

CITY OF BLOOMINGTON
1800 WEST OLD SHAKOPEE ROAD
HENNEPIN COUNTY, MINNESOTA 55431

CITY COUNCIL MEETING

Approved Minutes
Regular Meeting
Meeting #21

7:00 p.m.
July 21, 2003
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.
- Approved Submittal of a Grant Application to the Minnesota Department of Health
Item 6.1 Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve a request by Public Health to submit a grant application to the Minnesota Department of Health for continued administration of the local WIC (Women, Infants and Children) project during calendar years 2004 and 2005.
- Approved Acceptance of 2002 State and Local Supplemental Appropriation Planning Grant Pass-through Funding
Item 6.2 Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve the acceptance of the 2002 State and Local Supplemental Appropriation Planning Grant pass-through funding in the sum of \$6,365 from Hennepin County Emergency Preparedness. The funds help offset the costs incurred by Bloomington's jurisdiction while updating its all-hazard emergency plan to include specific points related to terrorism initiated event response.
- Approved Grant Agreement with State of Minnesota Department of Public Safety
Item 6.3 Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve a grant agreement with the State of Minnesota Department of Public Safety in the amount of \$29,850.00 received under the 2002 Domestic Preparedness Equipment Grant program and approved the appropriate adjustments to the 2003 Budget. The program is directed at providing additional equipment for the Police Department's Bomb Squad to purchase a blast tent and other associated equipment. The grant requires a 25% match of \$9,950, which has already been met by the acquisition of a bomb suit earlier this year.
- Adopted a Resolution Approving a Variance at 241 East 105th Street Circle for Mark Johnson Construction
Case 10623A-03
Item 6.4
R-2003-100 Motion was made by Elkins, seconded by Wilcox, and all voting aye, to adopt a resolution approving an administrative variance to reduce the side yard adjoining a street from 30 feet to 14 feet for a new single family home at 241 East 105th Street Circle, Case 10623A-03, for Mark Johnson Construction, subject to the following 3 conditions as set forth by the Hearing Examiner:
1. The maximum encroachment of 16 feet shall be limited to the garage as shown on the plans for Case 10623A-03;
 2. No additional improvements between Third Avenue and the dwelling be permitted. This includes, but not limited to, swimming pools, parking pads, accessory structures, play apparatuses, or sport courts; and
 3. No fencing allowed in the easement of record.
- Approved Addendum II to Referral Provider Agreement with HealthPartners
Item 6.5 Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve Addendum II to the Referral Provider Agreement with HealthPartners for which the City will be reimbursed \$15 for each influenza vaccination given to HealthPartners' enrollees at employer sites, including the City of Bloomington.

<p>Approved Agreement with Eden Prairie ISD #272 for SHIELD Item 6.6A</p>	<p>Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve an agreement with Eden Prairie ISD #272 for purchase of SHIELD (South Hennepin Interagency Learning and Development) Central Referral Services from the Public Health Division. The City will receive up to \$61,916.63 for providing referral services for handicapped children under age five and their families.</p> <p>No budget adjustment is needed.</p>
<p>Approved Agreement with Eden Prairie ISD #272 for Services to Handicapped Children Item 6.6B</p>	<p>Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve an agreement with Eden Prairie ISD #272 for services to children with handicapping conditions in which the City will be compensated up to \$35,471 for services provided during the 2003-2004 school year.</p> <p>No budget adjustment is needed.</p>
<p>Approved Change Orders to Bloomington Civic Plaza Item 6.8</p>	<p>Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve the following Change Orders for the Bloomington Civic Plaza that will add \$48,394 for a total construction cost of \$26,006,354:</p> <p>Stellar Concrete/Masonry: \$4,339 Doody Mechanical: \$136.00 Lund Martin: \$36,331 Harmon: \$8,893 Kelleher Construction: \$1,553 Swanson & Youngdale: \$1,912 Secoa: (\$9,140) Mortenson (City Hall): \$4,370</p> <p>Funding is available in the Contingency Budget adopted for this project. The contingency for Police, City Hall, and Fine Arts has a negative balance of \$162,460 and the Enhancement Contingency Budget has a balance of \$1,106,425 after these change orders.</p>
<p>Awarded a Contract to Merrimac Construction Item 6.9</p>	<p>Motion was made by Elkins, seconded by Wilcox, and all voting aye, to award a contract to Merrimac Construction in the amount of \$761,295.00 and approved a 10% project contingency for the construction of a salt/sand storage facility at 1800 West 96th Street.</p> <p>Funding for this project is available in the 2003 Storm Water Utility Fund, Activity 8320. The engineer's estimate for this project was \$800,000.00.</p>
<p>Approved Lease Agreement with "Thursday Musical" Item 6.10</p>	<p>Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve a lease agreement with "Thursday Musical", a Minnesota non-profit organization whereby Thursday Musical will lease space in the Bloomington Center for the Arts.</p>
<p>Approved RALF Loan Agreement for 8524 Girard Avenue South Item 6.11A</p>	<p>Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve a RALF loan agreement in an amount up to \$265,000 for the property at 8524 Girard Avenue South owned by Randall and Marie Wegner. This is one of 27 parcels eligible for the Met Council's RALF (Right-of-Way Acquisition Loan Fund) program, along the I-35W corridor between roughly 82nd Street and 86th Street.</p>
<p>Approved Purchase Agreement for 8524 Girard Avenue South Item 6.11B</p>	<p>Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve a purchase agreement between the City and the Wegners for the purchase of 8524 Grand Avenue for a price of \$208,000 (the City's certified appraisal of value).</p>
<p>Approved RALF Loan Agreement for 8332 Humboldt Avenue South Item 6.12A</p>	<p>Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve a RALF loan agreement in an amount up to \$252,000 for the property at 8332 Humboldt Avenue South owned by Donald and Ellen Desplinter. This is one of 27 parcels eligible for the Met Council's RALF (Right-of-Way Acquisition Loan Fund) program, along the I-35W corridor between roughly 82nd Street and 86th Street.</p>

<p>Approved Purchase Agreement for 8332 Humboldt Avenue South Item 6.12B</p>	<p>Motion was made by Elkins, seconded by Wilcox, and all voting aye, to approve a purchase agreement between the City and the Desplinters for the purchase of 8332 Humboldt Avenue for a price of \$200,000 (the City's certified appraisal of value).</p>
<p>Postponed to July 28 the Awarding of a Contract for the 2002-203 Street and Utility Improvement Project Item 6.7</p>	<p>Motion was made by Elkins, seconded by Wilcox, and all voting aye, to postpone to the July 28, 2003, Study meeting, the awarding of a contract for the 2002-203 Street and Utility Improvement Project.</p>
<p>Approved Bill Hagstrom on the Bloomington Civic Plaza Park/Art Design Task Force Item 3.1</p>	<p>Motion was made by Peterson, seconded by Wilcox, and all voting aye, to approve Bill Hagstrom, 8607 Xerxes Avenue South, as the Veteran's group member on the Bloomington Civic Plaza Park/Art Design Task Force, who is a member of both the Bloomington VFW and the Bloomington American Legion.</p>
<p>Adopted a Resolution Authorizing a Livable Communities Demonstration Program Grant for 84th & Lyndale Item 4.3A R-2003-95</p>	<p>Motion was made by Fossum, seconded by Peterson, to adopt a resolution authorizing application for a redevelopment grant through the Livable Communities Demonstration Program for the 84th & Lyndale redevelopment area. The plans calls for development of a new Cub store, senior housing, townhomes, urban park and streetscape. This area has been identified by Council as one of the City's "String of Pearls" redevelopment priorities. Motion passed 6-1 (Elkins opposing).</p> <p>Elkins stated that as this development has materialized, it doesn't warrants inclusion among the City's "string of pearls." He stated that he wouldn't be supporting the grant application, as this project is undistinguished and doesn't do anything to further the strategic objectives the Council set for its "pearls."</p>
	<p>Abrams stated that this section of Lyndale Avenue needs further improvement and doesn't want to see it slide further. He supports the application submittal, as it would improve the commercial property, would provide some more senior housing and affordable housing, and would in general help spruce up Lyndale Avenue.</p>
	<p>No public testimony was received.</p>
<p>Adopted a Resolution Authorizing a Livable Communities Demonstration Program Grant for McGough Development Item 4.3B R-2003-101</p>	<p>Motion was made by Elkins, seconded by Abrams, and all voting aye, to adopt a resolution authorizing application for a development grant through the Livable Communities Demonstration program to construct infrastructure related to Phase I development of the Bloomington Central Station Project (McGough Development), which includes 698 housing units with a goal of at least 20 affordable and 80 percent or less of median income.</p> <p>Elkins supported this resolution stating that this project has more merit and is more consistent with what the Council wants in a redevelopment and therefore supported the resolution.</p>
	<p>No public testimony was received.</p>
<p>Opened Public Comment Period</p>	<p>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.</p>
<p>Adopted a Resolution Approving a Grant Application to the Metropolitan Radio Board Item 4.5 R-2003-96</p>	<p>Motion was made by Peterson, seconded by Harden, and all voting aye, to adopt a resolution approving a grant application to the Metropolitan Radio Board to encourage integration into the regional 800 MHz trunked radio system.</p> <p>Mark Bernhardson, City Manager, explained that since the City is exploring the possibility of joining the Metro Radio System, the resolution indicates that the City is applying for state and federal funding but does not commit the City to Metro Radio if the numbers are not favorable.</p>
	<p>No public testimony was received.</p>

<p>Adopted a Resolution Approving Hennepin County Agreement No. PW 44-07-02 Item 4.6 R-2003-97</p>	<p>Motion was made by Peterson, seconded by Wilcox, and all voting aye, to adopt a resolution approving Hennepin County Agreement No. PW 44-07-02 between the City and Hennepin County for a traffic control signal at Logan Avenue and County State Aid Highway (CSAH 1) West Old Shakopee Road to accommodate the new Bloomington Civic Plaza.</p> <p>No public testimony was received.</p>
<p>Adopted a Resolution Amending Fees and Charges Schedule Relating to Arts Center Item 4.7 R-2003-98</p>	<p>Motion was made by Peterson, seconded by Harden, and all voting aye, to adopt a resolution amending fees and charges for services provided by departments and divisions of the City (other than those otherwise established by ordinance) specifically relating to the Bloomington Center for the Arts.</p> <p>Peterson stated that one of his goals for the theater is to foster local theater groups and make opportunities for Bloomington residents to see performances in Bloomington that they might not be able to see otherwise. Although non-profit theater productions are not currently covered in this schedule, he is comfortable for now with the schedule as presented.</p> <p>No public testimony was received.</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>No Status of Actions Items.</p> <p>Bernhardson announced that Bush Lake Beach was reopened on Sunday, July 20.</p> <p>To respond to Fossum's inquiry regarding the recent problems at Bush Lake, Community Development Director Larry Lee explained that staff believes that the conditions haven't really changed but that more monitoring and measuring is taking place today than had been done in the past. Problems are detected more quickly with the newer technology and explained that staff is trying to develop a predicting model to know ahead of time when the lake is likely to be unsafe. He described the factors affecting the lake are as follows:</p> <ol style="list-style-type: none"> 1. Period after rainfall (material that is washed off into the lake). 2. During heavy winds (agitation of the lake surface stirs up the lake bottom). 3. Water temperature. <p>Bernhardson announced that tentatively the Council would be meeting at 5:00 p.m. on August 18 to participate in a budget exercise utilizing voting technology.</p>
<p>Approved Transmittal of Letters Supporting NAR Project Item 7.3</p>	<p>Motion was made by Wilcox, seconded by Peterson, and all voting aye, to approve transmittal of letters to Representative Ramstad and Senators Dayton and Coleman supporting an initiative by Representative Steve Rothman (NJ) and Senator Jon Corzine (NJ) to include aircraft noise reduction as a goal in the National Airspace Redesign (NAR) Project.</p>
<p>Approved Serving of Liquor in Bloomington Center for the Arts Item 7.4</p>	<p>Motion was made by Peterson, seconded by Elkins, and all voting aye, to approve the serving of intoxicating liquor in the Bloomington Center for the Arts, through a provision in Minnesota State Law which allows the City to contract with a licensed liquor provider within the City to serve liquor, approved the solicitation of a Request for Proposals (RFP) from Bloomington on-sale liquor providers to contract for the serving of liquor in the Bloomington Center for the Arts, approved the dispensing of liquor through the issuance of a special event license up to twelve events in the main corridor along the Civic Plaza (between the Center for the Arts and the Police Department), for Priority Groups #1-5, with the provision that the Police Chief would have discretion to determine at which events a police officer would be provided (at the cost of the provider), and approved a review of the provision of liquor in the Civic Plaza in mid January 2004.</p>

Dave Ornstein, City Attorney, explained that the best option would be to authorize the serving and sale of liquor in the Civic Plaza area, specifically the Arts Center and the hallway and potentially the City Council Chamber. He stated that a process should be approved to select holders of on-sale intoxicating liquor licenses in Bloomington (restaurants and/or hotels) interested in providing liquor service on those occasions when it's warranted. An agreement would be prepared by the City that could be entered into with the vendor the Council authorized that would insulate the City from any liability related to the serving or sale of liquor on the premises. Another option that could be authorized would be for quality non-profit organizations to obtain special event licenses but that they would be limited to 12 such events each year. The non-profit would contract with the on-sale licensee to provide that service and the City would be removed from any liability. He stated that as a policy issue, the Council could decide if it wanted a police officer present during the events for security purposes.

Council inquired why a police officer would be needed at Bloomington Civic Plaza special events when they're not required for other establishments in the city.

Harden disagreed with the need for having a police officer present and limiting the choice of alcoholic beverages that can be served.

Abrams stated that as the building can be rented out to all possible sorts of users, he could support serving beer and wine to the Bloomington arts groups.

Bernhardson stated that it's a policy decision for the Council but that staff might recommend on a trial basis that it be limited to the facility, the City, and the community-related groups at a maximum at this time.

Motion was made by Peterson, seconded by Elkins, to adopt a policy with restrictions to serving only beer and wine and that the police officer requirement be deleted, and that the serving of liquor be limited to groups that are identified as Priority #1-5 with a review of the policy in mid January 2004.

Fossum stated that he would not have a problem with serving a wide array of liquor and that the Police Chief should have the discretion of whether a police officer is needed at a certain event. The provider should be charged for the officer's time.

Harden agreed with Fossum.

Wilcox disagreed with the priority ranking of the groups and inquired if the idea of having a police officer present could be more linked to the organization that might trigger the police officer on duty. He agreed that it be the Police Chief's discretion.

Winstead stated that he supports the liquor and the Police Chief discretion.

Abrams suggested an amendment that makes the provider pay for the police officer so that the taxpayers are not bearing the cost. Peterson and Harden agreed with the amendment.

Motion was made by Wilcox, seconded by Harden, to amend the motion to include hard liquor with the beer and wine. Motion passed 5-2 (Abrams and Peterson opposing).

Bernhardson stated that staff was looking at limiting the serving of alcohol to the arts center side of the gate and that if there were events down the corridor that Council felt should involve serving alcohol, that it could be done under the Special Events license for non-profit groups.

Abrams inquired if a damage deposit should be required in case an event gets out of hand and damage is done to City property.

Mayor called the main motion that was amended to include the serving and sale of hard liquor, wine, and beer and deleting the requirement that a police officer be present making it the Police Chief's discretion to require that would be paid for by the provider. Motion passed unanimously.

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.
Adopted a Resolution Renewing a Bar Bingo Occasion Lawful Gambling Permit for Eagles at 9152 Old Cedar Avenue South Item 4.1A R-2003-94	Motion was made by Abrams, seconded by Fossum, and all voting aye, to adopt a resolution renewing a Bar Bingo Occasion Lawful Gambling Premise Permit for Eagles Aerie 3208 at 9152 Old Cedar Avenue South on Saturdays from 1:00 p.m. - 3:00 p.m. No public testimony was received.
Approved a New Taxicab License for Northstar Taxi Item 4.1B	Motion was made by Abrams, seconded by Wilcox, and all voting aye, to approve a new taxicab company license application for Northstar Taxi, 1031 West 80 th Street. Their rates are proposed as follows: Flag, \$2.00; Per Mile, \$1.60; Waiting Time, \$21.00/hour. No public testimony was received.
Approved Amendment to Liquor Licensed Premises for Richfield- Bloomington Eagles at 9152 Old Cedar Avenue Item 4.1C	Motion was made by Abrams, seconded by Fossum, and all voting aye, to approve a request for amendment to the Liquor Licensed Premises for the Richfield-Bloomington Eagles, 9152 Old Cedar Avenue South, to include liquor service in the tent area. The amendment is for a members and guests only picnic on Saturday, July 26 for the time period of 12:00 noon to 5:00 p.m. No public testimony was received.
Approved On-Sale Intoxicating Liquor Management Agreement Between T-H Continental, L.P. and Joey D's Grill & Bar Item 4.1D	Motion was made by Abrams, seconded by Peterson, and all voting aye, to approve an On-Sale Intoxicating Liquor Management Agreement between T-H Continental, L.P., the current on-sale intoxicating liquor licensee at Days Inn Mall of America, 1901 Killebrew Avenue, and Joey D's Grill and Bar, Inc. No public testimony was received.
Adopted an Ordinance Authorizing the Sale of 3.2 Percent Malt Liquor and On-Sale Intoxicating Liquor Until 2:00 AM Item 4.2 O-2003-33	Motion was made by Harden, seconded by Fossum, and all voting aye, to adopt an ordinance authorizing the sale of 3.2 percent malt liquor and on-sale of intoxicating liquor until 2:00 A.M., requiring a special license and imposing an additional license fee of \$500 for on-sale of intoxicating liquor and \$200 for on-sale of 3.2 beer. Special licenses would be required for on-sale club and 3.2 off-sale but for no additional fee. Ornstein provided background on the Legislature's decision authorizing the on-sale of intoxicating liquor, on-sale and off-sale of 3.2 percent malt liquor until 2:00 AM, which will require an amendment to the City's ordinance if it wants to extend the hours of operation. Staff is recommending that a special license from the City be required if a licensee wishes to take advantage of the additional hour of operation. Based on staff's analysis of the estimated additional cost of issuance, inspection, and law enforcement, the following fees are being recommended: 3.2 on-sale (\$200), on-sale intoxicating liquor (\$500), with no additional fee for a special on-sale club, special on-sale wine, or a special 3.2 off-sale. The City received correspondence from both the Hospitality Industry and the Bloomington Convention & Visitor's Bureau supporting the amendment. Regarding the law enforcement element, John Laux, Police Chief, explained that some officers start at 5:00 PM and work 10-hour shifts and some start at 7:00 PM and work 8-hour shifts, but all leave at 3:00 AM (assuming a 1:00 a.m. closing hour). Extending to 2:00 AM with a 2:30 AM closing creates an hour of overtime, which results in a cost of \$1,000 per licensee if all 75 licensees stayed open until 2:00 AM. He stated that moving those shifts back one hour would not be appropriate, as the busiest time for police officers answering calls for service is between 5-9 p.m. He stated that there is no current available data from other cities to see what effects staying open until 2:00 AM would have on the needs for law enforcement.

Item 4.2 continued

Bernhardson stated that staff is not pushing forward on a special events license, as it has some administrative and legal concerns.

Speaker #1: Bob Dorn, General Manager, Marriott Courtyard

He stated that the hoteliers are trying to stay competitive in the hospitality industry in the Twin Cities area. They would look to stay open until 2 AM but only for a few days a year, when a big convention is in town, and that the Police Department could be notified of those dates so that less overtime expenses would be incurred. He stated that he would be more interested in the special events situation rather than all year.

Bernhardson stated that it may not be legally possible for the City to issue a special events license but that it would likely be an annual license in order to try and keep the costs lower.

Speaker #2: Mike Roddy, General Manager, Radisson South

He stated the importance of keeping Bloomington's hospitality industry competitive with Minneapolis in the area of services and amenities. He stated that his hotel would not be utilizing the 2 AM closing on a routine basis but rather would be working with their meeting planners to extend until 2:00 AM on an as-needed basis only. He doesn't believe too many hotels would be open until 2:00 AM on a consistent basis.

Winstead commented that the Council received a comment from a citizen opposed to the 2 AM bar closing, as Bloomington is a bedroom community and it's not appropriate here.

Speaker #3: Kevin Sawatsky, President of Arrowhead Hospitality Group

He operates four hotels in Bloomington and supports staff's ordinance amendment. He believes the plan makes complete sense and is agreeable to the proposed fees.

Winstead believes an additional fee should be charged for the special license to help offset the additional costs associated with the extended hours of operation. He stated that it would be helpful for the Police Chief to know in advance when big conventions are going to be in town so that enforcement could be beefed up.

Bernhardson stated that staff would look at whether the City could do a "limited license" rather than a special event license. It may involve some work with the Legislature.

Approved Settlement
Acquisitions at 315/351
West 79th Street
Item 4.4A

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to approve a settlement of acquisitions at 315/351 West 79th Street in conjunction with the Lyndale Avenue Street Project, which includes the construction of a segment of Grand Avenue between 79th Street and 80th Streets that will be located on 315 West 79th Street.

Ornstein explained that a total taking of 315 and 351 West 79th Street won't be necessary as originally thought. This agreement was recommended for the purchase of the 315 West 79th Street parcel and some easements and right-of-way from the 351 West 79th Street parcel in order to complete the existing project and for future three-lane widening of the eastbound 79th Street. He stated it's a good settlement for the City, as a total taking was challenged.

Adopted an Ordinance
Authorizing Transfer of a
Portion of 308 West 80th
Street
Item 4.4B
O-2003-34

Motion was made by Wilcox, seconded by Abrams, and all voting aye, to adopt an ordinance authorizing the transfer of a remnant portion of 308 West 80th Street, together with associated vacated Grand Avenue Street right-of-way. The parcel at 308 West 80th Street is currently owned by the City and was purchased in conjunction with the Lyndale Avenue Street Project. The majority of the parcel will be used for a new Grand Avenue connection between 79th Street and 80th Street.

Adopted a Resolution
Approving a Variance
for a Three-Season Porch
at 10300 Humboldt
Circle
Case 6674A-03
Item 5.1A
R-2003-99

Motion was made by Wilcox, seconded by Harden, and all voting aye, to adopt a resolution approving a variance to reduce the rear yard setback from 30 feet to 15.3 feet for a three season porch addition (living area addition) at 10300 Humboldt Circle, Case 6674A-03, for Mark Muelken and Margaret King, subject to the following 2 conditions of approval as set forth by the Planning Division Staff and the Planning Commission:

1. Exterior building materials be compatible with those used on the existing house; and
2. The variance is applicable to the porch addition shown on plans contained in Case 6674A-03.

The applicants were available for Council questions but there were none. No public testimony was received.

Adopted a Resolution
Approving a Variance
for a Deck at 10300
Humboldt Circle
Case 6674B-03
Item 5.1B

Motion was made by Wilcox, seconded by Harden, and all voting aye, to adopt a resolution approving a variance to reduce the rear yard setback from 20 feet to 15.3 feet for a deck at 10300 Humboldt Circle, Case 6674B-03, for Mark Muelken and Margaret King, subject to the following 1 condition of approval as set forth by the Planning Division Staff and the Planning Commission:

1. The variance is applicable to the deck shown on the plans contained in Case 6674B-03).

No public testimony was received.

Approved a Two-Year
Temporary Conditional
Use Permit at 8300
Pillsbury Avenue for
Lease Brokers, Inc.
Case 8005A-03
Item 5.2

Motion was made by Abrams, seconded by Elkins, and all voting aye, to approve a two-year Temporary Conditional Use Permit for Class II Motor Vehicle Sales in an I-3 (General Industrial) Zoning District at 8300 Pillsbury Avenue, Case 8005A-03, for Lease Brokers, Inc., subject to the following 8 conditions of approval as set forth by the Planning Division Staff and the Planning Commission:

1. Floor area of the use shall not exceed 9,440 square feet for vehicle storage and office use unless approved by the Planning Manager;
2. Total number of vehicles in the lease space at any one time may exceed 26 vehicles providing that there is no excessive stacking of vehicles and providing that all fire and safety exits are clear for use;
3. There shall be no off-site storage, parking or display of vehicles associated with business elsewhere in the City of Bloomington;
4. There shall be no outdoor display, storage, parking or sales of motor vehicles associated with this use;
5. Signage shall be limited to one identification sign currently available to all tenants on the common monument sign as well as one sign above the main entrance to the multi-tenant building;
6. No temporary signs, banners, balloons or similar attention attracting devices are allowed in conjunction with this use;
7. Sewer Availability Charges (SAC), if any, be satisfied prior to occupancy of the space; and
8. All loading and unloading be conducted on the property and off of public streets.

Stephanie Warhol, Planner, provided the staff report stating that the use by the current tenants in the building would be compatible with the proposed use of indoor motor vehicle sales. She showed a layout of the interior space adding that there is to be no outdoor display or outdoor storage of vehicles. No more than 26 vehicles will be stored for sale at one time. Existing parking on the site provides adequate parking for the intended use and the hours of operation will be from 9 a.m. - 7 p.m. She stated that the Comp Plan designation for this property is guided Industrial, which is not consistent with Class II motor vehicle sales. However, this particular use for this particular site will occur solely indoors under highly limiting conditions. Therefore, staff would not support any long-term vehicle sales at this location. It will not oppose the short-term use of Class II motor vehicles sales at this location so long as the motor vehicles sales takes place solely indoors.

No public testimony was received.

Adopted a Resolution Approving a Conditional Use Permit at 7810 Portland Avenue South for Three Amigos Café Case 8211A-03 Item 5.3 R-2003-102

Motion was made by Fossum, seconded by Peterson, and all voting aye, to adopt a resolution approving a Conditional Use Permit for a restaurant in an existing shopping center at 7810 Portland Avenue, Case 8211A-03, for Three Amigos Café, subject to the following 2 conditions of approval and 3 Code requirements as set forth by the Planning Division Staff and the Planning Commission:

1. Restaurant dining capacity not to exceed 32 seats unless approved by Planning Manager;
2. A SAC questionnaire be completed and submitted to the Department of Public Works;

and subject to the following Code requirements:

1. Food service plans be approved by the Environmental Services Division (Sec. 14.360);
2. All signage be in accordance with the Uniform Sign Design (Sec. 19.109); and
3. All trash and recyclable materials be stored and screened inside the principle building (Section 19.51).

No staff report was provided.

Speaker #1: Mr. Perez, Owner

He was available for Council questions but they had none. He stated they plan to open on July 28 if the application is approved.

Requested a Resolution of Denial for August 4 for the Elite Towing, Inc. Application Case 8565C-03 Item 5.4

Motion was made by Abrams, seconded by Fossum, and all voting aye, to request staff to bring back a resolution of denial on August 4, 2003, for the Elite Towing, Inc. application for an Interim Use Permit for the open storage of towed motor vehicles at 9301 Harriet Avenue, Case 8565C-03.

Londell Pease, Planner, provided the staff report explaining that the use has been in existence for quite sometime and that several violations have occurred on the property relating to cleanliness over the significant number of permits that have been approved. The current owner, Richfield Bus Company, has owned the property for one year and has since begun storing some of its materials on the lot. He stated that although the property has not been kept very clean and orderly, staff has been working with the applicant for the past six to eight months and some improvements have been made. Staff believes that approval of the Temporary Conditional Use Permit for one year to allow him to continue making improvements to show staff that he can run it clean, would be the recommended choice if Council should agree. He showed some photos of the corner of 93rd Street and Pleasant Avenue. (The dilapidated fence has been removed and a new one installed.) As the current gate is unsightly, staff has recommended as a condition that it be replaced and informed the owner that the staff would take a negative view if that work is not done during the permit period. He showed photos of some of the additional storage on the site.

Abrams inquired if this is the site that was previously a bus graveyard.

Pease replied that the site Abrams was referring to was 9301, 9327, 9227 Harriet Avenue South. He explained that staff could recommend approval if the bus company's items are moved off of 9301 Harriet Avenue and it's only used as storage of vehicles as part of the towing company. He stated that staff would be proceeding with enforcements of the current violations that exist on the bus company's site within the next couple of months. He stated that while the applicant requested a three-year Interim Use Permit, staff recommended denial and the Planning Commission recommended approval of a one-year Interim Use Permit.

Abrams suggested that given the September 1, 2003, performance date to get the site cleaned up and given the less than perfect compliance requirements, a shorter time than a one-year permit be approved so that if the condition wasn't complied with, the applicant would have the burden of reapplying for another permit.

Pease stated that staff could support approval of a less than a one-year Interim Use Permit. He explained that 16 months ago, Richfield Bus Company purchased the property and six months ago, the towing company was taken over by new owners and new management. During the past 16 months, one complaint was received and 11 complaints were received prior to that.

Bernhardson explained that Council could grant a 3-6 month Interim Use Permit and if the condition of cleaning up the site was satisfied that the applicant could get another six months without needing to reapply with the entire length of the term of the Interim Use Permit being a year with no expectation that it could be renewed after that. Any approval short of the three-year Interim Use Permit will require that a resolution be brought back to the next Council meeting.

Abrams stated that this application would not be adding anything of value to the community and he would be comfortable recommending denial.

Pease explained that if Council denies the application, the applicant would have to remove everything from the lot and the options for use of the lot would have to be a Code complying use rather than one that would require an Interim Use Permit. A small building could be constructed and used for an industrial use but it would have to be developed with Code complying curb, gutter, water, storm sewer, etc.

No public testimony was received.

Requested a Resolution of Partial Approval and Partial Denial for August 4 for the Nechville Music Products Application Case 4034A-03 Item 5.5

Motion was made by Abrams, seconded by Peterson, and all voting aye, to request staff to bring back a resolution of partial approval and partial denial on August 4, 2003, for the Nechville Music Products (Tom Nechville) application for the renewal of a one-year Temporary Conditional Use Permit for an office building as a transitional use at 8036 Lyndale Avenue South, Case 4034A-03, per the Planning Commission’s recommendation with staff crafting language that describes the use as something other than assembling or manufacturing, and subject to the following 9 conditions and 2 Code requirements as set forth by the Planning Division Staff and the Planning Commission:

1. Office use, musical instrument repair and 400 square feet for storage of stock-in-trade may be permitted on the first floor and lower level as approved by the Planning Manager. This shall be altered in accordance to Section 19.64 when the parking is reduced to provide for Lyndale Avenue expansion;
2. No over-the-counter retail or wholesale sales shall be conducted on site;
3. The maintenance and repair of musical instruments is allowed only in the main floor and lower level area as shown on the floor plan submitted with the application;
4. No assembly or manufacturing of new instruments shall be permitted;
5. Musical instruments may be displayed on the wall or in a location for testing on the first floor in an area approved by the Planning Manager;
6. No rear yard storage or parking be permitted;
7. No additions to or changes in the appearance of the structure shall be permitted unless approved by the Planning Manager;
8. The fire sprinkler system be maintained in proper working order;
9. Employees for all office operations be limited to 7 total employees on-site unless prior approval received from the Planning Manager.

and subject to the following Code requirements:

1. The applicant limit the square feet used in the building in accordance with the Parking requirements for each use should the applicant lose parking as a result of expansion of Lyndale Avenue. (Section 19.64); and
2. Three foot screening along Lyndale Avenue be maintained (Section 19.52).

Pease provided history on the property in question and explained what the Code allows as far as Temporary Conditional Uses. He stated the applicant is applying for a five-year Temporary Conditional Use Permit for: multiple offices, instrument assembly, music lessons, jam sessions, instrument repair, inventory of stock and trade and that he not be subject to Section 19.64 regarding parking. He stated that staff recommended: multiple office, music lessons, instrument repair, and inventory of stock and trade in the basement subject to the requirements in Section 19.64. Planning Commission recommended a one-year Temporary Conditional Use Permit with multiple offices, assembly, music lessons, jam sessions, instrument repair, inventory of stock and trade, and subject to the full parking provision. Therefore, the two key differences after the Planning Commission meeting was the length of time and the amount of parking that would be required based on the use that exists. There have been no complaints on this property since 1994.

Speaker #1: Tom Nechville, Applicant

He provided the Council with a list of conditions that he would like to see changed. He stated that he intends to comply with the Code regarding parking. He stated his neighbors all support what he is doing and that the use is now lower and less intense than in previous years. He stated he purchased the building with the expectation of growth and plans to purchase the property to the north with the thought of expansion in the future. He believes he has found the highest and best for the building. He explained his business and the quality of his product and proceeded to show the Council how he produces his product. He stated that it was determined at the Planning Commission that what he does is not considered manufacturing and, therefore, requested the Council strike some of the restrictions based on what he does and not on the term manufacturing. He stated the business is situated on a minimum size lot, which will be reduced to an illegal sized lot after the City acquires some of the property.

Ornstein explained that this application is for a Temporary Conditional Use Permit (TCUP) and that if approved for one year, the applicant could apply for a one-year TCUP renewal at the end of the year. The Comprehensive Plan designation for that property is Office and that designation takes precedence over zoning, if there is a conflict. He stated that one issue raised at the Planning Commission was what is considered manufacturing and what is considered Office. He believes the Planning Commission's determination that there not be any assembly is legally the correct one. Assembly typically involves manufacturing and repair typically isn't manufacturing and that would be allowed. He restated that manufacturing clearly is not permitted in that zone.

Elkins inquired why wouldn't the applicant be encouraged to request a change in the zoning to make it a permanent use given its history and the future of the surrounding area.

Pease replied that the problem is that the building doesn't meet any of the standards for a commercial structure. Therefore, if the applicant wants to acquire additional property, apply for a rezoning, and wants to bring the property up to Code with storm sewer, storm sceptors, and if necessary, an appropriate building, staff would evaluate.

Nechville believes the property is a transition between industrial, I-3 zoning across the street, and residential behind. He stated he wouldn't mind putting a brick front on the building or putting up a nice sign to make it look better. He doesn't understand why this property is under so much scrutiny and doesn't want to have to come back and reapply for another TCUP next year.

Pease explained why the facility would not meet the commercial standards suitable for rezoning: Doesn't meet any of the setbacks for a commercial zone, wouldn't meet the building type, wouldn't have the screen yards or separation from residential to the west, wouldn't have stormwater management (both rate and quality control), and wouldn't have full handicapped access, all the elements that every other new business in town is required to have.

With regard to the definition of manufacturing, Peterson stated that if it is like the manufacturing that is done in a hardware store (putting a screen together) or at a Kinko's (assembly business), it would not be particularly problematic as a component of a retail use. He is concerned with the house-related use and that if components of Nechville's application are approved, what right does that give the "next" user of the property to substitute uses that would be maintenance and repair-oriented uses making it tougher to live next door to.

Pease believes the conditions need to be written in great detail to reflect Nechville's business so that if his business is deemed appropriate and the conditions are detailed to describe his business, it will help eliminate someone from coming in with a different business that would not be compatible with that property. He added that the Comp Plan is very specific that it is Office, subject to four properties being combined into a development and that they should never be developed individually. If all four properties are developed together, the Office designation wouldn't be appropriate.

Winstead stated that from experience, the law recognizes the assembly of a machine or a piece of equipment as manufacturing in an I-3 Zoning District.

Ornstein read a definition of manufacturing as follows: “production of articles for use from raw and prepared materials by giving them new form, qualities and properties or combinations excluding repairing or processing, aiming to complete an article or restore it to its former condition.”

Bernhardson stated that Conditions #1, 3, and 4 need to be looked at to better define what Nechville is specifically doing. He stated that if the intent of the Council is to find a way to permit Nechville to basically do what Council understands at this point he is doing, staff could bring back some better language.

Abrams inquired why staff is recommending the use for only one year.

Pease stated that the property will have significant changes when Lyndale Avenue is expanded and is not sure what the function of the property will be once the total acquisition is complete and reconstructed. The Council is requested to approve what’s there now. The property could change drastically at which time staff would want to evaluate what’s been done. He compared the conditions one by one to clarify the differences between what Nechville wants and what staff is recommending. He explained that the main floor is considered in the parking requirement would not be met if the use was expanded to the second floor. He explained the differences in conditions as follows:

1. Condition #1: Staff wants to make sure the applicant is clear that he will lose parking space as part of the condemnation and therefore will have to reduce the usable space in the building.
2. Condition #2: It’s been a constant condition.
3. Condition #3: Staff stated that what the applicant applied for is what is going to be approved and that a future user would need to live within that footprint or get approval by the City.
4. Condition #4: Language would need to be created to reflect specifically what the applicant does.
5. Conditions #5-#8: No changes recommended by the applicant.
6. Condition #9: Limit the number of employees to 7 in order to have enough parking for visitors and delivery trucks, etc.
7. Code requirements: Always included by staff to ensure that they are complied with and that the 3-foot screening is maintained.

Pease suggested that after Nechville demonstrated his craft at the Planning Commission meeting, it was determined not to be manufacturing.

Nechville stated that what he does would have to be considered manufacturing, as it is assembly and proceeded to demonstrate how he puts together components using a banjo belonging to one of the Dixie Chicks performers. He stated that his parts are manufactured by other Bloomington businesses. He designs and makes custom improvements to instruments. He hopes staff will be able to craft the conditions of the permit such that it will allow him to continue his work at this location. He stated he wants to stay in business and doesn’t have any plans to expand the business, although there appeared to be a potential for expansion when he bought the building. He was not prepared to talk about expansion involving the future development of the surrounding parcels at this time.

Winstead stated that staff would try and define the conditions so that the next person doesn’t move in and do the type of activities that would be associated with traditional assembly and manufacturing.

Elkins inquired how many parking spaces will be lost with the expansion of Lyndale Avenue.

Pease replied that seven or eight spaces could be lost depending on how it’s configured.

Item 5.5 continued

Harden complimented Nechville on his business stating that it's good for Bloomington and believes there are options for the applicant as well as the City to work this out.

Wilcox stated that he doesn't want to mislead this applicant into thinking he would be able to expand his business in this location if he were to come back in a year to reapply for another permit.

Elkins stated that he doesn't believe anything realistically could happen with this block unless the City reassembles the entire block and redevelops it, which would include the residences on Aldrich as well.

Staff stated that after the City takes the right-of-way along Lyndale Avenue, the resulting area will most likely be used as a buffer strip between the residences left and the expanded roadway.

Abrams stated that the current situation is not generating any significant problems or complaints from the neighbors but the situation for that property and that block will be significantly different in a year. The parking will be significantly reduced and so will the setting. Therefore, he stated he was satisfied with preserving the status quo for a year and allowing the business to continue in the way that it has been so as to give the applicant a year to figure out what he wants to do in that location. He proceeded to direct staff to bring back a resolution of partial approval for a one-year Temporary Conditional Use Permit with staff wording Conditions #1, 3 and 4 so that the business as it presently exists is satisfying those conditions, leaving the conditions relating to Code requirements, that seven employees be allowed on site, and that jam sessions be allowed.

Reaffirmed Council's
Vote on Sale of Vehicles
at Hennepin County
Auction

Motion was made by Peterson, seconded by Abrams, and all voting aye, to reaffirm the vote that was taken via e-mail on the City taking several vehicles to the Hennepin County Auction that was held on July, 2003.

Approval of Minutes

Motion was made by Peterson, seconded by Fossum, and all voting aye, to approve the minutes of the May 19 Regular, June 2 Regular, and July 7, 2003, Regular Council meetings, as presented.

Adjourn Meeting

Mayor Winstead adjourned the meeting at 10:24 p.m.

Barbara Clawson
Council Secretary