lot division.
- 2) The proposal meets the required standards for granting of a variance, because:
  - a. Reasonable Use. The applicant's proposal is reasonable, as the resulting lots would reflect both the size and width of other lots in the immediate area.
  - b. Unique Circumstance. The subject property is disproportionately large in both size and width relative to the area and width of other properties in the area.
  - c. Neighborhood Character. The applicant's proposal to create to single-family properties in a single-family neighborhood

would not negatively impact the essential character of the area. Rather, as the McMansion policy would be applied to the proposed subdivision, the proposal would result in construction of two houses compatible in size to others in the area. Without the proposed subdivision, a much larger home could be constructed, which may visually impact the surrounding area.

Approval is subject to the following conditions:

- 1) Prior to release of the final plat, submit the following:
  - a. A revised final plat drawing. The revised drawing must correctly identify "Meadow Lane".
  - b. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
  - c. The following documents for the city attorney's review and approval. These documents must be prepared by an attorney knowledgeable in the area of real estate.
    - (1) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
    - (2) Restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.
  - d. Park dedication fee of \$2,375.
- 2) Prior to issuance of a building permit for any either of the two lots within the development:
  - a. Submit the following for items staff review and approval:
    - (1) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance.
    - (2) Final grading and tree preservation plan for the lot. The plan must:
      - (a) comply with the preliminary grading plan as depicted on the preliminary plat;
      - (b) must preserve trees designated for preservation at the time of preliminary plat approval;
      - (c) show sewer and water services to minimize impact to any significant trees. No trees may be removed for installation of services. One set of new services must be installed.
    - (3) 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.
- b. Submit the following documents:
- (1) A recorded copy of the preliminary plat, all required easements, and restrictive covenants.
- (2) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
- c. Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
- d. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot. These items must be maintained throughout the course of construction.
- e. Pay any required hookup and/or access fees for sanitary sewer and water.
- 3) Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the all R-1 zoning standards. In addition:
- a. Based on the McMansion policy, the largest home that can be built on the newly divided lots is as follows:  
Lot 1: 2,990 square feet  
Lot 2: 3,069 square feet  
Included in the calculation of floor area ratio shall be:
- Area of above ground living spaces
  - Area of attached garages
  - 50% of floor area of walkout or lookout basements (full basement square footages will not be included).
- b. The 28-inch white pine at the front property line of Lot 1 is to be preserved.
- 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) During construction, the streets must be kept free of debris and sediment.

- 6) Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

All voted "yes." Motion carried.

**E. Resolution approving a conditional use permit and variances for an accessory apartment located at 2400 Mayflower Avenue**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2010-003 which approves a conditional use permit for an accessory apartment at 2400 Mayflower Avenue, with the following variances:

- Variance to allow for an expansion of a non-conforming use
- Variance to increase the size of the accessory apartment from 950 square feet to 990 square feet

Approval is based on the following findings:

- 1) The proposal meets the required conditional use permit standards.  
2) The proposal meets the required standards for a variance, because:

- a. Practical Difficulty: There is a practical difficulty due to the existing nonconforming setback.  
b. Unique Circumstance: The size of the property, the size of the house, the significant slope, existing vegetation and distance from adjacent structures are circumstances not common to all single-family properties.  
c. Neighborhood Character: The proposal would not adversely impact the character of the surrounding neighborhood. The apartment would be constructed within the same footprint and height of the existing garage. The proposal would not significantly increase the mass of the structure, and would not be highly visible from adjacent properties.

Approval is subject to the following conditions:

- 1) Complete the following prior to issuance of a building permit:  
a. This resolution must be recorded with the county, and a copy of the recorded resolution must be returned to the city.  
b. Submit a construction management plan for staff review and approval. At a minimum, the plan must address construction access, stockpiling locations and parking.  
2) The site must be developed in substantial compliance with the plans date-stamped November 9, 2009.  
3) The property must be owner-occupied, with the owner residing in either unit on a continuous basis except for temporary absences throughout the period during which the permit is valid.  
4) The apartment must comply with all applicable building, housing, electrical, plumbing, heating and related codes of the city.

- 5) The property must comply with all other provisions of the ordinance relating to single family dwelling units.
- 6) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 7) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 8) The applicant must agree to these conditions in writing.

All voted "yes." Motion carried.

**F. Time extension to file the final plat of HELEN L. COOLEY ADDITION, a two-lot subdivision at 2202 Meeting Street**

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

**G. Reaffirm previous approval of a registered land survey, with variances at 10001 Minnetonka Blvd**

Allendorf moved, Wiersum seconded a motion to:

- 1) Reaffirm City Council Resolution No. 2008-141 approving a Registered Land Survey, date stamped October 8, 2008.
- 2) Reaffirm City Council Resolution No. 2008-142 approving multiple variances associated with a Registered Land Survey, date stamped October 8, 2008.

All voted "yes." Motion carried.

**H. Labor agreement between the city of Minnetonka and Teamsters Local #320 – police officers**

Allendorf moved, Wiersum seconded a motion to approve the 2010 labor agreement between the city of Minnetonka and Teamsters Local #320 – police officers. All voted "yes." Motion carried.

**11. Items requiring Five Votes:**

**A. Resolution accepting the MN Department of Agriculture emerald ash borer grant**

Wiersum moved, Allendorf seconded a motion to Resolution No. 2010-004 and approve execution of the grant agreement in a form acceptable to the city attorney. All voted "yes." Motion carried.

**12. INTRODUCTION OF ORDINANCES:****A. Ordinance approving a revised master development plan, final site and building plans and variances for the property at 9703 Data Park Drive**

City Planner Loren Gordon gave the staff report.

Hiller said he has noticed a lot of car parking where the building was going to be built. He asked who was parking in the area. Gordon said there currently is a surface parking area at the location that is owned by United Health Group. He said most of the employee parking is in the ramp and he was unsure who was parking in the area Hiller identified.

Hiller said there were two primary issues. The first is getting the interchange fixed. The other involves the building. He asked if interchange improvements including stoplights were included with this project. Community Development Director Julie Wischnack said there had been an in depth traffic analysis. Staff understands the traffic that is attributable to the project. She said the traffic analysis would be reviewed with the planning commission. City Engineer Lee Gustafson said the interchange improvements would be a separate project led by the city. The project would be similar to others the city has done with a cooperative agreement with the state. That agreement would need to be approved by the council.

Greves asked how many abutting properties would be impacted by the storm sewer changes, the vacation of Data Park drive, and the possible conversion of public utilities to a private system. She asked if the property owners had been contacted and a discussion held. Gordon said the stormwater pipe would pick up water from the United Health Group properties to the north and south and water that falls onto the public Data Park Drive. The pipe would take the water down to the stormwater pond through the Comcast properties. He said those two properties would be the only ones impacted. He noted agreements with Comcast would have to be updated with the conversion from a public to private system. Wischnack noted the property to the north was owned by Rahnhorst Corporation. Staff has been in contact with that company as well.

Allendorf said that he would need to understand the ramifications of changing the stormwater system, the sewer system, and the utilities from public to private before he could support the proposal. Greves said she agreed with Allendorf.

Wiersum asked if the conversion from public to private was unusual or if there were other examples in the city when the conversion was done. Gordon said one of the things evaluated in the vacation decision was

where the stormwater was coming from. He said most of the water flowing into the stormwater system was from the adjacent private properties. Gustafson said no changes would be necessary to the sanitary sewer or to the water main. As part of the development the city is trying to clean up the maintenance responsibilities and the boundaries to reflect the development. He said staff has looked at if Data Park Drive was functioning as a public street or as a major private entrance and it was determined the street is acting as a private entrance.

Schneider said the conversion likely would not be an issue for United Health Group but could be for Comcast because there would be cost implications for having a private storm sewer system on their property. He asked if one option would be to have a private system north of Comcast's lot line that drained into the public system. Gustafson said staff is looking at that option.

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

**13. PUBLIC HEARINGS:** None

**14. OTHER BUSINESS:**

**A. Items concerning approval of a revised contract for private redevelopment and site plan for the proposed St. Therese housing project**

Gordon and Wischnack gave the staff report.

Mike Pagh, CEO of St. Therese Southwest, said circumstances intervened in 2009 that caused the project to be delayed. He said the financial meltdown in the fall of 2008 changed the whole dynamic of how projects could be financed. The subsequent fall of the stock market led to a lot of uncertainty. The St. Therese Board decided to take a step back to see if the markets would reestablish themselves. The board decided to move forward with the development and plans and specifications were created and formally submitted to the U.S. Department of Housing and Urban Development (HUD) for financing. Pagh said St. Therese is hopeful they will receive feedback from HUD over the next few months. If there is a formal commitment from HUD, the development could start in early spring.

Greves asked if there had been any feedback from HUD about the five year look back. Pagh said there had not been any concerns raised by HUD about the look back. He said he believes HUD would be comfortable with the existing language but he anticipates there won't be any feedback from HUD until February or March.

Allendorf noted the project had been around for quite a while and the council was anxious to work with St. Therese to get the project done. He asked what steps other than the HUD financing could deter St. Therese from going ahead in the spring. Pagh said the financing is the key issue. He said preliminary bids have been received from contactors and a contractor has been selected. Hard bids have not yet been completed so there is some exposure until the final numbers are submitted. Allendorf said the overriding concern he has heard from those who want to see the project move ahead is that the proposed dates have been prolonged so far into the future that it appears the city is not keeping tabs on the project. He thanked the EDA for the five year/15 year split that was an innovative idea that would meet the HUD requirements. He asked Wischnack if she saw issues other than the financing that would stop the development from beginning in the spring. Wischnack said unless something drastic happens she sees the development moving forward in March or April. Staff has looked at the plans that were submitted to HUD so the city is prepared to turn the plans around and get council approval.

Greves asked what prompted the changes in the types of units. Pagh said the changes were primarily due to design issues. The site is fairly tight. The footprint in which the project can be placed is fairly well defined by the setback requirements.

Wiersum said from what he has read HUD is essentially the only lender currently available for the project. He asked what type of activity HUD has had in terms of similar developments. Pagh agreed HUD was the only lender available for the project at this time and it was fortunate that St. Therese is working through the local HUD office. HUD asked St. Therese to submit the proposal last summer and a preliminary submittal was provided giving HUD all the financial information available. The formal submittal is based on HUD's invitation to submit and if the proposal was not submitted it likely would mean St. Therese would have to get in line with other projects throughout the nation.

Allendorf asked for information about HUD's percentage requirements for equity to debt. Pagh said there was a substantial amount of equity into the development and St. Therese has fully completed plans and specifications. He said there are resources available to meet the requirements. Allendorf asked if it was correct that the cost for the project was around \$25 million. Pagh confirmed that was correct.

Greves said one of her concerns last year was with pedestrian circulation and noted the issue was addressed in the staff report. She said the idea of a crosswalk at Tree Street and Woodhill was raised at the planning commission meeting and asked if that idea was considered and could still

be part of the project. Gordon said a year ago the county indicated there would not be a crosswalk but since then has indicated they would install a seasonal crossing allowing pedestrians to go from north to south across Excelsior Boulevard at Woodhill Road. Gordon said a number of things could be done at the Tree Street and Woodhill Road intersection. Gustafson said caution was needed in the location and number of crosswalks put in the city. He said mid-block crosswalks are not the best option for a variety of reasons. He said staff could look at doing something similar at Tree Street and Woodhill Road that was being done at Excelsior and Woodhill. Greves said something seasonal would make sense at the intersection because there are only a few months in the year when people are crossing over to the athletic fields.

Allendorf said a positive change helping safety in the area was putting no parking signs on Woodhill Road next to the ball fields. He noted there was an entry way on Tree Street offset from the driveway to the Atrium. He asked if the traffic study addressed that this setup was not going to be an issue. Gordon said the question was raised by staff and at the planning commission meeting. The traffic consultant took a look at the issue. The offset is enough where attention would be required but a conflict would not be created due to the amount of traffic coming out of the two access points.

Allendorf noted that during the holiday season overflow parking is required at the St. Therese location in Hopkins. There is overflow parking available on the street at that location. For this location the idea is to prevent parking on Tree Street so he was heartened by the contract agreed to by the owner of the property to the south. He questioned if people visiting the location only a few times a year would know that there was additional parking by the grocery store. He suggested signage or something else could be put up during the busy times of the year to let the casual visitor know of the additional parking. Schneider noted the hardware store put up a sign this past year notifying people that visitors to the post office were welcome to park in their lot and out of goodwill some solution would likely happen for this location as well.

Hiller said the use of the term "village concept" was a critical justification for the proposal and had implications for what is stated in the guide plan. The new plan substitutes the term "village concept" for the term "new urbanism." He said "village concept" was vague but "new urbanism" is a well defined design concept. He said staff was saying the two terms are equivalent and he asked staff to elaborate. Gordon said the city's comprehensive plan used the term "village center" as a description for a more identifiable compact area. He said other terms including "new urbanism" could be used to describe a "village center." The context for the term "village center" was for a tighter, more walkable, denser area that

might have a different integration of uses than other commercial areas in the city. He noted the zoning ordinances do not contain a good mechanism to implement “new urbanism” or a “village center” because there was not a specific zoning district that allows for a denser development with reduced setbacks, integration of uses, and with floor area ratios that are closer to a main street environment. He said the way to get to that type of development was through a planned unit development (PUD) and variances to achieve what the city wants through a master development plan.

Hiller said he was trying to understand why the PUD approach would not solve the issue. He said new urbanism statements and the reduction of setbacks were designed to improve walkability in order to bring the businesses straight in line with residents. This was a specific purpose that had a reason for its existence and was not necessarily an idea to increase density. He said the justifications and purposes that were trying to be accomplished are not in the comprehensive plan.

Schneider said Hiller may be reading more into the priority that was placed on higher density in the original approval. He said he didn't recall much discussion about the term “new urbanism” when the item was originally approved. The goal was to get high density housing at the north end of the site. He acknowledged the housing type has since changed. He didn't recall the council's intent was to establish a “new urbanism” district, and that was not the focus of the current discussion. The goal for high density housing for this particular part of the site has been met and that impact triggered the need for the variances and reduced setbacks.

Hiller agreed the goal was accomplished. He questioned what a good density for the property was. Schneider said the council previously approved what was proposed and that no one felt a five story building with 150 units would be out of place for the area.

Hiller said this was the first time the density was being discussed by the council. The goal in the comprehensive plan is for 30 units per acre for high residential density and for 250 high density units over the next few years. He said the original plan with 100 units in the area would have meant there were 37 units per acre. That was 25 percent higher than what was set as a goal for the average in the comprehensive plan. The amended proposal would increase that even further to 56.6 units per acre. He questioned what justification existed to increase the density by that much. He said Pagh was asked at a November meeting about the variances and Pagh said he was going to use the same entitlements as the original project. Hiller asked staff if there was any physical basis or characteristics that were driving the variances. Gunyou said the density being discussed tonight was essentially the same as what the council

approved a year ago, and asked whether Hiller's questions were related to the 2006 proposal.

Hiller said he was talking about what the planning commission reviewed and approved and the original variances that were setup. He said the original variances were based on the 100 unit proposal in 2006. Schneider said the variances were reapproved last year by the council and are consistent with the current plan. The council was not going to reconsider the density for the site in tonight's discussion.

Hiller asked staff for a picture of the original 2006 proposal. Wischnack said she had an illustration showing the height comparison of the two proposals. Hiller asked if there was a vertical view of the illustration available. Wischnack indicated she did not have that illustration at this meeting.

Hiller noted one of the reasons the variances were needed with the original proposal was because of the plaza and walk through. He said the "new urbanism" concept of having the walk through and plaza area discussed at the November 2005 council meeting have been lost. The key concept was to draw the community together through interaction and defined the space and was part of the requirements for the variances. He said a vertical view would illustrate that the property had to be split down the middle to provide the plaza area. He questioned if the city was prepared to give up those concepts. There was an increased density without the benefits of what were originally asked for, and why the original variances were needed. Gunyou apologized that staff did not have a vertical view illustration available for the meeting, and reminded Hiller that he had indicated no such need earlier in the day when he asked whether Hiller wanted to discuss specific issues that might require supplemental information.

Schneider said obviously there was a difference between the 2006 proposal and what was currently before the council. There had been extensive debates last year when the council approved the conversion from condominiums to senior housing. There were two 50 unit buildings with a plaza when the proposal was for condos. The council approved the current site plan, unit density, variances and setbacks last year, and the proposal before the council tonight was the same.

Hiller said the issue he was raising had to do with the features being traded off if approval was given. He indicated he wanted the project to succeed but he was concerned with the increased density and that the new property contains no walkability. Schneider disagreed. He said his first reaction to what was currently before the council was how impressed he was with how the plan connects the 150 units to the Glen Lake plaza

and the grocery store and the walkability that would exist. With the 2006 plan, there was a disconnect between how a person would get from the building into the grocery store and restaurants. He was impressed with how the southern wing now connects to the activity center and with the pedestrian walkway that makes the proposal feel a part of the overall development. He said great improvements have been made and he didn't see Hiller's rationale in revisiting the debate whether there should be two condominium buildings with a plaza.

Wiersum said a lot has changed in the world from 2006 and the council could debate if it preferred two condominium buildings with a plaza or if it preferred the proposed senior living building. He said such a debate would be irrelevant because there was not a proposal to have a condominium building because the market does not exist today for that type of proposal. The city was fortunate to be looking at a 150 senior housing project that made sense for the community. The proposal was denser than what was originally discussed, but a senior living facility does not have all the density impacts like two cars per unit and the traffic associated with a regular family oriented condominium development. He said what the council was looking at was if the proposal was good for the city, if the changes were appropriate for the site, and if the council was satisfied with what the city would get in terms of affordable housing and other items. He said the answer to all the questions was yes. He said he understood Hiller's questions but didn't think they were relevant unless Hiller perhaps was looking for a reason to vote against the proposal. Wiersum agreed there had been compromises and changes to the project from what was originally proposed but given the market and the property, it was an exciting project.

Hiller said he appreciated Wiersum's comments but his concern was that in the long term the city was looking at the village centers to accomplish a lot of projects. The question the council needed to ask at each phase in a multiple phase project was if the goals that had been set out were being accomplished and what mechanisms existed to prevent abrupt changes. He said each time a change was made to a project the council needed to state the value being received before approving the changes. Projects should not go ahead until the council reviews if the goals and objectives had been met or if there were reasonable reasons to make changes.

Allendorf agreed with Schneider's comments about the new design improving the walkability. He said the original plan contained a front yard area and a back alley. The current plan has a front entryway and a nice front yard in the south. The front yard connects to the rest of the properties all the way to the Exchange Building and also has green space where people can sit down.

Schneider said he had serious reservations about the benefits of a crosswalk. He said for the past 30 years he has closely watched the pattern of what happens between the ball fields and the grocery store and the other activities in the area. He doubted if the general population would go up to the corner to cross when all the activities are to the south. He said the sight lines in the area are excellent with relatively low traffic. The intersection is similar to other residential areas. Putting in a crosswalk would be like putting in a stop sign where one is not warranted. Putting in an unnecessary stop sign makes people feel too comfortable about not watching for seniors or somebody in a wheelchair crossing the street.

Allendorf moved, Greves seconded a motion to:

- 1) Adopt Ordinance No. 2010-01 which approves the proposed master development plan amendment with variances. This ordinance is based on the following findings:
  - a. The rezoning would provide additional residential opportunities to support the surrounding commercial area.
  - b. The residential uses would be consistent with the high density land use to the north, west and south.
  - c. The rezoning would be consistent with the public health, safety, and welfare.
  - d. The rezoning would be consistent with the proposed guide plan designation.
  - e. The proposed development would not have an adverse impact on neighborhood traffic or property values.
  - f. The proposed development is consistent with the purposes of the PUD district, particularly the provision of affordable housing, the more efficient and effective use of land and public facilities through mixing land uses and assembly and development of land in larger parcels, and the high quality of design.
  - g. The three phases of this development are being developed as one integrated project. The proposed variances in the development are justified by the following:
    - (1) The unique hardship to these properties is the deteriorated nature of the Glen Lake commercial area.
    - (2) An additional hardship is that the zoning code was developed before the village concept became prominent and, therefore, does not accommodate the reduced setbacks and mixed uses inherent in that planning technique. The Glen Lake area has been identified by the Economic Development Authority as an area where more dense development is appropriate to encourage affordable housing. The

- village planning concept is one way to implement more dense development.
- (3) Neither of these hardships was created by the landowner.
  - (4) The variances would meet the intent of the ordinance and would not alter the essential character of the neighborhood because they allow reasonable development that is creative and attractive and that is similar to other high density developments in the area.
  - (5) The variances on Site A are further justified by the fact that the west side of the property is adjacent to a parking lot resulting in minimal impact, and the east side of the property is across the street from a park, also resulting in minimal impact.
  - (6) Economic consideration is not the sole basis for the variances. Although the sizes of the buildings are generated by the financial needs of the tax increment district, there are significant public benefits that result from the coordinated development of the three sites and that serve as justification and trade-offs for the variances. These public benefits are discussed in the staff report. The economic impact on the developer is only one consideration in the analysis.

Approval of the site and building plans is subject to the following conditions:

- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
  - Site plan dated January 6, 2009
  - Grading plan date-stamped January 6, 2009
  - Landscaping plan date-stamped January 6, 2009
  - Building elevations date-stamped January 6, 2009
  - Utility plan date-stamped January 6, 2009
  - Stormwater Pollution Prevention Plan date-stamped January 6, 2009
- b. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
  - (1) The following must be submitted for the grading permit to be considered complete.
    - (a) Final site, grading, drainage, utility and erosion control plans must be submitted for staff approval.
      - (i) Final site plan must:



- (c) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.
  - (2) Prior to issuance of a grading permit:
    - (a) Submit an electronic PDF copy of the plans and specifications.
    - (b) Submit two full size and three 11x17 sets of construction drawings and three sets of project specifications.
    - (c) Submit all required administration and engineering fees.
    - (d) Submit a SWPPP.
    - (e) Install a temporary rock driveway, erosion control, tree and wetland protection fencing for staff inspection. These items must be maintained throughout the course of construction.
    - (f) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Nine Mile Creek Watershed District, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits. Copies of all required permits must be submitted to the city.
- c. Prior to issuance of a building permit:
  - (a) Submit the following items for staff review and approval:
    - (i) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for noncompliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.
    - (ii) A landscaping and tree mitigation plan. The plan must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be decreased based on any of the following: the health of trees removed; the ability to appropriately install trees and other shrubbery given existing vegetation and/or topography. The landscaping plan must include the following:

- (1) A revised final landscape plan must be submitted for staff approval. The Norway maples proposed to the east along Woodhill Road must be substituted with another species subject to final approval by city staff. Please include general landscaping requirements regarding value (see original CC conditions).
- (2) No construction activity within 8 feet of the northern 60 feet of the western lot line. This should be shown as a construction limit on any subsequent plan revisions.
  - (i) Move or eliminate the existing retaining wall in this location.
  - (ii) Need to relocate/redesign the memory center area to eliminate any encroachments into this area and leave enough space to construct it.
- (iii) Need heavy-duty fencing along the construction limit in this location to prevent encroachments.
- (iii) 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:
  - (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.
- (iv) An electronic CAD file or certified as-built drawings in microstation or DXF and PDF format.
- (v) A letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.

- (vi) An illumination plan for staff approval.
  - (viii) All required hook-up fees.
  - (ix) A copy of the recorded plat and any easement or covenants required to be recorded.
  - (x) Park dedication fee of \$55,550 (park fee less the value of public trails or trail easements and less a credit for affordable housing.)
- d. The property owner is responsible for replacing any required landscaping that dies.
  - e. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
  - f. Provide documentation of a parking easement or agreement on the adjacent Glen Haven Center property for the joint use of parking spaces.
  - g. Construction must begin by June 30, 2010, unless the planning commission grants a time extension.
  - h. Provide fire hydrant spacing and water flow requirements as required by the fire marshal. Hydrants must be located at drive entrances to parking lots as well as those required for minimum spacing on islands in the parking lot. The buildings must have fire sprinklers, as approved by the fire marshal, including attic spaces.
  - i. Provide stop signs at all drives entering a public street.
  - j. Pay toward the actual cost, up to \$12,000, for removing water services in Tree Street and patching and paving the excavations.
- 2) Adopt Resolution No. 2010-005 approving a second Amended and Restated Contract for Private Redevelopment between the City of Minnetonka, the Economic Development Authority in and for the City of Minnetonka, and Glen Lake Redevelopment LLC and an Assignment and Assumption agreement between Glen Lake Redevelopment LLC and Glen Lake Senior Housing, LLC.

All voted "yes." Motion carried.

## 15. **APPOINTMENTS and REAPPOINTMENTS:**

### A. **Appointment of representatives to various advisory boards, commissions and committees**

Wiersum moved, Allendorf seconded a motion to approve the following appointments:

- Terry Schneider as the Minnetonka City Council Legislative Contact to Metro Cities.
- Terry Schneider as the Minnetonka City Council representative to the Municipal Legislative Commission Board of Directors.
- Dick Allendorf as the Minnetonka City Council representative to the I-494 Joint Powers Organization.
- Robert Ellingson as the Minnetonka City Council representative to the Southwest Suburban Cable Commission.
- Desyl Peterson as the Minnetonka City Council's appointed representative to the Suburban Rate Authority and GERALYN BARONE as the alternate.
- Perry Vetter as the Minnetonka City Council's appointed representative to the Bennett Family Park Board.
- Dave Johnson as the Minnetonka City Council's appointed representative to the Minnetonka School District Community Education Advisory Council.
- Dave Johnson as the Minnetonka City Council's appointed representative to the Music Association of Minnetonka.
- Terry Schneider as the Minnetonka City Council representative to the West Hennepin Affordable Housing Land Trust (Homes Within Reach).
- Elise Durbin as the Minnetonka City Council's appointed representative to the Wayzata Schools Community Collaboration Council.

All voted "yes." Motion carried.

**B. Reappointments to Minnetonka boards, commissions and committees**

Schneider noted he had a conversation with EDA member Ellen Cousins. He told Cousins he wanted to have a more in depth discussion at the February study session about the EDA's roles and responsibilities and if there should be changes made to the interaction between the council and the EDA. He asked Cousins to continue on the EDA without an official appointment. Cousins agreed to continue on until the February study session.

Schneider moved, Wiersum seconded a motion to approve the following reappointments to the Minnetonka Boards, Commissions and Committees:

- Paul Ansolabehere, to the community commission, to serve another two-year term, effective February 1, 2010 and expiring on January 31, 2012.

- Betty Johnson, to the community commission, to serve another two-year term, effective February 1, 2010 and expiring on January 31, 2012.
- Michael Kelly, to the community commission, to serve another two-year term, effective February 1, 2010 and expiring on January 31, 2012.
- Tim Goodyear, to the park board, to serve another two-year term, effective February 1, 2010 and expiring on January 31, 2012.
- Patrick Robben, to the park board, to serve another two-year term, effective February 1, 2010 and expiring on January 31, 2012.
- Steve Adams, to the planning commission, to serve another two-year term, effective February 1, 2010 and expiring on January 31, 2012.
- Sue Sjeklocha, to the planning commission, to serve another two-year term, effective February 1, 2010 and expiring on January 31, 2012.
- Al Thomas, to the planning commission, to serve another two-year term, effective February 1, 2010 and expiring on January 31, 2012.
- Robert Walker, to the planning commission, to serve another two-year term, effective February 1, 2010 and expiring on January 31, 2012.

All voted "yes." Motion carried.

## 16. ADJOURNMENT

Wiersum moved, Greves seconded a motion to adjourn the meeting at 8:03 p.m.  
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk