

Regular Meeting #22
Monday, August 7, 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.

The colors were presented by Girl Scout Troop #1819. At the Mayor's request, they introduced themselves indicating they were 9th graders from Jefferson High School.

Roll Call

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

Absent: Councilmember A. Grady.

**Adopted Resolution
Approving Variance
for Rainbow Play
Systems
Case 9189A-06
ITEM 3.1
R-2006-87**

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to adopt a resolution approving a variance to increase the allowed sign size on the secondary elevation from 50 square feet to 100 square feet for a new wall sign for Rainbow Play Systems at 900 West 80th Street, Case 9189A-06, subject to the following 3 conditions as set forth by the Planning Division staff:

1. No wall signs be placed on the north or south elevations;
2. Signs be limited to 100 square feet in the dimension shown in Case 9189A-06; and
3. Any violation on the property be remedied prior to the issuance of any permits for the signs on the east elevation.

**Adopted Resolution
Approving Variance
for McDonald's
Case 5735D-06
ITEM 3.2
R-2006-88**

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to adopt a resolution approving a variance to reduce the required 20-foot front yard setback to 10 feet for an existing pylon sign for McDonald's Corporation at 9529 Lyndale Avenue South, Case 5735D-06, subject to the following condition of approval as set forth by the Planning Division staff:

1. Variance only applicable to the sign as shown in Case 5735D-06.

**Ratified 2006/2007
Contribution to
Fire Pension
ITEM 3.3**

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to ratify that the 2006/07 contribution by the City of Bloomington to the Fire Pension Contribution is \$0.

**Approved List of
Election Judges
ITEM 3.4**

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to approve the appointment of the individuals listed in the agenda materials as eligible to serve as election judges for the 2006 Primary (September 12) and General (November 7) Elections.

**Approved Change
Order #1 to 2006-101
PMP Street
Improvement Project
ITEM 3.5**

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to approve Change Order #1 to the 2006-101 Pavement Management Program (PMP) Street Improvement Project in the amount of \$118,469.61 (including the 2006-103 Fremont Avenue Diversion). The change order is for the replacement of the existing 27" storm sewer with 36" storm sewer from West 80½ Street to the Southtown Apartments Pond (City Pond ID #07-01) on the east side of Fremont Avenue South. It also includes the repair of a broken storm sewer pipe in West 80½ Street.

The cost for the improvement to come from the storm sewer Capital Improvement Fund 8320 and not be directly assessed. The total contract amount for the 2006-101 PMP Improvement Project would increase from \$3,352,061.51 to \$3,470,531.12.

- Awarded a Contract to Environmental Enhancements, LLC
ITEM 3.6** Motion was made by Wilcox, seconded by Peterson, and all voting aye, to award a contract to Environmental Enhancements, LLC in the amount of \$131,491.00 for the fall street sweeping of 342 centerline miles of Bloomington streets and cul-de-sacs excluding State and County highways. Work under this contract to start after September 5 and be completed no later than October 14, 2006.
- Funds for this contract are available in the 2006 Storm Water Utility Fund Budget, Activity 530-8306-433.63-24.
- Approved Travel
ITEM 3.7** Motion was made by Wilcox, seconded by Peterson, and all voting aye, to approve the following out-of-state travel for Councilmember Steve Elkins and Mayor Winstead to attend the 5th Annual InterCity Leadership Visit to San Diego, CA on October 15-17, 2006.
- Approved Minutes
ITEM 3.8** Motion was made by Wilcox, seconded by Peterson, and all voting aye, to approve the minutes of the February 13 (study) meeting as presented.
- Awarded a Contract to Urban Companies
ITEM 3.9** Motion was made by Wilcox, seconded by Peterson, and all voting aye, to award a contract to Urban Companies in the amount of \$35,431.00 for Brookside Park Playground general site work located at 10000 Xerxes Avenue South and approved an additional \$5,000.00 as a contingency fund for the project.
- Funding to come from the 2006 Park Development Capital Projects Fund, 411.95-02.
- Awarded a Contract to Earl F. Andersen, Inc. (Brookside)
ITEM 3.10** Motion was made by Wilcox, seconded by Peterson, and all voting aye, to award a contract in the amount of \$54,000.00 to furnish and install replacement playground equipment at Brookside Park to Earl F. Andersen, Inc.
- Funding to come from the 2006 Park Development Capital Projects Fund, 411.95-02.
- Awarded a Contract to Webber Recreational Design (Hohag)
ITEM 3.11** Motion was made by Wilcox, seconded by Peterson, and all voting aye, to award a contract to Webber Recreational Design in the amount of \$37,500.00 to furnish and install replacement playground equipment at Hohag Playlot located at 9113 16th Avenue South and approved an additional \$2,000.00 as a contingency fund for the project.
- Funding to come from the 2006 Park Development Capital Projects Fund, 411.95-02.
- Awarded a Contract to Webber Recreational Design (Quail Ridge)
ITEM 3.12** Motion was made by Wilcox, seconded by Peterson, and all voting aye, to award a contract to Webber Recreational Design in the amount of \$50,500.00 to furnish and install replacement playground equipment at Quail Ridge Playlot located at 7301 Minnesota Bluffs Drive and approved an additional \$2,500.00 as a contingency fund for the project.
- Funding to come from the 2006 Park Development Capital Projects Fund, 411.95-02.
- Awarded a Contract to Earl F. Andersen, Inc. (Xavier)
ITEM 3.13** Motion was made by Wilcox, seconded by Peterson, and all voting aye, to award a contract to Earl F. Andersen, Inc. in the amount of \$50,500.00 to furnish and install replacement playground equipment at Xavier Playlot located at 11276 Xavier Road and approved an additional \$2,500.00 as a contingency fund for the project.
- Funding to come from the 2006 Park Development Capital Projects Fund, 411.95-02.
- 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.
- City Council Policy & Issue Update
ITEM 6.1** The monthly update was provided to Council.
- City Manager Mark Bernhardson mentioned that the City received word that it is a finalist in two for the SAVVY awards; one for the Insider (employee publication) and one for the City's Annual Report. He congratulated and thanked the Communications and Finance staff that worked on these two publications.
- No Council issues were presented.

ITEM 6.1 continuedAdditional Council Comments:

Axtell commented on the very successful National Night Out activities of August 1.

Police Chief Laux commented on all of the great public support that was witnessed during the National Night Out events.

Bernhardson provided the following additional comments:

- Safety Festival & Creekside Open House -- Saturday, August 12.
- Comcast took over from Time Warner on August 1.
- Bloomington is one of eleven cities to be awarded a Blue Cross Blue Shield grant up to \$75,000 to develop alternative transportation for the community. (Biking, walking and other non-traditional vehicle transportation that will tie into transit for energy efficiency, physical activity and enjoyment.) The Alternative Transportation Plan will help drive part of the restriping program within the community.
- Mentioned that he, Clark Arneson, Mayor Winstead and Mark Fabel from McGough Development were onsite today at the LRT station with a reporter from Channel 5 who was excited about the opportunity Bloomington Central Station (BCS) presents. The number of riders keeps increasing. This story will not air tonight, however, due to pre-empted accident. The BCS park area is now being cordoned off and tenants have moved into Reflections.

**Adopted Resolution
Approving Off-Site
Gambling Application
for Bloomington Lions
Club**

**ITEM 5.1A
R-2006-89**

Motion was made by Peterson, seconded by Nordstrom, and all voting aye, to adopt a resolution approving an off-site gambling (raffle) application for the Bloomington Lions Club to be used at the Minnesota Valley Country Club located at 6300 Auto Club Road.

**Tobacco License
Violations –
Portland Auto Service
Normandale Amoco
Bloomington Citgo
ITEM 5.1B**

Jennifer Tichey, Associate City Attorney provided the staff report describing the following three tobacco license violations that occurred on June 8, 2006, as a result of the tobacco license compliance checks that were conducted by the Bloomington Police Department as required by State law. It was a third violation in five years in all three of the following cases:

#1: Gasport Standard Service, dba Portland Auto Service, Inc., 7801 Portland Avenue South

Tichey explained that a police operative requested and was sold tobacco without the cashier requesting to see any identification. The Police notified the clerk after the sale was made and a Stipulation of Facts was signed. She reviewed the fine structure stating that a third tobacco violation within five years has historically resulted in a \$600 civil penalty and a minimum 7-day tobacco license suspension.

No representative from Gasport was present to speak on this matter.

Motion was made by Peterson, seconded by Elkins, and all voting aye, to impose a 7-day tobacco license suspension and a \$600 fine.

#2: South France Standard, dba Normandale Amoco, 5150 West 98th Street

Tichey described the violation that occurred when a 16-year old police operative requested and was sold cigarettes with no age identification requested. Bloomington Police Department notified manager of the illegal sale. A Stipulation of Facts was signed.

ITEM 5.1B continued

Speaker #1: Linda Persons, Normandale Amoco

She thanked the City for the materials they provided her but stated she found a better program online. She liked the idea of the We Card agreement. She brought along the manager who was on duty during the time the violation occurred stating he is on a 12-month probation. She stated they do take the selling of tobacco to minors very seriously and are trying to put an end to the issue of illegal sales. She closed by stating that only a very small portion of their operation is the convenience store.

Motion was made by Peterson, seconded by Elkins, and all voting aye, to impose a 7-day tobacco license suspension and a \$600 fine for this third violation.

#3: Bloomington Citgo, 10740 Normandale Boulevard

Tichey explained that a 17-year old operative attempted to purchase cigarettes and that the clerk asked for an I.D., looked at it, but then proceeded to make the illegal sale. A Police detective notified the clerk of the illegal sale. The clerk stated he miscalculated the age.

Speaker #1: Arlene Bernardi, Owner, & Joe Thompson, General Manager

She stated they have two locations in Bloomington and presented a copy of the action plan they will soon be implementing. She stated the clerk knew the customer was underage but let it go, as he was only two months from his 18th birthday. It was stated they are considering installing an electronic scanning machine to rectify this situation. Their own compliance checks resulted in a 50% failure rate.

Motion was made by Peterson, seconded by Elkins, and all voting aye, to impose a 7-day tobacco license suspension and a \$600 fine.

**Approved Liquor License Amendment for Richfield/Bloomington Eagles
ITEM 5.1C**

Motion was made by Peterson, seconded by Wilcox, and all voting aye, to approve an amendment to the following on-sale liquor license: Richfield/Bloomington Eagles #3208 located at 9152 Old Cedar Avenue from noon to 5 p.m. on August 19, 2006, for the Eagles Club annual members picnic.

No public testimony was received.

**Approved a Temporary Conditional Use Permit for Bloomington Carpet One at 501 American Boulevard West
Case 6038A-06
ITEM 5.2A**

Motion was made by Nordstrom, seconded by Elkins, and all voting aye, to approve a three-year Temporary Conditional use Permit for the retail sales of carpet as an adjunct to a carpet wholesale business at 501 American Boulevard West, Case 6038A-06, for Carpetime Inc. dba Bloomington Carpet One, subject to the following 6 conditions of approval as set forth by the Planning Division staff and the Hearing Examiner:

1. The parking area and public business entrance continue to be properly illuminated as approved in order to serve the retail use;
2. No exterior display or storage of business products is allowed;
3. All trash and recyclable materials shall be collected and stored within the building as previously approved by the Fire Marshal and Planning Manager;
4. The temporary storage container on the west side of the building shall be removed upon completion of the street, curbing, and driveway work for American Boulevard or by October 1, 2006, whichever occurs first;
5. All business signage shall be in compliance with Section 19.113 of the City Code; and
6. A future request for the renewal of this temporary conditional use permit may be heard before the Hearing Examiner in accordance with the provisions of Section 2.14 of the City Code.

No public testimony was received.

**Adopted Resolution
Approving Preliminary
& Final Plat of
HARRIET WEST
ADDITION
Case 4560A-06
ITEM 5.2B
R-2006-90**

Motion was made by Peterson, seconded by Nordstrom, and all voting aye, to approve the Preliminary Plat and adopted a resolution approving the Final Plat of HARRIET WEST ADDITION located at 10110 Harriet Avenue South, Case 4560A-06 for Danny O. Chuka, subject to the following 9 conditions and 2 Code requirements:

1. Title opinion or title commitment dated within the past six months shall be provided.
2. Connection charges shall be due prior to issuance of utility permits.
3. Right-of-way to 30 feet from centerline along Harriet Avenue shall be dedicated on the Final Plat.
4. Standard drainage and utility easements 10 feet along street frontages and 5 feet along internal lot lines shall be provided.
5. Ten-foot sidewalk/bikeway easement shall be provided along Harriet Avenue.
6. Signed copy of private common driveway/parking/access easement agreement shall be provided.
7. Signed copy of private common utility easement agreement shall be provided.
8. Temporary street signs, lighting, and addresses shall be provided during construction.
9. Surveyor shall provide monumentation letter certifying that all monuments shall be placed within one year of filing the plat, unless set before filing.

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.

**Continued to Aug. 21
Ordinance Amending
City Code Regarding
Standards for Plat
Findings, Lot Width,
Building Height &
Residential Tree
Preservation
ITEM 5.4A1**

Motion was made by Peterson, seconded by Elkins, and all voting aye, to continue to the August 21 Regular Council meeting, an ordinance establishing new plat findings, residential lot width standards, building height standards and residential tree preservation standards, thereby amending Chapters 16 and 19 of the City Code.

Larry Lee, Community Development Director presented the item explaining that the ordinance addresses the subdivision of larger lots upon which single-family homes of much different character and size compared to the existing neighborhood are developed and the resulting tree loss that occurs. He described the four areas addressed in the ordinance amendment and introduced Greg Ingraham, a consultant with the Hoisington/Koegler Group hired by the City to assist staff on this project.

Ingraham presented background relating to the Council's previous direction with regard to this issue, the study that was used to prepare the ordinance, and the analysis of the study and highlighted the pros and cons of the amendment. His presentation included discussion on the following:

- Background: Ordinance focuses on single-family and two-family subdivisions, tear downs and rebuilds on the same lot, and major additions when the scale is changed.
- Items for Council discussion included: objective standards, plat findings, revision of lot width standards to more of a prevailing width or the option of a prevailing width to match the neighborhood, building height and side lot line, and separation between structures, and tree preservation.

ITEM 5.4A1 continued

1. Revised Subdivision Criteria: (Applies to new subdivisions).

Regarding the finding that involves adequate public facilities, City Attorney Dave Ornstein commented that in the most recent legislative session, the Legislature made some changes to Park Dedication, one of which prohibits cities from denying plats based solely on an inadequate supply of parks, open space, trails, or recreation facilities. As a result, he recommended for Finding #5, which is a good finding for the adequacy of public facilities, that the mention of trails, parks and walks be deleted from the language in Sec. 16.05.01 (e) (5) so that denial can't be based solely on inadequate parks, trails or walks.

2. Lot Width Standards: (Matches the lot width of new subdivisions to the prevailing or median lot width in the neighborhood – modeled after Edina's ordinance. To maintain the character of a particular neighborhood, the lot width of the newly subdivided lot would have to match the median width of the properties within 500 feet surrounding the proposed subdivision up to a maximum width of 120 feet.)

Lot width would be measured at the property setback and not at the street. If lots did not meet this requirement, options such as applying for a Planned Unit Development or a Neighborhood Unit Development would be available. This requirement will help retain the character of the neighborhood. Lots would need to be a minimum of 80 feet to 120 feet.

3. Building Height: (The taller the structure, the greater the required side yard setback.)
4. Tree Preservation Standards: (Applies to new single-family and two-family subdivisions.)

A developer could remove up to 50% of the trees on a property without doing a replacement.

- Results of staff's testing regarding proposed ordinance amendment using the most recent subdivisions approved by Council.
- Results of hearings of proposed ordinance at the Planning Commission: They recommended approval of all of the ordinances and standards with revisions. Recommended a grammatical change to exempt multi-stem Cottonwoods. The Planning Commission recommended the 6-inch diameter be applied to Oaks, Sugar Maples, Ironwoods and Hickories due to the importance of those species of trees.
- Staff recommended changes: Enhance the Commission's recommendation by adding a definition of diameter to breast height to the ordinance and clarified some of the details relating to chimneys and lot width calculations for two-family.
- Pros and cons regarding the four sections of the amendment:
 1. Pros: Subdivision findings do reflect the current practice but are more objective than the current ordinance. Height and height to side yard transition is simpler than the existing. It caps height but still allows very tall structure as long as they have a greater setback.
 2. Cons: Some of the existing houses wouldn't meet this regulation and new additions that would be added to those houses beyond the building envelope would be required to adhere to the new standards.

Bob Hawbaker, Planning Manager provided specifics relating to the amendment explaining that the City is working on the development of a GIS tool that should provide applicants with a ballpark answer to some of their questions relating to some of the City's standards. He took each issue individually and public comment was received accordingly:

- Height limits: (30 feet for flat-roof homes and other structures and single-family and two-family dwellings could go up to 40 feet if they met the additional setback requires.)

- ITEM 5.4A1 continued**
- Revised lot width standards: (Intent is to match the lot width of new subdivisions to the prevailing or median lot width in the neighborhood. Modeled after Edina’s ordinance.)
 - Tree Preservation: Prevents excessive tree removal and clear-cutting while still allowing a modest amount of development and removal.

Ornstein mentioned that the last sentence in Section 19.53 (b) Applicability should read as follows: “The regulations continue to apply for a period of two years after the date the plat was filed with Hennepin County.”

Based on Council’s inquiries relating to the last few subdivisions that came before the Council, Larry Lee analyzed them to see how they would have fared using the new standards.

Mayor Winstead invited public comment on the following portions of the proposed ordinance:

- Findings: (No public comment was received.)
- Lot Width:

Speaker #1: Ray Anderson, 9243 Green Briar Road

Forty-five years ago, he purchased an acre and two-thirds, over 67,000 square feet, in west Bloomington, hoping it would fund his retirement. He stated he would be out \$300,000 if this ordinance gets approved as presented. He stated his lot is on a cul-de-sac and that he would like to subdivide it but it has little street width. He stated he opposes what the Council is proposing unless there are some variances to available to get it subdivided. He stated he would not oppose the proposed ordinance if variances are available on the size of the lot rather than just the width.

With regard to Anderson’s desire to subdivide, Hawbaker replied that no neck lots could be done without a variance under either the proposed or existing ordinance.

Speaker #2: Jeff Andrews, Bloomington Resident

He inquired if the new ordinance was only going to apply to new subdivisions. He stated the Council needs to be careful when adopting an ordinance that could limit homeowners in being able to expand their existing homes. He added that there would be a net loss to certain homeowners in Bloomington who might want to subdivide their lots and there would be a loss of tax value from the increased building that would be prohibited due to the new ordinance. He commented that the general public might not be aware that the City is proposing this ordinance.

Peterson stated that the proposed ordinance doesn’t appear to have any material impact on the future expansions of the living area of existing homes in Bloomington.

Speaker #3: Peter Beck commenting on Edina’s ordinance

He stated that although he isn’t representing anyone on this particular ordinance, he has had experience with Edina’s ordinance and shared some of his observations of the impact of that ordinance. He stated Edina’s ordinance was written to prevent a client of his from splitting his lot in order to pay for college. He stated the neighbors didn’t want to see a house built on the new lot so Edina imposed a moratorium and then adopted an ordinance that prevented his client from splitting his lot. It had an impact on his client and has had on other single-family homeowners in Edina. He stated his other concern is that someone can’t be sure what the requirements will be when they purchase a lot, as ordinances can change over the years. He cautioned the Council on the administrative issues that can result from simple lot splitting.

Elkins clarified that most of his discussions with the Edina staff regarding their ordinance centered on the height requirement more than on the lot size requirements.

ITEM 5.4A1 continued

Speaker #4: Kris Grodahl, 1620 West 98th Street, President/Broker, Bloomington Realty
She inquired if her client would still be able to remove a single-family home on an oversized lot and build a twinhome under the new ordinance.

Hawbaker replied that the regulations would not affect two-family dwellings at all. There would still be a 15,000 square foot minimum lot size requirement and that it could be subdivided into two 7,500 square foot lots for an attached twinhome. Grodahl added that she has several clients that purchased larger lots as a retirement nest egg with the intention that they would be able to subdivide them someday and that it would be a definite impact on those homeowners should they not be able to do that as they had intended. She requested the Council table this ordinance for further study.

Speaker #5: Kevin Thompson, 650 East 82nd Street

He inquired if the new ordinance would require the hiring of more City staff handle all of the questions applicants will have when trying to determine what they can or can't do with their lots and that it will create a lot more work. He stated he supports lower density and solid rules and that perhaps some boundaries should be established where lots could be subdivided.

Hawbaker commented on the three single-family residential zoning districts that existed but were later condensed into one district.

- Height Standards: No public testimony was received.
- Tree Preservation:

Speaker #1: Fred Sauer, 191 Norman Ridge Drive

He supports the tree ordinance but had questions regarding it and its implementation, specifically relating to the Drip line and Critical root zone criteria and inquired about City trees in the public right-of-way. He stated most of his concerns relate to the Tree Preservation Standards. He mentioned a typo in Sec. 19.53 (f) Tree Preservation Standards: First sentence "Tees" should be "Trees." Regarding calculation of the caliper inches on a piece of property, he inquired how multiple stem trees would be counted. He inquired if trees in the right-of-way would be calculated the same way and how would they be preserved. He inquired if the Critical root zone of his tree onto a neighboring property would be affected by this ordinance.

Ingraham explained that multi-stem trees with stems less than 12 inches or 6 inches would be combined at breast height so three six-inch stems would be counted as one 18-inch tree. He stated trees within the right-of-way are public trees and are preserved, would not be calculated in the lot preservation calculation, and that this ordinance only applies to situations involving subdivisions. Regarding the Critical root zone question, he stated this ordinance only applies to subdivision situations and that if Mr. Sauer's neighbor were to subdivide his property, he would have to consider the significant trees up to ten feet away into his property. Therefore, if the land next to Mr. Sauer were to be subdivided, the developer would need to demonstrate the significant trees offsite up to 10 feet away into Mr. Sauer's property and would need to be protected within 30 feet of a disturbance zone.

Sauer inquired why the ordinance only deals with new subdivisions and not teardowns.

Lee explained that Council had previously discussed in which situations they wanted tree preservation to be applied, as they had expressed concern about the invasion of someone's private property rights in cases where they want to modify their lot by removing a tree or trees.

With regard to teardowns, Peterson commented that the setback requirement for building a new structure tends to drive replacement buildings and that many times the new structure is built in the same or in very near the same location as the existing building so Council decided to concentrate on the issue of trees with regard to subdivisions.

ITEM 5.4A1 continued

Elkins stated Council has concerns regarding developers that clear cut lots before they are subdivided and that Council would tighten up the ordinance if those problems continued to occur.

Sauer stated his biggest concern with the way the ordinance is written is regarding (f) Tree Preservation Standards and using a plat drawing, explained why he believes this ordinance is counter-productive to the way he did things on his lot. He mentioned how they designed their house to save as many trees as possible but if the new ordinance would have been applied, they would have been within the drip line of many of their trees and according to the way the ordinance is written, it would have been as if they had cut them down. They would not have been credited for trying to save any of those trees. He stated if the Critical root zone and the Drip line were to have taken into account, there is no way they would have been able to construct a house without having an impact on those trees.

Lee explained that 50% of the trees could have been removed without the replacement ordinance coming into play adding that 50% is a reasonable number.

Ingraham stated the ordinance doesn't affect an individual lot and that the ordinance would have come into play at the time the subdivision occurred. He stated it is very hard to survey a Drip line so the ordinance takes into account the Critical root zone, which is an approximation.

Sauer stated he believes paragraph (f) of the ordinance lacks flexibility and that it is impossible to meet some of the characteristics.

Ingraham stated if it would help with clarity, he would not be opposed to taking any reference to the Drip line out and just using the Critical root zone, as it might add some flexibility but could also impact some trees a little more.

Bernhardson stated there is some flexibility in the ordinance to deal with particular subdivisions as they come forward.

Sauer concluded his comments by stating that the absolute requirement of no infringement anywhere on the Critical root zone can be a very difficult thing to accomplish and suggested Council allow some limit to the encroachment within the Critical root zone for some disturbance, i.e. preserving at least 75% of the Critical root zone, and if someone does so, they would get 75% credit for trying to save that tree. He believes it will be very difficult for anyone to comply with the letter of the ordinance as laid out in paragraph (f).

Mayor Winstead requested Council's comments on these standards.

Peterson stated he would support adopting the Drip line changes in Section (f) and would like to see more delegation regarding the flexibility relating to the City forester as described in Section (i) to deal with the situations as described by Mr. Sauer.

Elkins stated he could support focusing on the Critical root zone, which appears to provide a little bit more flexibility than the Drip line. He stated this ordinance contains everything that works in other cities' ordinances. It's a first step that contains elements that are tried and true and addresses some of the issues that Edina has encountered, i.e. fooling with the grade to manipulate the height. He stated Parks, Arts & Recreation Commissioner Larson, a professional forester, provided very positive comments when she testified at the Planning Commission hearing regarding these standards. He is happy with the overall ordinance and wouldn't object to going down to 90% of the median to provide more flexibility.

Peterson requested staff bring back an analysis table to compare the impacts at the 80% and 90% levels.

ITEM 5.4A1 continued Wilcox stated his concern that this ordinance only addresses single and double occupancy and not about multiple units.

Peterson commented that most of the multiple family developments have been planned developments.

Axtell inquired if public notices were sent to owners of properties in excess of a certain amount of square footage to make them aware this ordinance is being considered and that there could be a potential impact on their ownership or was it a general posting. He was concerned with the low turnout for this discussion. He stated his concern with the standards for lot width, as it appears to have the potential to significantly impact homeowners financially with regard to their property, but supports the other standards as discussed.

Bernhardson summarized that there has been little comment from Council or the public regarding the sections relating to subdivision findings and the height of structures. However, the two areas of concern relate to the prevailing lot width, for which more options have been requested, and trees suggesting the Drip line be eliminated. He stated staff would look at what quality tradeoffs the forester could make within the ordinance. He suggested Council continue this item for review of the language that gets amended following tonight’s discussion including the language changes suggested by City Attorney Ornstein related to the removal of language regarding parks and trails and adequate public facilities under the Findings and the language regarding when plats are filed.

Motion was made by Peterson, seconded by Elkins, and all voting aye, to continue this discussion to the August 21, 2006, Regular Council meeting.

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.

<Council Recess>

The Council took a 10-minute recess.

Continued to Aug. 21 the Zoning Ordinance Text Amendments, Rezoning, and Moratoriums ITEM 5.4B-F

Winstead stated that the Council could establish the new zoning districts but defer the application of them until after the Strategic planning process has been completed.

Glen Markegard, Senior Planner provided the staff report explaining that this is the third public hearing on this item and that previously the Council discussed the underlying principles of the ordinance on July 10, discussed in more detail the specific standards on July 24, and that tonight’s hearing will focus on the issues the Council previously flagged for additional discussion. He described the issues and Council provided comments as follows:

- Issue #1: Definition of Motor Vehicle Sales – Under current zoning, used car sales are only allowed as an accessory use to new car sales. Used car sales only are not allowed in most areas of Bloomington except in the I-3 Industrial District where new cars only, used cars only, and mixed is allowed. Staff recommends against merging new and used car definitions.

(Council consensus not to merge the two definitions.)

ITEM 5.4B-F continued

- Issue #3: Proposed limitations on drive-through hours: (Hours limitations would not apply to existing restaurants that currently have hours within the restricted times, as they would become legally non-conforming and could continue their hours indefinitely, but it would apply to new drive-throughs within 300 feet of residential properties.) As proposed, drive-through hours would be limited to 6:00 a.m. to 10:00 p.m. when located within 300 feet of a residential property line. To illustrate the impact of this change, he used a map indicating that the red areas show where restricted hours would apply and the green indicated where drive-throughs would be allowed in existing zones, which are in excess of 300 feet from residential property. This change would impact any new drive-through applications. With regard to other cities, Maple Grove and Plymouth do not allow drive-throughs within 300 feet of residential property unless there is a collector or an arterial street between the drive-through and the residential property. That wouldn't be the case in Bloomington. The City of Minnetonka doesn't allow drive-throughs adjacent to residential property regardless of the hours of operation. Eagan limits hours when located within 200 feet of residential property allowing them between 7:00 a.m. – 1:00 a.m. but not from 1:00 a.m. – 7:00 a.m.

Winstead inquired if the rebuilt Taco Bell on Lyndale Avenue would have been allowed a drive-through with the existing hours of operation had this ordinance been in place a year ago.

Ornstein explained that as long as the business had a drive-through previously and they're reconfiguring, they can't expand the footprint of the building without violating the law but if they're drive-through is in the same location as it was, he indicated they would be grandfathered in.

(Council consensus to limit restaurant drive-through hours of operation from 6:00 a.m. – 10:00 p.m. when located within 300 feet of residential property and would not be allowed to operate between 10:00 pm – 6:00 a.m.)

- Issue #4: Horizontal vs. Vertical Mixed Use in the C-5 District. Residential is required but it does not mandate whether they will be vertically or horizontally integrated. Staff believes it would be hard to mix horizontally mix residential and non-residential uses on a site that is less than 2.5 acres. Using a map, he indicated what 2.5 acres would look like (a typical block in Downtown Minneapolis). Options are whether Council would allow or would require residential in the C-5 District.

Axtell stated allowing but not requiring residential in the C-5 District gives property owners some additional flexibility in what the property could be used for.

Wilcox inquired if residential could be encouraged with incentives but not require it, as it's not fair to handicap those property owners that can't afford to do that.

Elkins stated that the area in which Council is proposing a C-5 zoning is a limited area and an area in which the Council would want to encourage some land consolidation.

Wilcox believes it's fine to encourage residential and offer the incentive for it but don't demand it.

Axtell agreed with Wilcox.

Elkins stated that it would be desirable to have a land use pattern in the C-5 District that encourages areas to become 16-hour destinations.

Winstead inquired how will the goals of the entire district including residential could be met when dealing with smaller parcels.

ITEM 5.4B-F continued

With regard to the transfer of development responsibilities, Markegard stated that staff looked into and decided against it, as most of the minimum lot sizes in Airport South exceed 2.5 acres.

Wilcox stated that without some type of financial assistance, it's very difficult to develop residential like McGough and it's sitting on a light rail line.

Axtell stated he likes the concept of the C-5 District but the outcome of how it's applied should be a byproduct of the strategic planning process.

(As there was no Council consensus to require, encourage, or allow residential in the C-5 District, this discussion to be continued.)

- Issue #5: Is there a way to further limit the level of site characteristic nonconformity for motor vehicle sales uses in the C-1 District? He recapped the status of dealerships if the ordinance and rezonings are approved and explained the options for Council to consider.

Staff recommended no exception for auto dealers.

(Winstead, Wilcox, and Elkins were leaning towards an Option C but it was stated staff would craft some language that would encourage dealerships to maintain a conforming status but move towards a 4.0.)

- Issue #6: Expansion of Nonconforming Uses: He explained nonconforming uses and nonconforming site characteristics and stated that staff recommends that site characteristic nonconformities have a process through which they can expand. Staff recommends against allowing expansion of nonconforming uses. Research by staff indicated there are not many cities that allow nonconforming uses to expand.

(Peterson and Elkins recommended not allowing nonconforming uses to expand and the rest of the Council concurred.)

- Issue #7: Minimum Lot Width Requirements and Why Corner Lots are Proposed to have Higher Minimum Lot Widths: He referenced the letter the City received from the owner of the Johnson Hardware site on American Boulevard & Portland Avenue and described how this site would be affected by the proposed lot width requirements. Staff proposes 150 feet be the minimum lot width standard.

Wilcox stated that the City caused the nonconforming site characteristics at Johnson Hardware when a portion of that property was acquired for right-of-way along American Boulevard.

(Winstead suggested adopting the proposed minimum lot width standards and the majority of the Council concurred.)

- Markegard skipped over Issue #8.

- Issue #9: Options for Rezoning South of Southtown

Markegard mentioned the City had received letters from Mr. Lunz and Mr. Poligono and reviewed the options for Council to consider.

Elkins stated he could support postponing application of the rezoning but would then want a moratorium on the C-5 land until the Strategic planning process has been completed.

(Staff stated that a moratorium could only be imposed for twelve months and that the Council could impose one if someone comes in with a rezoning application.)

ITEM 5.4B-F continued

- Issue #10: Single Parcel Rezoning at 9200 Old Cedar & 8820 Lyndale Avenue South.
- Winstead commented that although there is no rezoning to apply, both of these property owners are supportive of a rezoning.
- Bernhardson suggested the Council postpone the zoning text amendments, the rezonings, and the moratorium on the pawn shops including a waiver of the 120 days.

Mayor Winstead invited public testimony relating to the proposed zoning districts.

Speaker #1: Kevin Thompson, 650 East 82nd Street

He stated he moved to Bloomington in 1988 and Johnson Hardware was in its present location and would hate to see it leave his neighborhood. He mentioned the hardware store had plenty of parking on the north and east sides of the store until the intersection improvement took a portion of the property. He expressed concern that decisions may be made by the Council that could affect the future of Johnson Hardware and the owner's retirement nest egg when it comes time for him to sell the business and the property.

Peterson stated that there are bank loans on properties all over the City that are nonconforming.

Speaker #2: Peter Beck, Representing Luther Companies

With regard to definitions, he stated it was not his intent in his letter to propose taking away the Class II definition of used motor vehicle sales but what he had proposed was including in the definition of Class I Motor Vehicle Sales everything that comes with a new car dealership. His other comments related to Issue #5 Floor Area Ratio and his concern that preventing dealerships from acquiring land and from making their property better in this interim period while working toward a higher density is counterproductive.

Speaker #3: Rob Lunz, Representing Peerless Land Company & Bloomington Chrysler Jeep

He stated he senses the Council is leaning towards Option B and inquired if an existing dealership were to expand short of a .4 FAR, would it become nonconforming.

Bernhardson stated Mr. Lunz should not go with the proposed language but let City staff revise the language.

Lunz stated that nonconforming properties can be financed but that it costs more due to more fees, etc. resulting in a diminution of value. With regard to Peerless, he stated since it appears that residential development is required in the C-5 District and not commercial development, why is it located in a Freeway Commercial Zoning District and not in a residential zoning district.

Winstead stated that the C-5 District is intended to promote a high intensity of mixed use, which would include residential.

Lunz stated that such a zoning district might be suitable to current market conditions. He stated there will be design challenges with requiring a minimum 80,000 square foot site area. He believes it would better to encourage residential rather than require it. He reported what the public financial commitment has been for projects within other communities: Excelsior & Grand (8% of the total project cost), Marketplace Lofts in Hopkins (7% of the total project cost), and Kensington Park in Richfield (20% of the total project cost). Based on those examples, he estimated that the City would need to contribute approximately \$15-\$40 million towards a total project cost of \$200 million for the redevelopment of Southtown that might be used for parking, land acquisition, etc. He stated Peerless has no trouble with the C-5 zoning but doesn't want to see it applied within the next year or so. They would prefer to see the market evolve to where it would come into play. He doesn't see how residential will succeed in this district and believes office would be more appropriate for this area.

ITEM 5.4B-F continued

Speaker #4: Jim Erickson, Representing Border Foods

He stated the project at Taco Bell would not have happened if their drive-through had to close by 10:00 p.m. The late drive-through hours are critical to the Taco Bell on Lyndale Avenue. Practically speaking, he stated the proposed ordinance will limit operations of the quick-serve restaurants of this type in the B-2 District within 300 feet of residential. He stated late night drive-throughs provide a desired service for people.

Speaker #5: Larry Reid, Bloomington Chrysler

He stated all businesses provide a service within the city. He's been in business for 30 plus years at 90th & Penn Avenue and can't afford to renovate like BMW. He believes he provides a good service to Bloomington residents and that they deserve a good dealership to service their automobiles. He requested Council consider leaving the zoning as is in this area.

Winstead stated staff would bring back some alternatives for Council consideration but that they need to act upon the ordinance on August 21.

Motion was made by Wilcox, seconded by Peterson, and all voting aye, to postpone to August 21, 2006, the zoning text amendments, the rezonings, and the moratorium on secondhand and pawn shops, and a waiver of the 120 days as the applicant on those items.

Adjourn Meeting

Mayor Winstead adjourned the meeting at 11:40 p.m.

Barbara Clawson
Council Secretary