

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

CITY COUNCIL MEETING

Approved Minutes
Regular Meeting
Meeting #27

7:00 p.m.
October 7, 2002
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, S. Elkins, M. Fossum, H. Harden, S. Peterson, and V. Wilcox.

Mayor Welcomes
Webelo Scouts

Mayor Winstead welcomed Webelo Scouts from Troop #374, Nativity of Mary School, who had met with him prior to the council meeting and were staying to observe a portion of the meeting as required for their citizenship badge.

Proclamation Declaring
October as Disability
Employment
Awareness Month

Mayor Winstead read and presented a proclamation declaring October as Disability Employment Awareness Month to Bart Guddal, Co-Chair of the Job Success Fair to be held on October 9 at the Ramada Inn from 11:00 a.m. - 2:00 p.m.

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.

Accepted Grant from
Bureau of Justice
Assistance
Item 6.1

Motion was made by Elkins, seconded by Peterson, and all voting aye, to accept a grant in the amount of \$45,168 from the Bureau of Justice Assistance through its Community Block Grant Funds for Law Enforcement Purposes, to authorize the Mayor and Manager to sign the contract with the Bureau of Justice Assistance, and to approve the adjustments to the Police Department Budget as presented in the agenda materials to account for the funds.

Approved Adjustments
to 2002 Police Bomb
Squad Budget
Item 6.2

Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve adjustments to the 2002 Police Bomb Squad Budget from the State grant for equipment and training as presented in the agenda materials. The training funds will be used to send a new bomb squad member to explosive entry school. The equipment funds will be used to purchase X-ray equipment.

Ratified 2002-2003
Labor Agreement
with Civilian Police
Dispatchers
Item 6.3

Motion was made by Elkins, seconded by Peterson, and all voting aye, to ratify a 2002-2003 labor agreement with the Civilian Police Dispatchers. The 13 dispatchers are represented by the International Association of Fire Fighters and the contract is the result of a binding arbitration award.

Approved Agreement
with Metropolitan Radio
Board (MRB)
Item 6.4

Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve an agreement between the City and the Metropolitan Radio Board (MRB) under which the MRB will provide two radio control stations for integration into the City's police department's dispatch center. The radio control stations are designed to allow interoperability between Bloomington's 800 MHz trunked radio system and the MRB 800 MHz trunked radio system.

The radio control stations are provided at no cost and the MRB will reimburse the City for the cost of installation, up to \$1,000.00 per unit.

<p>Approved Amendments to Agreements with Met Council Regarding Hyland-Bush-Anderson Lakes Park Reserve Item 6.5</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve amendments to two grant agreements between the City and the Metropolitan Council for the acquisition, rehabilitation, and development of recreational open space lands within the boundaries of Hyland-Bush-Anderson Lakes Park Reserve. The State of Minnesota and Metropolitan Council bonds fund the grant agreements.</p>
<p>Approved Public Health Division's Request to Apply for Funding for ENABL (Education Now and Babies Later) Program Item 6.6</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve the Public Health Division's request to apply for funding from the Minnesota Department of Health to continue implementation of the ENABL (Education Now and Babies Later) program. The program's objective is to "reduce the incidence of adolescent pregnancy in Bloomington, Edina, and Richfield through delaying the initiation of sexual activity."</p> <p>No new City expenditures would be required, as the required match would be met through existing programs.</p>
<p>Approved Revised Schedule for the 2001-2002 Utility Improvement Project Item 6.7</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve the revised schedule for the 2001-2002 Utility Improvement Project as presented in the agenda materials.</p>
<p>Awarded a Contract for the 2002-802 Street Improvement Project Item 6.8</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to award a contract to Bituminous Roadways, Incorporated in the amount of \$351,702.35 for the 2002-802 Street Improvement Project for the roadway widening along 200 West 79th Street adjacent to the new Sam's Club development per the approved development and street modification agreement.</p>
<p>Awarded Design of a Salt/Sand Building and Design of a Vehicle Storage Building at Public Works Item 6.9</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to award the design of a salt/sand building to be located at 1800 West 96th Street to the firm of Toltz, King, Duval and Anderson at a cost of \$47,360 and to award the design of a vehicle storage building to be located on the James Avenue site of Public Works to the Kodet Architectural Group at a cost of \$79,800.</p> <p>Funding is available in the Public Works Improvement Project Fund for the vehicle storage building and the 2002 Storm Utility Budget for the salt/sand storage building.</p>
<p>Rejected Bid and Approved Schedule to Re-bid for Construction of a New Radio Communications Tower Item 6.11</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to reject the sole bid received from Vinco, Inc. for the construction of a new radio communications tower and to approve the proposed schedule to re-bid the project.</p>
<p>Approved Contract for Graphic Identity Work Item 6.12</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve a contract for graphic identity work with Yamamoto Moss in the amount of \$18,050. Yamamoto Moss will work with an ad hoc task force from the City to analyze brand information and develop a logo that more closely aligns with the City's identify. The graphic identify selected will be used in the signage and image system for the new Police/City Hall facility.</p>
<p>Approved Purchase Agreement for Acquisition of 8151 Aldrich Avenue Item 6.13</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve a purchase agreement for the acquisition of the premises at 8151 Aldrich Avenue in conjunction with the Lyndale Street Improvement Project. The agreement contemplates a purchase of the home for the City's appraised value of \$142,000. Other financial terms include: (1) proration of current year taxes (\$860.72) to date of closing; (2) city assumption, per federal regulations, of abstracting deed tax, and various closing costs.</p> <p>Funding for this acquisition will be from Fund 830-9156-431.70-11 (Project 2002-204).</p>

<p>Approved Relocation Benefits Relating to Purchase of 308 West 80th Street Item 6.14</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve payment of certain relocation benefits to the former tenants (Larry and Sue Gaston) of 308 West 80th Street, a residence the City is purchasing in connection with the Lyndale Avenue Street Improvement Project.</p> <p>The benefits to be paid total \$23,698 and consist of a rental assistance payment of \$21,798 and a moving cost payment of \$1,900. (The City has already advanced the Gastons a substantial portion of this amount to assist in their move, and this will be deducted from their final payment.) These benefits are due the tenants pursuant to the relocation regulations applicable to the project.</p> <p>Funding will come from Fund 830-9156-431.70-11 (Project 2002-204).</p>
<p>Directed Public Works to Investigate Possibility of a West 78th Street Improvement Project Item 6.15</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to direct Public Works staff to investigate the possibility of a West 78th Street Improvement Project from Gleason Road to the east terminus of the reconstruction of West 78th Street associated with the I-494 Third Lane Project including the Nine Mile Creek crossing replacement and to request the Nine Mile Creek Watershed District's participation in the replacement of the storm pipe which crosses this roadway.</p>
<p>Approved Purchase Agreement for Acquisition of 8200 Lyndale Avenue Item 6.16</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve a purchase agreement for the acquisition of the premises at 8200 Lyndale Avenue in conjunction with the Lyndale Street Improvement Project.</p> <p>The agreement contemplates a purchase of the home for the City's appraised value of \$158,000. Other financial terms include: (1) proration of current year taxes (\$967.15) to date of closing; (2) city assumption, per federal regulations, of abstracting deed tax, and various closing costs.</p> <p>Funding for this acquisition will be from Fund 830-9156-431.70-11 (Project 2002-204).</p>
<p>Approved Tentative Settlement for 2115 Southtown Drive Item 6.17</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve a tentative settlement with respect to the condemnation of the Rosenberg parcel at 2115 Southtown Drive for the Penn Avenue Bridge Project. The settlement amount is \$900,000, which represents a compromise between the City's appraisals (ranging from \$722,000 to \$762,000) and the owner's appraisal of \$1,590,000.</p> <p>The settlement will also need to be approved by the City of Richfield, which is responsible for the payment of the award under the Cities' cooperative agreement for the construction of the bridge.</p>
<p>Approved Funding for Joint Public Safety Training Center Item 6.18</p>	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve the funding for the City of Bloomington's share of the Joint Public Safety Training Center Project as follows: Fund 630 - Facilities (\$199,800), Fund 617 - Fire Equipment (\$920,400), Fund 245 - Pension Residual (\$1,086,700), Fund 240 - Drug Forfeiture (\$622,600), and 2003 General Fund (\$25,000) for a total of \$2,854,500.</p>
<p>Accepted and Thanked Donors for Donations to Various City Activities Item 6.10</p>	<p>Motion was made by Elkins, seconded by Wilcox, and all voting aye, to accept and thank the following donors for their donations to the various City activities including a long list of donations to River Rendezvous, Fire Prevention, Pond-Dakota Mission Park, and Human Services Party of the Month, as listed in the agenda materials. Approval was also given to amend the revenue and expenditure budgets, as noted, to facilitate the appropriate use of the funds.</p>
<p>Boards/Commissions Communications Item 7.1</p>	<p>No boards/commissions communications reported.</p>
<p>Status of Action Items Item 7.2</p>	<p>Status of Action Items provided.</p> <p>A consensus of the Council indicated that they would be available to meet at 7:00 a.m. on Wednesday, October 16 for a special meeting in Council Chambers.</p>

<p>Appointed Fossum as Voting Delegate and Harden as Alternate at NLC Congress of Cities Item 7.3</p>	<p>Motion was made by Peterson, seconded by Abrams, and all voting aye, to appoint Fossum as the Voting Delegate and Harden as an Alternate to the National League of Cities Congress of Cities, December 3-7, 2002, in Salt Lake City, UT.</p>
<p>Adopted a Resolution Recommending Appointment of Stephen Dalsin Item 4.8 R-2002-139</p>	<p>Motion was made by Peterson, seconded by Elkins, and all voting aye, to adopt a resolution recommending one nominee, Stephen Dalsin, for membership on the Board of Managers of the Lower Minnesota River Watershed District.</p> <p>Mayor Winstead commented that it would be good to have a Bloomington citizen on the Board of Managers and that he would be sending a letter of recommendation to accompany the resolution.</p>
<p>Approval of Minutes</p>	<p>Motion was made by Peterson, seconded by Abrams, and all voting aye, to approve the minutes of the September 9, 2002, Council meeting, as presented.</p>
<p>Sister City Gift Presentation</p>	<p>Wilcox, President of the Sister City Organization, presented a gift to Mayor Winstead from Mayor Inada of Izumi City that was brought back by the delegation of high school and college students who visited Japan this past summer. He stated that a delegation of Japanese grade-school kids is coming over here at the end of this year and a high school delegation is coming over next March. As next year celebrates the 10th anniversary of Bloomington's Sister City Organization, a delegation will be coming over here in August and Bloomington will be taking a delegation over there in October of 2003. It is hoped that Wilcox and the Mayor will be leading that delegation.</p> <p><Council took a 10-minute recess.></p>
<p>Closed Public Comment Period</p>	<p>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.</p>
<p>Approved New On-sale Liquor License for Spectators Grille & Bar Item 4.1</p>	<p>Motion was made by Fossum, seconded by Wilcox, and all voting aye, to approve a new on-sale intoxicating liquor license application for Nicklow's Back on 100, Inc. dba as Spectators Grille & Bar at 8301 Normandale Boulevard, expiring June 30, 2003.</p> <p>No public testimony was received.</p>
<p>Adopted an Ordinance Rezoning Property at 3835 West Old Shakopee Road Case 4985A-02 Item 4.2A O-2002-34</p>	<p>Motion was made by Peterson, seconded by Elkins, and all voting aye, to adopt an ordinance amending the Zoning Map to rezone certain property located at 3835 West Old Shakopee Road from Retail Business, B-2 to Retail Business (Planned Development), B-2(PD) for Azure Properties/Bloomington Square.</p> <p>Planner Rebecca Schindler reported that Azure Properties is planning on constructing a retail building with three tenant spaces on the southeast corner of France Avenue and West Old Shakopee Road, which requires a rezoning of the properties to Retail Business (Planned Development), approval of preliminary and final development plans, and a replat of the property to accommodate the proposed use. She stated that the proposed building and land use are consistent with the Concept Plan developed by the Advisory Committee and reviewed by the City Council in December 2001. She stated that the land use recommended for the southeast quadrant of the intersection is retail/commercial and was scheduled to be privately redeveloped. The Planned Development will allow the site to be integrated with the existing Southport Center to the east. She described the final development plan for a one-story, 4,450 square foot retail building that will be located on a ½ acre site after right-of-way is acquired for roadway improvements. She described the 25-foot setback as being approximately the same as the Bruegger's Bagles building. She stated that intersection improvements are scheduled to begin in the summer of 2003, with anticipated completion in 2004. As part of the plat, she stated that the City would acquire a portion of the right-of-way along Old Shakopee Road and along France Avenue for improvements. She stated that the Planning Commission recommended approval.</p> <p>Speaker #1: John Patterson, RJM Construction He stated that the potential building tenants include a coffee shop and a franchised hair salon with no letter of intent for the third space.</p>

Elkins stated that this building should transition well into what will likely come along later on the other three corners. He stated that the relatively short setback will align nicely with the Bruegger's building next door and that there will be lots of glass along the front of the building to allow patrons a view of the streetscape that the City will be investing substantial funds in order to create a pedestrian-friendly environment. He commented that it's time to change the Zoning Code so that applications like this would not be the exception that requires a PUD, but instead would be the rule that basically goes through. He stated that the 65-foot setbacks that put the parking lots in the front of buildings is not what is desired any more.

Winstead stated that the Planned Development tool allows for exceptions outside of the Code by the use of conditions.

Peterson stated that he agrees with Elkins regarding the setbacks and that it is good that an overall review of the Zoning Code is in progress.

City Manager Mark Bernhardson stated that staff is working to prepare a discussion of mixed use development versus PUD and the plusses and minuses as a concept issue piece to bring forward during an upcoming Strategic Planning session.

No public testimony was received.

Approved Revised
Preliminary and Final
Development Plan at
3835 West Old Shakopee
Road
Case 4985B-02
Item 4.2B

Motion was made by Peterson, seconded by Fossum, and all voting aye, to approve the revised preliminary development plan and final development plan for a retail building at 3835 West Old Shakopee Road, Case 4985B-02, for Azure Properties/Bloomington Square, subject to the following 12 conditions (including amended Condition #12 inserting the words, "Standard concrete" at the beginning of the sentence) and 9 Code requirements as set forth by the Planning Division Staff and the Planning Commission:

1. A development agreement including all conditions of approval be executed by the applicant and the City and be filed with Hennepin County;
2. A bond for landscaping and site finishing be submitted as approved by the Planning Manager;
3. Watershed District permit be obtained and proof of permit be submitted to the Manager of Building and Inspection Division;
4. Exterior building materials be approved by the Planning Manager. No elevation shall have more than 15% EFIS, wood and metal trim;
5. Building plans shall identify trash and recyclable material collection and storage area provided within the building as approved by the Fire Marshal and the Planning Manager;
6. Grading, drainage, utility and erosion control plans be approved by the City Engineer;
7. Connection charges, as appropriate, be satisfied;
8. A SAC questionnaire be completed and submitted to the Department of Public Works;
9. Erosion control measures be in place prior to issuance of grading permits and be maintained until all disturbed areas are stabilized;
10. Common driveway/access/parking agreements, as necessary, be provided as approved by the Traffic Engineer;
11. Alterations to utilities be at the developer's expense; and
12. Standard concrete sidewalk be installed along France Avenue and West Old Shakopee Road in a location determined by the City Traffic Engineer at the developer's expense unless the City Council waives assessments when they approve the street improvement project;

and subject to the following Code requirements:

1. Landscape plan be approved by the Planning Manager (Sec. 19.52) and be consistent with the France/Old Shakopee Road streetscaping plan;
2. All rooftop equipment be fully screened (Sec. 19.52.01);
3. Poured-in-place concrete curbs be provided on the perimeter of parking lots and traffic islands (Sec. 19.64);
4. Building be provided with an automatic fire sprinkler system as approved by the Fire Marshal (MN Bldg. Code 3802; Uniform Fire Code Ch. 10.306);

5. Fire lanes be posted as approved by the Fire Marshal (Sec. 8.73);
6. Utility plan showing location of existing and proposed water main and fire hydrant locations be approved by the Fire Marshal and Utilities Engineer (Sec. 6.20, Uniform Fire Code Ch. 10.301-C);
7. Food service plans be approved by the Environmental Services Division (Sec. 14.360);
8. Parking lot and security lighting shall satisfy the requirements of Section 19.54 of the City Code; and
9. Signage be in conformance with the requirements of Chapter 19, Article X of the City Code.

Patterson stated that regarding Condition #4, he would prefer to see the percentage of allowable exterior building materials such EFIS, wood and metal trim be increased to 20%, to make it easier to patch the exterior walls if the signs on three sides needed to be changed in the future.

Lee was informed by Londell Pease that staff has not wavered from the 15% requirement and those exceptions have needed to get a variance. He used Toro as an example. However, if the material was standard stucco instead of EFIS, there would not be a need for a variance. As it was suggested that perhaps the Code should be changed to allow EFIS as a comparable material to stucco, Lee replied that some of the differences are that stucco is a build-up system that is about 1" thick when it's finished, giving it exceptional durability compared to EFIS, and that lower installations of EFIS can melt under high heat and actually feed a fire as it creates a buldge in the skim coat that can start spraying out. Such a material would need to be at least 15 feet high up on a building. Another problem is that EFIS is a good moisture barrier because it holds moisture in buildings. He stated that stucco behaves much more like a masonry product than EFIS.

Patterson inquired as to whom would be incurring the costs to install the public sidewalk along France Avenue and West Old Shakopee Road and if it needed to be installed with some type of pavers or a specially designed sidewalk.

Deputy Director of Public Works Jim Gates stated that in the Ring Route corridor, public walks have been installed as part of the improvement without assessing the adjacent property owners. However, the France and Old Shakopee Road Improvement has not yet been ordered but staff would probably recommend that the sidewalks be part of the project and not assessed to the adjacent property owners. In this case, however, the Code requires commercial property to install public sidewalks as part of their project. He stated that staff would set the grade for the public sidewalks in conjunction with the France and Old Shakopee Road Improvement that the developer would need to follow.

Bernhardson explained the three options as follows:

1. Developer installs the sidewalk and pays for it.
2. Sidewalks are part of the project and that the City assesses the developer.
3. Sidewalks are installed as part of the project and are not assessed to the developer.

Patterson stated that it makes the most sense to have them installed as part of the project, however, the big difference is between a standard sidewalk and pavers.

Staff clarified that a "standard" sidewalk would be installed by the developer as part of his project and that if the City decides to enhance it later on it could be but without assessment to the owner. The words "standard concrete" were added to the language in Condition #12.

Patterson stated that if stucco is not figured into the 15%, they would not have a problem staying at 15% or below for the EFIS, wood and trim materials.

Lee clarified that the developer could use a combination of stucco in the flat applications and up to 15% EFIS to get the sculptural effects.

Approved Preliminary
Plat of Shakopee Second
Addition at 3835 West
Old Shakopee Road
Case 4985C-02
Item 4.2C

Motion was made by Peterson, seconded by Elkins, and all voting aye, to approve the preliminary plat of Shakopee Second Addition, located at 3835 West Old Shakopee Road, Case 4985C-02, for Azure Properties/Bloomington Square, subject to the following 6 conditions of approval as set forth by the Planning Division Staff and the Planning Commission:

1. 15-foot drainage and utility easement be provided along France Avenue and West Old Shakopee Road;
2. 15-foot sidewalk/bikeway easement be provided along France Avenue and West Old Shakopee Road;
3. 5-foot drainage and utility easement be provided along the east and south lot lines; and
4. Park dedication to be in cash;
5. Common driveway and access easements across the properties to the east be provided as approved by the Planning Manager and;
6. The preliminary plat be revised to reflect the right of way dimensions on the development plan.

Approved One-Year
Temporary Conditional
Use Permit at 8124
Pillsbury Avenue
Case 9391A-02
Item 4.3

Motion was made by Abrams, seconded by Peterson, and all voting aye, to approve a one-year temporary conditional use permit for the outdoor storage of construction equipment at 8124 Pillsbury Avenue South, Case 9391A-02, for Lakeview Electric, subject to the following 7 conditions of approval as set forth by the Planning Division Staff in the revised agenda materials and that the adjacent neighbor who spoke at the September 23 Council meeting be notified as to Council's actions with the understanding that if she objects, she could speak to this matter at the next meeting.

1. The existing fence be replaced with an 8-foot fence as approved by the Planning Manager;
2. All equipment greater than 10 feet in height be parked at least 10 feet from the fence;
3. The installation of the fence be completed no later than May 31, 2003;
4. Access from Pillsbury Avenue be removed or constructed to comply with all of the applicable City Codes;
5. No on-street parking allowed;
6. No exterior storage of construction debris allowed; and
7. No parking allowed in the 20-foot landscaped yard along Pillsbury Avenue.

Pease stated that this item was continued from a previous meeting because of the 10-foot fence requirement for screening of outdoor storage from residential and the temporary conditional use permit versus a permanent conditional use permit. He explained why the 10-foot fence is required and stated that when Star Plumbing came in for an application, a 10-foot fence was required along the front to screen equipment. He stated that Star Plumbing rents some of the land and stores some of his equipment on the Lakeview property and that a common fence along the entire frontage has been proposed. After a site visit, staff determined that an 8-foot fence would provide adequate screening for this temporary use but that another use in the future might necessitate a higher fence depending on what is being stored. He stated that long-term, both Lakeview and Star Plumbing could work together to create a new industrial development on the site but that it depends on the economy and other factors and that it is likely 4-5 years away. He stated that sometimes it's good to get property developed right away or go temporary so that it can be monitored by staff before major problems develop. He explained that staff recommended a two-year temporary conditional use permit because it's almost winter and the fence may not get installed until next spring and staff would like more time to evaluate the use.

Abrams stated that he is inclined to require the 10-foot fence as was required for a neighboring property a couple of months ago or reduce the length of the temporary conditional use permit so that if there is an issue or a problem with how they're using the property, it could be addressed much quicker by the City.

Bernhardson suggested going with an 8-foot fence and recommend one year in order to give the City better control regarding the types of vehicles that will be stored there.

Item 4.3 continued

Wilcox brought up the issue of consistency in approving applications in this area and requiring a 10-foot fence for one and an 8-foot fence for another. He stated that it would be fairer to the applicant to require a 10-foot fence over five years than require 8 feet now but taller in the future.

Peterson stated that the City's goal is to try and put in something that satisfies the need to screen it from the neighbors but in a way that is the most efficient and cost-effective. Therefore, he would support the conditions as provided by Pease in the staff report.

Pease stated that one curb cut would serve both Lakeview Electric and Star Plumbing with one gate and a walk-through gate. Regarding Star Plumbing, he explained that currently they are required by permit to put up a 10-foot fence. If Council approves an 8-foot fence for this applicant, then staff would have Star Plumbing's conditions changed to an 8-foot fence to have continuity between the two users.

Wilcox inquired if this would need to be reheard and readvertised because when it was left two weeks ago, it was going to be reviewed as a more permanent use.

Bernhardson recommended that the interested neighbor from the previous meeting be notified of what's being approved so that if she has an objection, she could contact a Council Member to have it reconsidered and then a resolution of denial would be brought back to Council.

Wilcox requested that the property owner who spoke on this matter at the last meeting be notified with the understanding that she could come back and speak to this matter at the next meeting.

Approved Revised Final Development Plan to Change Condition #9 in Case 9250AB-94 Item 4.4A

Motion was made by Peterson, seconded by Wilcox, to approve the revised final development plan to change the date in Condition 9 in Case 9250AB-94 from 2004 to 2009 at 3700 and 3750 East 80th Street, for Rosa Development, subject to the following 2 conditions as set forth by the Planning Division Staff and the Planning Commission. Motion passed 6-0-1 (Fossum temporarily absent).

1. A report detailing efforts to market the property for development be submitted to the Director of Community Development upon request on or after July 1, 2005. This report shall include but not limited to any agreements with brokers, contacts and inquiries with potential developers or potential users, and copies of all marketing materials prepared and distributed to promote the development of the property; and
2. A development agreement be executed to include the above conditions and all the conditions in Case 9250AB-94.

Pease stated that Neil Blanchett was present if Council had any questions but they had none.

No public testimony was received.

Adopted a Resolution of Partial Denial for Rosa Development at 3700 and 3750 East 80th Street Item 4.4B R-2002-136

Motion was made by Peterson, seconded by Wilcox, to adopt a resolution of denial of an application by Rosa Development to extend the deadline for construction of an office building at 3700 and 3750 East 80th Street from April 1, 2004 to April 1, 2009, with an option for an additional five-year extension if warranted by market conditions but approval of a five-year extension to April 1, 2009. Motion passed 6-0-1 (Fossum temporarily absent).

No public testimony was received.

Continued to Later in the Agenda Item 4.5

Resolution assessing property at 9140 Columbus Avenue was continued to later in the agenda to give homeowner an opportunity to discuss the assessments with Associate City Attorney Eric Berg and Community Development Director Larry Lee.

Lee explained that the homeowner had questioned the reasonableness of the assessment and that his memo to the Council provided the history on this matter. He stated that the time for questioning the reasonableness of the assessment is in the past because the owner did not respond to those opportunities provided by staff and that the assessment is simply a way of obtaining payment of the unpaid fines.

Item 4.5 continued

Bernhardson stated that after this was previously heard by Council, staff did try and set up a meeting with the applicant, however, the applicant did not show.

Speaker #1: Ernestine Wagner, 9140 Columbus Avenue

She stated that according to the mediation records, the fine was supposed to be delivered in community service hours by Richard Grant and not in monetary value.

Associate City Attorney Eric Berg stated that per Associate City Attorney Sandra Johnson, there were three citations originally issued and that the fines proposed for assessment tonight relate to two of the three that were not involved in the mediation process for which no mediation was requested. He explained that mediation was requested for Citation 2025 for substandard buildings, exterior storage, rent without a license, and a late fee totaling \$1,265.00. He explained that the mediation matter is not before the Council tonight.

Bernhardson suggested that this item be postponed to later in the agenda to allow Eric Berg and Larry Lee to meet with the homeowner out in the hall to discuss the matter.

Winstead added that the City has tried to work with the homeowner to bring this to resolution but that it has gone on for years and now in the eleventh hour there are objections and questions being raised about the process for which the time to question that has passed. He stated he would temporarily postpone the item and suggested the homeowner meet with staff in the hall for an explanation of what has transpired.

Applications for
Variances at 5109 West
86th Street to be Reheard
on November 4, 2002
Item 4.6

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to rehear the applications on November 4, 2002, by Martin Tjaden at 5109 West 86th Street for variances to reduce side yard and rear yard setbacks in order to erect an 8-foot high fence along the south and east property lines.

Wilcox stated that as a result of a conversation with the applicant, he supports the applicant's request to have this matter put to a vote before the entire Council.

A motion was made by Wilcox, seconded by Fossum, to reconsider this matter to allow the applicant to appear before the entire Council. (No vote was taken.)

Peterson clarified that because the Council did not take final action on this at the last meeting but requested a resolution of denial, perhaps a motion to reopen the public hearing would be more appropriate.

Bernhardson stated that based on the City Attorney's advice who is out of town, the Council should move to a reconsideration.

Winstead suggested that the motion be amended to include a reopening of the public hearing also. It was agreeable to Wilcox and Fossum so the Mayor called the motion to reconsider the matter and reopen the public hearing. Motion passed 5-2 (Abrams and Peterson opposing).

Bernhardson confirmed that because the matter is to be reconsidered, another public hearing would need to be held and suggested November 4 in order to have a full council.

Motion was made by Wilcox, seconded by Elkins, to reconsider the matter and reopen the public hearing on November 4, 2002. (No vote was taken.)

Motion was made by Peterson, seconded by Abrams, to substitute that motion with a motion to adopt a resolution of denial. (No vote was taken.)

Peterson explained that he wanted a test vote on the resolution of denial because if it passes, then the hearing would not need to be readvertised and reopened.

Wilcox stated that he is comfortable with letting the vote be taken on the resolution of denial and Harden stated that she had spoken with the applicant and is up to speed on the matter.

Peterson withdrew his motion on the resolution of denial.

Mayor called the motion by Wilcox, seconded by Elkins, to reconsider the matter and reopen the public hearing on November 4, 2002. (No vote was taken.)

Peterson requested that Council vote in opposition of this motion in order to allow the resolution of denial to be acted upon tonight to determine whether the hearing should occur in a few weeks.

Wilcox withdrew his motion to reconsider entertaining the motion on the resolution of denial.

Motion was made by Peterson, seconded by Abrams, to adopt a resolution of denial as presented. (No vote was taken.)

Peterson stated that he does not believe the public hearing process should be redone in order to give a council member who has been absent the ability to be present. He stated that the public hearing process allows a record to be developed and that it is recorded in the minutes and that it would be a bad idea from a process standpoint to go back and rehear items because of the absence of one council member. He stated that the rules allow four council members to take action on an item and that it is not a good idea to go back and reopen items because one council member is absent unless some new information has come forward.

Wilcox clarified that this request is for the applicant and not for a council member.

Mayor called the motion made by Peterson, seconded by Abrams, to adopt a resolution of partial denial. Motion failed 3-4 (Fossum, Wilcox, Elkins and Harden opposing).

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to reconsider Case 10596A-02 with a new readvertised public hearing to be held on November 4, 2002.

Abrams inquired if there was a legal requirement for needing to handle application denials in two meetings, which opens the door for the reconsideration of items, when approvals are handled in one meeting.

Bernhardson stated that denials have traditionally been a two-step process because staff does not know what Council is going to deny ahead of time. A request for staff to prepare a resolution allows for the establishment of a record for the denial and allows the Council to see the resolution of denial and the reasons for the denial. He stated that there have been more resolutions of partial denial lately due to the 120-day time limit in which the Council has to act upon the application with either an approval or a resolution of partial denial indicating what part of the application the Council is denying or it could be considered approved without this formal action by the Council.

Adopted Resolution
Approving Variance for
an Open Deck and
Stairway at 8201
Washburn Avenue
Case 10603A-02
Item 5.1A
R-2002-140

Motion was made by Peterson, seconded by Abrams, and all voting aye, to adopt a resolution approving a variance to reduce the required front setback from 25 feet to 21.9 feet for an open deck and stairway at 8201 Washburn Avenue South, Case 10603A-02, for James and Janis Brady, subject to the one condition of approval being satisfied prior to the issuance of a building permit as set forth by the Planning Division Staff and the Planning Commission:

1. The variance only applies to a four-foot deck encroachment as shown in Case 10603A-02.

Pease explained that a building permit was obtained by the applicant for a major building addition onto the house. While staff was reviewing the request for a variance for a deck in the front yard, staff realized that it issued a permit in error for the substantial addition. He explained that tonight are variances for the addition and for the open deck. He stated that it was the City's mistake and that the citizens have handled it very well. He added that the project is a nice addition to the neighborhood.

No public testimony was received.

Adopted Resolution
Approving Variance for
Living Area Addition &
Garage Conversion at
8201 Washburn Avenue
Case 10603B-02
Item 5.1B
R-2002-141

Motion was made by Peterson, seconded by Abrams, and all voting aye, to adopt a resolution approving a variance to reduce the side yard setback from 10 feet to 5 feet for a living area addition and garage conversion into living area at 8201 Washburn Avenue South, Case 10603B-02, for James and Janis Brady, subject to the following condition of approval as set forth by the Hearing Examiner:

1. This variance only applies to the original dwelling and proposed addition as shown on the plans in Case 10603B-02.

Adopted Resolution of
Partial Denial of
Application by Walser
Buick/Pontiac/GMC at
4301 West 80th Street
Item 4.7
R-2002-138

Motion was made by Fossum, seconded by Abrams, to adopt a resolution of partial denial of the application of Walser Buick/Pontiac/GMC for a one-year temporary conditional use permit to park employee vehicles at 4301 West 80th Street but approval of said permit for a term through December 31, 2002, subject to the following conditions. Motion passed 6-0-1 (Peterson abstaining).

1. The temporary conditional use permit shall terminate on December 31, 2002;
2. Only employee parking for the Walser Buick/Pontiac/GMC and Walser BMW dealerships will be allowed with a maximum of 125 spaces in the area designated on the plan submitted in Case 8133B-02;
3. No overnight parking shall be allowed;
4. No new or used car inventory or vehicles associated with the service/repair shops of the two dealerships shall be parked or stored on the site;
5. The existing site lighting shall be properly maintained and used for employee security during the permit period; and
6. No site improvements or alterations shall be made during the permit period without authorization by the Issuing Authority; and
7. Only the appropriate directional signage for Walser employee parking, as approved by the Planning Manager; shall be used.

No public testimony was received.

<Council took a two-minute recess to wait for staff trying to resolve Item 4.5, which was temporarily postponed to the end of the agenda.>

Adopted Resolution
Assessing Property at
9140 Columbus Avenue
Item 4.5
R-2002-137

Motion was made by Harden, seconded by Fossum, and all voting aye, to adopt a resolution assessing property located at 9140 Columbus Avenue for unpaid civil fines totaling \$1,468.00.

Bernhardson stated that because the staff directly involved in this assessment were not available and the appellant claims he was not aware of certain things, he suggested that this item be postponed for two weeks to allow the resident one more opportunity to talk with the staff directly involved.

The homeowner claimed he didn't receive a meeting notice for the last meeting that was set up by staff but asked if a meeting time could be determined tonight. Staff inquired if Council wanted staff to meet with the applicant after 5:00 p.m. or on the weekend in order to resolve this.

Harden stated that given the history on this assessment and the homeowner's lack of cooperation with staff, the property should be cleaned up and the fines paid and that it's too late for talking.

Motion was made by Harden, seconded by Fossum, and all voting aye, to adopt a resolution assessing property at 9140 Columbus Avenue for unpaid civil fines totaling \$1,468.00.

Peterson stated for the record that there is a long history of staff attempting to contact this homeowner to discuss his property violations but that the homeowner has been unresponsive to the City's repeated efforts, thereby making it tough for the Council to grant the homeowner additional time at this point in the process.

Adjourn Meeting

Mayor Winstead adjourned the meeting at 9:11 p.m.

Barbara Clawson
Council Secretary