

Regular Meeting #19
Monday, July 10, 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 7:01 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.

**Adopted Resolution
Approving a Variance
at 3019 West Old
Shakopee Road
Case 4973A-06
ITEM 3.2
R-2006-77**

Motion was made by Grady, seconded by Elkins, and all voting aye, to adopt a resolution approving a variance to reduce the side yard setback from 10 feet to 5.4 feet for a living area addition at 3019 West Old Shakopee Road, Case 4973A-06, for Daniel & Susan Brooks, subject to the following condition as set forth by the Planning Division Staff:

1. This variance only applies to the original dwelling and proposed addition as shown on the plans in Case 4973A-06.

**Approved Agreement
with Richfield Ind.
School District #280
ITEM 3.3**

Motion was made by Grady, seconded by Elkins, and all voting aye, to approve a renewal agreement with Independent School District #280 to provide school health services to nonpublic schools in Richfield. Based on a projected enrollment of 491 students for school year 2006-2007, the City will receive approximately \$25,399.

No budget adjustment is necessary, as these dollars have been incorporated into Public Health's Budget.

**Approved Agreement
with Bloomington Ind.
School District #271
ITEM 3.4**

Motion was made by Grady, seconded by Elkins, and all voting aye, to approve the Public Health Facilities Agreement with Independent School District #271 whereby the Bloomington School District would give the City access to the two senior high schools and Oak Grove Middle School, their grounds, kitchens and equipment, without charge, as backup sites for mass vaccination or medication dispensing clinics, public health workforce readiness activities, disease investigation and case contact activities, and/or other emergency public health activities.

**Approved Renewal of
LMC Insurance Trust
Commercial Package
Policy
ITEM 3.5**

Motion was made by Grady, seconded by Elkins, and all voting aye, to approve the renewal of the League of Minnesota Cities Insurance Trust (LMCIT) Commercial Package Policy (comprised of municipal liability, property, automobile, crime and boiler and machinery coverages) and authorized the non-waiver of the statutory tort liability limits. The quoted premium costs for renewal of the LMCIT Commercial Package Policy totals \$416,743, an increase of 1.18% from last year's premium of \$411,805.

**Approved Closing &
Transfer of Debt
Service Funds
ITEM 3.6**

Motion was made by Grady, seconded by Elkins, and all voting aye, to approve the closing of Debt Service Funds 364 & 366 and transfer into Strategic Priorities Fund (\$1,200,000) and PIR Debt Service Fund (\$200,000).

**Approved Revision to
BCS Preliminary
Development Plan
ITEM 3.7**

Motion was made by Grady, seconded by Elkins, and all voting aye, to approve the revision to Council Condition #3 for the Preliminary Development Plan of Bloomington Central Station to read as follows: "A Transportation Management Plan shall be approved by the Director of Public Works which includes the following: Trip reduction alternatives and programs, a schedule for implementation, a procedure for evaluation and revisions based on project phases by November 30, 2006, or prior to issuing a building permit for the next phase of the final development plan, whichever occurs first."

- Approved Proposed Settlement Re: 1050 West 80th Street ITEM 3.10** Motion was made by Grady, seconded by Elkins, and all voting aye, to approve a proposed settlement of the easement acquisition occurring over Parcel 1A, 1050 West 80th Street (Bloomington Business Park Company), for the Dupont to Nicollet segment of the Ring Route currently under construction. The interests being acquired are an 18-month temporary construction easement along the American Boulevard frontage of the site (1,810 s.f.), plus several nature trees located in that easement area.
- Approved Donation to City of Bayport, MN ITEM 3.11** Motion was made by Grady, seconded by Elkins, and all voting aye, to approve the donation of two Motorola Syntors Mobile VHF radios no longer needed by the City to the Bayport Minnesota Police Department.
- Approved Minutes ITEM 3.12** Motion was made by Grady, seconded by Elkins, and all voting aye, to approve the March 20, 2006 and April 17, 2006, (Wilcox abstaining), Regular Council meeting minutes as presented.
- Adopted Resolution Transferring Funds to Legal Department ITEM 3.13 R-2006-78** Motion was made by Grady, seconded by Elkins, and all voting aye, to adopt a resolution approving the transfer of \$100,000 from Contingency Fund 101-8001-499 to the Legal Department's Budget Fund 101-2205-416.62-21 for professional consultants relating to airport noise mitigation.
- Adopted Resolution Authorizing City's Cost Participation in C.S. 2782-297 with MnDOT ITEM 3.1 R-2006-76** Motion was made by Elkins, seconded by Grady, and all voting aye, to adopt a resolution authorizing the City's cost participation in C.S. 2782-297 (T.H. 35W) – T.H. 35W at West 90th Street (east and west ramps signal rebuilds) with the Minnesota Department of Transportation (MnDOT).
Funds will be programmed for 2009 in the Municipal State Aid Account.
Elkins held this item to inquire if \$250,000 is being held in the budget for this project.
Shelly Pederson, City Engineer explained that funding is intended to come from State Aid but that no money is available for biking stripes. She stated it is anticipated a couple of these would be coming through every year.
- Authorized Staff to Set "Just Compensation" for Project at 84th St./ Chalet Road/East Bush Lake Road ITEM 3.9** Motion was made by Elkins, seconded by Grady, and all voting aye, to authorize staff to set "just compensation" amounts and make offers based upon the City's certified appraisals for the easement acquisitions relating to the upcoming street improvement project for 84th Street/Chalet Road/East Bush Lake Road with the comment that it seems staff is very resourceful when it comes to trades involving 4F and 6F parkland when a road widening is involved but it is extremely difficult for them to do the same in other cases.
- Accepted Donations ITEM 3.8** Motion was made by Grady, seconded by Peterson, and all voting aye, to accept the following donations made to various City activities and approved the related budget adjustments, as noted, to facilitate the appropriate use of these funds: \$5,000 donated by Firemen's Fund Insurance Co. to the Fire Department for the purchase of turnout gear and \$500 donated by Time Warner Cable for the Human Rights Commission – Youth Service Award.
- 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: Howard Bear, 10222 Wentworth Circle
He stated he has been a Bloomington resident since 1961 and that his wife and son are buried at Bloomington Cemetery. He expressed concern over the theft of two plants from his wife's and son's graves within the past three weeks. He inquired why the gates to the cemetery are still open after 8 p.m. and doesn't believe the City is doing anything to try and stop these thefts from occurring. He suggested the gates automatically lock at 8 p.m. every night to stop these thefts from reoccurring.

**PUBLIC COMMENT
PERIOD continued**

Bernhardson apologized for being unaware that this has been a longstanding problem and that staff has discussed locking the gates at 10 p.m.

Bear claims most cemeteries in the cities lock their gates by 8 p.m. He showed photos of the two plants recently stolen and suggested the City install signage that states thieves will be prosecuted.

**Approved On-Sale
3.2% Beer "Special
Event" License for
Northwestern Health
Sciences University
ITEM 5.1A**

Motion was made by Peterson, seconded by Grady, and all voting aye, to approve an On-Sale 3.2% Beer "Special Event" license for Northwestern Health Sciences University for their Student Senate Summer Jam that will take place on Friday, July 21 from 5-10 p.m. at Northwestern Health Sciences University at 2501 West 84th Street.

No public testimony was received.

**Approved On-Sale
3.2% "Special Event"
License for Knights of
Columbus
ITEM 5.1B**

Motion was made by Grady, seconded by Peterson, and all voting aye, to approve an On-Sale 3.2% Beer "Special Event" license for the Knights of Columbus for the Firemen's Softball Tournament that will take place on Friday, July 14 from 4-10 p.m., on Saturday, July 15, from 9 a.m. – 10 p.m., and on Sunday from 12:01 – 10 p.m. at Valley View Fields located at 9000 Portland Avenue South.

No public testimony was received.

**Adopted Resolution
Approving Gambling
Permit at Joe Senser's
ITEM 5.1C
R-2006-79**

Motion was made by Grady, seconded by Peterson, and all voting aye, to adopt a resolution approving a Lawful Gambling Premise Permit (Pull-tabs) for Metro Baseball League at Joe Senser's, 4217 American Boulevard West.

No public testimony was received.

**Approved Temporary
Conditional Use
Permit for True Tae
Kwon Do at 10724
France Avenue South
Case 10616A-06
ITEM 5.2A**

Motion was made by Grady, seconded by Peterson, and all voting aye, to approve a three-year Temporary Conditional Use Permit for a martial arts studio in a leased space in an existing retail center at 10724 France Avenue South (Business: 10756 France Avenue), Case 10616A-06, for True Tae Kwon Do (Ralph Truesdell), subject to the following 4 conditions of approval as set forth by the Planning Division Staff and the Hearing Examiner:

1. Floor area of the use shall not exceed the 2,100 square feet shown on plans approved in Case 10616A-06 during the permit period unless approved by the Planning Manager;
2. No tournaments involving outside participants shall be held at this location;
3. All signage shall be in compliance with the approved Uniform Sign Design and the Sign Code; and
4. Future requests for renewal of this Temporary Conditional Use Permit may be considered by the Hearing Examiner.

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

**Approved Temporary
Conditional Use
Permit for a Billboard
at 4300 W. 78th Street
Case 5029A-05
ITEM 5.2B**

Motion was made by Axtell, seconded by Wilcox, to approve a Temporary Conditional Use Permit for a billboard until March 20, 2009, for the property at 4300 West 78th Street, Case 5029A-05, subject to the following 6 conditions as set forth by the Planning Division staff and the Planning Commission. Motion passed 6-1 (AG opposing).

1. The approved advertising copy area for each face shall consist of only the basic 14'x48' panel with no extensions to the top, sides, or bottom of either panel;
2. All advertising copy shall be within the approved copy area;
3. The height of the billboard shall not be increased above the surveyed height of 38.7 feet;
4. A summary sheet containing a description of the billboard advertiser and display dimensions, including dimensions of each billboard face, in a format approved by the Planning Manager, be submitted to the Planning Division within 15 days of the change of face;
5. In accordance with the Site Development Agreement for Phase II of Market Pointe, the billboard be removed by March 20, 2009 and the billboard owner notify the Planning Manager in writing within 10 days of the date of removal; and
6. Maintenance of billboard and surrounding grounds be performed in a timely manner throughout the period of the conditional use permit.

ITEM 5.2B continued

Bob Hawbaker, Planning Manager provided the staff report explaining that the billboard sets on part of the Ryan Marketpointe Development and that it was approved 15 years ago when billboards were legal in this location. Later the site was rezoned to Residential Office for a development that never materialized. Since that time, Ryan has made application to rezone the property to commercial/office and subsequently the second phase of Marketpointe was approved so the process for the Temporary Conditional Use Permit (TCUP) for the billboard continued. He stated the billboard should have been removed when the site was rezoned to residential but that staff gave Ryan Companies a three-year time frame to keep the billboard in place and that it was a condition on their Final Development Plan approval. He stated staff approves a TCUP expiring on March 20, 2009.

Axtell inquired if the conditions for the billboard address use of any interactive media display.

Hawbaker replied that the moratorium would not allow it.

Grady inquired if the expiration date could be tied to the groundbreaking date of the Marketpointe project and not March 20, 2009.

Hawbaker explained that the City only allows billboards as TCUP's if they already exist.

Mark Bernhardson, City Manager explained that staff has limited all billboards to three years but that applicants could apply again if no development has occurred.

Nordstrom inquired why staff would want to renew this application when the site hasn't been maintained as it is.

Hawbaker replied that the building has been destroyed and removed from the site.

Bernhardson stated he would have the City Attorney provide the Council with some background information relating to billboards.

Speaker #1: Marvin List, Attorney Representing Clear Channel

Mr. List stated that either the development will occur by March 2009 or it won't and that Clear Channel is and has been a legal use on that site. He doesn't believe the condition that's been added requiring the removal of the billboard by March 2009 is necessary or proper, as the developer might not develop the property by March, 2009. He believes the Council should make the findings as to why this application can't be renewed. He suggested the approval be for two years from now without attaching any conditions or the Council should have to make findings that it would adversely impact the public health, safety and welfare.

Bernhardson explained that the Council could go for two years if the property owner is accepting, but that the condition would remain.

Dave Ornstein, City Attorney provided background on the lease agreement Ryan Companies, the property owner, has had with Clear Channel and explained that the permit runs with the land. He stated when the property was originally zoned RO-50 to accommodate residential, billboards were no longer allowed. When the TCUP came through, staff sat down with Ryan Companies and agreed that the billboard would be removed in March, 2009. Ryan is in control of whether the billboard remains. Clear Channel needs a lease agreement with Ryan Companies and that if the City Council wants to be consistent with the Final Development Plan, a condition must be included that states it needs to be removed by March, 2009 or when construction on the Marketpointe development begins. He stated the applicant could try and get that condition changed when the Final Development Plan comes through but that he recommends leaving it in. He restated Ryan Companies has control of the lease with Clear Channel.

Wilcox inquired if the property owner is responsible for the maintenance of the site.

Ornstein confirmed that he is responsible.

ITEM 5.2B continued

Elkins requested confirmation that the condition on the developer's permit would require Ryan to terminate the lease by March, 2009.

Ornstein confirmed that it would as it was a condition on the Final Development Plan.

Mr. List commented that Clear Channel was not invited to the meetings that took place between Ryan Companies and the City and believes the condition that was attached to Ryan's Final Development Plan would be considered illegal if Ryan Companies were never to develop the site.

Bernhardson asked Mr. List when the lease between Clear Channel & Ryan expires.

List replied he was unsure but that their lease can be terminated when Ryan develops the property but that it is some date beyond the three-year expiration of the TCUP. He believes the lease runs until 2013. He requested the approval of the TCUP be for two years.

Grady inquired if the February 23, 2006, Condition #9 for the office building and parking structure only comes into play if they move forward with the development or is the date a factor no matter what.

Ornstein replied that it doesn't matter. The billboard has to be removed by that date even if Ryan doesn't come in with a proposal. Ryan has agreed that the billboard will be removed whether they develop the property or not and that they, as the property owner, can terminate their lease with Clear Channel.

**Approved Revised
Development Plan for
Normandale
Investments, LLC at
8200 Normandale
Boulevard
Case 7792A-06
ITEM 5.2C**

Motion was made by Peterson, seconded by Grady, and all voting aye, to approve a Revised Final Development Plan for a one-level, 122-space parking deck addition at 8200 Normandale Boulevard, Case 7792A-06, for 8200 Normandale Investments, LLC, subject to the following 8 conditions of approval and 6 Code requirements as set forth by the Planning Division Staff and the Planning Commission:

1. The property shall be platted per Section 16.03 of the City Code. The approved Final Plat shall be filed with Hennepin County and a certified copy shall be provided to the Engineering Division prior to the issuance of building permits;
2. Exterior building materials shall be integral texture and color to match the building as approved by the Planning Manager;
3. Any alterations to utilities be at the developer's expense;
4. Access, circulation and parking plans be approved by the City Traffic Engineer;
5. All construction loading, unloading, stock piling and staging occur on site and off of public streets;
6. Grading, drainage, utility and erosion control plans be approved by the City Engineer following review by the appropriate watershed district;
7. A Stormwater Management Plan shall be provided and shall include:
 - a) Stormwater Rate Control; no net increase in runoff;
 - b) Stormwater Volume Control; no net increase in volume;
 - c) Water Quality Treatment which meets the requirements of the Bloomington Comprehensive Surface Water Management Plan (CSWMP);
 - d) Maintenance Schedule/Plan for Stormwater BMP signed by property owner and to be filed on record with Hennepin County. Proof of filing shall be submitted to Engineering;
8. Nine Mile Creek Watershed District Permit and comments shall be provided;

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. Fire lanes be posted as approved by the Fire Marshal (Sec. 8.73);
3. Parking lot and site security lighting shall satisfy the requirements of Section 19.54 of the City Code;

ITEM 5.2C continued

4. Utility plan showing location of existing and proposed water main and fire hydrant locations be approved by the Fire Marshal and Utilities Engineer (Sec. 6.20, Uniform Fire Code Ch. 10.301-C);
5. Structure and parking shall comply with State Handicap Code; and
6. The parking structure addition shall be built in conformance with open parking garage standards.

Hawbaker provided the staff report explaining that the applicant intends to add a 122-space, single story parking ramp onto the south side of its site between its property and United Properties. An issue exists regarding the design and location of the ramp in conjunction with Norman Center Drive. He stated the ramp to get to the upper level is very close to 84th Street and that the Traffic Engineer has concerns that cars could stack up on Norman Center Drive while waiting to enter the ramp but that Condition #4 addresses the design element of the parking ramp issue and that staff recommends approval.

No public testimony was received.

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 so the public comment period was closed.

Approved Preliminary Plat at 8500 Irwin Rd & 4216 Poplar Bridge Rd Case 10732A-06 ITEM 5.2D

Motion was made by Grady, seconded by Peterson, and all voting aye, to approve the three-lot Preliminary Plat of Next Step Development at 8500 Irwin Road and 4216 Poplar Bridge Road, Case 10732A-06, for Larry & Kathy Anderson, subject to the following 10 conditions of approval as set forth by the Planning Division Staff and the Planning Commission:

1. After acceptance by the Department of Public Works and prior to signing by the Mayor and City Manager, the final plat, all easement documents, and all other documents required as part of the subdivision be reviewed by the Planning Manager and City Attorney to assure compliance with conditions of approval adopted by the City Council.;
2. Park dedication shall be in cash for one lot;
3. Standard drainage and utility easements be provided along all lot lines, including a concurrent 10 foot sidewalk and bikeway easement along Poplar Bridge Road and Irwin Avenue for all three lots;
4. A drainage easement shall be provided for all drainage swales on all lots;
5. Grading, drainage and utility plans be approved by the City Engineer;
6. Connection charges be satisfied;
7. Sewer Availability Charge (SAC) be satisfied;
8. Permits shall be obtained for all new curb cuts and the driveway design and location shall be approved by the City Traffic Engineer;
9. All alterations and additions to utilities shall be at the developer's expense; and
10. Erosion control measures be in place prior to issuance of grading permits.

Hawbaker explained that this application is the cooperation of two property owners on Irwin Road and that they're creating a new lot by taking the back portions of two existing lots. He stated neighbors have had issues with drainage so a catch basin will be constructed on the new lot. All lots meet City Code and no utilities will be located in the lot lines.

Grady inquired if the water from the neighborhood gathers in that corner.

Shelly Pederson confirmed that this is a low spot in the area and that Condition #5 addresses it. She stated staff will continue to work on the drainage issue but they believe the grading on the plat is adequate. Calculations and pipe size have not yet been submitted so staff will meet with applicants and the neighbors to ensure there is no overland flooding.

Elkins inquired if the applicant has to meet all of the findings.

Ornstein replied that typically the applicant applies and staff reviews. If staff finds the standards have been met, then they recommend it to the Planning Commission and they make a recommendation for Council's final decision. When a plat is initially submitted, the applicant must meet with City staff to ensure that it meets all of the relative standards.

ITEM 5.2D continued

Elkins inquired if Finding #3 has to be met before this is approved?

Ornstein replied that staff needs to make a recommendation that the preliminary plat meets the standards and that the conditions need to be satisfied before the Final Plat is approved.

Pederson restated there are still some grading issues but that staff will work with the applicant to get the water draining to the lowest point. She stated the property to the south is at a higher elevation and shouldn't be affected.

Wilcox inquired if the neighbors could come and comment when the Final Plat is presented for approval if they're not satisfied with how the storm drainage issue get worked out.

Bernhardson stated that if all conditions are met on the Final Plat, the City Council would have to approve it.

Grady inquired if the Preliminary Plat could be held until the Final Plat is taken.

Ornstein replied there is a deadline on the Preliminary Plat.

Winstead stated he is satisfied that staff will deal with all the issues appropriately.

Speaker #1: Larry Anderson, Applicant

He stated his desire to see this get approved tonight, as he will spend the money necessary to make sure it drains properly. He believes City staff would not allow him to build anything that would adversely affect the drainage situation for his neighbors. He praised City staff for working with him. He wants to ensure that future money invested by him will not be wasted and understands that all conditions must be met before the Final Plat is approved.

**Approved Revised
Final Site & Building
Plans for Country Inn
& Suites at 5120
American Boulevard W
Case 8816A-06
ITEM 5.2E**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to approve the Revised Final Site Plans and Building Plans for a building addition for Country Inn and Suites at 5120 American Boulevard West, Case 8816A-06, subject to the following 3 conditions and 6 Code requirements as set forth by the Planning Division staff and the Planning Commission being satisfied prior to the issuance of 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;

and subject to the following additional condition:

3. Alterations to utilities be at the developer's expense;

and subject to the following Code requirements:

1. Erosion control measures be in place and bond be filed;
2. All rooftop equipment 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 Sec. 903, MN.Rules Chapter 1306; MN State Fire Code Sec. 903);
4. Fire lanes be posted as approved by the Fire Marshal (MN State Fire Code Sec. 503.3);5)
5. 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, Minnesota State Fire Code Sec. 508); and
6. Food service plans be approved by the Environmental Services Division (City Code Sec. 14.360).

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

**Adopted Ordinance
Amending City Code
Relating to Juvenile
Curfew
ITEM 5.4F
O-2006-26**

Motion was made by Grady, seconded by Peterson, and all voting aye, to adopt an ordinance amending Chapter 12 of the Bloomington City Code relating to juvenile curfew to make it consistent with recent amendments to Hennepin County's Ordinance 16 – Juvenile Curfew to specifically:

1. Place curfew requirements of 9:00 p.m. on Sundays – Thursdays and 10:00 p.m. on Fridays and Saturdays on juveniles under the age of 12 years.
2. Require law enforcement officers to first inquire of the juvenile and consider the circumstances surrounding the juvenile's presence in a public place after curfew, so as to determine whether or not the juvenile has a viable defense to the violation, before detaining the juvenile, taking the juvenile into custody, or issuing the juvenile a citation for the curfew violation.

Staff explained that this ordinance puts the City's ordinance in line with the County's.

No public testimony was received.

**Adopted Ordinance
Vacating Easements at
10832 Harrison Ave. &
10837 Irwin Ave.
ITEM 5.4G
O-2006-27**

Motion was made by Grady, seconded by Peterson, and all voting aye, to adopt the ordinance vacating drainage and utility easements located at 10832 Harrison Avenue and 10837 Irwin Avenue for Karen Blue. The vacation is requested to clear title for the replatting of the property. No public or private utilities are affected by this vacation. New drainage and utility easements will be dedicated on the approved plat of DEVOLD 2ND ADDITION.

No public testimony was received.

**Continued to July 24
an Amendment to the
Zoning Ordinance and
the Rezoning of
Several Properties
ITEM 5.4A-D**

Motion was made by Peterson, seconded by Elkins, and all voting aye, to continue to the July 24, 2006, Regular Council meeting, a zoning ordinance amendment establishing new commercial zoning districts and standards, Case 10000A-06 (Item 5.4A1), a resolution directing summary publication of the zoning ordinance amendment (Item 5.4A2), the rezoning of the property at 9200 Old Cedar Avenue, Case 10002A-06 (Item 5.4B), the rezoning of the property at 8820 Lyndale Avenue South, Case 10002B-06 (Item 5.4C), and the rezoning of 20 parcels south of American Boulevard West between Queen Avenue & I-35W, Case 10002C-06 (Item 5.4D).

Glen Markegard, Senior Planner explained that Items 5.4A-D pertain to an ordinance that establishes new zoning standards and rezones three areas. All four items are part of a complete update of the Zoning Ordinance with a total of 50 subcomponents. The item being discussed tonight relates to the commercial zoning districts that have the broadest impact on the community and are the most controversial. There has been significant discussion on these items and he stated staff recommends the hearings be divided into the following three components:

1. Underlying principles and assumptions
2. Ordinance details
3. Rezoning

Markegard explained that all three components don't need to be completed tonight. If Council desires to amend any standards, staff will bring them back. His presentation included the following:

- A history on this process, including the timeframe and members who participated in the focus group.
- A description of the contents of the ordinance.
- Areas for rezoning: Old Cedar Avenue & Old Shakopee Road (Spur station), 8820 Lyndale Avenue (Metro Pawn Store), area south of American Boulevard from Queen Avenue to 35W (20 parcels in the area).
- A description of the key underlying principles and assumptions as follows:

ITEM 5.4A-D
continued

- Principle #1: Existing ordinance was written in the 1950's so make the update more user friendly. Reduce the number of commercial districts, provide better tools and reorganize.
- Principle #2: Preserve neighborhood commercial orientation: Use height limits, tenant size, and use limitations.
- Principle #3: Improve walkability – A few key areas will be pedestrian oriented.
- Principle #4: Distribute goods & services. Districts needs to accommodate all of those uses and spread them out.
- Principle #5: Reduce Setbacks – Don't force parking to be located in front of a commercial building. Eliminate the historic 65-foot front setback.
- Principle #6: Promote development of a few mixed-use commercial nodes. Should have a select few that reflect on the surrounding areas. Shift parking to the side and to the rear to make developments more attractive and pedestrian friendly.
- Principle #7: Encourage intensity along I-494/American Boulevard corridor. The big challenge is that 494 is over capacity even if expanded. Could tighten limitations on growth along freeway or look beyond the freeway. Foster high quality mass transit. Increase development intensity to spur on transit. Include minimum Floor Area Ratio (FAR) and minimum height requirements.
- Principle #8: Encourage residential uses in commercial areas: American Boulevard corridor and in neighborhood commercial nodes.
- Principle #9: Implement most rezonings after the Strategic Planning process. Apply new standards to most of the areas after the discussions are complete and apply some now so that developers can request the new zoning. Adopt districts now so that the Council can apply them in a particular area. Would give the Council more land use control. Don't delay all of the areas but delay the bulk of them so that utilities could be more closely examined for capacity and needed improvements in certain districts.
- Principle #10: New zoning standards should be forward looking. City Attorney to discuss non-conformity and changes in law.

Ornstein reviewed the legislative changes. He stated owners of properties potentially affected by these zoning changes have expressed concern regarding possible non-conforming uses, buildings, characteristics and features. He stated the law states that non-conforming uses in existing buildings should be allowed to continue. (**Listen to this.**) In 2001 and 2004, the State Legislature amended the law regarding non-conforming uses and it affects the City's ability to eliminate non-conforming uses. State law allows non-conforming uses to continue through improvements, repairs, replacements, maintenance, or restoration but can't expand unless the City allows it. If non-conforming use has been discontinued for a year, the City can discontinue it. If a non-conforming structure is destroyed by fire and more than 50% of the building use is destroyed, the owner could rebuild if they get a permit within six months. Changes in State law pre-empt local enforcement. The City has legal authority by ordinance to allow expansion of non-conforming uses in certain zoning districts. Original proposals did not contain any elements regarding expansion of buildings. Staff and the Planning Commission propose to allow non-conforming buildings and non-conforming characteristics to expand under certain uses. Non-characteristics would be performance standards. Proposed standards would include expansion of buildings through the variance or planned development process. Ornstein prefers Council use a variance, as they would have more discretion than a Conditional Use Permit. If an application meets standards for a use permit, it would be harder for the Council to deny it. The applicant would have to show that there would not be negative impact on the surrounding properties.

**ITEM 5.4A-D
continued**

Ornstein continued by stating that the Legislature also amended State statute to prohibit municipalities from amortizing either non-conforming uses or permitted uses out of existence. He referenced a recent case in St. Louis Park regarding a concrete plant. The third protection that the Legislation conferred on non-conforming uses is last session when they enacted a law that prohibits cities from conditioning the approval of a license, permit or development proposal on the removal of an existing non-conforming use without paying just compensation. The only exception for that is if the removal of the non-conforming use is necessary to physically accommodate the development. He stated the Planning Commission inquired if the creation of non-conforming uses or buildings implicates potential inverse condemnation actions and would the City be vulnerable to claims of a taking. He concluded that it would be very unlikely under Supreme Court decisions that involve regulatory takings. The value of the property could very well be enhanced by the application of the new zoning districts in terms of potential future uses. He stated it would take a type of regulation that would cause a property to have a reduced value to constitute a regulatory taking under both the United States and Minnesota Supreme Court decisions. He, therefore, doesn't believe the City would be vulnerable to a takings claim unless it could be shown that the property is no longer economically viable as a result of the rezoning.

Using a hypothetical situation, Grady inquired what could a dealership like Larry Reid's do if they wanted to expand their building to accommodate a new piece of equipment but is rendered a non-conforming building as a result of the new rezoning.

Ornstein replied that the dealership could expand the non-conforming building if it's under a .4 Floor Area Ratio (FAR) without expanding the non-conformity. He stated they couldn't reduce the size of their building without getting a variance or a planned development. If it were to burn down, they would have 180 days to rebuild but the building would have to be at least the same size or bigger. In regard to Sec. 19.10.01 Non-Conforming Site Characteristics and using an example whereby a non-conforming building has a non-conforming use but wants to add an addition that would allow for a permitted use, Ornstein explained that the building could be expanded, as it would accommodate a use that is consistent with the zoning.

Using the hypothetical car dealership scenario, Axtell inquired if an auto dealership building could be expanded onto an adjacent lot.

Bernhardson explained that the applicant could but would have to meet the standards for the adjacent lot or if the lots were combined, the standards for both lots would have to be met. He mentioned there is always the variance process through which it could be pursued.

Markegard recapped the concerns raised to date regarding the principles and assumptions:

- Principle #6: Promoting development of a few mixed-use commercial nodes: Commenters have expressed support for the principal itself but do not like the requirements that go with it.
- Principle #7: Encouraging intensity along I-494/American Boulevard Corridor: Commenters inquired whether the City would succeed in obtaining transit for the corridor through higher intensities.
- Principle #8: Encouraging residential uses in commercial areas: Commenters expressed support for the principle but indicated a preference for doing it through allowances rather than requirements, i.e. in the C-5 District.

ITEM 5.4A-D continued

- Principle #9: Implement most rezonings after Strategic Planning: Commenters would prefer the City delay adoption of the districts until it knows in which locations each district would apply. Since the City doesn't know exactly where the zones would apply at this point, it hasn't been able to directly notify landowners who may be potentially affected in a given district. Therefore, staff recommends that the City keep an open mind regarding the standards themselves as the districts are applied down the road and look at potential changes to the districts as additional public input is received throughout the process. Commenters also believe that even if the new districts are adopted, they should not be applied until after the Strategic Planning process has been completed.
- Principle #10: New zoning standards should be forward-looking: Concern that non-conforming status could impact value, loan rates, and insurance rates.

Markegard provided a brief overview of Planning Commission's recommendation. The Commission did recommend approval of the ordinance subject to three modifications:

1. Lower the minimum required Floor Area Ratio for expansions of existing motor vehicle sales uses and sites. The lowered ratio, however, would not apply to new motor vehicle sales uses.
2. Add some additional clarification language on expansions of site characteristic non-conformity.
3. Rename the B3 District to B4 allowing the existing B3 standards to remain in the Code during the interim period.
4. Regarding the rezonings, the Planning Commission recommended approval of the first two on Old Cedar and on Lyndale but recommended denial of the rezoning of the area south of Southtown. Most commissioners preferred delaying the discussion of that area until after the Strategic Planning process is further along.
5. The Traffic & Transportation Advisory Commission (TTAC) recommended approval of both the sidewalk standards and the drive-through standards subject to some modifications, all of which have been incorporated into the ordinance presented tonight.

Winstead inquired about how to deal with the existing B3 parcels.

Markegard explained that there are currently (17) B3 parcels and all of them are proposed to be rezoned to some other district. If the ordinance and the rezonings were adopted as presented, neither the old B3 or new B3 would apply anywhere in the city until the Strategic Planning process is included, at which point the City would look at applying the new B3 standards in selected areas. The Planning Commission was okay with adopting the zoning ordinance standards but they didn't want to rezone the area south of Southtown.

Bernhardson suggested Council not take a final vote on this tonight but continue it to the July 24th meeting.

Council inquired about specific language in a few sections of the ordinance relating to the definition of banks and financial institutions, government facilities, whether or not fuel pumps should be considered an accessory to an auto dealership, the need to add text to clarify the sidewalk requirements relating to private sidewalks

At this point, Mayor Winstead opened up the testimony to address the issue of the principles and assumptions as described by staff.

ITEM 5.4A-D continued

Speaker #1: Jim Erickson, Border Foods, Sky Ventures

He liked the Council's measured approach of continuing to take input. Review the ten principles and always bear in mind Principle #4. He endorses #4 but it could come in conflict with some of the other principles. Taco Bell is about to open on Lyndale Avenue and they'd like to do more of that. They've spent \$1 million to improve service for the public. Specifically, his client would love to convert the KFC on American Boulevard into another old choice Taco Bell but it would go against the City's principles. He urged the Council to keep Principle #4 in mind. He requested the Council not restrict or limit the opportunity for businesses to expand like they did with Taco Bell.

Speaker #2: Rob Lunz, Nicollet Partners, Real Estate Advisors

He stated his issues are intertwined. He has two clients. The City Council's vision is different from many property owners' vision of their property. He stated they're located near two major intersections. Auto dealers will want to locate in Bloomington near those two intersections. He stated there are (16) auto dealerships in Bloomington in 6-7 zoning districts. The C-1 Zoning District, as proposed, will require a 4.0 FAR unlike any other suburban zoning code. He stated the City needs to decide how it wants to treat dealerships. Let the market drive the auto dealerships or promulgate how they can stay here. He believes all car dealers should be treated the same. With respect to the Peerless Land Company which owns five parcels south of Southtown, he stated they have no desire to go to a C-5 classification, as C-5 has a required density. With regard to residential, he stated most developments have some connection to a park. The Metro Mitsubishi site, for example, wouldn't have any connection to a park. They desire to keep their zoning as it is, as they wouldn't want to develop residential on that site.

Axtell requested statistical data from Lunz relating to the value of non-conforming properties, as he had mentioned that it's hard to get financing for commercial properties if they're non-conforming.

Peterson stated the City constructed the Lyle Berg Bridge and improved American Boulevard and asked Lunz if those improvements have helped the Peerless Land Company, as the number of vehicles going by those properties has increased.

Wilcox stated residential is easier to apply to a larger parcel than a smaller one.

Speaker #3: Tom Kendall, Local Real Estate Agent – Chamber of Commerce Economic Development Committee

He stated non-conforming is an issue that affects the use value. On behalf of Adam Bengtson, he stated the Chamber has been meeting on this subject for six months and the Chamber's position is that the timing of the zoning update should coincide with the Strategic Planning process. He believes the City should educate the business community and make citizens aware of the future impacts on existing developments. People need to have a better understanding of this zoning update. Make it more visible to the public. He stated the Chamber is trying to raise awareness of this undertaking in the business community. He stated care should be taken to leave the door open for changes upon completion of the Strategic Planning process. He suggested staff reach out to different realtor associations to tap into their resources.

Axtell complimented the Chamber's work in engaging the community in this process.

Speaker #4: Larry Reid, Larry Reid's Chrysler Plymouth

He stated they provide a service as an auto dealer that is essential to Bloomington residents. This was his first dealership and he's proud to provide this needed service.

ITEM 5.4A-D continued Speaker #5: Jeff Andrews, 2362 Wellswood Curve

He thanked staff for working with the community and listed his concerns:

- Timing of the process.
- If this ordinance is adopted, will the zoning changes influence the Strategic Planning process?
- Community at large needs to be more involved in this process looking to the future.
- Is there market demand for more residential?
- Some conflicts with what Bloomington will look like down the road.
- We've had descriptive zoning.
- What does new urbanism mean for Bloomington?
- Is the goal that the Council sets attainable for the right kinds of development?
- He is concerned with the minimum intensity requirements.

As there is no proof that people are moving away from Bloomington, Andrews questioned whether form-based zoning is necessary. He requested the Council delay its action until after the Strategic Planning process has been completed.

Peterson stated that Bloomington uses tools to drive planning, which has worked well and hopes the Council stays the course.

Axtell stated he struggles with the economic impacts of the Council's decision regarding non-conforming properties and the marketability of those properties as a result, as the market is unpredictable.

Elkins commented that this is all great feedback and that staff has made many changes as a result of this feedback. Many good things have already been accomplished through the existing ordinances and the City will continue to receive feedback going forward. He likes where the process is at and looks forward to continuing the discussion throughout the Strategic Planning process.

Winstead inquired about some conflicts. Does Principle #4 conflict with #8? If the City starts to get into non-conforming, is there a better way to phrase it? The object is not to drive businesses out of Bloomington. He suggested the language be changed to make the issue of non-conforming less negative. He stated Council will be able to apply the zoning after the strategic planning process and that the City will learn as it goes. He wants to see this process continue.

Grady suggested Council look at the issues looming: Car dealership FAR, rezoning of Peerless Land Co., fast-food drive-through locations and size of boards, and non-conforming.

Bernhardson stated that those are the issues Council will focus on the next round. After discussing specifics, the timing of the changes will be discussed. He requested Council provide staff with their text comments/questions. He stated staff will focus on the principle concerns identified up to this point and bring it back to the next meeting for a final vote.

**Postponed to July 24
an 8-Month Mora-
torium Relating to
Pawnshops &
Secondhand Dealers
ITEM 5.4A-E**

Motion was made by Peterson, seconded by Elkins, and all voting aye, to continue to the July 24, 2006, Regular Council meeting, an ordinance imposing an 8-month moratorium on the operation of new pawnshops and secondhand dealers.

**City Council Policy &
Issue Update
ITEM 6.1**

Motion was made by Peterson, seconded by Elkins, and all voting aye, to approve transmittal of a letter to Congressman Ramstad relating to his recent vote on the Communications, Opportunity, Promotion, and Enhancement Act of 2006 (COPE/Barton-Rush) Bill H.R. 5252. The bill, in its current form, contains several provisions that the City Council believes will hurt his constituents, not only in Bloomington but also throughout his district.

Council was provided with the tentative dates for the strategic town meetings and was requested to inform staff of any concerns they have regarding the dates. One meeting will be held in each district and Council members were encouraged to attend as many meetings as they would like.

ITEM 6.1 continued

Wilcox mentioned that the Noise Oversight Committee (NOC) is going to be filming an Airport 101 class on Wednesday, July 12 in the Council Chamber, which will be used to help other cities better understand airport noise.

**Appointment to
Bloomington Sister
City Organization
ITEM 6.2**

Motion was made by Peterson, seconded by Elkins, and all voting aye, to appoint Councilmember Nordstrom to the Bloomington Sister City Organization.

Adjourn Meeting

Mayor Winstead adjourned the meeting at 10:55 p.m.

Barbara Clawson
Council Secretary