

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, MAY 24, 2010**

1. CALL TO ORDER.

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

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL

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

4. APPROVAL OF AGENDA

Greves moved, Wiersum seconded a motion to accept the agenda with the addendum to item 15B and adding item 14E. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES:

A. April 19, 2010 local board of appeal and equalization meeting

Allendorf moved, Greves seconded a motion to approve the minutes of the April 19, 2010 local board of appeal and equalization meeting. Hiller, Wagner, Ellingson, Allendorf, and Greves voted "yes." Wiersum and Schneider abstained. Motion carried.

B. April 19, 2010 regular meeting

Allendorf moved, Greves seconded a motion to approve the minutes of the April 19, 2010 Minnetonka City Council regular meeting. Hiller, Wagner, Ellingson, Allendorf, and Greves voted "yes." Wiersum and Schneider abstained. Motion carried.

6. SPECIAL MATTERS

A. Recognition of outgoing senior citizen advisory board members Ruby Berg and Karen Mast

Schneider read the recognitions.

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 – May 10, 2010

Allendorf moved, Greves seconded a motion to approve the May 10, 2010 claims which includes electronic fund transfers (EFTs) numbered 1237 through 1248 and checks numbered 227054 through 227328 totaling \$1,562,475.74. All voted “yes.” Motion carried.

B. Claims for council authorization – May 24, 2010

Allendorf moved, Greves seconded a motion to approve the May 24, 2010 claims which includes electronic fund transfers (EFTs) numbered 1249 through 1256 and checks numbered 227329 through 227599 totaling \$1,340,047.43. All voted “yes.” Motion carried.

C. Amended water and sewer agreement with Wayzata

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

D. Contract for fire pension consultant

Allendorf moved, Greves seconded a motion to authorize staff to select and retain a fire pension consultant at a cost not to exceed \$35,000. All voted “yes.” Motion carried.

E. Resolution regarding the disposition of funds from sale of 5425 Spring Lane

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-044. All voted “yes.” Motion carried.

F. Resolution approving layout for the Trunk Highway 169/Bren Road interchange improvements

Hiller asked for the item to be pulled from the consent agenda. He said he had questions about the funding but would ask his questions during the CIP discussion.

Hiller moved, Wiersum seconded a motion to adopt Resolution No. 2010-045 approving Layout 1C, and authorizing the preparation of plans and specifications for Trunk Highway 169/Bren Road interchange improvements. All voted "yes." Motion carried.

G. Resolution reaffirming preliminary plat, with lot-width at right-of-way variance, for a two-lot subdivision

Allendorf moved, Greves seconded a motion to adopt Resolution No. 2010-046 which grants preliminary approval to GAGNER'S 2nd ADDITION, dated January 10, 2010, with a lot-width at right-of-way variance. Approval is based on the following findings:

- 1) The proposal meets the required standards and ordinances for a preliminary plat.
- 2) The proposal meets the required standards for a lot width at RIGHT-OF-WAY variance in Section 300.10, Subdivision 5(h)(2)(b).

Approval is subject to the following conditions:

- 1) Prior to final plat approval, complete the following:
 - a. Show the following on the final plat:
 - (1) 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.
 - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (3) Drainage and utility easements over wetlands, floodplains, and stormwater ponds, as determined by the city engineer.
 - b. Pay a park dedication fee of \$5,000.00.
- 2) The following items must be submitted to the city before the city releases the final plat:
 - a. An engineering/utility inspection fee.
 - b. An electronic CAD file of the final plat in microstation or DXF.
 - c. 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:
 - (1) Title evidence that is current within thirty days before release of the final plat.
 - (2) Conservation easements over mature trees on the east side of the private driveway and a drawing of the easement. The easement may allow removal of

hazard, diseased, or invasive species. The easements and drawings must be recorded with the final plat.

(3) A private driveway easement between the public right-of-way and Lot 2. The easement must state the maintenance responsibilities of each owner. The easement must be 34 feet wide. The minimum driveway width must be as required by the fire marshal.

(4) 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. Any other requirements included with final plat approval.

3) Prior to issuance of a building permit for any of the 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) A stormwater management plan as required by the city engineer.

(3) 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 driveway location and sewer and water services to minimize impact to any high-priority or significant trees. No trees may be removed for installation of services. One set of new services must be installed.

(4) 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; the ability to appropriately install trees on the steep slope; and/or installation of under-story shrubbery.

- (5) 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.
- (3) 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.
- 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. Install heavy-duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.
- f. Pay a hookup fee for sanitary sewer and water.
- 5) Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the all R-1 zoning standards. In addition:
- a. No structure, except a fence, may be constructed within 40 feet of the west property line.
- b. Access to all lots and houses the development must meet all minimum access requirements as outlined in Minnesota State Fire Code Section 503. These access requirements include road dimension, surface, and grade standards. If access requirements are not met, houses must be protected with an approved automatic fire sprinkler system.
- 6) 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.

- 7) During construction, the streets must be kept free of debris and sediment.
- 8) 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.

11. Items requiring Five Votes: None.

12. INTRODUCTION OF ORDINANCES: None

13. PUBLIC HEARINGS:

A. Off-sale liquor license for US Liquor & Wine, 11333 State Highway 7

Gunyou gave the staff report.

Schneider opened the hearing at 6:42. No one spoke.

Schneider closed the hearing at 6:42

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

B. Amendment to an off-sale liquor license previously granted to MGM Wine & Spirits, Inc., 4755 County Road No. 101

Gunyou gave the staff report.

Mike Maglich, 16700 Grays Bay Boulevard, one of the owners of the MGM store, said the lease was still being negotiated. There are four parties involved and so the negotiation is taking more time than anticipated.

Schneider opened the hearing at 6:45 p.m. No one spoke.

Schneider closed the hearing at 6:45 p.m.

Wiersum moved, Wagner seconded a motion to grant an amendment for the licensee. All voted "yes." Motion carried.

14. OTHER BUSINESS:

A. Items concerning a subdivision of existing properties at 2700 Oakland Road

City Planner Loren Gordon gave the staff report.

Wagner asked if it was correct that the plat could not be filed without a final plat being filed for Coyote Song. Gordon said currently the property has access through out lot B, a more coordinated development pattern would be if the Dalmation Ridge plat would use the Coyote Song street. Schneider said it was his understanding that the plat could not be filed unless the property owner came back and requested an amendment to the condition. In theory, the property owner could decide that Coyote Song would never develop and they would like two lots with a private drive so the condition would have to be amended before that was allowed. Wagner said the point of his question was that if the Coyote Court road is not built then different variances would be needed. He asked if approving the item was contingent on Coyote Song being completed and providing some inherent approval for a subdivision if the street ends up not being built. City Attorney Desyl Peterson said the approval provides that structures cannot be built until Coyote Court is built. It does not require the final plat be filed. She said it was similar to approval the council did several years back for Meeting Street. Meeting Street was a private road. Applicants came in that wanted to subdivide but the conditions said that building permits could not be issued until the street had public improvements and public sewer and water. She said that was exactly what would happen with this item. There is no guarantee that two lots would be approved.

Greves asked for more detail about the public benefit of the PUD. Gordon said the planning commission focused on how there could be more tree preservation given it involved a PUD. The benefit with the PUD approach is that the developments could be coordinated so the building permits are conditioned on Coyote Court road being built and having better transportation connection to Oakland Road, having utility corridors that are not duplicated within an out lot that runs along the Coyote Court right of way. Also there can be finer detail on the grading plan through the PUD process to protect some of the high preservation trees.

Wagner asked if a slice of land on out lot B shown on the map was really considered a woodland preservation area given it was not connected to a woodland preservation area in the ordinance. He noted in another area one significant tree has been identified as being removed and he was questioning the reason why since the area was not being graded. Gordon clarified the woodland preservation area and said the isolated tree could be preserved.

Dean Johnson, the property owner, thanked the council for allowing the generous use of staff time. He said he was in agreement with the staff recommendation and he was pleased with the rearrangement of the storm water pond.

Wiersum moved, Wagner seconded a motion to:

- 1) Adopt Ordinance No. 2010-08 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;
 - b. The rezoning would be consistent with the public health, safety, and welfare.
- 2) Adopt Resolution No. 2010-047 which grants preliminary approval to DALMATION RIDGE SECOND ADDITION, date-stamped April 29, 2010. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:
 - a. Prior to final plat approval, complete the following:
 - (1) Submit a plan showing all existing and proposed drainage and utility easements.
 - (2) Show the following on the final plat:
 - (a) 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.
 - (b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (c) Drainage and utility easements over the delineated wetland edge, 100-year floodplain elevation of 932.0, and filtration basin, as determined by the city engineer.
 - (3) Pay a park dedication fee of \$5,000.
 - (4) 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 completed before the city releases the final plat:
 - (1) The existing house and shed must be removed from the property.
 - (2) Pay any required engineering/utility inspection fees.
 - (3) Submit an electronic CAD file of the final plat in microstation or DXF.
 - (4) 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 over the wetland buffer. The wetland buffer must extend a

minimum of 25 feet from the edge of the delineated wetland edge. The easement may allow removal of hazard, diseased, or invasive species. The easement must include a drawing of the easements, and the easements and drawings must be recorded with the final plat.

- (c) 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.

- (5) Any other requirements included with final plat approval.

- c. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit applicant has been submitted, reviewed by staff, and approved.

- (1) The following must be submitted for the grading permit to be considered complete.

- (a) Final grading, drainage and erosion control plans must be submitted for staff approval. The filtration basin must be relocated to the west side of the driveway for Lot 2 unless there are site conditions that require the basin be located as shown on the grading plan date-stamped April 29, 2010. The final location and design of the filtration basin must be approved by the city engineer and natural resources staff.

- (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 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.

- (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.

- (d) A stormwater maintenance agreement for the filtration basin. The property owner must be responsible for maintaining required drainage

ponding 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 the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.

(2) Prior to issuance of a grading permit:

(a) 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.

(b) The final plat must be released by the city and filed with Hennepin County for recording.

d. Prior to issuance of a building permit for any of the lots within the development:

(1) Submit the following items for staff review and approval:

(a) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance.

(b) Final grading and tree preservation plan for the lot. The plan must:

(i) comply with the preliminary grading plan as depicted on the preliminary plat;

(ii) must preserve trees designated for preservation at the time of preliminary plat approval;

(iii) 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.

(c) Final utility plan for the lot. The utility connections must be revised to connect perpendicular to the water and sewer mains.

(d) 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; the ability to appropriately install trees on the steep slope; and/or installation of under-story shrubbery.
- (e) 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.
- (2) Submit the following documents:
- (a) A recorded copy of the preliminary plat, all required easements, stormwater maintenance agreement, 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.
- (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.
- (7) The proposed homes must take driveway access and utility connections from Coyote Court. No homes may be constructed prior to construction of the public improvements for Coyote Song.
- e. Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the all R-1 zoning standards. In addition:

(1) Required principal structure setbacks are as follows:

	REQUIRED SETBACK
Front Property Line	25 feet
Side Property Line Exterior to the Development	15 feet
Side Property Line Interior to the Development	10 feet
Rear Property Line	20% of lot depth or 40 feet whichever is less
100-Year Floodplain	20 feet
Delineated Wetland Edge	35 feet

(2) Minimum floor elevation is 934.0.

(3) Access to all lots and houses the development must meet all minimum access requirements as outlined in Minnesota State Fire Code Section 503. These access requirements include road dimension, surface, and grade standards. If access requirements are not met, houses must be protected with an approved automatic fire sprinkler system.

f. If the outlots are conveyed to adjacent property owners, they must be combined with the parcel to establish a single lot of record.

g. 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.

h. During construction, the streets must be kept free of debris and sediment.

i. 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. Conditional use permit and site and building plan for Minnetonka High School located at 18301 Highway 7

Greves recused herself because she is an employee of the school district.

Gordon gave the staff report.

Allendorf asked how it would be known that the chamber storm water system was not working. Gustafson said the chamber system involves a large underground tank. If it is not working, the water will come out of the ground. He added the school district received soil analysis indicating the

infiltration rates that are hoped for would be met. There are still details to be worked out. Allendorf asked if there was a plan if the chamber malfunctions. Gustafson said the process is not quite at that point. Based on information submitted earlier in the day, staff was confident that the soil would infiltrate water. The final plans are still being worked out to make sure the size of the tank is big enough to hold the amount of water required by the ordinance. Staff has not seen all the details yet. Allendorf asked if the preferred way that the chamber would work was as an irrigation system or if the preferred way was having the water seep down through the soil. Gustafson said either way would be acceptable but based on the soil analysis the district was looking towards infiltrating the water into the ground and not using it as irrigation. Irrigation would remain an option going forward however.

Wiersum asked if the catch basin was designed to compensate for the increased hard surface of the eight tennis courts. The water captured would then be dispersed as the basin became full. Gustafson said the proposed water features are being designed to control the rate of runoff to ensure there is not a huge spike in the adjacent water bodies. The tank would be sized to handle a lot of the smaller rain storms. Another component would be to promote infiltration. Gordon added that the facilities master plan was incorporated into the design of the storm water system. If the soccer fields are converted from grass to turf, the city would consider that impervious surface. The storm water chamber was sized to handle the runoff from other impervious surface areas contemplated in the facilities master plan.

Hiller asked for clarification of the new lighting for the parking lot. Gordon said there would be lighting on the parking portion of the project but no lighting for the tennis courts. Hiller asked if proposed lighting took the neighbors into consideration. Gordon said the city did not have the details on the amount of foot candles or the amount of light bulbs that would be in the parking lot. That detail will be reviewed at the time of the permits for the project. Hiller said he talked to several residents in the area and the most common question was the potential damage being done to the environment. Gordon said over the years as the high school has expanded the expansions have contributed to the amount of storm water runoff. In more recent years the city's storm water rules have become tighter improving the way the runoff is controlled so there is benefit to the surrounding areas. He said the city is playing catch up now addressing issues that were not addressed well in the past by mitigating the past impacts with current designs and current projects. Gustafson noted tamaracks are more susceptible to bounce or peaks in the water elevation. One of the goals was to control the rate of runoff coming off the site. This has been addressed with previous applications. He said the lagoon at the

south part of the property did not start off being a water quality pond but has become one.

Hiller asked if the current water retention allows for additional flexibility if the estimates are not correct. Gustafson said a good feature in the proposal was the infiltration and underground system that would handle all the proposed improvements in the master plan. One of the features is infiltration capacity. This is a very good water quality feature for most of the storms that are small but still have the first flush of contaminants. The feature allows the contaminants to flow into the containment system and to infiltrate into the ground. A lot of the contaminants won't make it to the pond. The feature would also control the rate of runoff that is a key element for tamaracks.

Hiller noted that a couple of the speakers had been disconnected. He asked if the sound system goals had now been met. Gordon said a lot of the planning commission discussion was about what the requirements were. The requirements were that whatever system was used and number of speakers, the sound could not be audible more than 500 feet away. He said when staff met with school district staff last fall trying to understand how the system operated it was found that the system was not audible when two of the speakers were operating. When the system went to four speakers, it seemed to be out of compliance. Currently the system seemed to comply but the school district has received calls over the last few weeks about noise coming from the high school grounds. Some of the noise might be coming from the football field which the city does not have regulation over. The city only regulates Veterans Field.

Paul Bourgeois, the executive director of finance and operations for Minnetonka Public Schools, noted that the last time the district was going through the process, Planning Commissioner Steve Adams asked the district to consider putting parking by the football field. Bourgeois said at the time the idea didn't seem to make sense because other activities used that area. The district later decided there was merit to the idea and it was the genesis for the current proposal. Bourgeois said as part of the process the district was asked to provide a plan for where future additions might be located. He indicated that at the current time the additions are in the realm of possibility but are not on the school board's radar screen. He added the district hopes the storm water improvements would help improve the water quality off the site.

Hiller asked if the proposal would provide enough parking or if there would be additional requests in the future. Bourgeois said in terms of student parking, the proposal would put the school at about 660 total student parking spots. This would be considerably less than parking at Eden Prairie High School and Wayzata High School. It would be close to the

number of parking spots at Hopkins High School. He said if the district looks for more parking it might be for staff parking to free up parking spaces in the lot. This would require property acquisition.

Allendorf said that the discussion during the last proposal indicated the school had enough parking for seniors with a waiting list for juniors. He came away from the discussion with the idea that there could never be enough parking given the waiting list. He said there also were concerns about putting no parking signs on Delton Avenue. If people cannot park on Delton, they will find another place to park and that likely would be in the neighborhood. Bourgeois acknowledged not all students who wanted a parking permit would get one even with the added spots. The added parking would reduce the number of trips through the intersection during the morning and the evening.

Ellingson said one of the letters in the council packet indicated that one neighbor thought students would continue to park on the frontage road along Highway 7 because it was free parking. He asked Bourgeois if that was a factor. Bourgeois said the cost next year for a permit would be \$300 for a semester but the district was looking at offering lower cost parking by the dome area. He said it was unknown how much of a difference a lower price point would make. Students will likely continue parking on Delton Avenue even though the district prefers that they don't because of safety concerns.

Hiller said a resident raised a question at the district's open house about the additional traffic that would drive in front of her house. He asked if the district was able to address the resident's concern. Bourgeois said the one way system that was set up was to require cars to come into the main driveway and make a circulate route to go out through the main driveway. He said he did not think there was much that could be done to lower the amount of cars going by the corner house.

Charles Christian, 19013 Ashcroft Circle, said he was speaking on behalf of the 42 homeowners on Ashcroft. He said that on April 10, 2006 the council approved the renovation of the varsity baseball property. The approval included a CUP. One of the provisions of the CUP was that the speaker would not be audible past 500 feet and the speakers would face the bleachers. This year the speakers that were facing away from the bleachers were removed. He said the violations of the audible restrictions of the CUP have continued. There have been several meetings with the school district. He recently met with the provider of the speaker system. The meeting included representatives of the school district. The provider told Christian at the meeting it was the first he had heard of the 500 foot limit. Christian said the group began meeting with the city's planning department to register concerns and get the operation of the field in

compliance with the CUP. He noted that in the summer of 2009 the city logged two dozen complaints regarding the audio system being audible from surrounding properties. City staff has worked with the school district but there have been no meaningful results from the efforts. More complaints have been logged in the spring of 2010 and city staff required the two speakers facing the playing field be removed. He requested the CUP be appropriately enforced and that the provisions in the proposed CUP also be enforced if approved.

Steve Goldstein, 5482 Tamarack Circle, asked the council to deny the request for the CUP. In 1997 the city approved the first in the series of construction projects on the high school athletic field and wetlands were filled in. The original council packet had information indicating the need for grass playing fields for physical education. He said the wetland fill area was where the district was proposing to build the tennis courts. The council's March 1997 approval established numerous conditions including the district agreeing to no future further development of the wetland or buffer areas. He said for 13 years the city failed to enforce the conditions for construction agreed upon by the high school. 123 trees were removed with the promise to plant and care for 156 trees and that never happened. Black silt fabric fences installed during construction were supposed to be removed and that has not happened. The natural holding pond was to be regularly cleaned and that has not happened. No further future projects were to be constructed on wetlands and buffers and this has been disregarded. He asked why the city treated the high school differently than a private citizen by approving projects with conditions that are not met and allowing the district to rebuff city staff who attempt to enforce the agreements. He said the district has been allowed to transfer large acreage without rigorous master planning or completion of an environmental impact statement.

Charlie Kanan, 19715 Sweetwater Curve in Shorewood, asked the council to consider the existing safety issue on Delton Avenue and approve the proposal. He said students park off site and during the winter those students are crossing traffic in the dark. He grew up in Excelsior and that there was a time there were no traffic lights in front of the school. There was a history of students that were killed. He said the same situation exists on Delton Avenue and the proposal would eliminate the safety issue.

Ron Kamps, 15759 Tonkawood Drive, said he has four children that attended and drove to the high school. The parking is important for students that participate in extracurricular activities and have jobs outside of school so he asked the council to approve the proposal. He noted there was a softball tournament over the weekend that involved 28 teams and

the sound from the speakers could not be heard outside Veterans Fields. He said there are several upcoming events that need the speakers.

Chris Denton, 5830 Holiday Road, said he was a parent volunteer for the boys and girls high school lacrosse team. He said the activities at the high school were important to the community and the high school was a gathering place for people to come and be entertained. At the senior night for the girls lacrosse team the announcer had to go down to the first step of the stands and use his full voice to hear him recognizing the students. Denton said there was a compromise to be found. He suggested bringing in a sound engineer to determine what the actual issue was and to look at proper speaker placement.

Schneider said he appreciated the comments that had been made but clarified the CUP that was before the council included no sound system provisions. He said turning off the two speakers was a short term solution and the longer term solution would be to bring in a sound engineer to determine the best solution.

Allendorf said he worked on the Hopkins High School football field and an instrument was used to determine if a speaker could be heard at a certain distance. He hoped the instrument would be used rather than somebody saying they did or did not hear something. He said the proposal made sense because it addressed parking without doing what the previous request did in encroaching closer to somebody else's property. Since the city's ordinances and storm water issues were addressed he wasn't going to tell the school district it couldn't use the tennis courts as a parking lot. He said adding 156 parking spaces would not address the issue of offsite parking and before making Delton Avenue no parking, he wanted to make sure that the unintended consequence of increasing parking in the neighborhoods did not occur.

Hiller said one of his concerns was making sure if it was decided that there was going to be no parking on Delton Avenue, then the no parking signs on Delton Avenue had to be coordinated with the day the 156 parking spots are available. He said the concerns about cleaning up the pond and the silt fence had been heard before and the speaker issue was also a long standing issue. He asked what mechanism the city had to enforce the provisions. Gordon said there were two issues. One was enforcement which is ongoing. Another option would be to get escrow for every part of the project so if that part of the project does not get done, the city would complete the project with the escrow received from the school district. Peterson said if the conditions were conditions of prior CUPs, then there would be continuing obligation for the school district to comply. If they do not, the city could take enforcement actions including making the corrections and assessing the costs against the property. The city could

also bring action to require the school district to correct the issues. Another option would be to hold a public hearing in front of the council and the council could take action. Hiller asked what could be done on an ongoing basis rather than just having the issues addressed when a project came forward. Peterson said the planning department is responsible for enforcing the CUPs. She suggested if someone had a complaint, they contact Gordon. Gordon said part of the school district's plan for managing the site was a site operations plan that includes provisions to deal with the nuisance issues. He indicated staff was frustrated as well with the ongoing issues. Hiller said residents could always come to the council meetings to express concerns that issues are not being resolved.

Schneider agreed there were lingering concerns but said the council had been making progress in sending a message to the school district that the city was serious about taking care of the concerns. The council denied the previous proposal and laid out parameters for a master plan. He said the council had been more proactive and the school district had been more willing to pay attention to the issues. He noted there was a subtle difference between specific definable CUP criteria like the speaker volume, and general issues like cleanliness that were more subjective. The city had to be more flexible on the softer type issues.

Wiersum said the school district and the city could be more rigorous in dealing with some of the issues. He asked if further action had taken place since the 1997 condition of approval that said there would be no more development on the filled in wetland areas. Schneider noted he was on the council when approval was given to that CUP. The condition was not that the school district could not do anything else on the filled areas but rather that there could be no more additional filling of wetlands. Wiersum said he would like further clarity because the information was new to him. Peterson said she had not researched the issue. Gordon said staff would have to look at the language to determine exactly what it meant. He added the project did have to comply with the current wetland ordinance.

Wagner said he had the same question that Wiersum had and would like staff to follow up.

Ellingson said it would be helpful to him as well to know the answer to Wiersum's question before approving the item.

Peterson said state statute required the council to act within a certain period of time on the item but there was additional time to act. Wiersum said lacking the information the only way he could approve the item at this time would be to place conditions on the approval.

Wagner noted he would be absent from the June 7 meeting but he was generally supportive of the application because the relocation was being done in the existing field area and there was mitigation of the additional hard cover. While everyone wants to see less traffic going to the high school, the reality was that people were going to continue to drive so there had to be an effort to reduce the safety impacts on Delton Avenue.

Schneider said he was inclined to do something more informal with the Delton Avenue no parking issue. No parking on all of Delton Avenue may have some unintended consequences but making no parking along the curve could improve the safety while not having a great impact on the parking. He suggested making that a condition of the final approval.

Wiersum said he suggested an idea to Gunyou earlier in the day about having crossing guards at the dangerous corner. He said it sounded like a silly idea but since it was known the traffic would be there, and it was known the students were going to cross the road, it would be worth the investment to make it safe. He challenged the school district to come up with a creative solution that would increase safety.

Schneider said he supported working with the school district to look at options for safety enhancements at the corner.

Wiersum moved, Hiller seconded a motion to continue the item until June 7, 2010. Wiersum, Hiller, Wagner, Ellingson, Allendorf, and Schneider voted "yes." Greves abstained. Motion carried.

Schneider called a recess at 8:15 p.m. He called the meeting back to order at 8:28 p.m.

C. Review of Minnetonka Mills Park Heritage Garden Design

Parks, Buildings and Grounds Manager Perry Vetter gave the staff report.

Wiersum asked if the rock walls would be made from real rocks or artificial stones would be used instead. Vetter said real rocks would be used. Wiersum said a lot of the poured stone used in the city was excellent but he was less convinced about the field stone artificial stones. He agreed that going with real rocks was the proper decision.

Allendorf said there was a big improvement for a relatively minor increase in cost. He asked if thought was given to potential vandalism that might occur with free standing rock walls. Vetter said the design that would be used would set the rocks in mortar. Allendorf said the look of the wall was a real improvement.

Wagner agreed the design was improved over the last design. He said looking from the top down view, the visual from Minnetonka Boulevard still seemed small. He asked if the design would allow another pergola area without ruining the intent and creativity. Vetter said the ability to expand allowed for many options. There was not a dedicated circle with a radius that had to be maintained. The idea would be to wrap the stones around trees. He noted the size of the design was around 55 feet in diameter.

Schneider suggested improving handicap access by rounding the intersection to the two pergola areas. This would allow someone in a wheelchair to make the loop without having to turn around in a circle. He also said it was high priority for anything within the rock walls to make the park attractive. If final costs are higher than expected he suggested doing some of the smaller areas in the future.

Wiersum said he liked the pergolas because they added height and dimension and improved the view from Minnetonka Boulevard.

Greves agreed there were much improved elements to the design. She appreciated how the rock walls blended in with the natural features. She also liked the etchings on some of the rocks that would attract kids to the areas but cautioned against having too many etchings. She said the bench seating was perfect and also appreciated the sight lines to the Burwell House and to the creek. Gunyou said staff thought there would be etchings on a couple dozen of the rocks that could provide a treasure hunt type activity. Schneider said the etchings could be an excellent opportunity for a memorial or a donation.

Allendorf moved, Wiersum seconded a motion adopting the plan for the Heritage Garden area and implementing the Minnetonka Mills Park portion of the Upper Minnehaha Creek Corridor initiative. All voted "yes." Motion carried.

D. 2011-15 Capital Improvements Program

Gunyou gave the presentation.

Schneider asked if the proposed 1.2 percent property tax increase for the fire apparatus fund would be spread out over five years or if the increase was for 2011. Gunyou said it was for next year. Hiller asked for further clarification about the increase. He said the proposed 1.2 percent increase would bring in \$350,000 and there would be no increase the next year with an increase the following year that would bring in \$425,000 going forward. Gunyou confirmed that was correct.

Allendorf said the Economic Investment Fund (EIF) seemed to duplicate the HRA levy. He asked if the council could expect that the recommendation would be to not have an increase in the HRA levy for the upcoming year. Gunyou said staff was beginning budget discussions but at this point the thought was that there would not be an increase in the HRA levy. Allendorf said he was glad to hear that given the proposed 1.2 percent increase for the fire apparatus fund.

Hiller said he originally liked the idea of the EIF because funding for economic development projects was needed. After looking at the proposed fund more in depth, he now had concerns even though he still supported the fund and the Bren Road project. As presented at the study session, even with the worst case scenario, the fund would be at \$20 million after thirty years. He said what was being done was taking \$5 million of current assets from the overfunded Special Assessment Construction Fund (SACF) and putting them into the EIF along with another \$7.5 million from the interest that otherwise would have gone to the SACF. Looking at the project fund without the initial upfront \$5 million, there would be a range from minus \$12 million to plus \$7 million. His analysis shows that about 72 percent is the breakeven point if that many trip generations are sold. He said another problem with combining the two purposes was with the uncertainty in the fund, and the length of time before some of the cash is generated, the city would not have the freedom to use the development fund to go after the types of projects the city wants to go after. He said before going forward he would like to see the Bren Road project stand on its own reasonably well and have the development fund be independent. Combining the two would make it tempting to use the fund or borrow against it to buy property or other assets while combining two risk factors.

Hiller said another factor in the Bren Road project was the \$1 million shortage in funding. The proposed alternative was to shift \$1 million from the SACF for the project. He said he had a concern with that concept because that was the problem with the EDA budget that was asked to pay other underfunded projects. He said it shouldn't be a responsibility of the economic investment fund to cover a building project that should stand on its own.

Schneider said even without considering the EIF, the funds used from the SACF for cash flow for road projects would have been made available to assist with the cash flow for the Bren Road project. This could have been done without council involvement. He agreed there was a \$1 million gap with the current committed funds, but it was the city manager's responsibility to figure out how to fill the gap. He said the first priority for funding was to make sure 100 percent of the funds were available to fund the project. The proposed concept was to integrate the repayment of

funds through the trip generation fee over a period of time. He noted the light rail station would likely trigger additional redevelopment that wouldn't just happen in the normal market. This mechanism was being setup to capture the future revenues and dedicate the revenues for an improved economic development scenario based on the council approved criteria. The Economic Development Assistance Commission (EDAC) will help set up the criteria for when the funds start coming in. The funds would not be spent in advance because the funds are committed to the road. The funds have to be integrated to make the process work so the city could continue to plan on the continued source of revenue into the future. He disagreed that the funds should be separated from the standpoint of the cash flow and that Bren Road has to have priority in funding to ensure it is fully funded.

Gunyou said the confusion could be with the \$5 million for the Bren Road project. The way the project would have been funded last year would have been to use the SACF. That fund is used for cash flow for big road projects so the city doesn't have to borrow money. Currently there is around \$7 million in the SACF and Finance Director Merrill King's analysis showed that \$5 million would be paid out for the Bren Road project similar to a construction loan. That would leave \$2 million in the fund. Staff believes that amount would be adequate because there aren't any large projects on the horizon. The idea was rather than having the money paid back into the SACF, it could be paid back over time through the trip generation fees to the new EIF. Gunyou said the money would not sit in the fund but would be paid out as soon as the bridge was built. He said it would be important for the council to develop policy over the next year specifying how the fund would be used. The staff suggestion would be to have a joint meeting between the EDA and EDAC to discuss the guidelines, principles, and priorities for all the funds.

Hiller asked if \$5 million from the SACF was used to fund the Bren Road project, would the SACF still have \$5 million to transfer to the development fund. Gunyou clarified that the \$5 million was funding the project and would be used to pay out the contractor and was a construction loan. Schneider said the only money coming back in would be the revenue from the trip generation fees over time. Gunyou said it would be the same \$5 million whether it was paid from the SACF or the EIF. The question would be does the council want the money to be paid back to the SACF or the EIF.

Hiller indicated a spreadsheet King provided showed the fund balance would be \$5.1 million in year three. Schneider said that would depend on the timing of the Bren Road project. Gunyou said it would also depend on the payback of the trip generation fees. King said that if there would be no trip generation fees, there would be a fund balance of close to \$5 million.

Hiller asked if that \$5 million came from the SACF. King said it was virtually from the SACF in the sense the funds were transferred up front. Schneider said within three years the \$5 million would be paid out from one of the funds to pay for construction costs. King said part of the confusion was the city was also getting a loan from the Minnesota Public Facilities Authority and \$5 million was also backing up the loan. Gunyou said the way the mechanism would work was because the city was receiving low interest money from the state, the city would use the \$5 million to pay back the annual loan payment to the state. The money the city would have available to spend would come from the trip generation fees. The rest of the funds involved financing the project.

Hiller said he wanted to express his concerns but agreed discussing the concerns at the meeting might not be the right place for the discussion. Schneider said when the council adopted the EDAC there was a commitment to give the commission some direction and charge. That has not been done yet. He suggested that at the first meeting the first hour be a joint EDA and EDAC meeting to discuss broader issues and goals. There would then be a more defined narrative provided by King about how the funds flow through so the EDAC understands how the funding would work. He suggested that Hiller meet with King and Gunyou prior to the joint meeting to walk through the methodology and thought process so everybody was on the same page. Hiller said that would make sense and he would work with King and Gunyou to work out his concerns.

Wagner thanked staff for acting on the council's discussion last year associated with trail segments. He said the trails have a great community wide benefit and there hadn't been a lot of progress on them.

Wiersum agreed with Wagner. He also supported the idea for a fund for fire apparatus. The city knows there are big purchases coming and there was a need to ensure the city could offer the same high level of fire service expected by residents. The fund would enable the city to do that prudently.

Greves echoed Wagner and Wiersum's comments. She also thanked staff for incorporating comments made at the CIP study session. She noted that some of the projects associated with the fire apparatus fund had been delayed for quite some time and the approach was sensible and would minimize the impact to property taxpayers.

Ellingson said he appreciated what had been done on the trail plan. He said he would like to add another trail to the list when it was appropriate.

Wagner said he wanted to clarify how the trail improvement plan would be done. He noted items have to be listed in the CIP for two years and asked

if the plan were to be listed in the CIP would this mean the individual segments did not have to be listed? Staff confirmed that was correct. Schneider said even if a trail was listed as unfunded it would still qualify for the CIF.

Ellingson said the trail he wanted added to the list was on Hutchins Drive. He noted the trail was number one on the long list but did not make the top twelve. He said he would like to schedule the trail for 2013 even though it was unfunded. The trail is near the intersection of Highway 7 and County Road 101. There is a facility that serves special needs people who walk from the facility to the commercial area on County Road 101. He said the intersection is very busy and there is a public safety concern. Schneider agreed the trail should be a high priority and encouraged staff to make the trail a funded priority and shift something else around. He said the trail was more than a convenience but was a necessity from a safety standpoint. Greves agreed the trail should be a high priority. She noted the trail is in the vicinity of Minnetonka High School and could fit into a bigger plan for the area and could accommodate students as well.

Gunyou said staff had discussed the trail and agreed it should be a high priority. The suggestion would be with the village center comprehensive planning that would be going on for the area, staff felt it was important to include the trail in the plan rather than put the trail in prior to the plan. Schneider said the item deserved more council discussion. It's likely there would not be a complete redesign of the road and to put the trail off for five years might be a disservice. Wischnack noted the area would be the second village center that would be studied. Gunyou said it wouldn't be put off for five years but would be programmed with some of the extra funding. Schneider suggested listing the trail as funded and if there was a need to delay the trail because the plan was not complete, the council could approve the delay. Gunyou said the trail could be put in for one of the later years. He noted that if the trail was listed as funded within the first three years, another project would have to be changed to unfunded. He suggested listing the trail in the fourth year and then if something needed to be moved around that could be done.

Wagner suggested listing the trail as unfunded in 2014-2015. The results of the study area would then be available. He said the council had the authority to amend the plan at anytime. Wiersum agreed with Wagner.

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2010-048 adopting the 2011-15 Capital Improvement Program and listing Hutchins Drive for 2014 as unfunded. All voted "yes." Motion carried.

E. Amendment to the City Manager's Employment Contract

Schneider said he discussed options with Gunyou about his employment status given Gunyou being asked to run as a lieutenant governor. Schneider said he asked Peterson to review the options available and her review indicated the council had full latitude to do what was in the best interest of the city. He said if Gunyou was not elected the council would want him back as city manager but the question was what to do during the interim. The scenario that made the most sense would be to have Gunyou take a half time, unpaid leave. Schneider said there would probably be a review after the primary to determine if the arrangement still made sense.

Schneider said Assistant City Manager Geralyn Barone's position would be adjusted to act as acting city manager when Gunyou was not available. There would be an additional 10 percent increase in pay for Barone for the extra responsibility and time commitment. Schneider said there had to be a formal amendment to Gunyou's employment contract. He suggested the council authorize him to enter into the agreement due to the short time frame. The amendment would define the minimum hours and as much as possible, a defined schedule for Gunyou. It would also include a conflict of interest provision stating that there would be no campaigning on city time or equipment. Another restriction would be that Gunyou could not solicit any current city vendors for campaign contributions.

Hiller said Gunyou had given the city good service and he supported him in the endeavor. He said he had no question that Gunyou would continue to provide the support needed and if he didn't, Barone could be counted on. He also said he was comfortable that Schneider could make the correct decisions to finish the agreement.

Wiersum said the council needed to be fair to Gunyou but also needed to be prudent with the city's resources. He noted if Gunyou were an elected official he wouldn't need to take a leave of absence. He said the agreement made sure the council was being good stewards of city resources while still being fair to Gunyou. He said he had full confidence in Barone's abilities. In the interest of time it made sense for Schneider to handle the final arrangement.

Wagner agreed with getting the agreement done sooner rather later.

Greves agreed that the agreement should get done as soon as possible.

Schneider said he would rely on staff to handle the HR details.

Wagner moved, Hiller seconded a motion to amend the city manager's employment agreement and authorize the mayor to sign the amended agreement. All voted "yes." Motion carried.

Gunyou said he was grateful for opportunity the council was giving him. The opportunity to run with Margaret Anderson Kelliher came very quickly and he sought Schneider's advice and counsel. The arrangement was discussed and was possible because of the staff, Barone's capabilities and the council's support. He said he would never do anything to jeopardize the city and a periodic review was important.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Reappointments to the senior citizen advisory board

Schneider moved, Allendorf seconded a motion to approve the following reappointments:

- Allan Kind, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2010 and expiring on May 31, 2012.
- Jeanne Lutgen, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2010 and expiring on May 31, 2012.
- Christopher Meyer, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2010 and expiring on May 31, 2012.
- Beverly Montgomery, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2010 and expiring on May 31, 2012.
- Loy O'Boyle, to the senior citizen advisory board, to serve another two-year term, effective June 1, 2010 and expiring on May 31, 2012.

All voted "yes." Motion carried.

B. Appointments to Minnetonka boards, commissions and committees

Schneider said the biggest effort was to come up with seven candidates that met the criteria that had been anticipated for the EDAC. He said he was pleased with the end result. He had to do some recruiting and arm twisting but the candidates were excited about the opportunity. He said he thought there would be a different dynamic than what has existed in the past particularly if there was a good working relationship between the EDA and EDAC. He had a discussion with Peter St. Peter who was very supportive of the idea. Schneider said he was recommending St. Peter to be the chair with a one year term to provide continuity and to help with the transition.

Schneider noted that half of the terms were for one year and half were for two years in order to get the staggering nature of the board.

Schneider moved, Wiersum seconded a motion to approve the following appointments to the Minnetonka Economic Development Advisory Commission:

- Peter St. Peter, to the economic development advisory commission, to serve a one-year term, effective May 25, 2010 and expiring on January 31, 2011.
- Chandra Coughlin, to the economic development advisory commission, to serve a one-year term, effective May 25, 2010 and expiring on January 31, 2011.
- Kate Aanenson, to the economic development advisory commission, to serve a two-year term, effective May 25, 2010 and expiring on January 31, 2012.
- Ken Isaacson, to the economic development advisory commission, to serve a two-year term, effective May 25, 2010 and expiring on January 31, 2012.
- Benita Bjorgo, to the economic development advisory commission, to serve a two-year term, effective May 25, 2010 and expiring on January 31, 2012.
- Bruce Smith, to the economic development advisory commission, to serve a two-year term, effective May 25, 2010 and expiring on January 31, 2012.
- Michael Happe, to the economic development advisory commission, to serve a one-year term, effective May 25, 2010 and expiring on January 31, 2011.

All voted "yes." Motion carried.

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

- Amanda Daeges, to the planning commission, to serve the remainder of a two-year term, effective May 25, 2010 and expiring on January 31, 2011.
- Mark Magney, to the planning commission, to serve the remainder of a two-year term, effective May 25, 2010 and expiring on January 31, 2012.
- Samantha Ansolabehere, to the police advisory committee, to serve the remainder of a two-year term as a student representative, effective May 25, 2010 and expiring on October 1, 2011.
- Connie Cannon, to the senior citizen advisory board, to serve the remainder of a two-year term, effective May 25, 2010 and expiring on May 31, 2011.

All voted "yes." Motion carried.

Schneider moved, Wiersum seconded a motion to approve Tony Wagner as the primary council liaison and Brad Wiersum as the alternate council liaison to the Minnetonka Economic Development Advisory Commission for 2011. All voted yes. Motion carried.

16. ADJOURNMENT

Wagner moved, Greves seconded a motion to adjourn the meeting at 9:41 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk