

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, APRIL 5, 2010**

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

4. APPROVAL OF AGENDA

City Manager John Gunyou noted an addendum to item 13B.

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

5. APPROVAL OF MINUTES: None

6. SPECIAL MATTERS:

A. Retirement recognition of Jeff Dubay

Schneider read the recognition and presented a plaque. He said early in his time in the city he was the chair of the Big Willow Park Project for the Jaycees. Dubay was a Jaycee at the time and was a key insider in getting things done.

Dubay thanked the council and management. He said there are a lot of great people who work for the city.

Allendorf said that when residents called him about street maintenance issues, he referred them to Dubay. When the residents got back to Allendorf they always praised Dubay for getting the issues resolved.

Wiersum said Dubay had been instrumental in the city's highly successful thin overlay program going. He said the city is proud of the program and Dubay's innovation made a big difference for a lot of people.

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:**A. Bids for diseased tree removal**

Gunyou said the item was the annual bid for tree removal primarily related to the city's diseased program. Damaged public trees that the city cannot handle are also contracted out. He said typically there are about 700 trees removed per year. This year's bids are higher than the budgeted amount but staff does not see any problems approving the contract. If there are funding issues adjustments would be made in other natural resources areas.

Wagner moved, Allendorf seconded a motion to awarding the contract to Treecare, Inc. the lowest favorable bid. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Amendments to liquor license ordinance**

Allendorf moved, Greves seconded a motion to adopt Ordinance No. 2010-03 regarding liquor licenses. All voted "yes." Motion carried.

B. Amendment of the existing conditional use permit to increase the maximum occupancy at 13401 Lake Street Extension from 36 residents to 40 residents

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-031 which approves an amendment to the conditional use permit for Emerald Crest of Minnetonka to increase its maximum occupancy from 36 residents to 40 residents. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- 2) The development shall have a maximum occupancy of 40 residents and be limited to persons with Alzheimer's or other memory loss conditions.

- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) 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.
- 5) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

C. Ordinances regulating right-of-way:

- 1) **Right-of-way management ordinance**
- 2) **Amendments to the use of undeveloped right-of-way ordinance**
- 3) **Amendments to the telecommunication antenna ordinance**

Allendorf moved, Greves seconded a motion to adopt the following ordinances:

- 1) Ordinance No. 2010-05 Right-of-way management ordinance
- 2) Ordinance No. 2010-05 Amendments to the use of undeveloped right-of-way ordinance
- 3) Ordinance No. 2010-06 Amendments to the telecommunication antenna ordinance

All voted "yes." Motion carried.

D. Items pertaining to Trunk Highway 169/Bren Road interchange improvements

- 1) **Resolution authorizing easement acquisition**
- 2) **Agreement with the city of Edina**

Allendorf moved, Greves seconded a motion to:

- 1) Adopt Resolution No. 2010-032 authorizing easement acquisition
- 2) Approve the attached agreement with the city of Edina.

All voted "yes." Motion carried.

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

12. **INTRODUCTION OF ORDINANCES:** None

13. **PUBLIC HEARINGS:**

A. Precious Metal Dealer License for Evergreene Jewelers, Inc., 3500 County Road No. 101

Community Development Director Julie Wischnack gave the staff report.

Schneider opened the hearing at 6:44 p.m.

Wiersum moved, Wagner seconded a motion to continue the hearing to May 3, 2010. All voted "yes." Motion carried.

B. Items concerning United Health Group, Phase II, located at 9703 Data Park Drive

City Planner Loren Gordon gave the staff report.

Wagner said his understanding of what was being done was that the city was vacating the street, the street was becoming a private street, and the existing stormwater pipes would become private storm water pipes. Gordon confirmed that was correct. Wagner indicated the issue for the city therefore was a risk issue. Gordon said it was a risk issue for both the city and for United Health Group. The only area that is public water drainage is from Data Park Drive. If that is removed, all the water that goes through the pipe would be generated from the United Health Group site.

Greves asked Gordon to provide more information about the construction schedule and how parking and traffic flow would be impacted. Gordon said the work on the bridge would begin during the spring of 2011. The work would continue until the fall of 2011. The site work for United Health Group would begin before the bridge construction starts. Building occupation would occur sometime early in 2012.

Schneider asked if the right of way was vacated and the utility easement was retained with the utility easement between the new owner of the property and the city, would the new easement allow the maintenance and access for the small utilities? Peterson confirmed that it would be similar to what is on a plat for a platted drainage and utility easement. This would allow all the public utilities and the quasi-public utilities to be in the public drainage and utility easement. She said the city would be doing a fairly detailed development agreement with United Health Group that would deal with property interests. The development agreement will come back for council approval.

Allendorf asked for more information on how the traffic will flow when the bridge was being worked on. City Engineer Lee Gustafson said before bridge construction begins work will begin on Highway 169 to make certain traffic can be shifted from Highway 169 when needed. Work will be done on the ramps as well to make sure the ramps can remain open almost 100 percent of the time. When the bridge does come down in May 2011, there will be full access on the east and west side of Highway 169 on the ramps. If a driver is headed northbound and wants to access Opus,

the driver will have to go past the bridge area to the next interchange and do a U turn at the interchange to come back southbound. The drivers driving the other direction will have to do the opposite. The goal is to keep the ramps open as much as possible. The other work within the Opus area will be phased very carefully so traffic can be maintained effectively through the congested Smetana intersection. He said traffic should be maintained nearly 100 percent of the time with a few minor closures on Highway 169 and the ramps during off peak hours.

Allendorf asked for clarification of Gustafson's response using as an example an employee of United Health Care getting to work coming from the south to the north. Gustafson said there would be two options. The driver could go over to Shady Oak Road and come in the back way. The other option would be to proceed past the Bren Road interchange to the next interchange. The driver would get off that interchange, cross over the bridge and come back south bound.

Wagner asked what would happen if United Health Group ever split the properties and sold the buildings. Peterson said that type of issue has been anticipated and are addressed in the draft development agreement. There will have to be reciprocal easements for all three parties to each other. She said in addition there would have to be reciprocal easements between lots one and two over the storm sewer. She recommended the council not take action on the resolution dealing with the storm sewer at the meeting because further details needed to be worked out.

Wiersum noted United Health Group was planning on beginning work on the building prior to the bridge work being completed. He asked if there was anything that could happen that might get in the way of the bridge being finished. He also asked how long the bridge would be out under the scenario Gustafson described. Wischnack said it would be prudent for the city to time the building permit issuance based on securing all the funding. The development agreement would be specific on the order of events. Gustafson said the bridge would be down for four to five months.

Schneider said it made sense to time the building permit as Wischnack spelled out but he suggested because of the magnitude of the building and the time it will take to build, the city could issue a footing and foundation permit that would allow United Health Group some seasonal ability to move that portion of the building but not the actual structure. Wischnack said the building permit would likely be issued later this year. By that time all the funding and the design should be secured. A footing and foundation permit would not be needed because the security would occur up front.

Greves said she asked Gustafson during the last council discussion on the item if he would comment on the potential impacts from construction on Shady Oak Road from Excelsior Boulevard to Highway 7. At that time the approval of funding from the county had not occurred. She asked if that project would have any impact during the scheduled timeframe for the United Health Group project. Gustafson said the Shady Oak Road project would occur after the United Health Group project. The funding for the Shady Oak Road project will be available in 2014 and nothing can happen before the funding is allocated.

Schneider opened the hearing at 7:13 p.m.

Schneider closed the hearing at 7:13 p.m.

Hiller moved, Allendorf seconded a motion to approve the following: Adopt Ordinance No. 2010-07 approving a revised master development plan and approving final site and building plans for United Health Group Data Park Expansion Phase II at 9703 Data Park Drive. Approval includes the following variances:

- 1) a building setback variance to the north property line from 100 feet to 35 feet.
- 2) a building setback variance to the east property line from 100 feet to 9 feet.
- 3) a building setback variance to the west property line from 100 feet to 35 feet for the main building and 0 feet for the enclosed walkway connection.
- 4) a floor area ratio variance from 100% to 154%.

Approval is based on the following findings:

- 1) The proposal would meet all ordinances and standards for a site and building plan approval.
- 2) The proposal would meet the required standards for a variance, because:
 - a. UNDUE HARDSHIP: The variances allow the development of a cohesive campus master plan for the Data Park Expansion. Without the granting of the variances, the campus master plan would not include many project innovations.
 - b. UNIQUE CIRCUMSTANCE: The north building setback variance would be to a property occupied by the applicant which is part of the overall campus. The buildings on that parcel to the north exceed the minimum setback requirements. The east building setback is adjacent to the TH 169 right-of-way which acts as a buffer to properties directly east of the site. The east building setback variance is internal to the Data Park campus which is recognized in the master plan. Comprehensively, the building setback

variances allow the reorientation of the building along an eastwest axis which provides an increased opportunity for daylight and solar gain reducing the building's overall energy demands. The floor to area ratio variance is mitigated by the roadway improvements and impervious surface coverage which is below the maximum allowed by city code. Incorporation of underground parking further minimizes setback variances and increases overall green space in the site.

- c. NEIGHBORHOOD CHARACTER: The proposed variances would not negatively impact neighborhood character. The setback variances allow the building to be located in a more harmonious position in relation to the Phase I building which positively impacts the overall character of the neighborhood.

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

- 1) 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 date-stamped March 4, 2010
 - Grading plan date-stamped March 4, 2010
 - Landscaping plan date-stamped March 4, 2010
 - Building elevations date-stamped March 4, 2010
- 2) A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
 - a. The following must be submitted for the grading permit to be considered complete.
 - (1) Final site, grading, drainage, utility and erosion control plans must be submitted for staff approval. Revised plans must be submitted for approval after the issues below have been addressed prior to construction of the site improvements. All sheets must be signed by a professional engineer or architect as applicable, licensed in the state of Minnesota. Based on the plans received, the following was noted:
 - C100- Existing Conditions
 - Show all existing easements.
 - C200 – Site Demolition Plan
 - “Demolition Note 5” appears to call out a previous version of the Temporary Traffic Control Zone Layouts Field Manual. Revise.
 - C300 – Site Layout Plan
 - Provide detail/standard plate for curb and gutter type.

- Provide additional information for “General Notes for Layout” note (e).
- Provide plan for any proposed signage or striping revisions to
- Data Park Drive and site areas.

C401 – Erosion Control Plan

- Confirm all erosion control meets current NPDES and regulatory agency requirements.
- “Keynotes” on the plans reference city details. All applicable city details must be included in the plan set.
- Provide datum used on plan.
- An estimate of the volume of material being moved within the site, onto the site, and away from the site should be included in the SWPPP. The SWPPP does state that the entire site will be disturbed; however the volume of material to be moved should be included in the SWPPP.
- Provide soil stockpile locations on the plan.
- The Erosion Control Plan note #12 states that temporary vegetative cover will be placed within 14 days as required by the city’s ordinance. The SWPPP states that areas not worked for 21 days will be stabilized within 14 days. The SWPPP should be updated to agree with the Erosion Control Plan, and state that any areas not worked for 14 days will be stabilized.

C500 – Site Utility Plan

- Gate valves must be installed on Blue Circle Drive at Data Park Drive and approximately 700-ft south of Data Park Drive to separate city water lines from private water lines created from the vacation of Data Park Drive.
- As discussed previously, an alternative to bypass the existing storm sewer system along the east side of the property, extending south through the Comcast property, must be explored. Provide alternative plan for review.
- Core drill must be provided on connections to all existing sanitary manholes.
- Provide invert elevation for the proposed 8-inch sanitary sewer service. Confirm 8-inch service

line capacity is adequate for proposed demands.

- Confirm all proposed watermain crossings do not conflict with existing or proposed storm sewer.
- City of Minnetonka Fire Department must confirm hydrant placement and fire protection is adequate.
- Label all storm sewer casting types.
- Consider drain tile at low point catch basins.

Stormwater Management

The stormwater review was based on the UHG Data Park Expansion Phase II Plans revised March 4, 2010, the UHG Data Park Expansion Phase II Stormwater Management Plan revised March 4, 2010, and the UHG Data Park Expansion Phase I Storm Water Management Calculations dated November 20, 2006.

- Runoff rates and volumes need to be restricted to the predevelopment conditions. The Phase II Stormwater Management Plan (March 4, 2010) shows that rates and volumes increase with the construction of Phase II when compared to Phase I, however it is noted in the Plan that the overall rates and volumes decrease with the construction of Phases I and II when compared to predevelopment conditions. The rates and volumes calculated in the Phase I Storm Water Management Plan (November 20, 2006) for predevelopment conditions are based on a 12.94 acre watershed and the rates and volumes for proposed conditions are based on a 10.02 acre watershed. If the 2.92 acres has been diverted to the west instead of the south, provide calculations showing that the rates and volumes leaving the site to the west have not increased with Phase I and Phase II construction.
- Provide detailed maintenance plan for all stormwater management including tank operations. Submittal must include irrigation plan and tank connections to full irrigation system.

- (2) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit, 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.
- (3) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.
- b. Prior to issuance of a grading permit:
- (1) Submit an electronic PDF copy of the plans and specifications.
- (2) Submit two full size and three 11x17 sets of construction drawings and three sets of project specifications.
- (3) Submit all required administration and engineering fees.
- (4) Submit a SWPPP.
- (5) 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.
- (6) 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.
- 3) Prior to issuance of a building permit:
- a. Submit the following items for staff review and approval:
- (1) 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.
- (2) A letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.
- (3) An illumination plan for staff approval.
- (4) All required hook-up fees.
- (5) Evidence of the release of the obsolete access easements to 9705 Data Park Drive (Comcast site)

- and a copy of a deed for a new access easement to 9705 Data Park Drive for the relocated access drive.
- (6) Payment for public and on-site traffic signs and installation, as required by the city engineer.
 - (7) Record this ordinance with the county.
 - (8) The project architect must verify the required volume of water for the building and ensure that there will be adequate fire flow to the building.
 - (9) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. 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.
 - (10) 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:
 - 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
 - If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
 - (11) Payment of fees as calculated under the Opus Area Overlay Ordinance.
 - (12) The following conditions must be completed before occupancy of the Phase II building.
 - a) Bren Road West must be expanded to three westbound lanes from the Highway 169 interchange to Green Oak Drive.
 - b) The Highway 169 bridge over Bren Road must be widened and improved, as required by the city and MnDOT, including the addition of a free-right-turn lane from eastbound Bren Road to southbound Highway 169.
 - c) Addition of a third lane on Bren Road East, from Green Oak Drive to Data Park Drive, including widening the one-lane drive that connects Bren Road East to Data Park Drive.
 - (13) The north-south storm sewer easement must be vacated, subject to city council approval.

- (14) Implementation of an alternative storm water system design if feasible and agreeable to United Health Group, Comcast Cable, and the city.
- (15) Vacation of Data Park Drive subject to the following conditions:
 - a) The city will retain easements over the vacated right-of-way for drainage, utilities and trail purposes.
- (16) An electronic CAD file or certified as-built drawings in microstation or DXF and PDF format.
- 4) The property owner is responsible for replacing any required landscaping that dies.
- 5) 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.
- 6) Construction must begin by December 31, 2011, unless the planning commission grants a time extension.

Adopt Resolution No. 2010-033 which approves a conditional use permit for Phase II UHG Data Park Expansion at 9703 Data Park Drive. Approval is based on the following findings:

- 1) The proposal would meet the general conditional use permit standards as outlined in city code.
- 2) The proposal would meet minimum engineering requirements.

Adopt Resolution No. 2010-034 which approves the right-of-way vacation of Data Park Drive. Approval is based on the following findings:

- 1) Data Park Drive does not provide a benefit to the general public for transportation purposes.
- 2) Data Park Drive is designed to public street standards. Vacation of public use would not diminish the ability for adjoining properties to be provided with continued access with the recording of cross-easement documents.
- 3) Vacation of the Data Park Drive would allow the city to vacate a connected public storm water system which predominantly serves private development.
- 4) The city no longer needs this easement.
- 5) Vacating this easement is in the public interest.

All voted "yes." Motion carried.

Allendorf noted the city had been working on the project for around four years. He complimented staff for staying up on the details of the project given all the changes and issues that have come up.

- C. Items pertaining to El Toro of Minnetonka, 12608 Wayzata Boulevard:**
- 1) Resolution approving a conditional use permit with variances for El Toro Mexican Restaurant**
 - 2) On-sale liquor licenses for El Toro Mexican Restaurant**

Gordon and Wischnack gave the staff report.

Greves asked for clarification purposes if it was part two of the application where the applicant would have reported any interests and violations. Wischnack confirmed that was correct. Greves said she had looked at part one of the application several times. Wischnack said part two of the application was not included in the council packet because of privacy reasons.

The applicant, Marcos Gomez, 4001 McColl Drive in Savage, said there had been issues in the past. He has worked hard to make sure the issues have been corrected. His employees have been sent to the best practices sessions but it was difficult hiring responsible people. He took full responsibility for the problems. He said people under the age of 35 are carded and computer technology has been deployed. The managers are being trained to have staff card anyone under 35 years old. He said his main business is selling food and his restaurant is a family restaurant. The restaurant closes at 10 p.m. and an attempt is made not to attract any bar business. He said he was confused about what was being asked for in the application. The confusion was caused by a language barrier and there was no intention of trying to hide any issues. He asked the council for the chance to demonstrate that the past mistakes have been addressed and he said he would personally operate this restaurant.

Allendorf said there were two issues that had been identified. The first was how the restaurants owned by Gomez were operated and what that might tell the city about the future. The second issue was why the application was not filled out in a correct manner. He asked if Wischnack had ever seen similar omissions on a liquor application. Wischnack said the liquor license application process was not easy. The application has many pages that need to be completed and there are many requirements to fulfill. She said that the question Gomez omitted information for clearly stated what was being asked for. Gomez had not informed her there was a language issue. She said she had never seen a liquor license that omitted places of business that were owned or had been previously owned.

Schneider opened the hearing at 7:28 p.m.

Mark Ludem said he represented Gomez on the real estate transaction. Ludem said he had known Gomez for about a year and Gomez was a

man of integrity that tries to do the right thing because it is the right thing to do. As an example, he noted Gomez had installed a \$30,000 filter system to keep the exhaust from the burners bothering customers even though it was not required. Ludem said Gomez had paid for the past infractions and that Gomez's restaurants provide quality service and products. He encouraged the council to approve Gomez's application.

Robert Mendez said he owned a sign company and Gomez was one of his customers. Mendez said he had cancer when he first started working with Gomez. Gomez encouraged him to take care of his health before coming back to work. A couple years later Mendez had a brain aneurism and again Gomez encouraged him to take care of his health first. Mendez said there was a time he was meeting with Gomez on the restaurant project and he was having vehicle problems. Within a week Gomez bought him a vehicle. The two men discuss church a lot and Mendez said Gomez had taken him under his wing. He asked the council to approve the liquor license application.

Schneider closed the hearing at 7:33 p.m.

Greves said the item was challenging because residents often ask the council to try to get more restaurants in the city. She said the proposed location was a great location and that as a patron of at least two of the other locations mentioned in the staff report, she knows the quality of food is good and the service is top notch. At the same time she noted the council's recent discussion about off sale liquor licensing indicated the majority of the council wanted to get tough on violations. She said if there were just violations at the Plymouth restaurant, she might have more comfort in giving the application more consideration since the last violations occurred in 2006. But she noted there was a violation at another location as recently as 2009 so there was some risk in approving the application.

Hiller said Gomez and other business developers may be good at running restaurants but serving liquor requires special diligence. He said the application did not demonstrate the diligence occurred in Gomez's other restaurants. Hiller said one resident pointed out to him usually when the full story was not provided upfront, it is likely the ending of the story would not be favorable. While he would like to see another restaurant in the city, he does not want the city to have a liquor license where there were suspicions of issues, and the issues had to be addressed for years going forward.

Wiersum agreed the application was challenging because he thought Gomez ran good restaurants but there had been significant council discussion about liquor stores in the city. While that discussion dealt with

different issues, the correlation was underage drinking. He said this issue was about how much time needs to go by before there has been evidence of a change. He understood the challenge of finding quality employees to manage restaurants and noted Gomez took full responsibility for the violations. He said unfortunately in this situation, granting the liquor license was not something he could support. Given the testimony, he believed Gomez was a fine person and a good businessman but the city took the issue of underage drinking very seriously. He suggested one compromise might be a probationary license that included greater penalties for a violation but was told by Gunyou that the challenge was Gomez would make a significant investment in the restaurant to get it operating and if an isolated incident happened, having the city shut down the restaurant for a period of time would create a tough set of circumstances.

Wagner agreed there were concerns that came out in the application. There was a past history of violations with most of the violations occurring in and prior to 2006. The Plymouth location had a bad track record but the restaurant was closed. The most recent violations occurred in 2008 and 2009 at the Apple Valley and St. Paul locations. He said the city had not changed its approach and had always been concerned with the issue of underage drinking. He disagreed with Wiersum's comments about the compromise idea of providing some type of probationary period. If the owner wants to take the risk, then it was a business decision. Wagner said he would be willing to look at some type of probationary period that had stipulations in place like if there was a violation in the first year the liquor license would be pulled. Or if there were a number of violations during a period of time, then the license would be pulled. He said with the number of open properties in the city, if an owner was willing to take the risk he would be willing to look at some type of approval with conditions in place.

Wiersum noted the purchase agreement for the building was contingent upon securing a liquor license. His concern was that if there was a compromise involving a probationary license then the applicant might be put in a situation where he would be obligated to pursue the purchase even if he might not like the rules under which the purchase would occur. Wagner said he was considering the letter that was provided in the council packet and the applicant's statement that he might be open to some type of compromise.

Allendorf said the staff recommendation was to approve the CUP but to deny the liquor license. He asked what would happen if the liquor license was denied and somebody else came in with a proposal for 145 seats rather than 138 seats. Would the new applicant be required to get approval for a new CUP? Peterson confirmed that was correct. Allendorf asked the reason why then the recommendation was for approving the

CUP and to deny the license. Peterson said the restaurant use was appropriate. Schneider said the applicant had the right to open the restaurant without the liquor license.

Allendorf said there were two issues: how the applicant operated restaurants in the past; and if the applicant was forthcoming with his application. He said after he read Gomez's letter he was leaning toward thinking similar to Wagner's comments about approving a probationary period. But looking at the application and what was left off, he had concerns that the applicant may have wanted to hide some information from the city. He said given the council discussion about offsale liquor licenses and what type of community the city wanted to be, he did not want to have the type of community where somebody could look back and say the council knew the history and the applicant wasn't forthcoming and yet the license was approved.

Schneider said he thought a long time about the application because he has been disappointed that the location had been vacant for so long and there was a shortage of decent restaurants in the area. There was a definite community benefit to facilitate something happening at the location. He gave the applicant full benefit that there was nothing intentional with the omissions or the past issues. His concern was the management structure in place to manage a number of restaurants and the idea to expand on a fairly aggressive basis wasn't compatible with the detailed discipline required to manage the liquor operations. Opening a new restaurant every year or two was time consuming and a solid backup structure needs to be in place to ensure liquor license compliance. He said for that reason the concept of a probationary period would not serve the applicant or city well. He would like to see the restaurant do well without needing the liquor license. The city could monitor the situation and in the future look at approving a wine and beer license. If it was shown after a period of time that there were not issues with a wine and beer license, then the owner could apply for a full liquor license.

Greves noted that Gomez had indicated in his application there was a violation at the business he owned in Burnsville but in reality there had not been a violation. She agreed with Schneider's comments about giving Gomez the benefit that the omissions had not been intentional.

Hiller moved, Greves seconded a motion to:
Adopt Resolution No. 2010-035 which approves a conditional use permit for 3,915-square-foot, freestanding, sitdown restaurant at 12608 Wayzata Boulevard with the following variances:

- Variance from the minimum seating capacity requirement from 150 to 138 seats.

- Variance from the conditional use permit standard requiring that a freestanding restaurant be part of an overall master development plan consisting of more than one structure.
- Variance from the conditional use permit standard requiring that a freestanding restaurant be consistent and compatible with other structures in a master development plan.

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. UNDUE HARDSHIP & UNIQUE CIRCUMSTANCE: There is a practical difficulty due to the existing conditions of the site. There is very limited opportunity to incorporate the existing building into a master development plan. Doing so would require a significant redevelopment of the property and assemblage of additional property. This is not common to all similarly situated properties.

b. INTENT OF THE ORDINANCE: The proposal would be consistent with the intent of the zoning ordinance. The intent of the ordinance is to limit the development of freestanding fast food-type restaurants in the I-394 corridor. The proposed restaurant would be a full service, sit down restaurant, which is similar to other restaurants in the corridor.

c. NEIGHBORHOOD CHARACTER: The proposed restaurant would not have any adverse impacts on surrounding properties. The site is located with a commercial corridor and is adjacent to other commercial uses. The sit down restaurant would also be the same use that operated on the property for over 30 years prior to 2008.

Approval is subject to the following conditions:

1) Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.

2) The property must maintain a minimum of 78 parking stalls dedicated for use by the restaurant. These stalls must not be encumbered by a cross-parking arrangement or other agreement.

3) Exterior display, sales or storage of merchandise, consumer goods or business related items is not permitted.

4) Exterior signage must comply with the approved sign plan for the property.

5) The restaurant must obtain all required liquor and food licenses from the city.

6) The conditional use permit shall expire if normal operation of the use has been discontinued for 12 or more months. Time shall be calculated as beginning on the day following the last day in which

the use was in normal operation and shall run continuously thereafter.

- 7) The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - 8) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
 - 9) The applicant must agree to these conditions in writing.
- Adopt Resolution No. 2010-036 denying the liquor license

All voted "yes." Motion carried.

14. **OTHER BUSINESS:** None
15. **APPOINTMENTS and REAPPOINTMENTS:** None
16. **ADJOURNMENT**

Greves moved, Wiersum seconded a motion to adjourn the meeting at 7:53 p.m.
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk