

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

CITY COUNCIL MEETING

Approved Minutes  
Regular Meeting  
Meeting #29

7:00 p.m.  
October 6, 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.

Proclamation Declaring Disability Employment Awareness Month Mayor Winstead read and presented a proclamation declaring October as Disability Employment Awareness Month to Dale Findlay. He announced a workshop that will be held on October 8 at PACER Center, Inc. to educate local businesses about the many benefits of hiring individuals with disabilities. During the event, Bloomington businesses will be recognized for their efforts in this area.

Proclamation Declaring Breast Cancer Awareness Month Mayor Winstead read and presented a proclamation declaring October as Breast Cancer Awareness Month and October 17 as National Mammography Day to Karen Zeleznak, the City's Health Administrator.

Zeleznak acknowledged Jean Hegman, a Public Health Division staff member who worked at the Sage Women's Clinic at the Mall of America who recently passed away from breast cancer.

Presentation of Communication Awards Rolanda Taylor-Enroth, Communications Division, presented Council with the following awards they recently received from the National Association of Telecommunications Officers and Advisors (NATOA):

Second Place, Public Education - "Public Works: A Blueprint for Opportunity" (a video prepared in collaboration with the Minnesota Public Works Association to help recruit students to public works careers).

Third Place, Public Affairs - "Bloomington Today: The Year in Review 2002" (a video that reviewed Bloomington's key events in 2002).

Taylor-Enroth recognized City staff members Grant Parker, Tim Sasse, and Deputy Director of Public Works Jim Gates for their involvement in the two projects.

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.

Speaker #1: Michael Guinee, 1925 West 92<sup>nd</sup> Street  
Guinee, speaking on behalf of his neighbors, submitted photos of his neighbor's property and expressed concern that the home is unhealthy for the occupant and that the condition of the property has continued to decline for the past 15 years. He stated that the condition of the property doesn't reflect very well on the neighborhood and requested the City's assistance in addressing the situation.

Winstead stated that the City is aware of the property and that there has been action and activity on the part of the City to correct the situation.

Public Comment Period continued	City Manager Mark Bernhardson stated that the City is concerned for the welfare of the owner but that staff is restricted as to the degree to which they can do certain things, especially when it involves crossing the threshold into the house. He appreciated the neighbors bringing their concerns to the City and stated that staff would look into the situation and do whatever it can within the scope of the law. Staff will report any progress to the neighborhood.
	Harden stated that there is such a home in her district and requested that staff explain what legal steps the City can take when all other options have been exhausted.
	Bernhardson replied that the City can issue administrative legal penalties and tickets for which the owner must appear in court. However, it's a long process and if there's a mental health issue, it becomes an even more difficult situation.
Approved Letter of Agreement with Health Partners Item 6.1	Motion was made by Wilcox, seconded by Elkins, and all voting aye, to approve a letter of agreement with Health Partners to provide the City's health coverage for the years 2004 and 2005.  Winstead explained that Council had previously met to discuss the letter.
Approved Human Services Contract with Continental Ballet Item 6.2	Motion was made by Wilcox, seconded by Elkins, and all voting aye, to approve a Human Services Contract with Continental Ballet in which they will provide health, education and a gentle fitness program to Bloomington's older adults at the Bloomington Civic Plaza Performing Arts Center through a variety of dance and general exercise programs through June 30, 2005.
Approved Additional List of Election Judges Item 6.3	Motion was made by Wilcox, seconded by Elkins, and all voting aye, to approve the list of additional election judges for the City General Election to be held on November 4, 2003, as presented in the agenda materials.
Approved Public Health Grant Applications Item 6.4	Motion was made by Wilcox, seconded by Elkins, and all voting aye, to approve a grant application to the Medtronic Foundation and Robert Wood Johnson Foundation to fund a Pediatric Obesity Prevention Needs Assessment.  Approximately \$50,000 will be requested to develop, conduct, and evaluate a healthcare provider needs assessment in Bloomington, Edina, and Richfield pediatric clinics to address the rising incidence of obesity in the pediatric population.
Withdrawn Item 6.5	This item was withdrawn.
Accepted Donations Item 6.6	Motion was made by Wilcox, seconded by Elkins, and all voting aye, to accept the following donations made to various City activities and approve amendments to the revenue and expenditure budgets to facilitate use of the donations: (2) dining room carts valued at \$240 were donated by the Memorial Trust Fund to Human Services - Food Programs and \$205 was donated by the Bloomington Youth Soccer Club to the Bloomington Park Maintenance Soccer Field Maintenance Fund.
Adopted a Resolution Approving a Variance at 10440 Nesbitt Avenue Case 10641A-03 Item 6.7 R-2003-148	Motion was made by Abrams, seconded by Elkins, and all voting aye, to adopt a resolution approving an administrative variance to reduce the required five-foot side yard setback to build a garage addition three feet from the side property line at 10440 Nesbitt Avenue South, Case 10641A-03, for Thomas Murnan, subject to the following 4 conditions as set forth by the Hearing Examiner:  <ol style="list-style-type: none"> <li>1. Total garage space is not to exceed 1,052 square feet;</li> <li>2. The total square footage for any future accessory structures to be located on this property cannot exceed 265 square feet;</li> <li>3. Exterior building materials to be consistent with those used on the existing dwelling; and</li> <li>4. Variance establishing the setback is only for the garage addition as shown in plans contained in Case 10641A-03.</li> </ol>

Item 6.7 continued	<p>Abrams stated that as there was correspondence from a concerned neighbor regarding this variance, he wanted to make certain that the neighbor was given a chance to address the Council.</p> <p>Community Development Director Larry Lee explained that this item was tabled from the last Council meeting in order to allow the adjacent neighbor the full 10-day appeal period to have it heard before the Council. No appeal was ever received.</p> <p>Abrams requested that a neighbor's concern for the saving of an oak tree in the boulevard be forwarded to the contractor on the project.</p>
Closed Public Comment Period	<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>
Approved New On-Sale Intoxicating Liquor License for Kokomo Island Café Item 4.1A	<p>Motion was made by Fossum, seconded by Wilcox, and all voting aye, to approve a New On-Sale Intoxicating Liquor License application for Old Met BBQ, Inc. dba Kokomo Island Café at 320 South Avenue, Mall of America expiring June 30, 2004.</p> <p>No public testimony was received.</p>
Approved Off-Sale Intoxicating Liquor Management License for Wakefield Liquor, Inc. and Liquor Time, Inc. Item 4.1B	<p>Motion was made by Wilcox, seconded by Elkins, and all voting aye, to approve an Off-Sale Intoxicating Liquor Management Agreement between Wakefield Liquor, Inc., the current off-sale intoxicating liquor licensee at Wakefield Liquors, 5206 West 84<sup>th</sup> Street and Liquor Time, Inc.</p> <p>No public testimony was received.</p>
Adopted an Ordinance Rezoning 5401 Green Valley Drive and 5400 American Boulevard W Case 5891A-03 Item 4.2A O-2003-46	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to adopt an ordinance approving the rezoning from Commercial Service CS-1 to Commercial Service Planned Development CS-1(PD) at 5401 Green Valley Drive and 5400 American Boulevard West, Case 5891A-03, for the Holiday Inn Airport #2.</p> <p>No staff report or public testimony received.</p>
Approved Preliminary and Final Development Plans for Holiday Inn Airport #2 Case 5891B-03 Item 4.2B	<p>Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve a Preliminary Development Plan and Final Development Plan for hotel renovations at 5401 Green Valley Drive and 5400 American Boulevard West, Case 5891B-03, for the Holiday Inn Airport #2, subject to the following 14 conditions of approval and 8 Code requirements set forth by the Planning Division Staff and the Planning Commission:</p> <ol style="list-style-type: none"> <li>1. A Development Agreement that includes all conditions of approval shall be executed by the applicant and the City and shall be properly recorded by the applicant with proof of recording provided to the Manager of Building and Inspection Division;</li> <li>2. The approval shall be valid only for the site and exterior building improvements and modifications as shown on the plans approved in Case 5891B-03;</li> <li>3. Approved exterior building materials shall consist of the Rheinzink and aluminum metal panels identified in Case 5891B-03 and to be applied in a manner not to exceed the following; <ol style="list-style-type: none"> <li>a) 50 percent of the north elevation wall surface;</li> <li>b) 48 percent of the east elevation wall surface;</li> <li>c) 16 percent of the south elevation wall surface; and</li> <li>d) 27 percent of the west elevation wall surface;</li> </ol> </li> <li>4. Percentages of the metal exterior finish materials shall be shown for each building elevation on plans submitted for permits and shall be approved by the Planning Manager;</li> <li>5. Grading, drainage, utility and erosion control plans be approved by the City Engineer;</li> <li>6. Approved erosion control measures shall be in place prior to issuance of grading permits;</li> <li>7. Access, circulation, and parking plans be approved by the City Traffic Engineer;</li> <li>8. A 10-foot sidewalk/bikeway easement be provided by document in recordable form along the east Green Valley Drive and Norman Center Drive street frontages as approved by the City Traffic Engineer;</li> </ol>

Item 4.2B continued

and subject to the following additional conditions of approval:

9. All construction related parking, loading and unloading, staging, and material storage shall occur on-site and off of adjacent public streets except as may be approved by the Director of Public Works for a temporary period;
10. Alterations to utilities be at the developer's expense;
11. Approved and installed erosion control barriers shall be maintained in an effective and functional condition throughout the construction period and shall not be removed until all disturbed areas are stabilized in an approved manner and removal is authorized by the City Engineer;
12. The City Traffic Engineer shall approve a striping plan for all regular and accessible parking spaces;
13. All disturbed areas shall be sodded except as may otherwise be approved by the Planning Manager as part of the approved landscape plan;
14. Building address shall be placed on both the east and west elevations of the building;

and subject to the following Code requirements:

1. Landscape plan shall be approved by the Planning Manager (Sec 19.52);
2. All rooftop equipment shall be fully screened (Sec. 19.52.01);
3. 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);
4. Fire lanes shall be posted as approved by the Fire Marshal (Sec. 8.73);
5. Utility plan shall show location of existing water main and fire hydrant locations and shall be approved by the Fire Marshal and Utilities Engineer (Sec. 6.20, Uniform Fire Code Ch. 10.301-C);
6. Parking lot and site security lighting shall satisfy the requirements of Section 19.54 of the City Code;
7. Development shall comply with the State Handicapped Code; and
8. A uniform sign design in accordance with the requirements of Chapter 19, Article X of the City Code shall be approved by the Planning Manager.

No public testimony was received.

Adopted an Ordinance  
Vacating an Easement at  
8201 Park Avenue  
Item 4.3  
O-2003-47

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to adopt an ordinance vacating an easement for drainage and utility purposes over and across part of Lot 2, Block 1, Smith Park 2<sup>nd</sup> Addition and an easement for tennis court purposes over and across part of Lot 2 and Outlot A as described in Document No. 6210472 for Ben Safar, ATS&R Architects for Bloomington Lutheran High School at 8201 Park Avenue.

No staff report or public testimony received.

Adopted a Resolution  
Adopting the 2004  
Special Revenue  
Fund Budgets  
Item 4.6  
R-2003-146

Motion was made by Peterson, seconded by Elkins, and all voting aye, to adopt a resolution adopting the 2004 Airport South Environmental Review and Public Health Special Revenue Budgets as follows commencing on January 1, 2004, and approved a budget adjustment to increase the Airport South Budget by \$50,000 to make an additional payment on a loan.

Airport South Environmental Review Special Revenue Fund: \$20,300 (Total Revenues) and \$30,000 (Total Expenditures).

Public Health Special Revenue Fund: \$724,845 (Total Revenues) and \$809,073 (Total Expenditures).

Cindy Rollins, Finance, stated that these Special Revenue Funds have a designated revenue stream. The Public Health Special Revenue Funds include: Mall of America Sage Cancer Clinic, Green Trust Beneficiary Fund, Local Collaborative Time Study (LCTS) Funds, and Other Public Health Grants. The Airport South Environmental Review Fund is only supposed to have interest earnings as a revenue in 2004.

No public testimony was received.

Continued to October 20 an Ordinance Directing Reconveyance of Land at 8421 Garfield Avenue Item 4.4	Motion was made by Peterson, seconded by Abrams, and all voting aye, to continue to the October 20, 2003, Regular Council meeting, an ordinance authorizing and directing the reconveyance of Tax Forfeited Land at 8421 Garfield Avenue, described as "Outlot A, Holiday South 2 <sup>nd</sup> Addition" that recommends resale of the lands by the State to the Bloomington Housing & Redevelopment Authority.
	Wilcox inquired if this item should be postponed until such time when public hearings are held on the potential road closing and realignment.
	Staff replied that this is the process that needs to be followed in order for the State to subsequently reconvey it to the HRA but that postponing it for two weeks wouldn't be a problem. The overall plan is scheduled for the October 27 study meeting with formal approvals by Council in November. It was determined that it could be delayed for two weeks to allow staff to address Council's questions and that the approval of the transfer could be conditioned on the fact that the State gives it back.
Adopted a Resolution Approving the 2003 Assessment Roll No. 2 Item 4.5 R-2003-145	Motion was made by Peterson, seconded by Elkins, and all voting aye, to adopt a resolution approving the 2003 Assessment Roll No. 2 for sanitary sewer and appurtenances constructed at Cedar Circle as part of the 2001-202 Cedar Circle Sanitary Sewer Project and deferred assessments without interest to the three properties located north of Cedar Circle.
	Authorization was also given to transfer \$246,459.58 from the 520 Sanitary Sewer Reserve Fund to Activity 520-8213-443.70-31.
	Eric Wharton, Engineering, stated that staff met with the resident who had expressed concerns at a previous Council meeting and that all of them have been addressed.
	No public testimony was received.
Boards/Commissions Communications Item 7.1	No boards/commissions communications reported.
Status of Action Items Item 7.2	Status of Action Items provided. Bernhardson reminded the Council and invited the public to the Fire Station Open Houses that will be held on Saturday, October 11 from 10:00 a.m. to 2:00 p.m.
	Peterson inquired if there was any update on the Mall of America ownership.
	Bernhardson replied that the parties were supposed to have met with a judge during the past week and that staff should have some clear direction later this week or next. Staff's concerns are regarding the need to get documents signed by the right authority so that projects can move forward. Simon is still opening and closing the Mall and collecting the rent.
	Ornstein stated that based on recent conversations, he is optimistic that the City's concerns will be resolved.
Appointment of Voting Delegate to 2003 NLC Congressional Cities Conference Item 7.3	Motion was made by Peterson, seconded by Abrams, and all voting aye, to appoint Harden as the Voting Delegate to the National League of Cities Congress of Cities Conference to be held in Nashville, TN in December 2003, and Elkins and Fossum as Alternates.
Approved Transmittal of Letters Regarding Section 189 of the FAA's Authorization Bill Item 7.4	Motion was made by Peterson, seconded by Wilcox, and all voting aye, to approve the transmittal of letters to Senators Mark Dayton and Norm Coleman, as well as to Minnesota Congressmen Oberstar, Sabo, and Ramstad and non-Minnesota Congressmen Don Young, John McCain, and Ernest Hollings, as drafted, regarding Section 189 of the Federal Aviation Administration's (FAA's) Authorization bill.

Item 7.4 continued

Referring to the letter sent by Representative Sabo on this matter, Lee suggested that letters also be sent to Congressmen Oberstar, Sabo and Ramstad. In addition, it will be sent to the leading Non-Minnesota committee chairs with copies to the surrounding cities of Richfield, Minneapolis, Mendota Heights and Eagan and the City's MAC Commissioner Coral Houle.

Approved Three-Year  
Temporary Conditional  
Use Permit for  
Maranatha Community  
Church  
Item 5.1

Motion was made by Abrams, seconded by Peterson, and all voting aye, to approve a three-year temporary conditional use permit for a church in an office/warehouse building at 8910 Wentworth Avenue, Case 6331A-03, for Maranatha Community Church, subject to the following 4 conditions of approval and 1 Code requirement as set forth by the Planning Division Staff and the Planning Commission:

1. All pickup and drop-off occur on site and off of public streets;
2. All loading and unloading occur on site and off of public streets;
3. Area used for parking in the rear of the building shall be striped to define the parking spaces as approved by the Traffic Engineer if they are to be counted as available parking for the property;
4. Renewal of this temporary conditional use permit may be heard by the Hearing Examiner pursuant to Section 2.14 of the City Code.

and subject to the following Code requirement:

1. Signage be in conformance with the requirements of Chapter 19, Article X of the City Code.

Speaker #1: Noah Shelton, Pastor  
He was available for Council questions but they had none.

No public testimony was received.

Approved Three-Year  
Temporary Conditional  
Use Permit for ABRA,  
Auto Body Inc.  
Item 5.2

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to approve a three-year temporary conditional use permit for auto body repair and repainting at 10800 Bush Lake Road, Case 7903A-03, for ABRA, Auto Body Inc. subject to the following 3 conditions of approval and 5 Code requirements as set forth by the Planning Division staff and the Hearing Examiner:

1. All existing conditions of approval for the car care center apply to the auto body repair and repainting facility;
2. The lease area of the auto body repair and repainting business shall not increase during the approved permit period; and
3. All parking shall be limited to designated and approved parking areas;

and subject to the following Code requirements:

1. No exterior or outside storage of damaged or inoperable vehicles and parts;
2. No exterior or outside storage of vehicles in the process of repair or repainting;
3. There shall not be any discernible odor from the business at the property line;
4. Signs shall comply with the approved uniform sign design and Chapter 19, Article X of the City Code; and
5. Future renewal for this temporary conditional use permit may be heard through the Hearing Examiner process as per Section 2.14 of the City Code.

Lee stated that although this item was controversial when it was originally approved, it has operated without any complaints.

Elkins stated that this business is situated in a shopping area with other auto-oriented uses and that they are grouped together in a complimentary fashion.

No public testimony was received.

Adopted a Resolution  
Approving a Variance at  
7981 Lea Circle  
Case 10633A-03  
Item 5.3  
R-2003-147

Motion was made by Fossum, seconded by Peterson, to adopt a resolution approving a variance to reduce the prevailing front yard setback from 65 feet to 50 feet for a new single family dwelling at 7981 Lea Circle, Case 10633A-03, for Anthony Thomas Homes, subject to the following 4 conditions of approval as set forth by the Planning Division Staff and the Planning Commission. Motion passed 6-1 (Elkins opposing).

1. The variance is applicable to a single family dwelling as shown in Case file 10633A-03;
2. An as-built survey be provided to verify compliance with the 50 foot setback; and
3. Provide a scenic easement 30 feet from the west property line extending a distance of 150 feet south of the north property line; and
4. Landscaping to include a variety of spruce or pine trees at least six feet tall, as well as other landscaping for the scenic easement be approved by the Planning Manager.

Using an aerial photo, Lee explained that Lea Circle is a private road and that the house fronts Lea Circle. However, by Code, the distance from Lea Road, which is actually the rear of the house, is the prevailing setback in question. The prevailing setback from Lea Road is 65 feet. He explained that due to the need for stormwater ponding a gallery of pipes will be used to drain the water and that they need to be located in an easement and that they can't be located underneath the private road. The location of the pipe gallery results in the home needing to be moved slightly to the west, thereby reducing the setback 15 feet. It was stated that the homes across the street along Lea Road have a lesser setback. He stated that the Planning Commission recommended approval with conditions.

Abrams suggested that Council discuss the issue of private roads not counting in the Code, as they relate to prevailing setbacks, at a future study session.

Elkins stated that the new home will tower over the street and understands why the neighbors are upset. He stated that he would not be supporting the variance.

No public testimony was received.

Approved Revised Final  
Development Plan for  
Walser Automotive  
Group  
Case 7770E-03  
Item 5.4

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to approve a Revised Final Development Plan for a new car dealership at 1216 and 1400 American Boulevard West and 1301, 1309, 1313 and 1317 Clover Drive, Case 7770E-03, for Walser Automotive Group, subject to the following 1 condition as set forth by the Planning Division Staff:

1. All previously approved conditions of approval in Cases 7770ABCD-02 and Cases 7770ABCD-3, code requirements, easements and agreements shall remain in full force and effect. (See attached letters of transmittal for Cases 7770ABCD-02 and Cases 7770ABCD-03).

Lee provided the staff report explaining that in April 2003, Council approved a rezoning and a preliminary and final development plan for a Walser Toyota dealership at this location. However, Walser has subsequently decided to put their BMW dealership in that location instead of Toyota. New plans have been submitted containing virtually the same design footprint as before with the same materials but the initial development will be slightly larger including a three-story parking ramp that can be expanded to six stories in the future.

No public testimony was received.

Approval of Minutes

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to approve the minutes of the August 18 (Special) and September 8 and 22 (Regular) Council meetings, as presented.

Adjourn Meeting

Mayor Winstead adjourned the meeting at 8:17 p.m.

Barbara Clawson  
Council Secretary