

Regular Meeting #7
Monday, February 27, 2006, 7:00 p.m.
Bloomington Civic Plaza
1800 West Old Shakopee Road,
Bloomington, Minnesota 55431-3027

**Call to Order and
Pledge to Flag**

Mayor Gene Winstead called the meeting to order at 7:00 p.m. and led the audience in the pledge of allegiance to the flag.

Roll Call

Present: Mayor Winstead, Councilmembers R. Axtell, S. Elkins, A. Grady, K. Nordstrom, S. Peterson, and V. Wilcox.

**Presentation of 2005
LMC President's
Award
ITEM 2.2**

Plymouth Mayor Judy Johnson, Immediate Past President of the League of Minnesota Cities surprised Mayor Winstead by presenting him with the 2005 LMC President's Award for his outstanding contributions while serving on the Financing Local Government Task Force. This task force was created by Mayor Johnson to get cities working cooperatively on a local government agenda that could benefit all cities. Mayor Winstead was chair of the Municipal Legislative Commission at the time and provided valuable leadership on this committee.

**Permission for Human
Services Division
Volunteers to Solicit
for Program Funding
ITEM 3.1**

Motion was made by Elkins, seconded by Peterson, and all voting aye, to give Human Services Division volunteers permission to solicit Bloomington businesses and service organizations for funding of the programs and activities in 2005. Solicitation of donations for the following events by volunteers helps keep costs at a minimum and provides an opportunity for the community to participate in providing programs and services: Educational Programs, Fun Walk, Safety Fest, Employment and Awareness for People with Disabilities Month, Volunteer Recognition Activities, Senior programs, and Older Americans Month.

**Approved Public
Safety Safe &
Sober Grant
ITEM 3.2**

Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve a Department of Public Safety Safe and Sober Grant in the amount of \$2,000.00 to provide approximately 40 hours of overtime traffic enforcement patrols which will be scheduled between March 1 and June 30, 2006 and the related budget adjustments in conjunction with the grant.

**ITEM 3.3
(Changed to Item 5.4B)**

This item was changed to Item 5.4B.

**Approved Agreement
with Black & Veatch
Corporation
ITEM 3.5**

Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve a Professional Services Agreement with Black & Veatch Corporation for the Sanitary Sewer Modeling Project at a cost not to exceed \$371,204.00 and approved the transfer of an additional \$96,204 from the Sanitary Sewer Capital Fund to augment the budgeted funds for this work.

**Approved Two
Contracts with
Bloomington Public
Schools
ITEM 3.6**

Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve the following two contracts with Independent School District #271 for educational cable access services as follows: A) 2006 contract in the amount of \$149,068 for educational access programming. (This is the regular annual programming contract with the School District for educational access programming.) B) 2006 contract in the amount of \$39,473 for coordination and maintenance of The Bloomington Channel 14 as well as operation and maintenance of the fiber network between the City and the School District.

**Adopted Resolution
Approving Variance
for St. Luke's Lutheran
Church at 1701 West
Shakopee Road
Case 3411A-06
ITEM 3.7
R-2006-18**

Motion was made by Elkins, seconded by Peterson, and all voting aye, to adopt a resolution approving a variance to increase the size of a ground sign from 40 square feet to 48 square feet for St. Luke's Lutheran Church at 1701 West Old Shakopee Road, Case 3411A-06, subject to the following 1 condition of approval as set forth by the Planning Division Staff:

1. No temporary or portable signs, other than traffic control signs approved by the Issuing Authority, be permitted along West Old Shakopee Road.

- Adopted Resolution Approving Variance at 11531 Zion Road Case 10723A-06 ITEM 3.8 R-2006-19** Motion was made by Elkins, seconded by Peterson, and all voting aye, to adopt a resolution approving a variance to reduce a side yard setback from 10 feet to 5 feet for living area conversion at 11531 Zion Road, Case 10723A-06, for Henry Paul & Sheilah Kyburz, subject to no conditions.
- Approved Minutes ITEM 3.9** Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve the minutes of the October 24 (Study), December 5 (Regular), and December 19 (Regular) 2005 City Council meetings as presented but postponed approval of the November 28, 2005 (Study) meeting minutes to March 6, 2006.
- Approved Public Health Division's Application for a SAMHSA Grant ITEM 3.10** Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve a request by the Public Health Division as facilitator of the Tri-City Partners for Healthy Youth and Communities to reapply to the Substance Abuse and Mental Health Services Administration (SAMHSA) for year five of the Drug-Free Communities Support Program grant to support youth alcohol, tobacco, and other drug prevention activities in Bloomington, Richfield, and Edina.
- Approved Annual Contract Between City and Port Authority ITEM 3.11** Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve the annual contract between the City of Bloomington and the Bloomington Port Authority for staff services in 2006.
- Approved Extension of Contract with Ron Kassa Construction ITEM 3.12** Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve an extension of the contract with Ron Kassa Construction for curb, gutter and sidewalk replacement as needed by Public Works Street Maintenance and Utilities Divisions for routine pavement maintenance work and repairs required due to main breaks or sewer repairs. The 12-month extension through March 15, 2007 is at the unit prices of \$17.15 for curb and gutter, \$3.23/square foot for 4" sidewalk, and \$3.95/square foot for 6" sidewalk.
- Funding is available in the 2006 Budget, Street Maintenance Activities 7622 and 7624 and Utilities Activities 8131 and 8231. Contract expenditures for 2005 were \$69,554.00.
- Awarded Contracts for Bloomington Police Department Vehicles ITEM 3.13** Motion was made by Elkins, seconded by Peterson, and all voting aye, to award contracts to lease six vehicles for 24 months for use by the Bloomington Police Department as follows: Vehicles 1, 2, 3 and 5 to Union Leasing, Inc. for a total expenditure of \$48,302.69; Vehicle 6 from Brambilla's Lease Systems for a total expenditure of \$9,802.00 and Vehicle 4 from Jim Carlson Leasing for a total expenditure of \$11,936.52.
- Funding is available in the Police Department Budget, Activity 4223.
- Approved Purchase of Sewer Jet Truck TEM 3.14** Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve the purchase of a 2006 Freightliner M2-106 single-axle cab/chassis from I-State Truck in the amount of \$52,767.00 under State of Minnesota Contract #435527 and the purchase of a 2006 Sreco Model HV2000TM/T/0 high pressure sewer flushing machine from Flexible Pipe Tool under State of Minnesota Contract #435433 in the amount of \$45,762.99 that includes a trade-in allowance of \$18,000.00 for City Unit #156.
- Funding for the purchase of this vehicle is available in the 2006 Equipment Replacement Fund, Activity 617-0618-499.70-42.
- Approved Partnership with Cherbo Publishing Group ITEM 3.16** Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve a partnership with Cherbo Publishing Group to publish the Bloomington history book commemorating Bloomington's 150th anniversary in 2008. The general theme will chronicle the City's history from the time of the 17th century French explorers to the present.

**Adopted Resolution
Approving Interfund
Loan for Bloomington
Central Station
ITEM 3.17
R-2006-20**

Motion was made by Elkins, seconded by Peterson, and all voting aye, to adopt a resolution approving an interfund loan in the amount of \$630,209 from the Airport South Fund 435 to the Bloomington Central Station Phase I Fund 460 for engineering costs associated with Bid Package II for infrastructure improvements to Bloomington Central Station. The loan will be repaid with bond proceeds from bonds issued in 2008. There will be a special assessment on these improvements in 2008 for payment of principal and interest on these bonds. As required by State Statute, a 4% interest rate will be associated with these loans.

**Adopted Resolution
Approving Transfer of
Funds for Diseased
Tree Removal
ITEM 3.18
R-2006-21**

Motion was made by Elkins, seconded by Peterson, and all voting aye, to adopt a resolution approving the transfer of \$90,000 from the 2005 Contingency Fund 101-8001-499 to the Public Works' Diseased Trees Budget Fund 101-7731-452.63-21 to be used for the removal of diseased trees.

**Approved Agreement
with WSB &
Associates for Work
Related to Storm
Water Pond C
ITEM 3.19**

Motion was made by Elkins, seconded by Peterson, and all voting aye, to approve an agreement between WSB and Associates in the amount of \$14,490.00 for the Airport South Regional Storm Water Quality Improvement Project, which consists of enlargement and modifications to the existing Pond C located east of Cedar Avenue (T.H. 77) in the Minnesota Department of Transportation (MnDOT's) right-of-way adjacent to the Minnesota River. The modifications will significantly improve the storm water quality treatment capacity of Pond C prior to discharging storm water runoff to Long Meadow Lane and the Minnesota River.

Funds for this project will initially be available in the Airport South Capital Improvements Program and a portion will be assessed to Mall of America as outlined in the Airport South Improvements Agreement for up to \$750,000.00, which was initially envisioned to be 25% of the cost of construction.

**Acknowledged
Petition and Approved
Completion of
Feasibility Study
Relating to Grand
Avenue
ITEM 3.4**

Motion was made by Elkins, seconded by Peterson, and all voting aye, to acknowledge a petition to develop Grand Avenue from 99th Street to 102nd Street and approved completion of a feasibility study that will include a description of the project, a preliminary cost estimate, neighborhood notification and neighborhood meetings.

City Engineer Shelly Pederson provided background relating to a petition the City received from Gordon Pinske of 10118 Pleasant Avenue on February 9, 2006. The 15 petitioners request the development of Grand Avenue from 99th Street to 102nd Street. The project would include right-of-way dedication, utility improvements, storm sewer improvements, sanitary sewer and watermain adjustments, grading and street construction. The cost of the project would be 100% assessed to the benefiting property owners. She stated staff would be meeting with the neighborhood to discuss the petition.

Speaker #1: Gordon Pinske, 10118 Pleasant Avenue South

He stated he submitted the petition and that there is right-of-way for almost all of it except for the four property owners objecting to it. Using an aerial map, he indicated which four property owners object to a proposal to put Grand Avenue through. He suggested the street go right up to 99th Street if it's feasible. Looking at Pleasant Avenue, he believes 40 homes could be built along that right-of-way.

Mayor Winstead stated that if Council accepts the petition tonight, the process to study this issue will be initiated.

**Postponed to March 6
2005 Year End
Budget Carryover
Reappropriation
ITEM 3.15**

Motion was made by Elkins, seconded by Grady, and all voting aye, to postpone to the March 6, 2006, Regular Council meeting, reappropriation of the list of 2005 budgeted expenditures into 2006.

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.

**Adopted Resolution Approving Gambling Premise Permit for Bloomington Amateur Hockey Association
ITEM 5.1A
R-2006-22**

Motion was made by Wilcox, seconded by Grady, and all voting aye, to adopt a resolution approving a new Gambling Premise Permit for Bloomington Amateur Hockey Association to be issued by the Minnesota Charitable Gambling Control Board for the use of pull-tabs at the Sports Page at 9014 Lyndale Avenue South.

No public testimony was received.

**Approved Management Agreement for The Park at MOA
ITEM 5.1B**

Motion was made by Wilcox, seconded by Grady, and all voting aye, to approve a management agreement between Minntertainment Company, the current on-sale liquor licensee at The Park at MOA, 5000 Center Court, and MOA Entertainment Company, LLC.

No public testimony was received.

**Approved New Wine License for Da Afghan Restaurant at 929 West 89th Street
ITEM 5.1C**

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to approve a New Wine License, expiring June 30, 2006, and a New 3.2 Percent Malt Liquor License, expiring December 31, 2006, for Hassas Foods Inc. dba Da Afghan Restaurant at 929 West 80th Street.

No public testimony was received.

**Approved New Liquor License for Crowne Plaza Minneapolis Airport West Hotel
ITEM 5.1D**

Motion was made by Nordstrom, seconded by Grady, and all voting aye, to approve a New On-Sale Intoxicating Liquor License, expiring June 30, 2006, for Lane Hotels, Inc. dba Crowne Plaza Minneapolis Airport West located at 5401 Green Valley Drive.

No public testimony was received.

**Approved New Liquor License for Ramada Mall of America
ITEM 5.1E**

Motion was made by Wilcox, seconded by Nordstrom, and all voting aye, to approve a New On-Sale Intoxicating Liquor License, expiring June 30, 2006, for Sanford Hospitality, LLC dba Ramada Mall of America located at 2201 East 78th Street.

Speaker #1: Pam Siewert, 8018 Portland Avenue South
She commented on the new ownership of the Ramada Mall (former Thunderbird Hotel) stating they are not a reputable company and shouldn't be granted a liquor license.

Winstead stated the Council was approached by former Thunderbird Hotel employees and received correspondence from various other organizations around the state unhappy with the way the new management has treated employees. He asked the City Attorney if this information is relevant to the Council's decision whether or not to approve a liquor license for the new hotel owner.

City Attorney Dave Ornstein explained that the applicable City ordinance provides certain criteria in determining whether or not an individual or partnership or corporation is eligible for an on-sale liquor license. He stated the only criteria that might be relative is the provision that requires the applicant to be of moral character and repute. However, there is only one case in Minnesota that dealt with the meaning of good moral character in the context of a liquor license application. The situation in this case appears to be one of a dispute between former employees and the new management. Absent some concrete evidence that there is some type of intentional violation of this law relating to the applicant's fitness to hold a liquor license, this would not be a valid basis to turn down this application and there doesn't appear to be anything in the record to justify such action.

Council expressed their concern over the situation that has occurred at the Ramada but doesn't believe the City Council has any sort of role in a dispute between labor and management.

**Approved New
Therapeutic Massage
License at 7835
Portland Avenue So.
ITEM 5.1F**

Motion was made by Wilcox, seconded by Grady, and all voting aye, to approve a New Therapeutic Massage Enterprise License, expiring August 31, 2006 for Brett Christianson located at 7835 Portland Avenue South.

No public testimony was received.

**Approved Temporary
Conditional Use
Permit for
Bloomington
Transportation
Brokers
Case 5803B-06
ITEM 5.2A**

Motion was made by Grady, seconded by Peterson, and all voting aye, to approve a five-year Temporary Conditional Use Permit for Class III Motor Vehicle Sales (used car sales) at 1301 American Boulevard West, Case 5803B-06, for Roger's Body Shop dba Bloomington Transportation Brokers subject to the following 5 conditions of approval as set forth by the Planning Division Staff and the Hearing Examiner:

1. No more than ten (10) vehicles-for-sale are allowed to be parked or stored on the property at any time;
2. All for-sale vehicles associated with this use must be located within the fenced storage area as shown on the site plan in Case File 5803B-06 and shall be clearly identified;
3. No exterior site and building signage or signs visible from the exterior of the building that relate to the used vehicle sales are permitted;
4. Wood fence along the south side of the storage lot be repaired and brought into good condition by May 1, 2006 and the Planning Manager be informed by letter when this has been accomplished; and
5. Renewal of this Temporary Conditional Use Permit may be processed by the Hearing Examiner, in accordance with Sections 2.14(a)(1) and 19.15(b) of the City Code.

No staff report was provided and no public testimony was received.

**Approved Final Site &
Building Plans at
10801 Bush Lake Rd &
7001 W. Old Shakopee
Rd. for Verizon
Wireless
Case 10722A-06
ITEM 5.2B1**

Motion was made by Grady, seconded by Peterson, and all voting aye, to approve the Final Site and Building Plans for an office-warehouse building at 10801 Bush Lake Road & 7001 West Old Shakopee Road, Case 10722A-06, for Verizon Wireless (VAW) LLC, subject to the following conditions of approval as set forth by the Planning Division Staff and the Planning Commission being satisfied prior to Grading, Footing, and Foundation Permits:

1. Exterior building materials be approved by the Planning Manager;
2. Grading, drainage, utility and erosion control plans be approved by the City Engineer following review by the appropriate watershed district;
3. Access, circulation and parking plans be approved by the City Engineer;
4. Ten-foot planting easement be provided along West Old Shakopee Road;

and subject to the following conditions being satisfied prior to Structural Permits:

5. Connection charges, as determined, be satisfied;
6. A SAC questionnaire be completed and submitted to the Department of Public Works;

and subject to the following additional conditions:

7. Alterations to utilities be at the developer's expense;
8. Sidewalk be installed along Louisiana Avenue, in a location approved by the City Engineer, at the developer's expense;
9. All pickup and drop-off occur on site and off of public streets;
10. All loading and unloading occur on site and off of public streets;

and subject to the following Code requirements:

1. Landscape plan be approved by the Planning Manager and landscape bond be filed (Sec 19.52);
2. Erosion control measures be in place and bond be filed;
3. All rooftop equipment be fully screened (Sec. 19.52.01);
4. Poured-in-place concrete curbs be provided on the perimeter of parking lots and traffic islands (Sec 19.64);
5. All trash and recyclable materials be stored and screened inside the principal building (Sec. 19.51);

- ITEM 5.2B1 continued**
6. Property be platted in accordance with the requirements of Chapter 16 of the City Code (Sec. 16.03);
 7. Building be provided with an automatic fire sprinkler system as approved by the Fire Marshal (Mn Bldg. Code Sec. 904.1, Mn.Rules Chapter 1306; Uniform Fire Code Sec. 1003);
 8. Fire lanes be posted as approved by the Fire Marshal (Uniform Fire Code Sec. 901.4);
 9. Utility plan showing location of existing and proposed water main and fire hydrant locations be approved by the Fire Marshal and Utilities Engineer (City Code Sec. 6.20, Uniform Fire Code Sec. 903);
 10. Food service plans be approved by the Environmental Services Division (City Code Sec. 14.360);
 11. Parking lot and site security lighting shall satisfy the requirements of Section 19.54 of the City Code;
 12. Signage be in conformance with the requirements of Chapter 19, Article X of the City Code;
 13. A uniform sign design be submitted for approval by the Planning Manager; and
 14. All signage be in accordance with the approved Uniform Sign Design (Sec. 19.109).

Planning Manager Bob Hawbaker presented the staff report stating Verizon's intention is to use two parcels located on the south side of Old Shakopee Road between Louisiana and Bush Lake Road for a switching and storage facility. Space is available on site for future expansion. Planning Staff and the Planning Commission recommended approval with conditions.

Speaker #1: Brett Cato, Stricker Cato Murphy Architects, Inc.

He described how the building will be used and how much parking will be needed for the Verizon employees and the amount of parking lot space needed for truck maneuvering and storage. There will be 60-80 employees on site plus that occasionally attend for training.

No public testimony was received.

**Adopted Resolution
Approving Final Plat
of BLOOMINGTON
RNC ADDITION
Case 10722A-06
ITEM 5.2B2
R-2006-23**

Motion was made by Grady, seconded by Peterson, and all voting aye, to approve the Preliminary Plat and adopted a resolution granting Final Plat approval of BLOOMINGTON RNC ADDITION located at 10801 Bush Lake Road & 7001 West Old Shakopee Road, Case 10722A-06, for Jaymes D. Littlejohn for Verizon Wireless (VAW) LLC, subject to completion of the following 7 conditions and 2 Code requirements, receipt of the title, necessary documents and deposits and a review of all documents by the City Attorney. The property is being replatted to combine one platted lot and one unplatted lot into one lot for development.

1. Connection charges due prior to issuance of utility permits.
2. Provide right-of-way to 55 feet from centerline along West Old Shakopee Road and 40 feet along Bush Lake Road.
3. Provide standard drainage and utility easements 10 feet along street frontages and 5 feet along internal lot lines.
4. Provide 10-foot sidewalk/bikeway easement along all street frontages.
5. Furnish Grading, Drainage, Utility and Erosion Control plan; to be approved by the City Engineer prior to issuance of permits.
6. Surveyor to provide monumentation letter certifying that all monuments shall be placed within one year of filing the plat, unless set before filing.
7. A non-access (planting) easement shall be provided along West Old Shakopee Road.

Code Requirements:

1. The approved Final Plat shall be filed with Hennepin County (Section 16.05.01). A certified copy shall be provided to the Engineering Division prior to the issuance of building permits (Section 16.10).
2. All development setbacks shall be based on planned widened rights-of-way for the abutting public street(s) (Section 19.42).

No public testimony was received.

**Adopted Ordinance
Vacating Easements at
10801 Bush Lake Road
ITEM 5.2B3
O-2006-6**

Motion was made by Grady, seconded by Elkins, and all voting aye, to adopt an ordinance vacating drainage & utility and sidewalk & bikeway easements located at 10801 Bush Lake Road for the purposes of clearing title for the replatting of the property for Jaymes D. Littlejohn, Verizon Wireless (VAW) LLC.

Private utilities are affected by this vacation and new easements will be dedicated on the new plat to cover these existing utilities.

No public testimony was received.

**Continued to March 6
Preliminary & Final
Plat of POST
PENLAND ADDITION
ITEM 5.2C**

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to continue to the March 6, 2006, Regular Council meeting, the Preliminary & Final Plat of POST PENLAND ADDITION located at 11068 Glen Wilding Lane.

Shelly Pederson provided the staff report explaining that Council previously discussed this property when it considered the 2005 PMP Project, as easements were exchanged in this area and there was discussion of the property owner’s potential for building a new home on it. She stated there are 10 conditions and 2 Code requirements on the plat and that staff is requesting that in Condition #1, the applicant eliminate the retaining walls and grading slope towards the house. Using an aerial, she showed the proposed retaining wall and grading, stating that staff has not come to an agreement with the property owner on the proper grading of this parcel.

City Manager Mark Bernhardson suggested that as the applicant is in disagreement with staff’s Condition #1, he recommended that this item be postponed to allow the applicant to come to a conclusion regarding the retaining walls referred to in Condition #1 and the slope towards the house or alternatively to submit a plan that is engineered to satisfactorily handle the drainage.

As the applicant was not available but had previously indicated his objection, Council continued the item to March 6 to resolve the drainage issue and to be sure the original Planning approval and the plat approval come together in an appropriate fashion.

**CLOSED PUBLIC
COMMENT PERIOD**

The Mayor asked if anyone wished to address the Council during the public comment period, or it would be closed. No one came forward to speak so the public comment period was closed.

**Adopted Resolution
Approving Preliminary
& Final Plat of
NORMAN RIDGE
13TH ADDITION
ITEM 5.2D1
R-2006-24**

Motion was made by Peterson, seconded by Axtell, and all voting aye, to adopt a resolution approving an application by Lincoln Development for a four (4) lot preliminary and final plat of Norman Ridge 13th Addition at 171 Norman Ridge Drive subject to the conditions as stated in the resolution.

As background, Winstead explained that this item for a four-lot subdivision was before Council in 2005 and that after much neighborhood testimony and significant Council debate, they recommended denial on a split vote. He stated a set of conditions was discussed during the hearings that would have made a four-lot subdivision, had it gone forward, as palatable as possible. As the applicant believed he had a strong legal basis to move forward, he challenged the City Council’s denial of this application. The applicant took the City to court and the City Attorney and the League of Minnesota Cities’ counsel advised the City Council that its basis for denial was problematic going forward. In addition, the Council was informed that continuing could jeopardize its ability to impose the conditions previously discussed during the public hearings as a way of mitigating the four-lot subdivision if the applicant prevailed in the lawsuit. He stated the Council met in a closed session with the City Attorney to discuss the probability of prevailing in the lawsuit and it was concluded that the Council should move forward to negotiate with the applicant on a settlement of the four-lot plat and that such a decision needs to be made in an open meeting. He stated Council was in receipt of correspondence on this matter and a request that the Council delay its action tonight.

ITEM 5.2D1 continued

Ornstein provided background on Jim Thomson, a senior partner at the law firm of Kennedy & Graven appointed by the League of Minnesota Cities to assist the City in defense of this case and the work they did to prepare for it. He commented on the City v. Swanson case, which served as an example as to how courts might handle a dispute of this nature. He stated in this case, the record was compiled and thoroughly reviewed by Mr. Thomson and that both he and Mr. Thomson concluded that the likelihood of the City's prevailing in this lawsuit was not strong and explained how they arrived at that conclusion. He stated he does not recommend this item be continued, as the proposed Settlement and Release, which was negotiated over a couple of weeks time, is contingent upon the City Council acting on it this evening. He described what distinguishes this case from the Swanson case and explained the notification process that was used in both the initial application for the Preliminary & Final Plat and this public hearing regarding the proposed settlement agreement. He explained the concern is that if the City were to continue moving forward with this case and the Court rules against it, that Council might have to approve the Preliminary & Final Plat without being able to impose any conditions or perhaps only the staff recommended conditions and not the ones that the applicant conceded to during the public hearings with regard to tree preservation and a reduction in the height of the retaining walls for Lot 4. Tonight's proposed settlement agreement incorporates the conditions recommended by staff at the October 3, 2005, public hearing and the additional conditions, which were represented in a revised plat. He stated all of the conditions have been negotiated and explained the basic terms of the settlement as follows:

1. Council would approve the preliminary & final four-lot plat subject to all of the conditions identified by the City Attorney.
2. That all of the claims, including the claims of interference with contract and defamation would be dismissed and the City would be released from any future claims related to this matter.
3. A negotiated amount of \$17,500 would be paid to the applicant to cover claimed additional litigation expenses incurred as a result of the Council's denial.

Ornstein described the options available to the neighborhood going forward should the Council approve this subdivision file a lawsuit against the City and/or the developer or purchase a portion or all of the property by one or more of the neighbors as a way to mitigate the four-lot subdivision. If Council doesn't approve it, he stated the City would face in addition to the legal costs already incurred costs to defend the City against claims of contractual relationships and defamation, which could result in a trial and associated costs.

Mayor Winstead explained that the Council's decision to come to a settlement was weighted on the probability of winning the lawsuit and the ability to get the conditions favorable to the neighborhood negotiated into a settlement as the best way to mitigate this subdivision for the neighborhood. He invited the public to speak and requested they focus their comments on the proposed settlement and not on the conditions previously discussed.

Speaker #1: Connie Clark, 151 Norman Ridge Drive

She stated she is the neighbor directly to the south of the Norman Ridge subdivision and inquired why this subdivision has to be approved when the one on Timberglade wasn't. She mentioned the well established wildlife that exists within the Norman Ridge area compared to the Timberglade area. She inquired why the same criteria that was applied in the Swanson case regarding the Timberglade area wasn't applied to the Norman Ridge area.

Grady stated that the Council was advised that the difference between the two cases is no expert testimony was provided in the Lincoln Development case from a forester or a wildlife expert. It was just the City Council's and the neighborhood's comments that made up the record.

Winstead commented that to address this issue going forward, the Council has directed staff to look at the City Code and zoning related to in-fill development to try and find a way to ensure that the homes that get built within a neighborhood fit in with the character of the surrounding neighborhood in the future.

ITEM 5.2D1 continued

Speaker #2: Jane Murphy, 131 Norman Ridge Drive

She stated she understood the decision that has been made and that it makes sense at this point but expressed disappointment with the process in that their neighborhood spent a lot of good will and energy in an attempt to articulate their desires but doesn't feel they received sufficient direction from the Council and the City Attorney. She stated this is the first public meeting in which the Swanson case was mentioned and that information about a precedent case would have been beneficial to the neighborhood in preparing their objection to the four-lot subdivision.

Ornstein explained that he represents the City as a whole, the City Council, and City staff and typically doesn't represent the neighborhood even though they are part of the city. He stated if someone approaches him for some legal advice with regard to court decisions, he can provide that but that it's the neighborhood's responsibility, if they oppose a particular matter, to retain their own representatives and/or experts to make up the record.

Elkins stated he believes the main difference between the Timberglade and the Norman Ridge case was how the record was built. He stated a better record could have been built for the Norman Ridge case had everyone been better informed about the Swanson standard.

Winstead concluded his comments by stating that the Council went to bat for the neighborhood on this subdivision but didn't prevail and that thanks to the efforts of the City Attorney and City staff the conditions previously discussed were maintained in the negotiated settlement.

Approved Settlement Agreement & Mutual Release for Lincoln Development Lawsuit
ITEM 5.2D2

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to approve a Settlement Agreement and Mutual Release for the lawsuit entitled *Lincoln Development Company, LLC v. City of Bloomington*.

2006-3 East Bush Lake Road & 84th St. Project Feasibility Report
ITEM 5.3A

This item was postponed to later in the agenda.

Directed Staff to Complete the Barrier Installation Along West 80½ Street
ITEM 5.3B

Motion was made by Wilcox, seconded by Nordstrom, and all voting aye, to complete installation of the barrier on West 80½ Street down to the frontage road parallel to I-35W as originally promised to the Fremont Avenue neighborhood within a week's time that prevents traffic heading south on the frontage road from turning east onto West 80½ Street.

Using an aerial map and a schematic drawing, City Engineer Pederson reviewed the observations provided by both the Police Department and the Engineering staff of violations that occurred related to the temporary traffic control devices that were installed in the vicinity of GN ReSound.

Grady stated the traffic situation has clearly improved since the installation of the temporary barriers in reducing the amount of northbound traffic traveling down Fremont Avenue in the morning hours. However, drivers are still sneaking around when no one is observing. She stated it was Council's direction to give GN ReSound a two-week trial using the 13-foot temporary barrier to see how it was going to work in advance of the permanent barrier with the understanding that Council would take further action if the temporary barrier turned out to not be as effective as Council had hoped.

Wilcox and Nordstrom stated they don't feel the Council has lived up to what it promised the neighborhood originally, which was to run the barrier to the end of 80½ Street and rather installed the temporary barrier part way down West 80½ Street after discussing the situation with GN ReSound and proceeded to make a motion that the barrier be installed the rest of the way.

ITEM 5.3B continued

Speaker #1: Tyler LaFrano, GN ReSound, 8001 Bloomington Freeway

He stated they hired a security company to monitor the traffic for two weeks in an effort to police their employees. He stated they have approximately 423 cars entering and exiting their parking lot on a daily basis. He stated out of approximately 846 traffic trips in and out of their parking lot on a daily basis, the numbers of illegal u-turns around the barricade, illegal left turns at any one of their four exits, and cars going wrong way on the one-way were worse than the City's reported numbers. He stated they have tried to change the behavior of their employees from driving south and violating the traffic laws. He stated they do welcome the long-term barricade solution but in the interim, the short-term barricade going in front of the building concerns them, as they need to maintain their place of business for their customers.

Wilcox stated he applauds GN ReSound's efforts now but wondered where they were two years ago when this situation became such a problem for the Fremont neighborhood. He stated the City has tried but GN ReSound hasn't taken any ownership of this problem until now.

LaFrano stated he has only been with the company for a little over a year but they are working with the City and the residents now and they don't have a problem with the permanent solution, they are just concerned with the temporary barricade going all the way down to the end of West 80½ Street.

Grady inquired if Fremont Avenue could be blocked off completely for six months and if the apartment building and the office traffic could be forced to go north during that interim time period or do they need an outlet to the east.

Pederson stated that Engineering discussed that option with the apartment building owner and the office/condo people but they weren't in favor of it, as their residents would only have one access in and one during a time the office/condo units are being marketed for sale.

Bernhardson stated that staff advises against blocking it off completely, as a public hearing would be needed to give the residents that live in those apartments an opportunity to comment.

Ornstein agreed that there would be potential liability even if the blockage was temporary. The buildings must be given reasonable access to the main thoroughfare and they would need to be noticed for an opportunity to be heard if that access was lessened.

**Accepted Feasibility
Report & Adopted
Resolution Ordering
2006-3 Intersection
Improvement Project
ITEM 5.3A
R-2006-25**

Motion was made by Wilcox, seconded by Peterson, to accept the Feasibility Report for the 2006-3 Intersection Improvement Project at East Bush Lake Road & 84th Street and adopted a resolution ordering the 2006-3 East Bush Lake Road/84th Street Intersection Improvement Project. Motion passed 6-1 (Elkins opposing).

The improvements include grading, base reconstruction, bituminous resurfacing, retaining wall installation, water main, storm sewer and appurtenances, lighting and traffic signals, and landscaping improvements along the following streets:

1. East Bush Lake Road from south of American Boulevard to 700' west of 84th Street.
2. 84th Street from East Bush Lake Road to approximately 5800 84th Street.
3. Chalet Road from 84th Street to approximately 400' south of the intersection.

Julie Long, Engineer provided the staff report explaining that the project the City is proposing will use ISTEAF funds. She explained the grade changes that will occur with this project. She stated the existing bike path will be preserved in the project except for the section of trail through the shared property or life estate until such time that the occupant is deceased. She stated staff recommends ordering the improvements as presented.

Speaker #1: Mike Jarvis, 8269 Kentucky Circle

He inquired about the possibility of the neighborhood having two construction projects occurring at the same time if the Highwood/169 project commences construction soon.

Winstead stated that the East Bush Lake Road/84th Street Project should be completed before any work on Hwy. 169 involving Highwood Drive even gets started.

- ITEM 5.3A continued** Long stated the 2006-3 Intersection Improvements at East Bush Lake Road need to start construction by June 30, 2007, or the City will risk losing the grant funding. Staff anticipates the majority of the construction work to be completed by November of 2007.
- Speaker #2: Resident at 8257 Kentucky Circle
He inquired what it would cost to provide an outlet on the back side of the Creekside Townhomes/Condominiums, as this project is going to cost \$7 million and those residents will still have a problem turning left onto 84th Street.
- Long stated a rear access isn't possible for those condominiums due to the location of the wetlands.
- Speaker #3: Mike Kennedy, 8545 Chalet Road
He stated this project would restrict the access into the Chalet Road neighborhood and it appears an intersection similar to Old Shakopee Road & France Avenue is going to be constructed for an area that doesn't warrant all those lanes. He believes the backlog of traffic occurs due to the volume of cars going up into the Highwood area. He doesn't believe adding more lanes will solve that problem.
- Adopted Ordinance
Vacating Easements
Related to
Bloomington Central
Station & 3101
American Boulevard E
ITEM 5.4A
O-2006-5** Motion was made by Peterson, seconded by Grady, and all voting aye, to adopt an ordinance vacating drainage, utility, sidewalk, bikeway, and traffic control easements located at various addresses at Bloomington Central Station Addition and 3101 American Boulevard East for the purpose of clearing title for those properties.
- Public and private utilities are affected by this vacation and new right-of-way and easements will be rededicated on the new plat to cover these existing utilities.
- No public testimony was received.
- Adopted Ordinance
Authorizing Transfer
of Land to the HRA
ITEM 5.4B
O-2006-4** Motion was made by Grady, seconded by Peterson, and all voting aye, to adopt an ordinance authorizing the transfer to the Housing & Redevelopment Authority (HRA) of Lot 1, Block 1, G & S Addition (the old France 106 strip mall at 10609-21 France Avenue). The transfer is subject to the reservation by the City of easements for street purposes and for sidewalk, bikeway, and utility purposes.
- No public testimony was received.
- City Council Policy &
Issue Update
ITEM 6.1** The monthly update was provided at the February 6 meeting.
- Bernhardson requested Council provide him with feedback relating to the Draft Legislative Policies prior to next week. He indicated a desire to have Council meet to discuss the strategic planning process at 5:30 p.m. on Monday, March 6. He informed Council of the possibility that they may need to conduct a study meeting on Monday, March 27. He introduced his assistant Deb Smith to the Council and announced that she would be sitting in for Barb Clawson at next Monday's meeting.
- Appointment to HRA
ITEM 6.2** Motion was made by Wilcox, seconded by Peterson, and all voting aye, to reappoint Steve Bianchi to fill a term on the Housing & Redevelopment Authority that expired on December 31, 2005. His new five-year term will expire on December 31, 2010.
- Adjourn Meeting** Mayor Winstead adjourned the meeting at 9:44 p.m.

Barbara Clawson
Council Secretary