

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, JUNE 7, 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 James Hiller, Bob Ellingson, Dick Allendorf, Amber Greves, Brad Wiersum, and Terry Schneider were present. Tony Wagner was excused.

**4. APPROVAL OF AGENDA**

Greves moved, Wiersum seconded a motion to accept the agenda with addenda to items 14A and 14B. All voted "yes." Motion carried.

**5. APPROVAL OF MINUTES: May 3, 2010 regular meeting**

Wiersum moved, Allendorf seconded a motion to approve the minutes of the May 3, 2010 Minnetonka City Council regular meeting. All voted "yes." Motion carried.

**6. SPECIAL MATTERS**

**A. Recognition of 2010 Police Citizens Academy**

Schneider presented the certificates.

**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. Lease agreement for Sprint Spectrum on the Ridgedale water tower**

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

**B. Resolution authorizing the Minnetonka Police Department to enter into a Safe & Sober grant agreement**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2010-049. All voted "yes." Motion carried.

**C. Resolution to revise the term ending dates for EDAC members**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2010-050 and to amend the motion from the May 24th council meeting to the term ending dates as shown below:

- Peter St. Peter, to the economic development advisory commission, to serve a term beginning May 24, 2010 and expiring on January 31, 2012.
- Michael Happe, to the economic development advisory commission, to serve a term beginning May 24, 2010 and expiring on January 31, 2012.
- Chandra Coughlin, to the economic development advisory commission, to serve a term beginning May 24, 2010 and expiring on January 31, 2012.
- Kate Aanenson, to the economic development advisory commission, to serve a term beginning May 24, 2010 and expiring on January 31, 2013.
- Ken Isaacson, to the economic development advisory commission, to serve a term beginning May 24, 2010 and expiring on January 31, 2013.
- Benita Bjorgo, to the economic development advisory commission, to serve a term beginning May 24, 2010 and expiring on January 31, 2013.
- Bruce Smith, to the economic development advisory commission, to serve a term beginning May 24, 2010 and expiring on January 31, 2013.
- Tony Wagner as City Council liaison and Brad Wiersum as alternate City Council liaison for 2010 and 2011.

All voted "yes." Motion carried.

**D. Agreement with the Minnesota Department of Health to provide environmental health services**

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

**E. Items related to 1707 Hopkins Crossroad and West Hennepin Affordable Housing Land Trust**

Allendorf moved, Wiersum seconded a motion to:

- 1) Adopt Ordinance No. 2010-09 authorizing the sale of 1707 Hopkins Crossroad to the West Hennepin Affordable Housing Land Trust.
- 2) Approve a line of credit extension by the West Hennepin Affordable Housing Land Trust.

All voted "yes." Motion carried.

**F. Resolution approving a conditional use permit for medical/dental clinic at Minnetonka Crossings, 6001 Shady Oak Road**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2010-051 approving a conditional use permit for a 2,500 square foot medical/dental clinic in Minnetonka Crossings, 6001 Shady Oak Road. Approval is based on the finding that the proposal meets all required conditional use permit standards are outlined in City Code 300.21 Subdivision 3(e). Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit, this resolution must be recorded with the county and a copy of the recorded resolution returned to the city.
- 2) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 3) 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.
- 4) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

**G. Resolution approving a 2-lot subdivision of existing properties at 14802 and 14814 Timberhill Road**

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2010-052 which gives preliminary and final plat approval to the Broin Creek Addition, date-stamped April 1, 2010. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:

- 1) Include the following on the final plat:
  - a. A drainage and utility easement extending over Outlot A in its entirety.
- 2) The following items must be submitted to the city before the city releases the final plat:

- a. An electronic CAD file of the final plat in microstation or DXF.
  - b. 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) An access easement extending over the existing utility easement located along the east property line of 14802 Timberhill Road and a drawing of the easement. The easement may allow removal of hazard, diseased, or invasive species.
    - (3) A public trail easement over Outlot A to provide a connection to the city property to the east. Final trail location and size would be determined by the city staff.
    - (4) A deed giving "any and all interest" in Tract R to the city.
    - (5) Removal of pole barn located on Outlot A.
    - (6) Removal of all fencing located on Outlot A.These documents must be recorded with the final plat, and a drawing of any easement must be attached to the deed.
  - c. Any other requirements included with final plat approval.
- 3) The final plat must be released by the city and filed with Hennepin County for recording.

All voted "yes." Motion carried.

#### **H. Resolution approving agreement with the city of Hopkins for K-Tel Drive**

Greves asked for the item to be pulled from the consent agenda. She noted that there was around \$210,000 set aside for the K-Tel Drive project. The city of Hopkins will be working on a reconstruction in the area and Minnetonka is planning a mill and overlay. She asked if Minnetonka was contributing to the reconstruction of the section of the street. City Engineer Lee Gustafson said the estimate in the staff report was for work done in Minnetonka alone and was primarily for mill and overlay. He said there would be some minor catch basin repairs and other miscellaneous repairs. Greves asked if there would be money left over for the I394 area. Gustafson confirmed there would be some funds leftover for the I394 area.

Greves moved, Allendorf seconded a motion to adopt Resolution No. 2010-053 approving the Joint Powers agreement with the city of Hopkins.  
All voted "yes." Motion carried.

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

**12. INTRODUCTION OF ORDINANCES:** None**13. PUBLIC HEARINGS:**

- A. Items for Boulevard Kitchen and Bar, 11544 Wayzata Boulevard**
- 1) Resolution and amendment**
  - 2) On-sale liquor licenses**

City Planner Loren Gordon and Community Development Director Julie Wischnack gave the staff report.

John Ferrier from CSM Corporation, 500 Washington Avenue S, Minneapolis, noted the site had been vacant for two years and he was excited about the concept for the restaurant. He said the reason this project was different from others was the addition of Dean Vlahos, the founder and developer of the Champps franchise as well as the Redstone franchise, who was a legend in the Twin Cities restaurant industry. Ferrier said there would be no food or drink service for the rear patio. The purpose of the rear patio was for overflow for people using the private banquet area. The thought was it was important to enclose the area to help shield conversation noise.

Wiersum asked how often it was anticipated that the private room would be used. Vlahos said the concept of having a private banquet room that would allow people to go sit outside was something no other restaurant had. He said the restaurant's location was not the best so he had to do everything he could design-wise to attract customers. Because he had never done a private dining room he was not sure how often the private room would be used. Wiersum asked if there was any likelihood the back patio area would become a smoking area for employees. Vlahos said he would not allow his employees to smoke.

Greves asked what Vlahos' policy was in his other restaurants for employees caught selling liquor to minors. Vlahos said those employees are terminated.

Allendorf asked Vlahos to explain the restaurant's concept. Vlahos said there was no concept. Champps' concept was being one of the first upscale sports bar in the country. Redstone did not have a concept and was somewhere between a steakhouse and Champps. He said the new restaurant will feature a completely open kitchen.

Tim Dallmann, 930 Fairfield Way, said his house is the closest residence to the back patio. His family had an issue with noise when Don Pablos was in business at the site. Conversations from the patio were audible

from his house. He noted a number of neighbors had written letters in opposition to the back patio. Another concern was the boundary line in the staff report was inaccurate. The stakes have been placed up to the pond. Schneider asked Dallmann if the conversations he could hear from his house were from people talking on the patio or from amplified speaker sound. Dallmann said he could hear both amplified sound as well as people's conversations.

Schneider closed the hearing at 7:06 p.m.

Ferrier said the stakes were wetland boundary stakes and were not indicative of where the building would go. He noted that the patio that was out there previously was open and did not include any sound abatement. The proposed patio would be smaller and there would not be dining or drinking on the patio. Greves clarified that food and drinks would not be served but people would likely bring a drink outside with them from the banquet room. Ferrier agreed.

Allendorf noted the proposed patio would be around 400 square feet. He asked what the size of the previous patio was. Gordon said the Don Pablos' patio was close to the same size. Allendorf said the Don Pablos' patio serviced the entire restaurant and not just a banquet area. He asked the height of the proposed fence. Gordon said the fence would be eight feet high. The louvers would be three to four feet high. Allendorf noted the Don Pablos' patio wall was a brick wall around three feet high. Gordon confirmed that was correct and added the approval for the Baja Sol restaurant included a provision that required a fence around the top part of the lower wall to enclose the patio. The same noise issues were trying to be addressed back then as well.

Hiller asked where the limit on sound level was located in the staff report. Gordon said the staff's interpretation of "audible" would be that a person with a normal range of hearing could not hear noise from people or from a speaker. Hiller noted that a provision in the staff report stated that "music or audio paging systems must not be audible from the property." He asked if other noises including people's conversation were included in that provision. Gordon said there would be a different standard for that type of noise. One of the things staff struggles with in connection to outdoor patios is the city's ability to restrict noise people create through conversation. Wischnack added that was the reason the staff recommendation was against approval of the rear patio. She said staff had dealt with similar issues in the past and there have been difficulties enforcing the regulation because it was difficult to prove a person can hear the conversational noise. Hiller said that raised concerns for him because it was not his prior understanding that the restriction was just for the electronic systems and not the ambient noise level. Schneider said there

are certain voices that carry and that certain individuals can be heard from a block away. He said the matter was to determine what was common sense and reasonable.

Greves said it was exciting to see a new concept go in the location and she was pleased with how the proposal looks. She said the orientation of the front patio was much preferred to the existing use. She was inclined to go with the staff recommendation of not approving the rear patio primarily because of the noise concerns. She noted the banquet room could serve a rehearsal dinner and banquets often have tight knit groups of people who likely would migrate to the patio and stay for quite some time. She indicated she was pleased with Vlahos' answer about his policy of terminating employees who sell liquor to minors. The number of violations at his other restaurants concerned her but she was not at the point of supporting the denial of the liquor license. She said she hoped alcohol awareness training was fully put in place and there was participation in the city's best practices program.

Allendorf said he too was excited about the proposed concept and he really liked the front patio that was an improvement over any of the previous concepts. As for the back patio, he said a lot was being done to protect against what some people perceived to be a potential problem. There was discussion at the planning commission meeting that Vlahos was looking at potentially using other vegetation in addition to the louver including fir trees as well as a canvas awning or umbrellas. Allendorf said he agreed with Schneider that it would be difficult to prevent any voice from being heard from 230 feet away. He said he supported the entire proposal as recommended by the planning commission. He agreed with the planning commission's conclusion that the back patio would be an amenity that doesn't exist elsewhere and would make the restaurant stand out as unique.

Wiersum said he was excited about having the restaurant space filled. The design was good and he liked the front patio. He noted the previous concept that was approved included a back patio that did not include a louvered wall, and was a back patio that was going to be expanded. He said the proposed back patio area was a much less intense use. He agreed with Vlahos that things needed to be done to make the restaurant distinctive in order to make a challenging location work well. Wiersum said he was convinced that the restaurant operator would do his best to mitigate the noise concerns.

Hiller said he was looking forward to having the restaurant in the city but after looking at the proposal more closely, he was not comfortable in supporting the back patio because of the noise issue. There have been past problems with noise coming from the back patio area and he didn't

think the issues had been resolved by the proposal. He said he had recently been at a restaurant with a similar back area where people used the outside as a place to talk loudly to not disturb the inside diners.

Ellingson said he thought the proposal was fine and he could support the rear patio.

Schneider said from a practical standpoint given the location being next to an interstate highway and there were hundreds of neighbors who could be holding outdoor conversations, it would be overreaching to restrict a back patio that may have people talking loudly. He suggested one change regarding the stipulation related to amplified noise, was to prohibit the use of amplification on the rear patio. Gordon agreed that was a reasonable addition to the other conditions. Vlahos indicated he would be fine with that stipulation.

Greves said she really wanted to support the proposal but she could not vote for the rear patio. She didn't think the rear patio was what was going to make the restaurant unique and distinctive. She said her concern with the rear patio was with the increased intensity resulting from the users who would be using the banquet room.

Allendorf moved, Wiersum seconded a motion to:

- 1) Adopt Resolution No. 2010-054 approving a conditional use permit and setback variances for an 8,500 square-foot restaurant with outdoor seating at 11544 Wayzata Boulevard, based on the following findings:
  - a. The restaurant with outdoor seating meets the required conditional use permit standards.
  - b. The rear outdoor seating area meets the required standards for a variance, because:
    - (1) UNDUE HARDSHIP: The location of the building, existing outdoor seating area, and adjacent wetland provide a hardship in locating the patio expansion to meet the setback requirements.
    - (2) UNIQUE CIRCUMSTANCE: West Ridge Market was developed as part of a mixed use project which integrates retail, service commercial, restaurant uses with the surrounding residential developments. The mix of land uses is a circumstance not common to other retail centers in the city.
    - (3) INTENT OF THE ORDINANCE: Although the seating area is located 194 feet from a residential property line, it is over 265 feet from the actual building. This meets the ordinance intent to provide adequate spacing between the two uses.

- (4) NEIGHBORHOOD CHARACTER: The outdoor seating area would not negatively impact the character of the surrounding neighborhood. It would not be highly visible from surrounding properties, and would be buffered by the adjacent wetland and vegetation.

Approval is subject to the following conditions:

- a. The property must be developed and maintained in general compliance with the following plans:
- Site plan date-stamped April 8, 2010
  - Landscape plan date-stamped April 8, 2010
  - Floor plans date-stamped May 27, 2010
- b. Complete the following prior to issuance of a building permit or beginning any site work:
- (1) Record this resolution with the County. A copy of the recorded resolution must be returned to the city.
  - (2) The adjacent wetland must be delineated and the floodplain elevation staked in the field to verify setback requirements. If necessary, city staff can administratively approve adjustments to meet the setback requirements provided the front patio expansion does not exceed 1,100 square feet, and does not extend any closer to the property lines.
  - (3) Submit a detailed landscaping plan for staff review and approval which complies with the zoning requirements for minimum landscaping.
- c. The fountain shown on the plans within the adjacent wetland is not permitted.
- d. Delivery and garbage hauling hours are limited to 7:00 a.m. to 10:00 p.m. daily.
- e. Music or audio paging systems must not be audible from surrounding properties. No amplified sound is allowed on the rear patio.
- f. The patio must be fully enclosed with a knee wall or railing acceptable to the city. Access to the patio must be through the principal building only. All emergency exits from the patio must be equipped with self-closing and self-latching gates.
- g. The north side of the front patio and all sides of the rear patio must be enclosed with an 8-foot tall opaque fence as indicated on the approved plans.
- h. The patio on the back of the restaurant must be used as an outdoor lounge and seating area only. There must be no regular table service provided on the rear patio.
- i. Use of the outdoor patio on the back of the building must cease by 10:00 p.m. each day.

- j. The outdoor seating area must be equipped with refuse containers and patrolled daily for litter pick-up.
- k. The City Council may reasonably add or revise conditions to address any future unforeseen problems.
- l. 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.
- m. The applicant must agree to these conditions in writing.
- 2) Adopt the amendment to the WEST RIDGE MARKET SIGN PLAN AND CRITERIA. This amendment allows a 48-square foot blade sign on the southeast corner of the building in lieu of the allowable wall signs for the restaurant tenant at 11544 Wayzata Boulevard. Approval is based on the findings that the proposal would meet all ordinances and standards for sign plan review.

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

Wiersum moved, Allendorf seconded a motion to:

- 1) Grant the license with the following condition:
  - a) The disposal of trash is not allowed to the outdoor receptacles after 10 p.m. to restrict outdoor dumping of bottles/glass because of the proximity to a residential neighborhood.

Schneider said that six violations with two different owners in different restaurants was not a lot of violations when considering the amount of people who have visited the restaurants but the violations were something the city took very seriously. He said the answer wasn't necessarily firing employees but rather was educating the employees and having a good process to make sure the employees are paying attention. The issue with the last applicant that was denied because of violations was that the applicant was so busy trying to open other restaurants that he could not manage his own staff. In this case there would be someone onsite that would manage the process.

All voted "yes." Motion carried.

#### **14. OTHER BUSINESS:**

##### **A. Conditional use permit and site and building plan review for Minnetonka High School located at 18301 Highway 7**

Greves recused herself.

Gordon gave the staff report.

Charles Christian, 19013 Ashcroft Circle, said he and his wife have represented the neighborhood regarding Veterans Fields since 2006. He has volunteered with the East Tonka Little League and East Tonka Babe Ruth and said he was pro-youth athletics. He noted that previous discussion indicated that the sound system had been dialed down with the removal of two speakers in order to operate within the CUP. He recommended that the current restrictions be hardwired within the existing sound system by the vendor. Since March 14 there has only been one noticed violation of the CUP. He also recommended getting certification from the sound system vendor that the sound system meets the CUP's requirements and there be an establishment and use of a sound system policy with enforceable consequences for violations. He said on July 27, 2007 there was a thoughtful discussion at the high school with representatives of the school district and the Diamond Club who funded the facility as part of an action plan that included six action items agreed to during the meeting. One of the action items was to "create, publish, and enforce specific procedures for the public address system operations with specific penalties for misuse." On March 18 he received an email asking for input to a draft of the Minnetonka High School field sound policy. He provided input on March 26. The document was posted in the press box but later removed.

Christian said that Wiersum had mentioned at the last council meeting that past behavior was the best predictor of future behavior. Christian recommended that the three action items be coordinated, managed and monitored by city staff. He also recommended with the expansion of the fields and expanded use, that the community look at long term strategic planning and that the city develop, administer, and enforce a comprehensive set of guidelines for speaker system use at outside recreational facilities including all public and private schools, parks and other outdoor facilities. Christian showed a map of Veterans Field indicating the closest home in the Ashcroft neighborhood was 1,500 feet away, or three times past the guidelines the council approved March 30, 2006 in the CUP.

Amy Freese, 4808 Lamplighters Lane, said she has been a resident of the city for about five years. She said she loves everything about the city and that the high school is a hub of activity. She thanked the council for considering approving the additional parking because it was needed.

Charlie Cannon, 19715 Sweetwater Curve, Shorewood, said the proposal was a great solution to the safety issue. He met with representatives from the school district to discuss issues that were brought up at the last council meeting. He said he believed there was a good plan to address the issues and help prevent them in the future.

Gwynneth Walker, 4216 Kemrich Circle, said she was the parent of a student in the district and she works at the high school. She drives the frontage road every morning to park in the back and sees students crossing the street in the dark. She thanked the council for considering the proposal to deal with the safety of the students.

Ron Kamps, 15759 Tonkawood Drive, said he surveyed the businesses in the area and the business owners could see overflow parking coming. He said the increased parking would be helpful. He had worked in getting some grants from Hennepin County noting that over 300,000 people came into the area to take part in school activities.

Allendorf asked for more information about a possible second street light that Gordon mentioned in his staff report. City Engineer Lee Gustafson said the light is in the form of a recommendation if the council wants to improve the safety of the intersection area. The recommendation is that the proposed light installation would not be a city street light, but instead be added to the school parking lot light system. The light would be installed on school property, wired to their system and would come on with the rest of their lights. Allendorf noted it was therefore a recommendation the school district may or may not implement. Gordon said the question was the most appropriate location for the street light. If the most appropriate place was on school property, then the city would have to work with the school to determine the exact location. He said the second street light was separate from the project but it would be something that would enhance the campus. More details are needed before specific approval conditions could be developed.

Allendorf asked if the recommendation could come when a study is commissioned on parking on Delton Avenue and the surrounding area. Gordon said that if the council wanted to commission the study that should be written into the conditions of approval. Allendorf said that requiring the study would be an issue given it would not be in any context because it wouldn't answer who would do the study, what exactly would be studied, and how the study would be paid for. He said the information likely belonged in a report that staff would present to the council that would recommend a number of safety enhancements. Schneider said it was his understanding looking at the information that the issue of students walking across the intersection would not be completely solved but the focus was not on trying to eliminate the parking but to make it safer. If the second light is needed it should be done right away rather than waiting for a study.

Wiersum agreed a study would provide good information but the issue was that the council was deciding whether parking was being added at the

high school. The council was thus in the position to add a condition to compel the school district to add the light.

Hiller said he thought the project was a good one and the school needed the parking. One question he had however was about the cleanup and other issues the neighbors had. One way the city has gotten the district to clean up the property was when the district came to the city for approval of a new project. He noted staff has tried hard to work with the district to come up with solutions yet issues remain. He asked if staff had come up with new recommendations about how to get the district to address the issues. Gunyou said he had the opportunity to speak with Superintendent Dennis Peterson earlier in the day. One of the things staff has struggled with was how to get another governmental agency to address nuisance issues associated with a development. Typically in the case of a private development the city works with the developer with the objective of getting compliance. Ultimately if that is not possible, the city will make the improvement and then charge the costs back against the property. Because the school district does not pay property taxes, the process is more complicated. He said the city attorney was comfortable that the costs could be a special assessment so the city did have an ultimate enforcement mechanism.

Hiller said the special assessment enforcement mechanism was quite a change from the past. Peterson said the process would work for things that the city could go in and physically fix but wouldn't necessarily work for noise issues. Hiller asked what could be done to address the sound issues. Peterson said the same enforcement mechanism might be used enabling the city to go in and make the sound system meet the requirements. Schneider said the city also could pull the permit.

Wiersum said the council looked at another parking proposal from the school district a couple of months back. That proposal was dramatically reduced because the council did not feel it was a good proposal because it took trees out as well as other issues. The district was asked to come back with a master plan which they did. He said the new plan was dramatically better because it provides more parking and the impacts to the environment were largely mitigated. There was no rational reason to say no to the parking proposal. The good neighbor issue was more complicated. He agreed that it wasn't the city's role to tell the school district how to conduct its business. He said he would like to see the city, school district and neighbors work together to resolve issues. The city had the legal right to assess the school district but no one would win in that circumstance. He proposed having a meeting twice a year where residents, neighbors, representatives from the school district and city do a walk around of the school property. This would improve the collaboration of all involved. Gunyou said Wiersum had brought up the idea earlier in

the day and he discussed it with Dr. Peterson who agreed it was a good idea. Gunyou said he offered to have the city convene the meetings. Establishing a more formal communication process that was done on a regular basis would help alleviate some of the issues.

Schneider agreed it was an excellent idea and should be part of the city's regular policies for the other school districts as well. He said he did have a problem including the idea as a stipulation related to the parking proposal. Wiersum agreed that was a fair point.

Hiller said the light issue still needed to be resolved. He would like the Delton Avenue safety issues resolved before the parking lot opened because the city currently had the opportunity to tell those parking along the street to move to the approved parking spaces. Once the spaces were filled, the city would lose its justification for stopping people from parking on Delton. Wiersum said the parking proposal would be helpful in reducing the foot traffic from alternative locations. The proposal would not solve all the off campus parking issues. The challenge was if parking was not allowed on Delton Avenue, a decision would be needed to determine where parking would be allowed. He said the nice thing about parking conditions on Delton Avenue was that it was a fairly contained location and if corrective action was taken to address safety issues, the parking could probably be managed reasonably well. He agreed with Hiller that it was better to act sooner rather than later.

Gunyou suggested requiring the light as part of the approval and requiring the district to put the light in. The parking would come back at a later date to allow for more study on that issue to avoid unintended consequences. Schneider noted the city could decide at any time to prohibit parking on Delton Avenue if it was determined that was the best approach. He said he had reservations about eliminating that parking because of the costs of parking permits as well as the carpooling requirement meant there would always be a subset of students who cannot afford the permit or who do not have the ability to carpool. Hiller said he wanted to make sure a decision about the parking was made before the parking lot was open.

Wiersum moved, Hiller seconded a motion to adopt Resolution No. 2010-055 which approves the site and building plan review and conditional use permit for a parking lot expansion, eight new tennis courts, and relocated shot put and discus fields at 18301 State Highway 7. Approval is based on the findings that the proposal would meet all site and building plan review and conditional use permit ordinances and standards.

- 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:
  - Demolition and erosion control plans date-stamped April 8, 2010

- Grading and drainage plans date-stamped April 8, 2010
  - Layout and striping plans date-stamped April 8, 2010
  - Lighting plans date-stamped April 8, 2010
  - Impervious surface and drainage plans date-stamped April 8, 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, erosion control, and stormwater plans must be submitted for staff approval.
    - There can be no additional run off directed to the adjacent tamarack swamp.
    - The shot put concrete pad must be relocated to meet the 25-foot setback requirement. To verify the setback is met, the wetland can either be re-delineated or the pad must be located a minimum of 30 feet from the wetland edge indicated on the submitted plans.
  - (2) A landscaping and tree mitigation plan. The plan must meet minimum landscaping and mitigation requirements as outline in the ordinance.
  - (3) A final illumination plan for staff approval.
  - (4) Conservation easement 25-feet upland of the wetlands adjacent to the project area, and a drawing of the easement area. This easement must be prepared by an attorney knowledgeable in the area of real estate and is subject to the review and approval of the city attorney. The easement and drawing must be recorded with the county.
  - (5) 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.
  - (6) Submit cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:
    - 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.
- (7) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with the 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.
- b. Prior to issuance of a grading permit:
- (1) The chain link fence at the south side of the dome must be repaired, the old silt fence on the north side of the stormwater pond must be removed, and all garbage and litter on the site must be picked up.
- (2) The landscaping required for previous projects that have died must be replaced.
- (3) Confirm that the existing sediment pond is functioning as designed, and clean out pond as required by the city engineer.
- (4) This resolution must be recorded with the county and a copy of the recorded resolution must be submitted to the city.
- (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.
- 3) The existing stockpiles of materials must be contained to prevent sediment erosion.
- 4) Permits may be required from other outside agencies including, but not limited to, MnDOT, Hennepin County, Riley-Purgatory-Bluff Creek Watershed District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
- 5) The property owner is responsible for replacing any required landscaping that dies.
- 6) The property owner must install, maintain, and provide electricity to a street light at the intersection of the east driveway and Delton Avenue.
- 7) Construction must begin by December 31, 2011, unless a time extension is granted.

All voted "yes." Motion carried.

Hiller asked if the council wanted to direct staff to establish the joint meeting. Schneider said staff had gotten that direction from the discussion.

Allendorf asked the status of the sound system issue. Schneider said the city did not have the capability of controlling the sound system outside of the criteria in the CUP. Gordon said staff would revisit the 2006 approvals and would bring the findings back to the council at a later meeting. Wiersum said Christian's comments indicated the current level of sound was OK. But as long as there was the ability to change the volume, there was always the chance for further violations. He said the issue was if the city had the legal right to require the volume control be removed or to fix the maximum setting. Gunyou said staff would look at the issue and come back with a comprehensive plan. Schneider said he was concerned about micromanaging the school district. There already was a condition that stated the sound could not be audible at a certain distance that was determinable by observation. He said it was likely the school district would want to upgrade the sound system to be more controllable and directionally oriented to the stands.

**B. Appeal of the planning commission denial of a variance to display decorative banners at Immaculate Heart of Mary church and school, located at 13505 Excelsior Boulevard**

Item was pulled. Immaculate Heart of Mary withdrew its appeal.

**15. APPOINTMENTS and REAPPOINTMENTS:** None

**16. ADJOURNMENT**

Wiersum moved, Allendorf seconded a motion to adjourn the meeting at 8:19 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk