

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, AUGUST 16, 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 Amber Greves, Brad Wiersum, James Hiller, Tony Wagner, Dick Allendorf, and Terry Schneider were present. Bob Ellingson was excused.

**4. APPROVAL OF AGENDA**

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

**5. APPROVAL OF MINUTES:**

**A. June 28, 2010 regular meeting**

Allendorf moved, Wiersum seconded a motion to approve the minutes of the June 28, 2010 Minnetonka City Council regular meeting. Allendorf, Greves, Hiller, Wiersum, and Schneider voted "yes." Wagner abstained. Motion carried.

**B. July 19, 2010 regular meeting**

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

**6. SPECIAL MATTERS: None**

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

Gunyou reported on the schedule for upcoming council meetings. He gave a special thanks to the council for allowing him to run for public office.

**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 – July 26, 2010**

Allendorf moved, Wagner seconded a motion to approve the July 12, 2010 claims which includes electronic fund transfers (EFTs) numbered 1298 through 1300 and checks numbered 228572 through 228859 totaling \$1,481,904.16. All voted "yes." Motion carried.

**B. Claims for council authorization – August 9, 2010**

Allendorf moved, Wagner seconded a motion to approve the August 9, 2010 claims which includes electronic fund transfers (EFTs) numbered 1301 through 1318 and checks numbered 228860 through 229086 totaling \$2,609,125.20. All voted "yes." Motion carried.

**C. Revocation of massage business license for Gui Hua Yang, d/b/a Chinese Healthy Massage**

Allendorf moved, Wagner seconded a motion to adopt the order revoking the massage business license. All voted "yes." Motion carried.

**D. Resolution approving a conditional use permits for a pedestrian trail on the south side of the south frontage road between Ridgedale Drive and Hopkins Crossroad**

Schneider asked for the item to be pulled from the consent agenda. He said he supported the trail because it was a missing segment that could tie the park and ride station with Ridgedale and it would provide meaningful access. He expressed concern regarding the use of bituminous along the area and earlier in the day, requested that staff look at if it would be feasible and the potential impacts in reducing the width from eight feet to six feet. Staff felt the grading and retaining walls would not change but the hard surface coverage would be reduced. It also would not cause any maintenance issues.

Wagner said he was very supportive of the trail and Schneider's suggested change. He said it was a heavily walked part of the trail system and the area has a lot of traffic due to the park and ride.

Wiersum agreed that it was important to protect Crane Lake but did not want to see the trail become too narrow for bike and pedestrian use. He

suggested limiting the trail to pedestrians only because there is a bike lane on the road.

City Project Engineer Nate Stanley stated originally the intent was for a shared use path. He explained that MnDOT regulations recommend a minimum ten foot trail width for the shared uses, while staff recommended an eight foot trail because of the environmental issues and because that was the minimum state aid standard. He said the two foot reduction to six feet would be plausible because a state aid fund was not being used for the project.

Schneider indicated he would prefer to see the trail not exclude bikers because those who ride their bikes at high speeds would likely continue using the road. Allowing young bicyclists to use the trail instead of the road would provide some safety.

Wagner noted that because it was a state aid roadway, future repairs and reconstruction would have to be covered by the city if the council chose to go below the standard width.

Greves said the city should be holding itself to the same standards as it has established for residents who propose developing near a wetland. She agreed with Schneider's suggestion for a six foot wide trail to reduce the environmental impact and that the benefit outweighed the concerns raised by Wagner.

Schneider said the planning commission raised a concern about salt running off the trail into the wetland. He asked if the trail could be tipped toward the road so that it did not drain directly into the wetland. Stanley indicated that would be done.

Wiersum stated his preference would be to have an eight foot trail, but he would go along with a six foot width.

Schneider moved, Greves seconded a motion to adopt Resolution No. 2010-070 which approves conditional use permits for a six foot wide impervious trail and associated retaining walls to be located with the shore impact zone of Crane Lake and with a wetland buffer. Approval is based on the following findings:

- 1) The proposed trail will provide for appropriate pedestrian travel within a public right-of-way that currently lacks a pedestrian route.
- 2) The proposed trail is consistent with policies of the comprehensive plan.
- 3) The location of the proposed trail would not impact adjacent shoreland, floodplain, or wetland areas.

- 4) The proposed trail would not have an undue adverse impact on the public health, safety or welfare.
- Approval is subject to the following conditions:
- 1) 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.
    - a. The following must be submitted for the grading permit to be considered complete:
      - (1) Final grading, drainage and erosion control plans must be submitted for staff approval.
      - (2) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.
    - b. Prior to issuance of a grading permit:
      - (1) 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.
  - 2) In areas where a wetland buffer does not exist between the trail and the delineated wetland edge, such wetland buffer must be installed.

All voted "yes." Motion carried.

**E. Resolution approving a lot division, with conditional use permit, for subdivision of the existing property at 5435 Woodland Road**

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2010-071 which approves a lot division, with conditional use permit, for subdivision of the existing property at 5435 Woodland Road.

Approval is based on the following findings:

- 1) The subject property is 40,167 square feet; it is sufficiently similar to 40,000 square foot lot.
- 2) The proposal meets the required standards and ordinances for a lot division with conditional use permit as outlined in City Code 300.16 Subd. 2 and Subd. 3(c).
  - a. The subject property is located in an area where the prevailing lot size is less than 22,000 square feet.
- 3) The proposed subdivision is reasonable as:
  - a. The proposed subdivision is a natural continuation of the clear, historical development pattern of the Woodland Road/Byscane Lane neighborhood
  - b. The proposed lot division would result in creation of lots of nearly identical size and configuration to lots both north and south of the subject property.

- c. The proposed lot division would allow for construction of a home on what appears to be a vacant lot.

Approval is subject to the following conditions:

- 1) The following items must be submitted to the city before the city releases this resolution:

a. An engineering/utility inspection fee.

b. An electronic CAD file of the lot division 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) Restrictive covenants to be recorded against the individual lots with the lot division. The covenants must include the conditions that have not been met as of the release of this resolution.

These documents must be recorded with the resolution, and a drawing of any easement must be attached to the easement deed.

- 2) Prior to issuance of a building permit for any PARCEL B:

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 show:

(a) Construction and grading limits for the home and driveway on PARCEL B in substantial conformance with Exhibit A of this resolution. Staff may approve alternate grading and construction limits if such alternate shows removal of no more than 35 percent of the High Priority Trees as defined in Exhibit A. For purposes of this condition, "removal" means physical removal of the tree or impact to 30% or more of the critical root zone of the trees as defined by City Code Section 300.28. Subd. 19.

(b) Location of driveway 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.
  - (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 lot division resolution, 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. Pay a hookup fee for sanitary sewer and water. f. Pay a park dedication fee of \$5,000.
- 3) Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the all R-1 zoning standards. In addition:

- a. Access to all lots and houses within the subdivision 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.
- b. Maximum floor area ratio on each lot is limited to 0.22.
- 4) During construction, the streets must be kept free of debris and sediment.
- 5) This resolution must be recorded by the county within one year, unless the city council approves a time extension. If the council does not approve the extension, the lot division approval will be null and void.

All voted "yes." Motion carried.

**F. Cooperative agreement with the Minnehaha Creek Watershed District – planning for creek improvements**

Allendorf moved, Wagner seconded a motion to approve the cooperative agreement between the city and MCWD for cost sharing of planning expenses for a proposed joint facility.

All voted "yes." Motion carried.

**G. Resolution electing to continue participating in the Local Housing Incentives Account program under the LCA**

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2010-072 electing to continue participating in the Local Housing Incentives Account program under the LCA. All voted "yes." Motion carried.

**H. Resolutions pertaining to levying the 2010 Special Assessments**

Allendorf moved, Wagner seconded a motion to adopt the following resolutions:

- 1) Resolution No. 2010-073 declaring costs for the Marshes of Meadow Woods Stewardship Program Agreement, ordering the preparation of special assessment rolls, and scheduling a public hearing.
- 2) Resolution No. 2010-074 declaring costs for the St. Therese Senior Project, ordering the preparation of special assessment rolls, and scheduling a public hearing.

- 3) Resolution No. 2010-075 declaring costs for Project No. 4894 (1-year) nuisance abatement projects, ordering the preparation of special assessment rolls, and scheduling a public hearing.
- 4) Resolution No. 2010-076 declaring costs for Project No. 4894 (3-year) nuisance abatement projects, ordering the preparation of special assessment rolls, and scheduling a public hearing.
- 5) Resolution No. 2010-077 declaring costs for Project No. 4894 (5-year) nuisance abatement projects, ordering the preparation of special assessment rolls, and scheduling a public hearing.
- 6) Resolution No. 2010-078 declaring costs for Diseased Tree Removal – Project No. 4902 (1-year) nuisance abatement projects, ordering the preparation of special assessment rolls, and scheduling a public hearing.
- 7) Resolution No. 2010-079 declaring costs for Diseased Tree Removal – Project No. 4902 (3-year) nuisance abatement projects, ordering the preparation of special assessment rolls, and scheduling a public hearing.
- 8) Resolution No. 2010-080 declaring costs for Diseased Tree Removal – Project No. 4902 (5-year) nuisance abatement projects, ordering the preparation of special assessment rolls, and scheduling a public hearing.

All voted “yes.” Motion carried.

**I. Amended joint powers agreement for firefighting equipment**

Allendorf moved, Wagner seconded a motion to approve the second amended and restated joint powers agreement to authorize the purchase of firefighting equipment. All voted “yes.” Motion carried.

**J. Special outdoor event held at Mind & Body Solutions, 17516 Minnetonka Blvd**

Allendorf moved, Wagner seconded a motion to approve the outdoor event, but contingent upon city staff receiving proper identification of the providing and server or the food and wine included with the event. All voted “yes.” Motion carried.

**K. Ordinance and resolutions approving expansion of the Minnetonka Animal Hospital at 3318 Groveland School Rd and 17408 Minnetonka Blvd.**

Allendorf moved, Wagner seconded a motion to:

- 1) Adopt Ordinance No. 2010-10 which approves a rezoning from B-2 to PUD, and adopts a master development plan, for the property at

3318 Groveland School Road. Approval is based on the following findings:

- a. The rezoning would be consistent with the city's guide plan; and
- b. The rezoning would be consistent with the public health, safety, and welfare.

2) Recommend the city council Adopt Resolution No. 2010-081 on pages A32–A35 which approves a conditional use permit for an animal hospital at 3318 Groveland School Road. Approval is based on the following finding:

- a. The proposal would meet all conditional use permit standards as outlined in City Code 300.21 Subd.3(e)

Approval is subject to the following conditions:

- a. Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- b. The city council may reasonably add or revise conditions to address any future unforeseen problems. Future traffic or site access issues may result in closure of the existing Minnetonka Boulevard access and construction of a new access onto Groveland School Road.
- c. 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.
- d. The applicant must agree to the above conditions in writing.

3) Adopt Resolution No. 2010-082 which approves final site and building plans, for additions to the existing Minnetonka Animal Hospital and associated parking improvements.

Approval is based on the following findings:

- a. The proposal would meet all ordinances and standards for a site and building plan approval

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

- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
  - Site plan date-stamped May 17, 2010
  - Grading plan date-stamped May 17, 2010
  - Landscaping plan date-stamped May 17, 2010
  - Building elevations date-stamped May 17, 2010
- b. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.

- (1) The following must be submitted for the grading permit to be considered complete.
- (a) Final site, grading, drainage, utility and erosion control and must be submitted for staff approval.
- (i) Final site plan must show:
- A 20-foot wide easement over the new sanitary sewer pipe. The new sanitary sewer pipe must be centered within the easement.
  - Increased pedestrian access from the north parking lot to the south (main) entrance.
- (ii) Final utility plan must:
- The full extent of the new sanitary sewer easement must be covered with hardcover, acceptable to the public works department, in order to allow for drivable access for maintenance vehicles.
  - The portion of the existing sewer line proposed to be abandoned cannot remain in place, unless it is utilized for service. If not utilized for service, the line must be completely removed to the manhole and the manhole must be plugged per city standard.
  - The buildings, once combined by the new addition, can only have one sanitary sewer service and one water service per city ordinance. Other service lines to the buildings must be removed in their entirety up to the main.
- (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, 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.



penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.

- (b) A landscaping and tree mitigation plan. The plan must meet minimum landscaping and mitigation requirements and values as outlined in the city's ordinance. However, at the sole discretion of natural resources staff, mitigation may be decreased based on any of the following: the health of trees removed; the ability to appropriately install trees and other shrubbery given existing vegetation and/or topography.
- (c) 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.
- (d) An electronic CAD file or certified as-built drawings in microstation or DXF and PDF format.
- (e) A letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.
- (f) An illumination plan for staff approval.
- (g) A maintenance plan for the rain gardens. This plan must be approved by the city engineer, and filed with Hennepin County.
- (h) A waste management/removal/containment plan, detailing how often animal waste will be removed from the site.
- d. Pay all required connection fees.

- e. Landscaping in the south half of the property must be integrated with the landscaping located in the right of way along Minnetonka Boulevard.
- f. The property owner is responsible for replacing any required landscaping that dies.
- g. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- h. Construction must begin by December 31, 2011, unless the planning commission grants a time extension.
- i. This resolution does not approve any signs. Separate sign permits must be submitted for staff review and approval.

All voted "yes." Motion carried.

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

12. **INTRODUCTION OF ORDINANCES:**

**A. Ordinance amending the insurance requirements for liquor licenses**

Gunyou noted the legislature made changes to liquor license laws and the ordinance amendment was necessary.

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

**B. Ordinance amending the definition of tobacco**

City Attorney Desyl Peterson noted the legislature also made changes to the tobacco laws and the ordinance amendment was necessary.

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

**C. Ordinance amending the tattooing regulations**

Peterson noted the legislature established a new licensing procedure for body art and the ordinance amendment was necessary for the city to continue regulating body art at the local level.

Wiersum moved, Hiller seconded a motion to introduce the ordinance. All voted "yes." Motion carried.

**D. Amendment to the existing Applewood Pointe PUD and master development plan 5709 Rowland Road**

City Planner Loren Gordon gave the staff report.

Wagner noted at the Economic Development Advisory Committee (EDAC) meeting a question was discussed that if the project was approved, future expansion would be challenging. Wischnack said the developer told the EDAC that he had no intent to do an expansion. She agreed with Wagner that given what was being proposed an expansion would be difficult to do. Wagner said the EDAC also had a discussion that the tax increment financing (TIF) was not a traditional TIF but instead was a short term economic development TIF that has limitations.

Allendorf questioned what percentage of the units would be affordable housing. Wischnack noted at this time approximately 13 percent would be affordable and more may be added before the next EDAC meeting.

Wiersum requested information from staff with the past pricing information, number of units, etc. versus the revised pricing information and units.

Schneider indicated the original project was big for the site and he was more in favor of the new size with the surrounding amenities.

Wiersum asked if the developer would meet the necessary pre-sale numbers to receive financing based on the timelines. Wischnack indicated she spoke with the developer and the developer was confident the sales were lining up with the financing.

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

**E. Amendment to the master development plan for United Health Group at 9703 Data Park**

Gordon reviewed the staff report.

Wiersum questioned the rationale behind the change made to the master development. Gordon explained the conceptual phase was completed by one architect and the final plans were completed by a different architect. Efficiencies were gained by the proposed building revisions.

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

**13. PUBLIC HEARINGS:****A. Precious metal dealer license for Gold Buyers At The Mall, 12401 Wayzata Boulevard, #2125**

Gunyou gave the staff report.

Schneider opened the hearing at 7:09 p.m.

Schneider closed the hearing at 7:09 p.m.

Allendorf moved, Wagner seconded a motion to grant the license, contingent on staff approval of a local manager. All voted "yes." Motion carried.

**B. Resolution vacating public drainage and utility easements at 16115 Temple Lane and 16229 Temple Drive South**

Gunyou gave the staff report.

Schneider opened the hearing at 7:10 p.m.

Mike Brandvold, 16103 Temple Lane, noted the new plat would add additional utilities. He thanked staff for their work on this issue.

Schneider closed the hearing at 7:11 p.m.

Greves moved, Wiersum seconded a motion to adopt Resolution No. 2010-083 which vacates existing drainage and utility easement at 16115 Temple Lane and 16229 Temple Drive South. Approval is based on the following findings:

- 1) Vacating the subject easements is not counter to the public interest.
- 2) The petitioners are the owners of the land abutting the subject easements and are, therefore, proper petitioners.
- 3) Upon filing of PREMIER PLACE plat, the city will no longer require the subject easements for drainage or utility purposes.

The vacation is subject to the following conditions:

- 1) This vacation of an existing easement is effective only upon proper recording of PREMIER PLACE.

All voted "yes." Motion carried.

**C. On-sale wine and on-sale 3.2 percent malt liquor licenses for Bukhara Indian Bistro, 15718 Wayzata Boulevard**

Gunyou noted there was a change in ownership for this restaurant. Staff was recommending opening and continuing the public hearing while the background check was being conducted.

Schneider opened the hearing at 7:12 p.m.

Wagner moved, Greves seconded a motion to continue the public hearing to September 13, 2010. All voted "yes." Motion carried.

**D. Ordinance amending the city charter regarding the primary election and city manager's purchasing authority**

Schneider noted that the full council was needed to adopt the amendment.

Wagner moved, Allendorf seconded a motion to continue the public hearing to September 13, 2010. All voted "yes." Motion carried.

**14. OTHER BUSINESS:**

**A. Concept Plan for Hillside Senior Living at 5431 and 5439 Williston Road**

Gordon reviewed the concept plan.

Allendorf asked if the lot to the south could be developed on its own. Gordon said the south lot was large enough to be developed as a single family lot. Staff would recommend the parcels be joined through the redevelopment.

Allendorf asked if future expansion would be made to the memory care within the development. He did not want to see the southern parcel developed as a single family home as this was not a viable transition. Mike Suess, the applicant, explained he was unsure how the southern portion of the development would be used at this time.

Greves requested information on the storm water ponding location along with any rain gardens. Brian Lubben, architect, noted the ponding would be to the south of the parking lot. He added there was no plan to develop the southern lot as a single family home.

Wiersum questioned if moving from a low density to higher density was applicable for this development. Gordon stated the number of kitchens within this development would likely have less impact on the sewer system than a condominium facility.

Schneider asked the maximum number of units to reach the medium density requirements. Gordon indicated the site was two acres in size and the maximum number of units was 24.

Greves suggested the council's conversation be guided by the criteria for changes to the comprehensive plan. Schneider indicated that may be a bit subjective and requested the council discussion remain broader at this point. He stated he would have preferred the site be guided as medium density versus high density. In reality the plan would have a lower density impact than a mid-density residential development.

Suess reviewed the high points of the development with the council. Lubben indicated that while the building would have 40 units it would not have the traffic and tree loss of a typical high density development. He stated the impact of the development would be akin to an R1 development.

Wiersum agreed that a memory care unit with 40 beds would have less of an impact on the surrounding area than a condo building with 40 units. He suggested the city may have to develop standards to help define what the unique housing styles really are equivalent to. This would provide some direction to developers. He said the developer had made strides with the current proposal but the property was still guided as R1. He questioned if he would want to change the guide plan to mid-density.

Hiller stated the neighbors were in favor of the blighted house being removed. He questioned if it was logical to rezone this site or if this would create additional commercial developments within the residential area. Hiller agreed the site would have less of an impact on the neighborhood than other high density developments.

Allendorf commented he did not feel additional commercial developments would creep into the neighborhood as each request would have to be reviewed on a case by case basis. He stated he have more trouble supporting a change from high density to low density rather than low density to high density. He was supportive of the proposed development because it looked like a residential development and provided a good transition for the neighborhood. He indicated he would like information on the plans for the southern portion of the site.

Greves indicated when she reviewed the concept plan with the criteria in mind, a number she would support, while others were concerns. Scaling back the proposal has alleviated some of her concerns. She said the impact on the natural environment would need to be further discussed as this site would fall within the Nine Mile Creek Watershed District. The site falls within the Holiday Lake and Lake Rose watersheds. Lake Rose and

Wing Lake are currently on the impaired waters list. She said she was comfortable looking at a comprehensive plan change for the parcel because a mid-density proposal would likely have more impact on the neighborhood, environmentally and with the amount of traffic. She requested the environmental impacts be reviewed further. She noted there were a number of innovative and creative techniques aside from rain gardens that would lessen the impact.

Wagner expressed concern about why the council should consider re-guiding the site. He questioned what had changed since the comprehensive plan was completed. He felt the site could be more than low density, but wasn't sure if this was the right development for the parcels.

Schneider stated the council did not want additional traffic along Williston Road; however, the property was not suitable for four single family lots. Putting aside the issue of changing the guide plan, he felt a memory care facility of this size was not unreasonable as most of the trees were being conserved, would provide open space, and would add little traffic. He wanted to be assured that the developer would deliver on the site as promised.

**B. Ordinance amending city code 300.29 and 710.005 regarding expansion of non-conforming uses**

Gordon gave the staff report reviewing comments from the planning commission.

Greves indicated half of the variance requests are expansions of non-conforming uses. She asked how many of those requests were looking to increase non-conformities as opposed to maintaining a non-conformity. Gordon stated over the last five years about half were for non-conforming expansions and more were approved than denied. Community Development Director Julie Wischnack indicated those not expanding the non-conformity were also more likely to be approved.

Greves asked for more information about where the line is when looking at expansions of non-conforming uses that maintain the non-conformity versus looking at expanding the process into the realm of increasing the non-conformity. City Attorney Peterson stated the city risked significant challenges when making an exception to the ordinance by going beyond the boundary of the existing building. This is clearly a variance situation. However, expansions of a non-conforming use to the extent of the existing building lines would be within the realm of reason.

Allendorf asked how he should respond if other cities asked how Minnetonka was getting around the court ruling. Peterson stated the state statute dealing with expansions of non-conforming uses does not specify what process should be used or standards for how they are to be granted. The city is interpreting how to allow expansions without invading the portion of the statute regarding variances. She said Minnetonka was not the first city trying this process. Both St. Paul and Minneapolis chose to allow expansions of non-conforming uses with a permit process. The ordinance does not get around the court decision because it only deals with a very small piece of the decision. The broader issue of variances in general still needs to be addressed.

Gunyou indicated the city would continue to work on a global approach for variances and seeking legislative changes with other cities, but until that happens, staff was looking at a reasonable and defensible approach to address non-conforming expansions that would still provide council discretion.

Hiller asked if the applicant still had to prove a hardship. Peterson stated the city would not be using the term "hardship" anymore. The new criteria within the ordinance would mirror the interpretation the Court of Appeals used for nearly 21 years for variances. Hiller asked what the definition of aesthetic value was that the planning commission would use. Peterson said the city would continue to do a case by case examination under an expansion permit process, using the same standard that was used for 21 years. The Court of Appeals decisions in the last 21 years will provide some guidance.

Hiller said in the past if a variance was granted, the property became conforming. Now the principle was changing. A property that gets an expansion permit would still remain a nonconforming property. Peterson clarified that when a variance is granted, then the property is considered conforming. If an expansion permit is approved, the property remains a nonconforming use.

Wiersum said the staff report clarified the information presented this evening. He noted the court decision took away a tool from the city and the newly proposed ordinance would provide a process to deal with situations that come up every day.

Wagner thanked staff for drafting the new ordinance to assist the city with non-conforming uses. He supported the ordinance change.

Louis Kokesh, 3225 Shores Boulevard stated the changes were reasonable but the court decision was not reasonable.

Wiersum moved, Greves seconded a motion to adopt Ordinance No. 2010-11 which amends City Code §§ 300.29 and 710.005 regarding expansion of non-conforming uses.

Hiller expressed concern on how the new language would be interpreted as he felt there would be a learning curve. He noted the proposal required four votes rather than five votes for council approval. Because there were questions about aesthetics and defining functionality, he would prefer requiring five votes for approval. A simple majority would make it easier to have split votes and not come to a resolution on how the standards would be done.

Schneider said the new ordinance merely documented the review criteria that have been used in the past. He said there would not be a learning curve because the council would continue to do what it has been doing. He agreed decisions would be based on a lot of subjective evaluation but if the council was not comfortable with a proposal, there would be ways to deny it.

All voted "yes." Motion carried.

Schneider said the planning commission did a thorough job reviewing the proposed change. The commission struggled with how to deal with a proposal that has a variance and isn't eligible for the expansion permit process. He said that issue was the next thing that needs to be addressed. One possible solution is to establish the variance setback line as the setback line for the entire property. In that scenario the house would be in the same position as a house that was granted an expansion permit for a nonconforming use. He suggested staff take a look at that type of approach. Peterson said Schneider's comments were helpful. One of the reasons staff went back and looked at the last five years of variances was to see if there were commonalities that could be found in order to set up a process in the ordinance for an alternative setback line. She noted staff would need to be careful in coming up with criteria to avoid any unintended consequences.

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

### **A. Appointment to the Southwest LRT Community Works Steering Committee**

Schneider said he was recommending Wagner be appointed to the Southwest LRT Community Works Steering Committee.

Schneider moved, Allendorf seconded a motion to adopt Resolution No. 2010-084 approving Tony Wagner for the appointment and the mayor as an alternate. All voted "yes." Motion carried.

**16. ADJOURNMENT**

Greves moved, Wiersum seconded a motion to adjourn the meeting at 8:33 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk