

Regular Meeting #25
Monday, September 11, 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.
- MOMENT OF SILENCE** Mayor Winstead asked the audience to join him in a moment of silence to remember the events of 9/11.
- PROCLAMATION – Constitution Week September 17-23** Mayor Winstead read a proclamation declaring September 17-23, 2006, as Constitution Week in Bloomington. As no one was present to accept it, Mayor Winstead announced it would be mailed to the Daughters of the American Revolution.
- PROCLAMATION – National Prostate Cancer Awareness Month** Mayor Winstead read and presented a proclamation declaring September as National Prostate Cancer Awareness Month in Bloomington to cancer survivor Police Chief John Laux.

Chief Laux spoke about his personal experience in 2005 when he was diagnosed with prostate cancer. He reported he is now cancer free thanks to annual check-ups and excellent physician care and treatment and encouraged all males age 40 and older to get screened for this disease.
- PROCLAMATION – International Day of Peace** Mayor Winstead read and presented a proclamation declaring September 21, 2006, as International Day of Peace to Flora Tsukyama, Vice Chair of the Human Rights Commission and Rebecca McPeek, a member of the Minnesota Valley Universalist Fellowship.

McPeek brought ten people with her to accept the proclamation and stated it is their hope to have a city-wide event next year to celebrate the International Day of Peace in Bloomington.
- Application Withdrawn 1524 W. 86th Street Case 10734A-06 ITEM 3.1** An application to reduce the side yard setback from 5 feet to 2 feet for a driveway expansion for a garage addition at 1524 West 86th Street, Case 10734A-06, for Robert Brown was withdrawn by the applicant.
- Adopted Resolution Approving Variance at 10637 James Circle Case 10736A-06 ITEM 3.2 R-2006-99** Motion was made by Axtell, seconded by Elkins, and all voting aye, to adopt a resolution approving a variance to reduce the front yard setback from 30 feet to 29 feet for a garage addition at 10637 James Circle, Case 10736A-06, for Richard Johnson subject to the following 2 conditions as set forth by the Planning Division staff:
 1. The variance will apply only to the plans shown in Case 10736A-06; and
 2. Exterior finish and materials will be compatible with existing building materials.
- Adopted Resolution Approving Variance at 2516 W. 108th Street Case 10735A-06 ITEM 3.3 R-2006-100** Motion was made by Axtell, seconded by Elkins, and all voting aye, to adopt a resolution approving a variance to reduce the front yard (side yard adjoining a street) setback from 30 feet to 27.5 feet for a new attached garage at 2516 West 108th Street, Case 10735A-06, for Christopher Cavanaugh subject to the following 2 conditions of approval as set forth by the Planning Division staff:
 1. The variance will apply only to the plans shown in Case 10735A-06; and
 2. Exterior finish and materials will be compatible with existing building materials.
- Approved Travel Expenses ITEM 3.4** Motion was made by Axtell, seconded by Elkins, and all voting aye, to approve the out-of-state travel expenses for Councilmember Rod Axtell for the 5th Annual InterCity Leadership Visit to San Diego, CA from October 15-17, 2006 to learn about and share information relating to the operation of another city. The packaged travel costs for each participant as determined by the Minneapolis & St. Paul Regional Chambers of Commerce are \$1,995.00.

- Ordered Feasibility Report for 2007-201 Street Improvement Project**
ITEM 3.5
- Motion was made by Axtell, seconded by Elkins, and all voting aye, to order the Feasibility Report for the 2007-201 Street Improvement Project located between Highway 77 and approximately 400 feet west of the intersection of 24th Avenue along Killebrew Drive. The improvements include grading, aggregate base, bituminous surfacing, storm sewer, sanitary sewer, traffic signals, and turf restoration. The Feasibility Study will involve a preliminary design, a cost estimate and potential funding sources. In addition, the Feasibility Study will take into account the Federal project for the Killebrew Pedestrian Bridge to be construction in 2009.
- Approved Agreement with Bloomington Schools (SHIELD Services)**
ITEM 3.6A
- Motion was made by Axtell, seconded by Elkins, and all voting aye, to approve an agreement with the Bloomington School District for purchase of SHIELD (South Hennepin Interagency Learning and Development) central referral services from the Public Health Division. The City will receive up to \$64,393.36 during school year 2006-2007 for providing central referral services for handicapped children under age five and their families.
- Approved Agreement with Bloomington Schools (Handicapped Children Services)**
ITEM 3.6B
- Motion was made by Axtell, seconded by Elkins, and all voting aye, to approve an agreement with the Bloomington School District to provide services to children with handicapping conditions living in Bloomington, Eden Prairie, Edina, and Richfield. Services include public health nurse support services, the Follow-Along program, speech/language assessment, and interpretation/translation. The City will be compensated up to \$38,400 for services provided during the 2006-2007 school year.
- Approved Change Order for Chalet Sanitary Lift Station**
ITEM 3.7
- Motion was made by Axtell, seconded by Elkins, and all voting aye, to approve a change order to Electrical Resource Contractors to replace the feeder breaker in the existing outdoor switchgear at the Chalet Sanitary Lift Station. The feeder breaker must be replaced to be compatible with the newly installed main distribution panel. The change order is in the amount of \$2,642.00. The City's electrical consultant on the project (Kaeding and Associates) recommended acceptance of this change order.
- Funds are available in the Utilities Budget, Activity 520-8231-433.70-41.
- Adopted Resolutions Approving Insurance Carriers:**
- ITEM 3.8A-D**
- R-2006-101 (Dental)**
- R-2006-102 (Long Term)**
- R-2006- 103 (Life)**
- R-2006- 104 (Health)**
- Motion was made by Axtell, seconded by Elkins, and all voting aye, to adopt resolutions approving the carriers for the four insurance groups as follows:
- Dental Insurance: Delta Dental (with passive PPO) for three years.
 - Long Term Disability: Reliastar for five years.
 - Life Insurance: Minnesota Life (Ochs) for three years.
 - Health Insurance: HealthPartners for three years.
- Approved Agreement with D'Amico Catering, LLC for a Normandale College Event**
ITEM 3.9
- Motion was made by Axtell, seconded by Elkins, and all voting aye, to approve an agreement between the City and D'Amico Catering, LLC to serve liquor at the Normandale College Foundation event (private rental) at the Bloomington Center for the Arts on September 13, 2006.
- Approved Minutes**
ITEM 3.10
- Motion was made by Axtell, seconded by Elkins, and all voting aye, to approve the minutes of the July 10, 2006, Regular City Council meeting, as presented.
- Adopted Resolution Related to Community Health Board**
ITEM 3.11
- R-2006-105**
- Motion was made by Axtell, seconded by Elkins, and all voting aye, to adopt a resolution authorizing appointees to act on behalf of the Community Health Board as listed in the resolution.
- Awarded a Contract to Varian, Inc.**
ITEM 3.12
- Motion was made by Axtell, seconded by Elkins, and all voting aye, to award a contract to Varian, Inc. in the amount of \$105,365.71 for the purchase of a simultaneous inductively coupled plasma-optical emission spectrometer (720 Simultaneous ICP-OES) for use at the Water Treatment Plant.
- Funds are available in the 2006 Water Utility Operating Budget, Activity 510-8111-433.70-46.

**Ratified Changes to
Council October 2006
Meeting Schedule
ITEM 3.13**

Motion was made by Axtell, seconded by Elkins, and all voting aye, to ratify the changes to the 2006 City Council meeting schedule for the month of October as follows:

- Changed the Regular meetings scheduled on Monday, October 2 & 16 to Monday, October 9 & 30.
- Changed the Study meeting scheduled for October 9 to Tuesday, October 24.

**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.

Cancer survivors former Mayor Coral Houle and Marguerite Adelman announced they will be attending the American Cancer Society event along with Councilmember Nordstrom and 10,000 others in Washington, D.C. next week called, "A Celebration on the Hill." The purpose of this one-day event is to call upon Congress to make them aware of the importance of the deadly disease cancer and to stress the need for Congress to continue funding the fight against it.

Speaker #2: Richard Gates, 8029 Aldrich Avenue South

He stated a house was torn down behind his and inquired if there was a plan to replace it with another house or something else. He just spent \$25,000 remodeling his home and doesn't want to see an empty hole there. He showed a photo of the demolition of that house.

City Manager Mark Bernhardson stated the house was purchased by the City and removed as part of the Lyndale Improvement Project.

Shelly Pederson, City Engineer explained that the home was part of the early acquisition process for the I-35W corridor and that the City would remove the debris and that it would just become a grassy area until a future need is identified. She stated the neighbors would be notified if any construction takes place on that parcel but there is no plan in Public Works to do anything with it at this time and that City staff would keep it mowed.

Mr. Gates also mentioned that with the house gone, he doesn't want to look straight out onto Lyndale Avenue and inquired if a fence similar to what was installed behind the bank building could be installed to buffer his view from Lyndale Avenue. He doesn't want to waste the money he has invested in his house.

Bernhardson replied that the City would look into his fence request.

Wilcox inquired about the zoning for the area.

Pederson replied that it is currently zoned R-1 on the Lyndale Avenue side.

Speaker #3: Mary Johanssen, 8023 Aldrich Avenue South

She commented that they bought their house 24 years ago and that since that house on Lyndale was removed, they hear more noise from Lyndale Avenue.

**Liquor License
Violations
ITEM 5.1A**

Associate City Attorney Sandra Johnson provided the staff report regarding the eight liquor license violations that occurred on July 18, 2006, as a result of a liquor law compliance check operation conducted by the Bloomington Police Department. She stated all of the license holders have signed stipulations admitting to the facts of these violations. She explained that Council needs to determine whether or not the violations were willful and the amount of the civil penalty to be imposed.

- **Cedar Liquor** (*Off-sale*)
1800 East Old Shakopee Road
No prior violations.

Speaker #1: Larry Welte, Owner

He stated this is their first failure of a tobacco or liquor license sting and requested the violation be deemed nonwillful. He stated the cashier requested identification but sold the alcohol anyway. They train their employees and are trying to do a good job.

**ITEM 5.1A continued
(Cedar Liquor)**

Grady inquired if their employees are trained to look at Wisconsin drivers' licenses.

Welte replied they do and that the driver's license in this particular case was clearly marked Under 21.

Motion was made by Elkins, seconded by Peterson, and all voting aye, to deem this liquor license violation nonwillful.

Motion was made by Elkins, seconded by Peterson, and all voting aye, to impose a \$1,000 fine.

- **MGM Liquor** (*Off-Sale*)
629 West 98th Street
3rd violation in 5 years.

Johnson stated in this case no identification was requested by the cashier.

Speaker #1: John Bidelli, Manager

He stated they have a "Card All" policy with a scanner and training procedures in place and that this employee was terminated as a result of the violation. Bidelli apologized to the Council.

Grady inquired if the sale can be completed without scanning the I.D. or if an override button on the register allows the sale to go through.

Bidelli replied the scanner is a separate machine and is not part of the register and that they can't get that equipment added to their cash registers.

Motion was made by Elkins, seconded by Peterson, and all voting aye, to deem this liquor license violation nonwillful.

Motion was made by Elkins, seconded by Elkins, and all voting aye, to impose a \$2,000 fine for a third violation in five years.

Axtell inquired if a fourth violation would result in revocation.

City Attorney Dave Ornstein replied that Council has the option of imposing the maximum fine of \$2,000 and a suspension of the license.

- **India Mart** (*Off-Sale*)
9805 Nicollet Avenue South
No prior violations.

Johnson explained this is a "beer only" off-sale liquor license and that in 2005, Council adopted a resolution putting all off-sale liquor licenses into the same category. She stated no I.D. was requested from the purchaser in this case. She reported a prior violation occurred at this address for which a \$500 fine was imposed.

Speaker #1: Tom Matthew, 9805 Nicollet Avenue South

He stated he is sad that this happened but said the purchaser looked 40 years old. He has since put up a big sign that states all purchasers of beer will be carded.

Wilcox inquired if Mathew was convinced that the person in the I.D. was the same person who purchased the beer.

Matthew replied he is not sure but has no recourse.

Winstead stated the Police Department made out the report.

Grady stated according to the materials, the operative was only 20 years old.

Matthew added that the India Mart sells approximately \$100 worth of beer per month and that they've done a good job passing past tobacco stings.

**ITEM 5.1A continued
(India Mart)**

Nordstrom inquired as to the criteria they use to card patrons.

Grady requested more information regarding the establishment that was previously fined \$500 at this location.

Johnson replied the A & S Kwik Mart had a violation on August 9, 2005, and a fine was imposed on December 19, 2005.

Bernhardson explained that the resolution approving changes to the policy was adopted after that sting operation.

Peterson stated that 3.2% beer fits in the \$500 bucket for the first offense and that this establishment is not a liquor store and that beer is sold as a secondary product as opposed to a full off-sale establishment.

Bernhardson explained that if Council wants something less than the scheduled fee, this item would have to come back.

Motion was made by Peterson, seconded by Grady, and all voting aye, to deem this violation nonwillful.

Motion was made by Peterson, seconded by Elkins, and all voting aye, to impose a \$500 fine as a first offense for a 3.2% beer establishment.

Motion was made by Peterson, seconded by Elkins, and all voting aye, to direct staff to bring back a revised resolution reflecting this level of off-sale.

- **Minneapolis Airport Marriott (Bistro 79)** (*On-Sale*)
2020 American Boulevard East
2nd violation within five years.

Johnson provided the staff report indicating that this is the second violation within a five-year period for Bistro 79. The server in this case did not request identification.

Speaker #1: William Hoffman, General Manager

He requested this violation be deemed nonwillful. He stated they have a no tolerance policy and as a result, this employee was terminated. He added the employee had been properly trained and provided Council with copies of their training materials.

Motion was made by Elkins, seconded by Peterson, and all voting aye, to deem this violation nonwillful.

Motion was made by Elkins, seconded by Peterson, and all voting aye, to impose a \$1,250 fine for a 2nd violation.

- **Fuddrucker's** (*On-Sale*)
3801 Minnesota Drive
3rd violation in five years.

Johnson provided the staff report stated that identification was requested in this case but the sale was still made and that it's a third violation at this establishment.

Speaker #1: Matt DeHeck, Manager

He requested this violation be deemed nonwillful. He stated he was not sure what the training method was prior to his hiring but since the date of this violation, they have implemented a driver's license guide.

Winstead inquired if Fuddrucker's had an alcohol awareness training policy.

DeHeck replied they do but the managerial staff is so new they are implementing new policies.

Axtell expressed concern that their excuse was new management.

**ITEM 5.1A continued
(Fuddrucker's)**

DeHeck, taking full responsibility for this violation, stated all staff serving alcohol has now been trained.

Motion was made by Peterson, seconded by Grady, and all voting aye, to deem this violation nonwillful.

Motion was made by Peterson, seconded by Grady, and all voting aye, to impose a \$2,000 fine. (It was stated this is only the third time since 1990 the Council has imposed such a fine.)

Grady mentioned that the penalty for a fourth violation would likely result in suspension of their license.

- **VFW – Everett McClay Post 1296** (*On-Sale*)
311 West 84th Street
2nd violation in five years.

Johnson provided the staff report stating this is their second violation within five years. She stated identification was requested but the sale was made anyway.

Speaker #1: Jim Newcomer, Manager

He stated anyone appearing under the age of 40 should be subject to a request for identification. He explained that on July 18, a Texas Hold Em tournament was going on and that all of the players participating were supposed to be age 21 and that the one waitress on duty that evening was overwhelmed with customers. He stated the server was apologetic and was not terminated. They are holding a seminar on alcohol awareness training and that server is now going to be writing the birthdate on her hand from now.

Winstead remarked that this server will probably be a better employee in the future as a result of this violation and inquired about the rules for the VFW.

Newcomer explained that members are allowed to bring in guests if they are considering becoming members and that all members and guests are supposed to sign in but admitted they are remiss in adhering to this procedure. They do have a doorman on Thursday-Saturday nights.

Motion was made by Elkins, seconded by Peterson, and all voting aye, to deem this violation nonwillful.

Motion was made by Elkins, seconded by Peterson, and all voting aye, to impose a \$1,250 fine for a second within five years.

Nordstrom inquired if the VFW generally lets teenagers in.

Newcomer again replied that no one under the age of 21 is allowed to play.

Nordstrom suggested they station someone at the door on Tuesday night as well.

- **Tony Roma's** (*On-Sale*)
346 South Avenue, Mall of America
3rd violation in five years.

Johnson provided the staff report stating this was Tony Roma's third violation within five years. She stated identification was requested but the sale was made anyway.

Speaker #1: Michael Pittera

He stated they invest a lot of time on alcohol awareness training. In this case, even though the server looked at the I.D. and noticed the patron was Under 21, she still served the alcohol and has since been terminated. They will continue to stress the importance of alcohol awareness training.

Motion was made by Elkins, seconded by Peterson, and all voting aye, to deem this violation nonwillful.

**ITEM 5.1A continued
(Tony Roma’s)**

Pittera replied that the server disregarded the Under 21 notification and tried to do the math instead.

Johnson explained that to deem a violation willful, there is usually a pattern or practice at a particular establishment to sell alcohol to minors. She stated it’s not uncommon for servers to try and calculate the age that someone turned 21 thinking they just hadn’t received their new license yet. It is not uncommon and is not excusable.

Winstead added that it is not a business policy of Tony Roma’s to serve minors and that it was an error in judgment by this particular server.

Motion was made by Elkins, seconded by Peterson, and all voting aye, to impose a \$2,000 fine for a third violation within five years.

- **Tiger Sushi** (*Wine/Beer*)
224 West Market, Mall of America
2nd violation in five years.

Johnson provided the staff report stating Tiger Sushi has a wine/ beer license only and that this is their second violation in five years.

Speaker #1: Scott Mann, Partner

He stated he was sorry and embarrassed this violation occurred. He stated they have a policy in place but that the server misread the age and has since been terminated. He mentioned his partner has implemented a \$100 bonus for any employee that passes a sting operation.

Motion was made by Elkins, seconded by Grady, and all voting aye, to deem this violation nonwillful.

Motion was made by Elkins, seconded by Wilcox, and all voting aye, to impose a \$750 fine for the second violation of a wine/beer license.

**CLOSED PUBLIC
COMMENT PERIOD**

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

**Adopted Resolution
Approving Lawful
Gambling Permit for
Bloomington Amateur
Hockey Association**

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to adopt a resolution approving the renewal of an application for a Lawful Gambling Premise Permit for the Bloomington Amateur Hockey Association for a Pull-tab operation at Billabong’s Aussie Grill & Pub at 5001 American Boulevard West.

**ITEM 5.1B
R-2006-106**

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

**Approved New On-
Sale Liquor License
for Country Inn &
Suites**

Motion was made by Grady, seconded by Peterson, and all voting aye, to approve a New On-Sale Liquor License for Country Club Restaurants, Inc. dba Country Inn & Suites at 5120 American Boulevard West.

ITEM 5.1C

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

**Approved Renewal of
a Temporary
Conditional Use
Permit for Ultra Tan
Case 8211B-06**

Motion was made by Grady, seconded by Elkins, and all voting aye, to approve the renewal of a three-year Temporary Conditional Use Permit for Skelton, Inc. dba as Ultra Tan for a tanning facility at 7810 Portland Avenue (Business – 7840 Portland Avenue South), subject to the following 3 conditions of approval as set forth by the Planning Division Staff and the Hearing Examiner:

1. The number of tanning units shall not exceed 14 during the period of the Temporary Conditional Use Permit with no more than three being standup units;
2. Window signage shall not exceed 30% of total window coverage; and
3. Future requests for the renewal of this Temporary Conditional Use Permit may be considered by the Hearing Examiner in accordance with Section 2.14 of the City Code.

No staff report was provided no public testimony was received.

Approved Preliminary Plat and Adopted Resolution Approving Final Plat of VILLAGE ON 9 MILE CREEK Case 10634A-06 ITEM 5.2B1 R-2006-107

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to approve the Preliminary Plat of VILLAGE ON 9 MILE CREEK 2ND ADDITION located 2334 Village Terrace, 2301 Village Lane & 2301 West Old Shakopee Road for Bloomington Housing Partners I c/o Greco, LLC and adopted a resolution granting Final Plat approval subject to completion of the following 8 conditions and 2 Code requirements, receipt of the title, necessary documents and deposits and a review of all documents by the City Attorney:

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. Standard drainage and utility easements 10 feet along street frontages and 5 feet along internal lot lines shall be provided.
4. An updated signed copy of private common driveway/parking/access easement agreement shall be provided.
5. An updated signed copy of private common utility easement agreement shall be provided.
6. Temporary street signs, lighting, and addresses shall be provided during construction.
7. Public access easements for trail shall be provided.
8. CIP plat and Association Declaration shall be provided.

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).

Bernhardson explained that this is a follow-up to the zoning changes that were made a few months ago. No staff report was presented.

Elkins inquired as to the location of the walkway in relation to the park.

Shelly Pederson stated it does not change significantly and showed the location of the creek and the existing pathway and how it has moved slightly due to the relocation of the townhomes.

No public testimony was received.

Adopted Ordinance Vacating Easements at 2301 West Old Shakopee Road, 2301 Village Lane, & 2325 Village Terrace ITEM 5.2B2 O-2006-36

Motion was made by Grady, seconded by Nordstrom, and all voting aye, to adopt an ordinance vacating walkway, drainage and utility easements at 2301 West Old Shakopee Road, 2301 Village Lane, and 2325 Village Terrace for Robert Wheaton of Greco LLC for the purposes of clearing 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 plat of Village on 9 Mile Creek 2nd Addition. A new walkway easement will be granted by document as a condition of the plat of Village on 9 Mile Creek 2nd Addition.

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

Approved Final Development Plan for the Laukka-Jarvis, Inc. Development at 10701 Lyndale Avenue South Case 8192D-06 ITEM 5.2C

Londell Pease, Planner summarized the points that were previously raised during discussions of the Laukka-Jarvis, Inc. Preliminary Development Plan. He stated the villa homes and townhomes had very few changes but mentioned a change that addresses adequate visitor parking. He stated a 28-foot wide street with a sidewalk will be installed to address parking needs. The developer is now proposing less units decreasing the number from 144 to 88 units. He stated 60 less units will cause a slight decrease in traffic. They are proposing a high level of underground parking and more open space. The building, however, will still be four stories. The peak has been lowered from 67 feet to 53 feet 7 inches in height. He stated staff recommends the changes as proposed and showed the new plan vs. the old plan. More underground parking will require less surface parking allowing for more open area or green space. He stated the applicant has made more changes since the Planning Commission meeting and showed the proposed elevations of the site and the low profile roof lines. The height of the building will be broken up with four on the wings but not on all three sides.

ITEM 5.2C continued

Peterson commented that it looks like the south lot lines of the two adjacent properties to the north will be 124 feet from the two-story building and 180 feet from the four-story building.

Speaker #1: Gary Tushie, Tushie Montgomery Architects, Larry Laukka, Peter Jarvis, Peter Cole and the President of Wooddale Builders

Tushie presented graphics to illustrate the concerns previously expressed:

1. Increasing the setbacks from the north and the east.
2. Maintaining the existing utility easement.
3. Saving more plant material.

Grady inquired about the proposed size of the Arborvitae.

Tushie replied they will be 5 feet tall at planting but will grow to 6 feet in height and the hedge will provide a nice screening. They've tried to keep the plant material as a buffer along two sides of the development. He added an entire floor plus is the grade separation on the north side of the condominium building.

Peterson inquired if the storm drainage easement is movable.

Tushie replied there is a major sanitary and storm drain in that easement.

Pease added the pipes are located there and there isn't a viable option to reposition them.

Tushie added a very large oak tree would be saved and that they will do as little grading as possible.

Peterson referenced a letter that received from Igdal regarding their garden.

Tushie stated the property goes into their garden so they'll remove the spreading Juniper and some of the Arborvitae hedge but two large Evergreen trees will be added.

Grady commented she appreciates the creative solution the developer devised after working with the neighborhood resulting in fewer units.

Axtell inquired as to their start date if they had any significant economic concerns relating to the status of the real estate market

Peter Jarvis replied that they hope to start grading after completion of the demolition and recycling of concrete. The project will be divided into two phases. All grading for utilities on the south portion of site will be done this winter. The north end of site will not be graded until next year. Scheduled occupancy is late summer to fall 2007 for the villas and townhomes.

Axtell commented that it is a nice looking project.

Motion was made by Grady, seconded by Nordstrom to approve the Final Development Plan for 88 condominiums, 17 villa homes and 42 townhomes at 10701 Lyndale Avenue South, Case 8192D-06, for Laukka-Jarvis, Inc., subject to the following 23 conditions of approval and 10 Code requirements as set forth by the Planning Division Staff and the Planning Commission:

1. A site development agreement including all conditions of approval be executed by the applicant and the City and proof of filing be provided to the Manager of Building and Inspection;
2. Exterior building materials be approved by the Planning Manager;
3. Grading, drainage, utility and erosion control plans be approved by the City Engineer;
4. Connection charges be satisfied;
5. A SAC determination and payment be paid, if applicable;
6. Connection charges are due prior the issuance of utility permits;

ITEM 5.2C continued

7. The revised grading, drainage, utility, and erosion control plans shall be approved by the City Engineer prior to issuance of permits;
8. Temporary street signs, lighting, and addresses shall be provided during construction;
9. A sidewalk connection shall be provided from the condo building and town homes to the public sidewalk/street and to the walk around the pond;
10. All parking shall be on-site; no on-street parking/loading/unloading will be allowed on public streets;
11. A revised circulation and access plan shall be reviewed and approved by the City Engineer, and shall include:
 - a) Auto turn calculations if on street parking is allowed on the private street;
 - b) Turnarounds for the dead ends; and
 - c) A minimum of 60-feet between garages on shared driveways.
12. A temporary chain link fence shall be provided along the bluff side during construction to protect against bluff encroachment that may cause erosion;
13. A haul road agreement shall be provided for Lyndale Avenue;
14. A Storm Water Management Plan shall be provided and approved by the City Engineer that includes the following:
 - a) Storm water Volume Control;
 - b) Water Quality Treatment which meets the requirements of the Bloomington Comprehensive Surface Water Management Plan (CSWMP); and
 - c) Maintenance Schedule/Plan for Storm water BMP signed by property owner and to be filed on record with Hennepin County. Proof of filing shall be submitted to Engineering.
15. NPDES construction site permit and Storm Water Pollution Prevention Plan (SWPPP) shall be provided. The SWPPP shall include the name and phone number of the party responsible for erosion control;
16. Lower Minnesota Watershed District Permit and comments shall be provided.
17. An Erosion Control Bond shall be provided;
18. A wetland delineation report and plans shall be provided which shall include:
 - a) Impacts and Mitigation;
 - b) A sequencing plan for the gazebo; and
 - c) A Wetland Conservation Act (WCA) permit.

and subject to the following additional conditions:

19. All unused water services shall be property abandoned.
20. No runoff will be allowed over the bluff in accordance with BP-2 Bluff Protection Zone.
21. Alterations to utilities be at the developer's expense;
22. All pickup and drop-off occur on site and off public streets;
23. All loading and unloading occur on site and off of public streets;

and subject to the following Code requirements:

1. Landscape plan be approved by the Planning Manager and landscape bond be filed (Sec 19.52);
2. Erosion control measures be in place and bond be filed;
3. All rooftop equipment be fully screened (Sec. 19.52.01);
4. Poured-in-place concrete curbs be provided on the perimeter of parking lots and traffic islands (Sec 19.64);
5. All trash and recyclable materials be stored and screened inside the principal building (Sec. 19.51);
6. Property be platted in accordance with the requirements of Chapter 16 of the City Code (Sec. 16.03);
7. Buildings be provided with an automatic fire sprinkler system, if needed, as approved by the Fire Marshal (Mn Bldg. Code Sec. 904.1, Mn. Rules Chapter 1306; Uniform Fire Code Sec. 1003);
8. Fire lanes be posted as approved by the Fire Marshal (Uniform Fire Code Sec. 901.4);
9. Parking lot and site security lighting shall satisfy the requirements of Section 19.54 of the City Code; and
10. Signage be in conformance with the requirements of Chapter 19, Article X of the City Code.

No one from the public testified.

**Adopted Resolution
Approving Conditional
Use Permit for
Chipotle Mexican Grill
at 3800 West Old
Shakopee Road
Case 10713C-06
ITEM 5.2D
R-2006-108**

Motion was made by Peterson, seconded by Nordstrom, and all voting aye, to adopt a resolution approving a Conditional Use Permit for a restaurant in a shopping center at 3800 West Old Shakopee Road (tenant address), Case 10713C-06, for Chipotle Mexican Grill, subject to the following 6 conditions of approval plus 5 Code requirements as set forth by the Planning Division staff:

1. The conditional use permit is limited to 2,515 square feet of leased space as shown in the plans approved in Case 10713C-06;

And subject to the following conditions being satisfied prior to the issuance of any permits:

2. Plans for the trash and recyclable material collection and storage space, with access directly from the restaurant, be approved by the Planning manager;
3. Sewer Availability Charge (SAC) be determined and satisfied;

And subject to the following additional conditions:

4. Restaurant seating must not exceed 80 seats (indoor and outdoor);
5. All loading and unloading occur on site and off of public streets;
6. Alterations to utilities be at the developer's expense;

And subject to the following Code requirements:

1. All rooftop equipment shall be fully screened (Sec. 19.52.01);
2. All restaurant trash and recyclable materials be stored inside the building space (Sec. 19.51);
3. Food service plans be approved by the Environmental Services Division (City Code Sec. 14.360);
4. Signage be in conformance with the requirements of Chapter 19, Article X of the City Code; and
5. All signage be in accordance with the approved Uniform Sign Design (Sec. 19.109).

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

**Adopted Ordinance
Extending Moratorium
on Installation of
Electronic Signs to
December 29, 2006
ITEM 5.4A
O-2006-37**

Motion was made by Grady, seconded by Peterson, and all voting aye, to adopt an ordinance extending the moratorium on the issuance of permits for signs displaying animation or rapidly changing images or messages through December 29, 2006. The purpose of the moratorium was to conduct a study analyzing the legal, public safety, planning, zoning and aesthetic issues related to regulation of these signs and to hold public hearings before the Planning Commission and City Council regarding proposed ordinance amendments.

Wilcox inquired if this extension marks the maximum length it could be extended.

Ornstein replied that the moratorium could be in effect for a total of 12 months.

No public testimony was received.

**Discussion Relating
to Establishing New
Neighborhood and
Freeway Commercial
Zoning Districts and
Standards
Case 10000A-06
ITEM 5.4B1**

Senior Planner Glen Markegard began by explaining this is the 5th public hearing to be held on the zoning ordinance amendment establishing new commercial zoning districts and standards. With regard to the C-5 High Intensity Mixed Use District, he stated Council consensus at the last meeting was not to require residential but rather to incent residential uses. He reviewed the following five potential incentives:

1. Floor Area Ratio
2. Height Bonus
3. Parking Reduction
4. Setback Reduction
5. Fiscal Incentive (beyond the realm of zoning)

ITEM 5.4B1 continued Markegard stated Staff recommends utilizing the following four specific bonus incentives:

1. Maximum Floor Area Ratio (FAR) incentive
2. Minimum Floor Area Ratio incentive
3. Height incentive
4. Parking incentive

He stated staff recommends changing the maximum FAR from 2.0 to 1.5 and showed a table for 10 units, 15 units, and 20 units. The maximum FAR bonus is 40 percent.

With regard to minimum FAR, he stated it could be reduced from 1.0 to .75.

Elkins commented that a lot depends on land values and inquired about the area along American Boulevard and Knox Avenue.

Markegard replied that any one of the four incentives could affect the Proforma and that the incentives should not inhibit residential at all but rather promote it.

Bernhardson suggested that a fiscal incentive used along with these four incentives could help make a project work financially for a developer.

Markegard explained that with regard to the height bonus; allow one foot of additional building height per residential unit up to a maximum height increase of 45 feet.

For the parking incentive, residential parking requirements in the C-5 District could be reduced by 5 percent due to potential transit opportunities in the C-5 District.

Wilcox stated he supports incentives #1 and #3 but inquired if #2 was really necessary.

Axtell commented that Staff recommends all four incentives be included in the tool box, as they do encourage residential development in the C-5 District.

Elkins stated that these numbers are likely to be adjusted but at least they provide a placeholder to entice the housing portion of a development.

Markegard restated that all of the Council's suggested changes to date have been incorporated in the ordinance and that Staff, Planning and the Traffic & Transportation Advisory Commission recommend adoption of the ordinance.

Winstead commented that all of the rezoning south of Southtown has been removed until after the strategic planning process.

Motion was made by Elkins, seconded by Nordstrom, and all voting aye, to approve Options 1-4 as presented by Staff relating to incentive criteria to be included in the ordinance.

With regard to the overall ordinance, Peterson commented that is a big step forward for the City, as the previous ordinance was a product of the middle of the century and that a lot has changed since the 1950's. He hopes this ordinance lasts for another 50 years, as it makes the entire process simpler. It's easier to understand with the inclusion of figures and tables. He added that as it is applied to certain properties, it can be changed and that it's not unusual to adopt something that can be tweaked down the road and indicated his support for the ordinance.

There was also discussion regarding how the 300-foot distance requirement for drive-throughs from residential was determined, the number of the drive-through lanes allowed, and in what situations more than one could be allowed.

**Adopted Ordinance
Establishing New
Neighborhood and
Freeway Commercial
Zoning Districts and
Standards
Case 10000A-06
ITEM 5.4B1
O-2006-35**

Motion was made by Peterson, seconded by Elkins, and all voting aye, to adopt an ordinance establishing new commercial zoning districts and standards, new menu board sign standards, new commercial structure design standards, new sidewalk standards, new drive-through standards, new standards for motor vehicle sales uses and new standards for residential uses in commercial zoning districts, thereby amending Chapter 19 of the City Code and establishing Chapter 21 of the City Code.

No public testimony was received.

**Adopted Resolution
Directing Summary
Publication of
O-2006-35
ITEM 5.4B2
R-2006-109**

Motion was made by Peterson, seconded by Elkins, and all voting aye, to adopt a resolution directing staff to publish a summary of Ordinance O-2006-35 creating new commercial zoning districts and standards in the official newspaper rather than the 38-page ordinance itself.

Peterson suggested staff add a note to the summary publication notice that explains how to access the complete ordinance on the City's Website.

**Adopted Ordinance
Rezoning 9200 Old
Cedar Avenue South
Case 10002A-06
ITEM 5.4C
O-2006-38**

Motion was made by Wilcox, seconded by Grady, and all voting aye, to adopt an ordinance rezoning 9200 Old Cedar Avenue South, Case 10002A-06, from the B-3 (General Business) Zoning District to the B-2 (General Commercial) Zoning District by the City of Bloomington.

Wilcox stated he discussed the rezoning with the property owner and he's okay with it.

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

**Adopted Ordinance
Rezoning 8820
Lyndale Avenue South
Case 10002B-06
ITEM 5.4D
O-2006-39**

Motion was made by Nordstrom, seconded by Elkins, and all voting aye, to adopt an ordinance to rezone 8820 Lyndale Avenue South, Case 10002B-06, from B-3 (General Business) Zoning District to the B-2 (General Commercial) Zoning District by the City of Bloomington.

It was stated the owner is aware of the ordinance and is okay with it.

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

**Adopted Ordinance
Imposing Moratorium
on Operation of New
Pawnshops Or
Secondhand Dealers
ITEM 5.4E
O-2006-40**

Motion was made by Wilcox, seconded by Axtell, and all voting aye, to adopt an ordinance imposing an eight (8) month moratorium on the operation of new pawnshops or secondhand dealers in Bloomington with a request that staff try and get the process completed as soon as possible.

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

**Adopted Resolution
Approving 2006
Assessment Roll No. 5
(Oxboro Streetscape)
ITEM 5.5A
R-2006-110**

Motion was made by Peterson, seconded by Axtell, and all voting aye, to adopt a resolution approving the 2006 Assessment Roll No. 5 relating to the streetscape maintenance performed by City forces on the properties in the Oxboro Redevelopment Area at 98th Street & Lyndale Avenue.

Per Council's request for an update on this situation, Park Maintenance Supervisor Paul Edwardson explained that the program that was brought forth a couple of years ago has not been initiated. He stated there are over 2,000 shrubs in this area and that staff has continued to remove some of the dead and dying shrubs in the area. He added that individual trees haven't been replaced but space has been left open for them so that 6-10 trees can be replaced at one time.

Grady inquired if the \$12,000 assessment is just to cover what will be done or does it accumulate in a fund.

Edwardson replied that the assessment only covers the maintenance that was provided in 2005 and doesn't include plowing, picking up trash, or maintaining the irrigation system.

Wilcox inquired if the City is doing anything for the property owners regarding lights and the brick walls.

ITEM 5.5A continued

Edwardson explained that some property owners don't understand that it is their responsibility to take care of certain things.

Wilcox stated that some education would be helpful for the business owners and developers.

Maintenance Superintendent Larry Tschida commented that it is difficult, as some of the property owners are located out-of-state.

Wilcox inquired about citing property owners who don't maintain the streetscapes on their properties.

Bernhardson replied that staff will look at what authority the City has in enforcing what the owners are responsible for and whether the assessment amount could be increased.

Elkins reported that the shrubs in the northeast quadrant along Lyndale Avenue are dead.

Axtell inquired if the City has annual communication with the tenants being assessed other than the annual bill they receive.

Peterson suggested the Council develop some streetscape standards and that when they become private improvements, arrangements can be determined regarding who will maintain them. He inquired about who maintains the area at France Avenue & Old Shakopee Road - the City or the property owner. He added money shouldn't be spent on the improvements unless they're going to be maintained.

Winstead stated that if the City is going to take on maintenance of some areas, Council should discuss the funding amount and to what level it will be maintained.

Bernhardson replied that staff will provide Council with some information for discussion.

Winstead suggested staff check with United Properties, as they seem to have a good maintenance schedule on their properties.

Elkins added that the streetscape along American Boulevard in Airport South needs some attention and discussion by the Council.

With regard to the irrigation system in Oxboro, it was stated that the City maintains it but it isn't working 100% all the time.

Grady requested a history of the assessments relating to this district.

Winstead suggested Council discuss City-sponsored streetscapes at a future study meeting to determine the costs to maintain the streetscape, how it should be funded (assessment or reserves), replacement schedule, personnel to maintain it, etc.

**Adopted Resolution
Establishing 2007
Preliminary Tax Levy
ITEM 5.5B
R-2006-111**

Motion was made by Wilcox, seconded by Axtell, and all voting aye, to adopt a resolution establishing the Preliminary 2007 Tax Levy at 5.75%.

Chief Financial Officer Lori Economy-Scholler presented the 2007 Preliminary Tax Levy & General Fund Budget. Her presentation highlighted the following slides:

- City's mission to deliver quality services at an affordable price.
- Key issues related to the levy and budget.
- Hennepin County cities over 20,000 property tax and aids comparison.
- What's Happened regarding Market Value Credit, Local Government Aid, no levy limits for 2007, and the General Fund Budget.
- 2007 Preliminary Tax Levy at \$40,361,795 and a 5.75% increase over 2005.
- Proposed 2007 Revenues: \$49,644,800.
- Proposed 2007 Expenditures: \$49,664,800.
- Monthly Cost of Services.
- Levy Options.
- General Fund Budget Options.

ITEM 5.5B continued

- Next Steps.
- Additional Comments:
 - Pavement Management Program (PMP): \$1.7 million set aside in 2007.
 - Fire Pension: No tax levy needed in 2007.
 - Strategic Priorities: Usually funded with front-end dollars but there should be approximately \$3 million available for future projects by year end 2007.
 - Approximately \$2 million available in Transitional Reserves.
 - Slowly bringing back Internal Service funds.
 - Market Value Credit – None expected in 2007.
 - No levy limits in 2007.
 - Bloomington has the lowest cost per household in tax supported services for Hennepin County cities over 20,000 households.

Wilcox inquired if the City of Minneapolis’ levy includes municipal garbage service, as the chart comparing the cost per household for service needs to compare apples to apples.

Economy-Scholler stated that if approved at 5.75%, the average increase over the last 14 years would be 3.36%. Council recommended using 5 and 10-year averages rather than 14 years to describe the average levy increase. Council suggested showing the average increase on a bar chart.

Expenditures are proposed to increase 5.16% in 2007 and it is the recommendation of staff and the City Manager to increase the levy by 5.75%.

Per Council’s request, staff to provide a history on levy limits.

**Adopted Resolution
Adopting Preliminary
2007 General Fund
Budget
ITEM 5.5C
R-2006-112**

Motion was made by Wilcox, seconded by Grady, and all voting aye, to adopt a resolution adopting the Preliminary 2007 General Fund Budget at \$49,644,800.

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

The monthly update was provided to Council.
Winstead reminded everyone to get out and vote tomorrow.

Adjourn Meeting

Mayor Winstead adjourned the meeting at 10:09 p.m.

Barbara Clawson
Council Secretary