

CITY OF BLOOMINGTON
2215 WEST OLD SHAKOPEE ROAD
HENNEPIN COUNTY, MINNESOTA 55431

CITY COUNCIL MEETING

Approved Minutes
Regular Meeting
Meeting #4

7:00 p.m.
February 5, 2001
Council Chamber

Call to Order and Pledge to Flag Mayor Gene Winstead called the meeting to order and led the Council and audience in the pledge of allegiance to the flag.

Roll Call Present: Mayor Winstead, Councilmembers D. Abrams, M. Fossum, H. Harden, S. Peterson, and V. Wilcox.
Absent: A. Ornat

Welcomed Boy Scout Troop #294 Mayor welcomed Boy Scout Troop #294 from Redemption Lutheran Church who were attending the meeting to work on their citizenship and community merit badges.

Approved 2001 Community Development Block Grant (CDBG) Rehabilitation Loan and Acquisition/Substantial Rehab Programs Item 6.1A Motion made by Wilcox, seconded by Fossum, and all voting aye, to approve the 2001 Community Development Block Grant (CDBG) Rehabilitation Loan and Acquisition/Substantial Rehab Programs. The maximum loan amount is \$25,000. Maximum qualifying incomes are 80% of the metropolitan median income as adjusted by size. The program began July 1 and runs through June 30, 2001.

Approved Mutual Agreement Between City and Housing and Redevelopment Authority for Operation of the 2001 CDBG Rehabilitation and Acquisition/Substantial Rehabilitation Programs Item 6.1B Motion made by Wilcox, seconded by Fossum, and all voting aye, to approve the Mutual Agreement between the City and the Housing Redevelopment Authority for the operation of the 2001 Community Development Block Grant (CDBG) Rehabilitation and Acquisition/Substantial Rehabilitation programs. The Agreement sets forth the terms and conditions under which the HRA must operate the programs. Under the terms of the Agreement, the HRA may charge up to 12.5 percent for direct costs incurred in administering the program. The document contains the same language as approved in 2000.

Approved Contract for Services Between the City and Housing and Redevelopment Authority Item 6.1C Motion made by Wilcox, seconded by Fossum, and all voting aye, to approve the Contract for Services between the City and the Bloomington Housing and Redevelopment Authority. There are no changes in the contract language from the 2000 contract. The fixed asset schedule is also attached as Attachment A and the Information Systems charges as Attachment B is also included with the agenda.

Adopted Resolution Approving Administrative Variance to Reduce Side Yard Setback at 8780 Walton Oaks Drive Case 10542A-01 Item 6.3 R-2001-10 Motion made by Wilcox, seconded by Fossum, and all voting aye, to adopt a resolution approving an administrative variance for Eric & Cynthia Swanlund, 8780 Walton Oaks Drive, Case 10542A-01, to reduce the side yard setback from 10 feet to 9.14 feet for a second level living area addition above an existing single level home and attached garage subject to the following 4 conditions as set forth by the Hearing Examiner:

1. Variance be filed with Hennepin County prior to the issuance of Building Permits;
2. The exterior and finish of the addition shall match that of the existing structure;
3. All necessary building permits be obtained prior to construction; and
4. No additional driveway access or garage door shall be permitted along West 86th Street.

Approved 2001 Cable
Access Service Contracts
Item 6.4

Motion made by Wilcox, seconded by Fossum, and all voting aye, to approve the following 2001 contracts for cable access service:

1. Independent School District #271 in the amount of \$131,156 for educational access programming.
2. Bloomington Public Television in the amount of \$131,156 for public access programming.
3. Independent School District #271 in the amount of \$22,062 for coordination and maintenance of The Bloomington Channel. The percentage of cable franchise fees available for access contracts is then split 33% each to Bloomington Public Television, Independent School District #271, and the City of Bloomington's government access operation.

Approved Specifications
and Bidding Schedule to
Secure 2001 Diseased
Tree Removal and Public
Stump and Root
Grinding Contracts
Item 6.8

Motion made by Wilcox, seconded by Fossum, and all voting aye, to approve the specifications and bidding schedule to secure contracts for diseased tree removal and public stump and root grinding for the 2001 Tree Removal Program. The two sets of specifications are as follows:

1. Diseased Tree Removal for removal of Dutch Elm and Oak Wilt diseased trees from both public and private property. (Estimated annual expenditure - \$165,000.00.)
2. Public Stump Removal and Root Grinding to follow tree removals on public property. (Estimated annual expenditure - \$30,000.00.)

Funding for these contracts is available in the 2001 Park Maintenance Budget, Activity 7731.

Approved Purchase of
Equipment for
Bloomington Fire
Department and
Authorized Funding
Item 6.9

Motion made by Wilcox, seconded by Fossum, and all voting aye, to approve the purchase of (1) 2002 Ford Explorer XLT in the amount of \$26,341.00 from Superior Ford and (2) Western Unimount Pro Plows in the amount of \$6,515.67 from Aspen Equipment for use by the Bloomington Fire Department and authorized the appropriation of \$8,867.67 from the working capital balance available in the Fire Equipment portion of the Equipment Replacement Fund and approved adjustment of the 2001 Budget for Activity 617-0619-499-70.42. The 2002 Explorer will replace Unit #551, a District Chief's vehicle.

Approved Request for
Proposals for Electrical
Services and HVAC
Maintenance and Repair
Services
Item 6.10

Motion made by Wilcox, seconded by Fossum, and all voting aye, to approve the Requests for Proposals to provide contracts for electrical services for City-owned buildings and traffic signals and for HVAC maintenance and repair services at City-owned buildings. The contractual services would be utilized as needed by Facilities and Traffic Maintenance Division for routine maintenance and repairs.

Adopted Resolution
Granting Final Plat
Approval and Change of
Name for Wik Estates,
140 Norman Ridge Drive
Case 9738B-00
Item 6.12
R-2001-8

Motion made by Wilcox, seconded by Fossum, and all voting aye, to adopt a resolution granting final plat approval of Wik Estates, 140 Norman Ridge Drive, Case 9738B-00, and approved a change in the name of the preliminary plat from Wik Addition to Wik Estates in keeping with the Hennepin County Surveyors Office request, and approved the subdivision agreement, subject to a review of the title by the City Attorney and receipt of the necessary documents, subject to the following 10 conditions as previously approved by Council on November 6, 2000:

1. Erosion control measures be in place prior to issuance of any building permits and be maintained until all disturbed areas resulting from construction are stabilized;
2. Park dedication to be in cash for two new lots;
3. Standard drainage and utility easements 10' along Norman Ridge Drive, 5' along the internal lot lines with the exception of a 10' drainage and utility easement following along either side of the common lot line between Lots 1 and 2;
4. Grading, drainage, utility and erosion control plans be approved by the City Engineer prior to issuance of any building or grading permits;

Item 6.12 continued

5. Wetland area to be field verified and field marked as approved by the City Engineer prior to issuance of any permits;
6. Floodage easement (and corresponding drainage easement) to be provided over the pond to the designated high water level;
7. Concurrent 10' sidewalk easement along Norman Ridge Drive be provided;
8. Alterations to utilities and curb and gutter at developer's expense;
9. Connection charges as appropriate be paid before any permits issued; and
10. No cutting or pruning of oak trees from April 15th to July 1st unless approved by the City Forester.

Items 1 and 4, 5, 8, 9 and 10 will be accomplished prior to issuance of building permits. Items 3 and 6 are accomplished on the final plat. Documents are being prepared for Item 6 and 7. Item 5 will be completed at the time of development. Item 2; park dedication to be paid in cash as required.

Subdivision agreement and deposit have been received.

Approved 2000 Budget Carryovers into 2001 Budget
Item 6.13

Motion made by Wilcox, seconded by Fossum, and all voting aye, to approve carryovers from the 2000 Budget authorization into 2001, to pay for encumbrances (purchases ordered in 2000 but not received by year-end) outstanding as of December 31, 2000, and reduce the 2000 Budget by this same amount as detailed in the agenda materials: Council (\$1,939), Commissions (\$262), City Manager (\$279), Legal (\$705), Finance (\$1,891), Support Services (\$149), Police (\$38,064), Fire (\$71,986), HRA (\$8.00), Community Development (\$1,546), Community Services (\$36,100), Public Works (\$153,395), City Clerk (\$115), Assessing (\$702) for a total General Fund amount of \$307,141.00.

Other Funds: Cable TV (\$10,537), Park Grants (\$73,315), Water Utility (\$2,523,567), Wastewater Utility (\$90,932), Stormwater Utility (\$40,649), Solid Waste Management (\$12,907), Recreational Facilities (\$4,459), Support Services (\$15,139), Information Systems (\$59,198), Equipment (\$1,384,332), Public Safety Radio (\$46,612), Facility Maintenance (\$48,582), State Aid Construction (\$183,370).

Total Carryover Amount = \$4,800,740

Accepted Various Donations to Various City Activities
Item 6.2

Motion made by Wilcox, seconded by Fossum, and all voting aye, to accept the following donations made to various City activities by various donors and approved the amending of the revenue and expenditure budgets to facilitate the appropriate use of the funds: \$300 donated to the Police K-9 Program from the Bloomington Chapter #307 Order of Eastern Star; \$30.00 donated to Police Animal Control by an anonymous donor; \$100 donated to Fire Prevention from Bloomington Area Shriner Club; a microwave valued at \$140 donated to Creekside Community Center from the Memorial Trust Fund; dishes, flatware and utensils valued at \$1,700 donated to Creekside Community Center from the Memorial Trust Fund; a boom box valued at \$50 donated to the Human Services Exercise Program from the Memorial Trust Fund; the funding of 1,000 additional copies valued at \$3,610 donated to the Creekside Chronicle from the Memorial Trust Fund; and \$1,575 donated to the Gene C. Kelly Park remodel warehouse area used by the Bloomington Athletic Association from the Bloomington Athletic Association.

Approved Purchase of Police Vehicles
Item 6.5

Motion made by Wilcox, seconded by Abrams, and all voting aye, to approve the following purchase of 14 replacement and additional police vehicles under State of Minnesota contracts for patrol-type automobiles: (13) 2001 Ford Crown Victoria Police Interceptors @ \$21,298.00 each totaling \$276,874.00 from Superior Ford, Inc., and (1) 2001 Chevrolet Impala 4-door Police Package totaling \$19,599.85 from Hinckley Chevrolet; and authorized the appropriation of \$19,599.85 from the working capital balance in the Equipment Replacement Fund to be carried forward to the 2001 Budget, and approved \$42,596.00 remaining in the 2000 Budget, Activity 617-0618-499-70.42 to be carried forward to the 2001 Budget.

Funds for the purchase of 11 vehicles are budgeted in the 2001 Equipment Replacement Fund, Activity 617-0618-499-70.42. Two vehicles are replacements for units that sustained major damage in accidents during 2000.

Item 6.5 continued

The Chevrolet Impala is an additional unit recently approved for traffic enforcement and was included in the vehicle replacement budget list, but funding was inadvertently omitted from the 2001 Equipment Budget.

Wilcox stated that it would be beneficial to the Council as well as the viewers at home if staff would provide an update on the City's fleet program in the near future.

Approved Purchase of
Administrative Staff
Vehicles
Item 6.6

Motion made by Wilcox, seconded by Abrams, and all voting aye, to approve the purchase of the following five administrative staff vehicles under State of Minnesota contracts for automobiles and passenger vehicles: (2) 2001 Dodge Intrepids from North Star Garage, Inc. in the amount of \$35,694 under State of Minnesota Contract #425989; (1) 2001 Chevrolet Impala and (1) 2001 Chevrolet Malibu from Hinckley Chevrolet in the amount of \$33,119.88 under State of Minnesota Contract #425993; and (1) 2001 Chevrolet Venture Van from Grossman Chevrolet in the amount of \$19,445.00 under State of Minnesota Contract #425994. Prices do not include applicable State of Minnesota Sales Tax.

Funding for the purchase of these vehicles is available in the 2001 Equipment Replacement Budget, Activity 617-0618-499-70.42.

Approved Purchase of
Replacement Vehicles
for Use By Various City
Departments
Item 6.7

Motion made by Wilcox, seconded by Abrams, and all voting aye, to approve the purchase of the following replacement vehicles for use by various City departments under State of Minnesota contracts for pickup trucks and cargo vans: (8) trucks from Airlake Ford Mercury for a total of \$158,638.96 under State of Minnesota Contract #426202; (1) truck from C & M Ford Sales for a total of \$24,152.00 under State of Minnesota Contract #426203; (1) cargo van from Hinckley Chevrolet for \$18,192.04 under State of Minnesota Contract #426206; and (2) trucks from Grossman Chevrolet for a total of \$37,363.50 under State of Minnesota Contract #426207. Prices do not include applicable State of Minnesota Sales Tax.

Funding for the purchase of these units is available in the 2001 Equipment Replacement Budget, Activity 617-0618-499-70.42.

Approved Contracts for
Construction of
Maintenance Building at
Bloomington Cemetery
Item 6.11

Motion made by Wilcox, seconded by Fossum, and all voting aye, to approve the contracts with the following firms relating to the construction of a maintenance building at the Bloomington Cemetery:

1. Kassa Construction (\$3,975.00)
2. Swanson & Schiager Plumbing (\$1,600.00)
3. United Water & Sewer (\$9,870.00)
4. C.J. Miller Construction (\$9,900.00)
5. Electrical Concepts (\$6,475.00)
6. Snell Mechanical (\$3,540.00)
7. City Wide Garage Door Co. (\$2,330.00)
8. William Hennemuth Architects (\$8,400.00)

Funds for this work are to come from a cemetery fund 101-7832-499-70.21.

A staff memo provided the following background. Earlier this year when the Council approved acquiring an additional parcel of land for the cemetery, platting, and construction of the associated underground water system, fence, access roadway, etc., staff did not apprise the Council of the need to construct a new maintenance building at the site. The building was to replace an undersized garage, which was subsequently torn down, to provide an enclosure for heating the water meter, a connection point for the underground water system, and to provide additional space for maintaining this enlarged cemetery. Quotes were obtained and then construction proceeded without the official action by the Council. Although the work has been completed, this item sets forth the various quotes received for the work and approval of the use of the capital funds in the cemetery account in regard to this project is requested.

Item 6.11 continued	Wilcox stated that he had concerns with this project when it was brought forward at a prior Council Meeting and reported that he had met with the City Manager to review the process and stated that the individual that was involved has been instructed on the proper procedure to get this type of construction approved.
Opened Public Comment Period	The Mayor declared the public comment period open for those wishing to address the Council on matters other than items included on the agenda. No one came forward to speak, so the Council returned to its regular agenda.
Nominated Individuals for the Advisory Board of Health and Postponed Appointments to the February 20, 2001 Meeting Item 3.1A	Motion made by Peterson, seconded by Wilcox, and all voting aye, to nominate the following individuals for consideration for (2) provider vacancies and (1) consumer vacancy on the Advisory Board of Health for two-year terms expiring on December 31, 2002: Gary Carlson, Gregory Hanson, and Janet Hovey as Providers; and Carolyn Byers, Virginia Lozano, Jeri Rosenberg, and Stacy Schueller as Consumers and postponed the appointments to the February 20, 2001, Regular Council meeting.
Nominated Frank Sanisidro for the Human Rights Commission and Postponed Appointment to the February 20, 2001 Meeting Item 3.1B	Motion made by Peterson, seconded by Wilcox, and all voting aye, to nominate Frank Sanisidro for consideration to a one-year term expiring on December 31, 2001, on the Human Rights Commission and postponed the appointment to the February 20, 2001, Regular Council meeting.
Nominated Individuals for the Merit Board and Postponed Appointment to the February 20, 2001 Meeting Item 3.1C	Motion made by Peterson, seconded by Wilcox, and all voting aye, to nominate the following individuals for consideration to a three-year term expiring December 31, 2003: Bill Peterson, Theresa Frost, and David Irvin and postponed the appointment to the February 20, 2001, Regular Council meeting.
Boards/Commissions Communications Item 7.1	None reported.
Status of Action Items Item 7.2	Status of Action Items to go out with Manager's Information at end of week. <Council took a 10-minute recess.>
Closed Public Comment Period	The Mayor asked if anyone else wished to address the Council during the public comment period, or it would be closed. No one came forward to speak and the public comment period was closed.
Approved Tent Permit for Bennigan's at 1800 West 80 th Street Case 5772A-01 Item 4.1A	Motion made by Wilcox, seconded by Peterson, and all voting aye, to approve a permit to erect a tent not to exceed 60 feet by 250 feet in an existing parking lot for a party event at Bennigan's, 1800 West 80 th Street, Case 5772A-01, scheduled for March 16, 2001 and March 17, 2001, subject to the following 21 conditions of approval as set forth by the Planning Division Staff: <ol style="list-style-type: none"> 1. An event agreement, including all conditions of approval, to be executed by the applicant and the City; 2. Event agreement shall include a termination section whereby the Chief of Police may terminate the event or limit portions of the event allowed by this permit; 3. Event site to be set and used in accordance with a site plan approved by the Director of Community Development; 4. Security operations plan including on-site and off-site services and procedures be submitted no later than February 28 2001 for review and approval by the Chief of Police; 5. Parking, pedestrian circulation, and traffic directional signage plan be submitted no than February 28, 2001 for review and approval by the City Traffic Engineer;

Item 4.1A continued

6. Tent and temporary structure permits be obtained prior to placement and installation and to be used according to requirements approved by the Fire Marshal and Manager of Building and Inspections;
7. Placement of tent, any appurtenant equipment, propane storage tanks and vaporizer (with a minimum 25 foot radius separation) be approved by the City Fire Marshal;
8. Fire egress lanes must not be fenced but gated as approved by the City Fire Marshal;
9. No parking within 25 feet of any propane tank or vaporizer or any exit-way;
10. Applicant shall reimburse the City for Staff costs incurred as a result of the event including costs incurred by response to noise complaints attributed to the event;
11. City Fire Inspector to be assigned by the Fire Marshal on each night to monitor occupant loading;
12. Certificates of insurance coverage for general and per occurrence liability be provided as determined by the event agreement;
13. Signage be in accordance with City regulations;
14. Food service, as applicable, be provided in accordance with the requirements and permits of the Environmental Services Division;
15. Fire lanes on the site must remain open and be posted as approved by the Fire Marshal;
16. Handicapped parking, access and accessible toilet facilities be provided as approved by the Director of Community Development;
17. Electrical and gas installation be installed pursuant to permits and requirements of the Building and Inspection Division;

Noise

18. Live and recorded music shall be permitted from 6:00 p.m. to 12:00 a.m. on March 16 and 17, 2001;
19. Applicant shall be available for meetings with City Staff if it is determined that such meetings are needed in order to control the noise level to address noise complaints;
20. Sound level generated by live or recorded music shall not exceed a maximum of 65 decibels at the property line; and
21. Applicant shall fully cooperate with the City representatives with regard to controlling noise, including but not limited to, reducing the volume of live or recorded music during the course of the event.

All of the above conditions will be monitored by Planning Division staff. If any of the above conditions are not met or satisfied, particularly any of the dated conditions, Planning Division staff will notify the Chief of Police to terminate the event, either before or during any of the scheduled days.

Abrams inquired if there any problems anticipated with this event as there has been in the past.

Bernhardson commented that none are expected and that the City would appoint a noise inspector to monitor the event.

Shelly Durand, Licensing, concurred adding that the event has run smoothly during the last two years with no complaints. This year's events will last two nights, she explained, not two weekends as has been the case in the past. She stated that the speakers will be placed in a direction that would be less distracting to the surrounding neighbors.

No public testimony was received.

Approved
Concert/Outdoor Music
Event License for
Bennigan's at 1800 West
80th Street
Item 4.1B

Motion made by Wilcox, seconded by Peterson, and all voting aye, to approve a Concert/Outdoor Music Event License application for a special event at Bennigan's located at 1800 West 80th Street scheduled for Friday, March 16, 2001, from 6:00 p.m. to midnight and Saturday, March 17, 2001, from 6:00 p.m. to midnight.

No public testimony was received.

Approved Amendment to Liquor Licensed Premises for Bennigan's at 1800 West 80th Street Item 4.1C

Motion made by Wilcox, seconded by Peterson, and all voting aye, to approve an amendment to the liquor licensed premises for Bennigan's located at 1800 West 80th Street, to include the tent area described in Item 4.1A, for the annual Bennigan's St. Patrick's Day Tent Party to be held on Friday, March 16, 2001 and March 17, 2001.

No public testimony was received.

Approved Event Agreement with Den Way, Inc. for Bennigan's at 1800 West 80th Street Item 4.1D

Motion made by Wilcox, seconded by Peterson, and all voting aye, to approve an Event Agreement with Den Way, Inc. in conjunction with the annual St. Patrick's Day Event at Bennigan's Restaurant located at 1800 West 80th Street to be held on March 16, 2001 and March 17, 2001. The Agreement follows the normal format, incorporating the conditions of approval, requiring insurance coverages, and requiring deposits for cleanup and City personnel, etc.

No public testimony was received.

Referred Denial of Taxicab License Application for Abebe G. Berhane to a Hearing Examiner Item 4.1E

Motion made by Peterson, seconded by Fossum, and all voting aye, to refer the denial of a taxicab license application for Abebe G. Berhane to a hearing examiner for an administrative hearing after which the hearing examiner will make a recommendation to the City Council for its final decision.

Ornstein explained that the staff recommendation is that it be referred to an administrative law judge who will conduct a hearing and will submit a report to the City Council with a recommendation based on factual findings and legal conclusions. He stated that the applicant was convicted of three serious matters in March, 2000, including terroristic threats, assault and fleeing a police officer, and a domestic assault on his wife. He stated that Mr. Berhane is currently on probation and staff does not recommend approval of the license but that a hearing be conducted by an administrative law judge for a recommendation to the Council for its ultimate decision on the application.

Approved Taxicab Driver's License Application for Godwin Okolue Item 4.1F

Motion made by Wilcox, seconded by Abrams, to approve a taxicab driver's license application for Godwin Okolue with the stipulation that his driving record be checked by staff in six months from the date of the approval. Motion passed 5-1-0 (Fossum opposing).

Ornstein explained that the reasoning for staff's recommendation of denial is that the applicant was convicted of careless driving and a reduced driving while intoxicated charge in July, 2000. As a result, his license was revoked in August, 2000 but reinstated in November, 2000. Ornstein stated that it has been verified that Mr. Okolue has completed the Operation Foresight and Driving Impact Panel programs as a result of his plea to careless driving and is no longer on probation.

Speaker #1: Godwin Okolue, Applicant

He stated that he has been driving cab for ten years and that he was driving a private vehicle when he was stopped in July, 2000. In response to Fossum's inquiry about the five moving violations prior to the July, 2000 stop, Mr. Okolue stated that he drives 100,000 miles per year.

Adopted Resolution Approving Preliminary and Final Plat for Gruggen Grant Addition 8124 West 86th Street Circle and 8134 and 8200 Oakmere Road Case 3600A-00 Item 4.2 R-2001-9

Motion made by Fossum, seconded by Wilcox, and all voting aye, to approve the preliminary and final plat of Gruggen Grant Addition, located at 8124 West 86th Street Circle and 8134 and 8200 Oakmere Road, Case 3600A-00, for the purpose of combining three lots into two lots, and adopted a resolution granting final approval and approval of the subdivision agreement, subject to a review of the title by the City Attorney and receipt of the necessary documents and deposits, subject to the following 7 conditions as set forth by the Administrative Subdivision Review Committee:

1. No park dedication required.
2. Standard 10' drainage and utility easements along all street frontages and standard 5' drainage and utility easements along all internal lot lines; also existing drainage and utility easements be properly vacated.
3. 10' concurrent sidewalk easement be provided along Oakmere Road and West 86th Street Circle.

Item 4.2 continued

4. The existing utility easement be rededicated across the westerly end of proposed lot one in the proposed plat.
5. Provide a driveway easement for the existing driveway of Lot 10, Dixon's Oakmere over the proposed Lot 2 as approved by the City Traffic Engineer.
6. 100-year flood elevations for Anderson Lakes be shown on preliminary and final plat.
7. Any alterations to existing utilities to be at the developer's expense.

Item 1, no Park Dedication required. Items 2, 4 and 6 to be completed on the final plat. Documents are being prepared to accomplish Items 3 and 5. Item 7 will be completed and provided prior to issuance of any building permits.

Subdivision agreement and deposit have not been received.

Wayne Force, Engineering, stated that the application is for three lots being combined into two lots and that staff recommends approval of both the preliminary and final plat.

Closed the Public Hearing and Approved Preliminary Plat of Lea Woods Addition at 8001 and 8003 Lea Road Case 10516A-00 Item 4.3

Motion made by Peterson, seconded by Fossum, and all voting aye, to close the public hearing.

Motion made by Fossum, seconded by Peterson, and all voting aye, to approve the preliminary plat of Lea Woods Addition at 8001 and 8003 Lea Road, Case 10516A-00, for the Matrix Development, subject to the following 20 conditions of approval, and 1 Code requirement as set forth by the Planning Division Staff and the Planning Commission and as amended by Council, deleting Condition #16, and adding Condition #21:

1. The impervious surface coverage for each lot, excluding the driveways and private access road, be limited as follows:
 - Lot 1 -- 6,000 Sq. Ft.
 - Lot 2 -- 4,900 Sq. Ft.
 - Lot 3 -- 5,700 Sq. Ft.
 - Lot 4 -- 4,600 Sq. Ft.
 - Lot 5 -- 3,625 Sq. Ft.
 - Lot 6 -- 3,290 Sq. Ft.
2. Dedication of right-of-way 40 feet from centerline off Forest Glen Road;
3. Dedication of a 30 foot radius at the corner of Lea Road and Forest Glen Road;
4. Standard 10 foot drainage and utility easements be provided along Lea Road and Forest Glen Road;
5. Provide concurrent 10 foot sidewalk/bikeway along Lea Road and Forest Glen Road;
6. Copy of common utility easement and maintenance agreement for the sanitary sewer and water line as approved by the City Engineer be provided prior to the filing of the plat;
7. Common driveway and maintenance agreements covering all lots be as approved by the City Traffic Engineer;
8. Grading, drainage, utility and erosion and control plans be as approved by the City Engineer;
9. Alterations to utilities shall be at the developer's expense;
10. Approved erosion control measures be in place prior to issuance of grading permits;
11. Review and approval by the Nine Mile Creek Watershed District;
12. Buildings on lot 4, 5 and 6 be provided with an automatic fire sprinkler system as approved by the Fire Marshal;
13. A scenic easement be provided for the rear yard of each lot as measured from the proposed sidewalk/bikeway easement as follows: Lot 2 - 60 feet, lots 3, 4 and 5 - 70 feet, and lot 6 - 50 feet;
14. Connection charges be satisfied;
15. SAC questionnaire be completed and charges satisfied;
16. Clarify any maintenance assessments for Lea Road be pro-rated against six lots and homeowners' association contract with one sanitation service; Association covenants be reviewed by the City's Planning Manager and approved by the City Attorney;

17. Access to the subject property be via Marth Road for all construction and staging;
18. City Forester review all trees and determine the appropriate amount of landscape bond that would be included in the landscaping bond for not less than a two-year period and whatever the City Forester thinks appropriate. The bond shall include the removal of any damaged trees on the neighbor's property to the south, at the discretion of the City Forester, up to the expiration of the two-year bond;
19. Protective fencing be provided on the top of the retaining wall as approved by the Planning Manager; and
20. A flag person be present during construction at the 90-degree turn.

and subject to the following code requirement:

1. Park dedication, as determined, be in cash for five lots (Sec. 16.09).

Londell Pease, Planning, explained that it has been a very lengthy subdivision process for the applicant. He stated that the Lea Woods Subdivision is one of the last remaining parcels in the city that can be subdivided. He stated that it is a 3.8-acre parcel that will be subdivided into six lots for single-family homes with a proposed average lot size of 26,420 square feet. All lots will have public street frontage, he explained, however, all of the lots will be accessed by a private drive on the south side of the property. He explained that this subdivision does not require any variances, it's not a neighborhood unit development, requires no Comprehensive Plan change, no zoning change, and that it is a Code complying subdivision. He explained that Forest Glen Road right-of-way is a dedicated street even though it has not been built, as it does border the property on the north. He explained that a 14-foot high retaining wall is proposed along the south property line as 20 feet in depth of soil will need to be removed to accommodate construction of the circular road and the 7 percent slope of the drive. He indicated on a map the no cut, no mow easement on the north side of the property which would remain untouched. He added that as the grading of the home pads would occur, the preservation of trees would be evaluated at that point. He explained that the intent is to use the Forest Glen Road right-of-way as some type of buffer between the existing natural land and the proposed development as it is unknown at what time that road would be constructed.

Pease went on to explain some of the issues that were brought up during the public hearing at the Planning Commission were traffic (speed and volume), average lot size of the proposed development (homes in the neighboring subdivisions average 21,202 square foot lots) making these 4,218 square feet larger than the existing average lot size, amount of soil removal proposed, which will require extraordinary bonding requirements, the 14-foot high retaining wall that will be within 5-10 feet of the properties to the south, stormwater runoff and slope, impact of grading on surrounding owner's trees, and tree preservation.

Bernhardson inquired as to how much soil is proposed to be hauled off site and whether or not staff would have any control as to where it is hauled and the amount of traffic generated by that process and what conditions would there be related to the bond, etc.

Pease stated that extra conditions could be added if the Council so desired.

Speaker #1: Perry Ryan, Ryan Engineering

He explained that there would be approximately 4,000-5,000 cubic yards of dirt removed but that some of the material may be put in the backyards. He stated that the hard surface areas will be sloped to the common access drive to allow drainage into the catch basin and then into the storm sector. He requested Council to allow staff to allow the figures indicated in Condition #1 regarding the impervious surface coverage for each lot to change as they are driven by the lot size and that only Lots 5 and 6 would be affected by the change.

Pease concurred that the lots could change when it gets to the final plat process but that the percentage of impervious surface coverage allowed would not change from what is allowed for all six lots.

Winstead requested staff to draft language to address that specific issue if the proposal is to go forward.

During the continuing discussion, a copy of the topography map was reviewed by Council per Wilcox's request.

Speaker #2: Pete Benecasa, Developer

He stated that the assessed values of the development would likely be in the \$6 million range as each home would be in the \$800,000 - \$1,000,000 range times six and that it would be a nice addition to the tax rolls.

Speaker #3: Art Abrahams, 8909 Lea Rod

He stated that he owns the immediate property to the south of the proposed development. He inquired if the draining of the 3.8 acres is to go into a surface storm sewer, which is the road that would carry the stormwater down onto Lea Road.

Pease clarified that the water will drain down onto the private driveway to catch basins that will carry the water down to the storm septors and that there should be no problems with the water draining from Lots 3-6 and onto Lea Road. Referring to his May 31, 2000, letter, Mr. Abrahams stated that although it is not clear who owns the large oak trees along the property line, there is likely to be damage done to them according to the excavation that is contemplated in that area. He requested some indemnification in the form of a bond, etc. from the developer in case the trees along the lot line are damaged and eventually die so that they can be removed and replaced. He stated his concern with the 24-foot roadway proposed that will invite trip generation. He also questioned the density of the housing proposed and whether it is in character with the rest of the neighborhood. The other concern he had is with the proposed 14-foot high wall within 5 feet of his property line and is not aware of any provision for the safety of people to prevent them from going over the wall.

Pease responded that the plat is Code compliant and encouraged the developer to work with the applicant to put up a fence as it would be problematic for the City to require it as a condition since the plat is already Code compliant.

Ornstein agreed that there is no basis in the Code to require it and that voluntary compliance could be requested of the developer.

Speaker #4: Mr. Ryan

He stated that the wall would only be about 6 feet high when it gets to a point within 5 feet of Mr. Abraham's driveway and then it fades to 0 feet. He mentioned that the developer is proposing to erect some type of fence on top of the wall and that there will be probably be some type of grading easement needed for the two properties to the east to get support material for the wall back into those properties.

Pease stated that an added condition could be, "A fence be installed for protection of the adjoining properties as approved by the Planning Manager" as it would give staff the flexibility to make it split rail, chainlink, etc. to provide a barrier there. In responding to the concern regarding potential of damage to the tree roots of trees along the property line, stated that the damage or impact to roots may not be ascertainable.

Ornstein stated that there is no ordinance to prevent the developer from taking down the trees. If there was any adverse impact to the neighbor's trees, the recourse would be a civil action against whoever would be responsible for removing the trees and that the City would not have any jurisdiction over that.

Fossum inquired about the average assessed value of the homes in the surrounding neighborhood.

Speaker #5: Bonnie Abrahams, 8909 Lea Road

Stated that she has been selling homes for Edina Realty in West Bloomington for ten years and does not believe there is anything to substantiate that the value of the proposed homes would be in the \$800,000 - \$1 million range. She stated that her own home might be in the range of \$300,000. She stated that she has a steep driveway with a hairpin turn that would slope down towards the wall and that sometimes the cars slide down their driveway and that it is the scrub woods and underbrush that keeps them from going over the natural slope. She expressed her concern that she could slide down the driveway and over the proposed 14-foot high wall. She stated that the City Forester agreed with them that the oak trees would die and expressed her concern that they would be left with the responsibility of hiring legal counsel to bring action against someone for the cost of their removal.

Winstead clarified that there is no ordinance in place that would allow for any kind of protection for the neighbors regarding potential damage to trees as a result of the development.

In reference to Condition #19, Ornstein stated that usually the purpose of a landscaping bond is to ensure that the landscaping plan is completed in accordance with the plan and that if it is not, then the bond would be used to enforce against the developer/owner who is responsible for complying with the landscaping requirements and that it is not used to protect an adjacent property owner from whatever damage might occur when there is the removal of trees or any other work on the site of the proposed development.

Bob Hawbaker, Senior Planner, explained that the Planning Commission's intent of Condition #19 was in part to be sure that the landscaping proposed by the developer would be done and also to cover the cost of the removal of the trees. He reported that the developer taking the trees down now as the developer's expense was discussed as well as the option to wait and see how many of the trees might live. He stated that the Planning Commission determined that two years was a reasonable length of time to determine the fate of the trees and that the bond would be used to cover the cost of the removal of trees that die within that two-year period of time. He reported that the Council has many times required the consent of a developer to provide landscaping on the adjacent property owner's land. He stated that the intent of the condition is to pay for the removal of dead trees within two years and not replace them, as a voluntary condition as put forth by the developer.

Wilcox inquired if the City could restrict the developer's development of the property if it is within Code because damage might be done to the neighbor's trees?

Ornstein stated that the City cannot restrict what the developer can do with the trees on his property and stated that the City shouldn't get involved with overhanging trees as that gets into a part of the law pertaining to private rights.

Bernhardson explained that the City couldn't require that the developer bond for the possible damage to trees on a neighboring property but that the developer could voluntarily agree to that condition for a bond should the trees die. He said the condition could go ahead if the developer agrees to it and then it would be within a certain timeframe. If the developer does not agree to that condition, then it would become a civil matter between the two neighbors should something happen to the trees.

To answer Mrs. Abraham's inquiry as to input regarding the fence on top of the wall, Winstead explained that it would be at the discretion of the Planning Manager as to the type of fence that is constructed and added that the neighbors could probably have input as to the type.

Speaker #6: Mr. Benecosa

He stated that there is no availability of lots in Bloomington and that these lots would probably be worth \$200,000 each. He explained that this development is a private development and that a \$200,000 lot would command a more expensive house than one valued at \$100,000, therefore, the homes should be in the range of \$800,000 to \$1,000,000 each. Regarding trees, he stated that the wall should be far enough away as to not impact the trees on the Abraham's property. He stated the two 12-inch and possibly one 18-inch tree on the developer's property would be subject to removal but that the two 16-inch and one 18-inch tree on the Abraham's property should not be damaged. He explained that most foresters use the following method to determine if a tree would be considered a saved tree or not: An 18-inch tree would have an 18-foot canopy and if less than 30% of that canopy area (and the root structure below) is going to be destroyed, then it would be considered a saved tree. He stated that he does not believe the construction of the wall would destroy the trees on the adjoining property as the zone of re-enforcement for the wall would probably not touch 10% of the tree canopy and therefore the tree would be saved.

Mr. Abrahams, referring to page three of his letter, requested that thought be given to the fact that Lea Road has a non-permanent surface to which he has been assessed over the years for repairs to the road. He stated that the residents like the Lea Road the way it is. He stated that four of the proposed lots will be fronted on Forest Glen Road, which is a bike path, therefore, the additional traffic that will be generated from the additional homes will add further deterioration to Lea Road and Marth Road. He questioned who would be assessed for the further repairs that will be needed.

Honchell stated that generally speaking, the abutting properties to the road where the improvements are being made are the ones that get assessed. He explained that in the case of odd shaped lots with odd shaped configurations of frontage, the lots are converted to rectangular comparable lots, assessed as their frontage, and the cost of the entire project is divided by all of the assessable feet. He stated that at the time of the improvement, it would be a Council decision. He stated that Lea Road is considered a non-standard City street, possibly 27 feet wide, and that there is some curb and gutter and some improvements on the south end.

Speaker #7: Virgil Stachura, 8100 Lea Road

He questioned whether or not the trip generation figures that had been quoted earlier for Forest Glen Road were correct. He was told that those trip generation figures were meant for Lea Road and not Forest Glen.

Bernhardson stated that there is nothing in the current proposal that would drive the change of Forest Glen Road to a more permanent road at this time.

Motion was made by Peterson, seconded by Fossum, and all voting aye, to close the public hearing.

Fossum stated that he did not see anything in the proposal that would be in conflict with the general use and it doesn't pose any threats of flooding, erosion, vegetation problems, and seems physically suited for the proposed density of development and doesn't believe the project would be detrimental to the environment or to the health, safety or the general welfare of the public, or is it in conflict with any easements.

Wilcox does not believe the City should be involved with the dispute over trees but does believe the grades are steep and had a concern that cars could slide down into the street. He believes the development is intense for the size of the lots. He stated the steep grading would make it difficult to build the homes there. He mentioned erosion could be a factor.

Pease restated the condition regarding the fence on top of the wall to be: "Protective fencing be provided on the top of the retaining wall as approved by the Planning Manager."

Bernhardson inquired if the developer wants to voluntarily agree to a two-year bond for the potential damage to trees on the neighbor's property.

Mr. Ryan stated that the developer would pay for the removal of a tree at the request of the homeowner at the onset of construction. He explained that the bond that is held for the landscaping on the project, at the end of the expiration of the two-year bond, that the funds reserved for that could be used at the discretion of the City Forester to remove any significant damaged trees that may be on the neighbor's property but that it should be at the discretion and direction of the City Forester.

Pease added that the neighbors and the developer are in support of the removal of Condition #16 pertaining to Lots 4, 5 and 6.

Winstead did ask if anyone wished to speak to the recommendation by staff that Condition #16 be removed.

Speaker #8: Duane Blanchard, 8050 Kentucky Avenue

He stated that after consulting with the developer, he is comfortable with the height restriction being removed.

Speaker #9: Christine Olman, Property Owner

She stated that another property owner affected by the height restriction could not attend the meeting, but Ms. Olman stated that she does have a letter from the neighbor agreeing to the removal of Condition 16.

Replying to an inquiry by Bernhardson regarding the hauling of dirt from the site, Larry Lee, Community Development Director, explained that that condition would be covered in the Code and that when there is the potential for a lot of dirt on the street, a separate bond can be obtained or a deposit. He also stated that there is a condition of approval that states that the construction traffic be on Marth Road. He added that the Code would again address any damage caused to public improvements such as Lea Road by the construction project.

Adopted Ordinance
Establishing Minimum
Standards and
Requirements for Refuse
Handling and Storage
Item 4.4
O-2001-6

Motion made by Peterson, seconded by Fossum, to adopt an ordinance establishing minimum standards and requirements for refuse handling and storage, Case 10000C-99, thereby amending Section 19.08, 19.31.01, 19.51 and 19.61 of the City Code with the following options as presented by staff: Issue #1 (Option #3), Issue #2 (Option #1), Issue #3 (Option #2), and Issue #4 (Option #1). Motion passed 5-1-0 (Wilcox opposing).

Mayor Winstead explained that this item was being continued from a previous meeting and that staff brought forward new language alternatives for the Council's review per its request.

Pease summarized the following issues and the options for consideration:

1. Issue: Exterior Storage (Should certain residential properties be protected, but not others?)
Option #1: Allow outdoor storage in Industrial Districts when greater than 300 feet from a Protected Residential District (original proposal).
Option #2: Require indoor trash collection and storage for all properties (can't be outside without obtaining a variance which would be reviewed on a case-by-case basis).
Option #3: Allow outdoor storage in Industrial Districts when greater than 300 feet from a protected residential property that meets two of three criteria. (Protected residential-Comp Plan designated residential, zoned R1, R1-A, or RS-1 and used residentially.)
Option #4: Allow outdoor storage in all Districts when greater than 300 feet from a protected residential property that meets two of three criteria.
2. Issue: Existing Conditions (What if greater compliance is required by past Conditions of Approval?)
Option #1: Existing properties may submit an application to the City Council to remove the Condition of Approval (original proposal).
Option #2: Remove all conditions for all properties in compliance with the proposed ordinance. (If they meet the Code, the conditions would be void.)

3. Issue: Language Clarification (Define requirements for minor expansions?)
Option #1: Modify wording
Option #2: New language (highlighted specific instances).
4. Issue: Compliance (When will existing developments be required to comply with the proposed Ordinance?)
Option #1: Cumulative expansion greater than 25 percent of the gross floor area.
Option #2: Full compliance for all properties by 2010.
Option #3: Full compliance for all properties other than industrial uses by 2005 and industrial uses by 2010.

Wilcox inquired of the City Attorney if the City could be held liable in the case where an applicant invested \$25,000 five years ago to put their trash inside as was required as a condition of approval but would not be required now.

Ornstein stated that if the condition of approval was reasonable at the time, and is consistent with the public's health, safety, and welfare, then it has the force and effect of law. He explained that the issue is whether or not it was a valid, reasonable condition at the time. He stated that he believed it would have been. He stated that although the requirement was not actually part of the Code, it was a long-standing policy endorsed by the City Council to require them as conditions of development approval.

Fossum, using an analogy regarding changes in speed limits, stated that there was no recourse for individuals who had received speeding tickets at that time to collect anything just because the speed limits were raised so the City shouldn't be liable for amending the trash ordinance now.

Bernhardson inquired of Pease what the City generally allows for outside storage in industrial areas, but not trash in particular.

Pease stated that in the I-3 Zone, outside storage of materials and products, within parameters (50%), is allowed.

Peterson stated his preferences in options as follows: Storage location (option #3), existing conditions (option #1), language clarification (option #2), and regarding compliance (option #1).

Abrams inquired as to the burden on those that have had the conditions and have played by the rules, and how much of a burden will it be on the Council and staff to process all of the applications one at a time.

Pease stated that the condition regarding exterior storage would basically follow the Code in all business and office districts and that it would only be the industrial districts that would be affected. He stated that it would be a small amount of applications that would come directly to the Council for approval and that they would not have to go through a public hearing process through the Planning Commission.

Harden inquired if Peterson's preference regarding compliance for expansion greater than 25 percent of the gross floor area would discourage businesses from expanding 25 percent and/or is it better that all properties be expected to comply at some point? She inquired if this option would have the impact that most existing developments not ever having to comply. She inquired that if the impact of option #1 is that most businesses don't have the room for 25 percent expansion, is the City then issuing an ordinance whereby most businesses will have their trash outdoors.

Pease stated that a 25 percent addition would be a large addition and that adding a trash room would be a small portion of a total building area and stated that he does not believe it would discourage expansions or hinder developments. He clarified that if the use of a building were to change, then the conditions would be triggered. He stated that approximately two-thirds of the businesses are in compliance as the ordinance is being presented.

Item 4.4 continued

Abrams, to clarify his understanding of the new ordinance, stated that the storing of trash inside was previously required as a condition on a case-by-case basis, but now there is going to be a loosening of the rules because those businesses that are far away from residences have more flexibility, however, what used to be required as a condition is now going to be part of an ordinance instead.

Speaker #1: Carl Nyberg

He asked for a clarification of the options put forth in Peterson's motion. He stated that he would prefer to see option #1 rather than option #3 for the issue regarding exterior storage as it affects his business.

Wilcox, for further clarification purposes, stated that Mr. Nyberg's property would not be in compliance with the new ordinance and that he would have to come in for a variance.

Speaker #2: Ken Viny, Kraus-Anderson

He stated that if there is a development less than 25 percent, that there would still be some screening that would be done in those circumstances. He stated that a lot of work went into the options presented as a result of the work done by the focus groups and that he would hate to see the ordinance go backwards.

Pease explained that as the recommendations were made by the focus groups, the only change was that option #3 now requires two of the three criteria be met rather than just being 300 feet from a protected residential property.

Wilcox inquired as to the makeup of the focus groups.

Pease replied that Gary Lally, Don Hayes, Mr. Dalsin, and one other.

Wilcox stated that in the last 20 years, through the Planning Commission, etc., the City has fought to clean up the city and has spent thousands of dollars on residential programs to help property owners clean up their neighborhoods and believes this ordinance is a step backwards. He does not see the benefits of the newly proposed ordinance.

Hawbaker stated that he believes the ordinance is a step in the right direction as it codifies the rules so that property owners can see and understand them. He added that the only time a condition can be put on it is when they come to the Council for an expansion. He believes this is a compromise but that the policies that are embodied in the ordinance are consistent with the past practice of the City.

Abrams suggested a friendly amendment to the motion that includes a direction to staff that it come back to Council in 12-18 months for an update as to how it's working and whether or not it needs to be changed.

Peterson agreed with Abrams that it should be brought back for review in 18 months.

Mr. Nyberg reappeared to state that according to an OSHA memo that he received, and provided to the Council that night, the additional dumping of smaller containers into a larger dumpster has the potential of adding more dust to the environment and that by the fact that diesel-powered trucks are coming into their building which are giving off carbon monoxide that can give people headaches. He stated that Council needs to be aware of some of the health risks that could be present with the requirement of inside trash storage.

Postponed to February 20, 2001, Awarding of a Cable Television Franchise to Everest Connections Corporation
Item 4.5

Motion made by Peterson, seconded by Abrams, and all voting aye, to postpone until the February 20, 2001, Regular Council Meeting, the awarding of a cable television franchise to Everest Connections Corporation and franchise agreement.

Ornstein stated that staff recommends the item be tabled for two weeks.

Approved Five-Year
Temporary Conditional
Use Permit for Home
Beauty Shop at 8821
Lakeview Road
Case 8230A-00
Item 5.1

Motion made by Abrams, seconded by Fossum, and all voting aye, to approve a five-year temporary conditional use permit for a home beauty shop at 8821 Lakeview Road, Case 8230A-00, for Jacqueline L. Good, subject to the following 4 conditions as set forth by the Planning Division Staff and the Hearing Examiner:

1. All customer parking shall occur on-site in the driveway and off the public street;
2. No business signs allowed;
3. Applicant shall be the sole operator on the premises; and
4. Hearings for renewal of this temporary conditional use permit may be conducted by the Hearing Examiner.

No staff report and no public testimony received.

Approved Five-Year
Temporary Conditional
Use Permit for Used Car
Sales at Roger's Body
Shop at 1301 West 79th
Street
Case 5803A-00
Item 5.2

Motion made by Abrams, seconded by Harden, and all voting aye, to approve a five-year temporary conditional use permit for used car sales (Class III) at 1301 West 79th Street, Case 5803A-00, for Roger's Body Shop, subject to the following 5 conditions as set forth by the Planning Division Staff and the Hearing Examiner:

1. Number of vehicles for sale on the premises be limited to a maximum of ten vehicles;
2. All vehicles associated with this use be located within the fenced storage area as shown on the site plan in Case File 5803A-00;
3. No signs relating to the used vehicles sales shall be permitted;
4. The small building at the west property line should be moved outside the existing drainage and utility easement and brought into conformance with Section 19.50.02 by July 1, 2001; and
5. Renewal of this temporary conditional use permit may be processed by the Hearing Examiner.

No staff report and no public testimony received.

Approval of Minutes

Motion was made by Peterson, seconded by Wilcox, to approve the minutes of the September 25, 2000, Special Meeting, as presented. Motion passed 5-0-1 (Abrams abstaining).

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to approve the minutes of the December 11, 2000, Joint Legislative/Council meeting and the January 16, 2001, Regular Council meeting, as presented.

Adjourn Meeting

Mayor Winstead adjourned the meeting at 9:50 p.m.

Barbara Clawson
Council Secretary